



NORTH DAKOTA

Family Alliance LEGISLATIVE ACTION

Testimony in Support of House Bill 1136

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
January 17, 2023

Dear Chairman Klemin and honorable members of the House Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. I am testifying in support of House Bill 1136 and respectfully request that you render a "DO PASS" on this bill

The Religious Freedom Restoration Act (RFRA) is a common-sense piece of legislation designed to ensure that the government cannot exclude certain beliefs from the public square. RFRA was introduced by Congressman Chuck Schumer and Senator Ted Kennedy, passed with bipartisan support and a unanimous voice vote in the House in 1993, and was signed into law by President Clinton.¹ It was written in reaction to the Supreme Court's weakening of religious freedom protections in *Employment Division v. Smith*.²

RFRA reinstates the balancing test used in pre-*Smith* cases involving restrictions on religious freedom and permits the government to burden the free exercise of religion **only if** the government (1) shows that the burden is necessary to achieve a compelling government interest and (2) uses the least restrictive means of achieving that interest.

In other words, this law does not choose winners and losers. Instead, it protects Americans from the heavy hand of government interference with their religion, while also allowing government to restrict exercise of religious belief in necessary circumstances.

The Court determined the federal RFRA did not apply to state laws in 1997 and so in order for states to guarantee these protections for their citizens, state legislators began to pass RFRA's.³

¹ H.R.1308 - Religious Freedom Restoration Act of 1993

² *Employment Div. v. Smith* 494 U.S. 872 (1990).

³ *City of Boerne v. Flores*, 521 U.S. 507 (1997).

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503

mark@Ndfamilyalliance.org

701-355-6425

www.ndfamilyalliance.org

Twenty-three states already employ this same legal balancing standard in interpreting their state constitutions, and they are working to protect a diverse number of Americans from government intrusion.⁴

RFRA creates an even playing field for all Americans and allows minority or disfavored faiths to have an equal footing before the law. It ensures diversity and plurality of thought, at least as far as the government is concerned. And in fact, the government still wins many cases where RFRA's are in place.

There are many examples of where RFRA has been used to protect diverse groups of believers. Several prominent examples are:

- Protected a closely held business, Hobby Lobby, by ensuring their right to operate their business without violating their faith. RFRA ensured Hobby Lobby received an exemption from the contraceptive mandate in the Patient Protection and Affordable Care Act (PPACA).⁵ The Court held that there were multiple other ways the government could provide contraception to Americans besides forcing a business to provide drugs that can cause abortions against its owners' religious belief.⁶
- Protected a group of nuns who provide charitable services to the elderly poor, the Little Sisters of the Poor, from being forced by the government to provide contraceptives under the PPACA mandate in violation of their strongly held religious beliefs.⁷ The Court concluded, and both parties agreed, that the government could provide contraceptive services another way without coopting the religious group's health plan.⁸

⁴ Ala. Const. Art. I, §3.01, Ariz. Rev. Stat. §41-1493.01, Ark. Code § 16-123-401, *et seq.*, Conn. Gen. Stat. §52-571b, Fla. Stat. §761.01, *et seq.*, Idaho Code §73-402, Ill. Rev. Stat. Ch. 775, §35/1, *et seq.*, Ind. Code Ann. § 34-13-9-0.7 *et seq.*, Kan. Stat. §60-5301, *et seq.*, Ky. Rev. Stat. §446.350, La. Rev. Stat. §13:5231, *et seq.*, Miss. Code §11-61-1, Mo. Rev. Stat. §1.302, Mont. Code Ann §27-33-105 Stat. §28-22-1, *et seq.*, Okla. Stat. tit. 51, §251, *et seq.*, Pa. Stat. tit. 71, §2403, R.I. Gen. Laws §42-80.1-1, *et seq.*, S.C. Code §1-32-10, *et seq.*, SD Cod. Law Ch. 3, § 1., Tenn. Code §4-1-407, Tex. Civ. Prac. & Remedies Code §110.001, *et seq.*, Va. Code §57-2.02.

⁵ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (holding "The contraceptive mandate, as applied to closely held corporations, violates RFRA.").

⁶ *Id.* at 2782 ("HHS itself has demonstrated that it has at its disposal an approach that is less restrictive than requiring employers to fund contraceptive methods that violate their religious beliefs. As we explained above, HHS has already established an accommodation for nonprofit organizations with religious objections.")

⁷ *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

⁸ *Id.* at 1560.

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- Protected a devout Sikh's ability to practice his religion, which required him to wear a turban and a beard, and to serve his country.⁹ The Court held that the government had no good reason to keep the man from practicing his religion, especially when the military gave exception to this rule to many others for both religious and other purposes.
- Protected a Native American kindergartener's ability to wear his hair long at school in keeping with his faith. A boy wearing long hair violated the school's dress code, but the government said that the school did not have a compelling reason to force the boy to violate his faith.¹⁰
- Protected government employees countless times from discriminatory dress codes.
- Protected local houses of worship and ministries that serve the needy from discriminatory zoning laws.

There is often a concern that RFRA's drive businesses away. However, there is no proof of this actually happening, despite threats. For instance, Amazon chose to move parts of their HQ2 to states, Tennessee and Virginia, that have some of the oldest, most entrenched religious liberty laws. Texas and North Carolina have also passed strong religious freedom protection laws, some far stronger than a RFRA, and those states consistently rank in the top five in the nation for business.¹¹

However, based upon empirical data, do RFRA's have an impact on state GDP or business startups? As Attachments A and B clearly show, even a simple graph plot reveals that there is no impact to a state's GDP growth or number of business startups from implementation of a RFRA. Scary stories and media bias aside, the data provides verifiable proof that this economic hobgoblin is unfounded.

In the end, RFRA is a commonplace fix that protects the freedom to think, believe, and live out those beliefs that most of us take for granted every day. It simply ensures the government cannot take away our ability to do this without justifying their imposition.

For these reasons, North Dakota Family Alliance Legislative Action asks that you please vote House Bill 1136 out of committee with a "DO PASS" recommendation.

Thank you for the opportunity to testify today, and I'd be happy to stand for any questions you might have.

⁹ *Singh v. Carter*, 168 F. Supp. 3d 216 (D.C. Cir. 2016).

¹⁰ *A.A. v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010).

¹¹ See, e.g., Forbes' "Best States for Business 2017": <https://www.forbes.com/best-states-for-business/list/#tab:overall>

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Attachment A

State Private Industry Annual GDP (millions of current dollars)

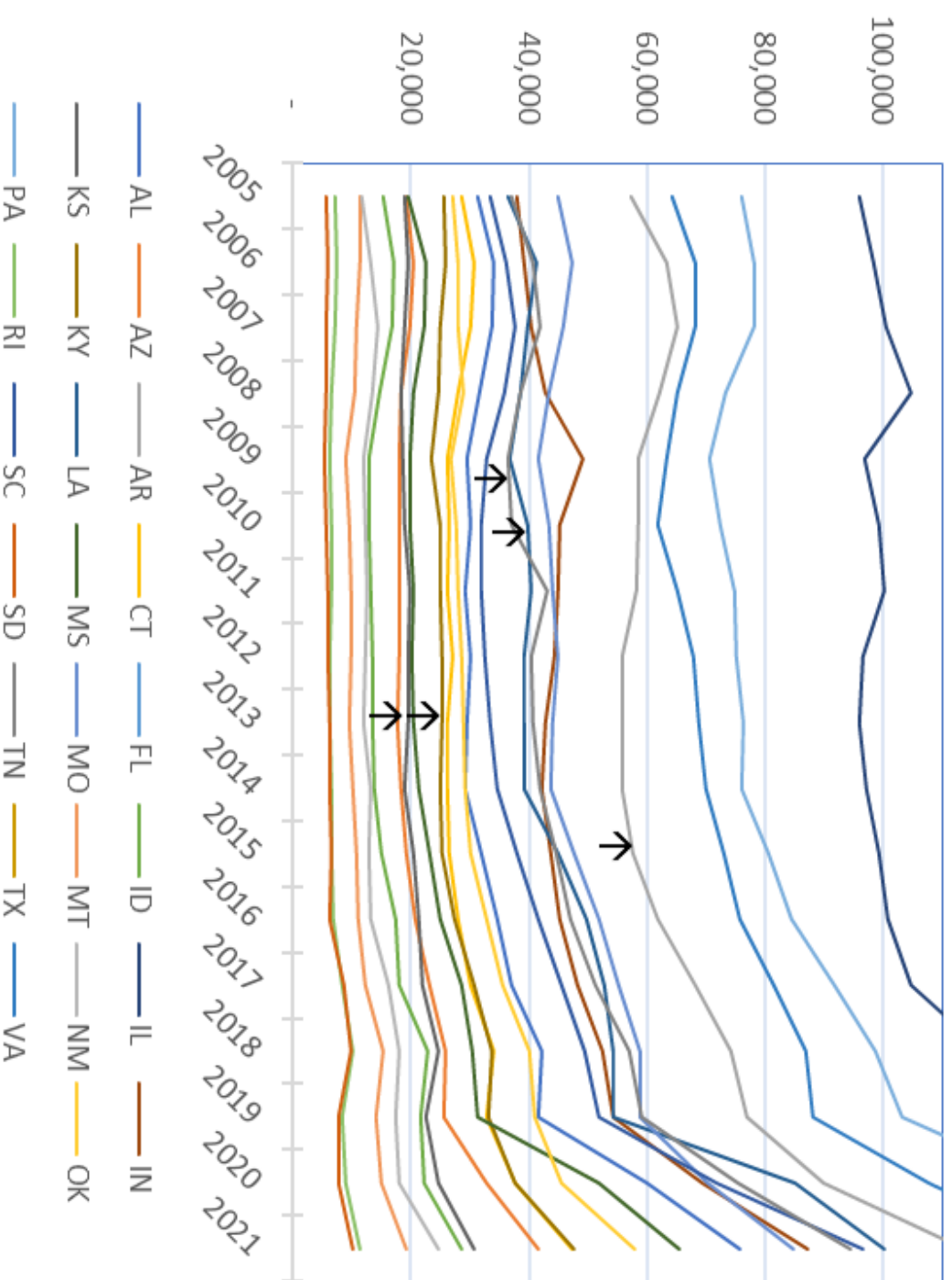
The chart displays the annual GDP of the private industry for 50 states and the District of Columbia from 1997 to 2021. The y-axis represents the GDP in millions of current dollars, ranging from \$50,000 to \$500,000. The x-axis represents the years. The states are ranked by their 2021 GDP, with California (CA) at the top and Alaska (AK) at the bottom. The chart shows a general upward trend for most states, with a notable dip around 2001 and a sharp decline in 2020. The states are ranked by their 2021 GDP, with California (CA) at the top and Alaska (AK) at the bottom.

State	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
CA	450,000	460,000	470,000	480,000	490,000	500,000	510,000	520,000	530,000	540,000	550,000	560,000	570,000	580,000	590,000	600,000	610,000	620,000	630,000	640,000	650,000	660,000	670,000	680,000	690,000
TX	350,000	360,000	370,000	380,000	390,000	400,000	410,000	420,000	430,000	440,000	450,000	460,000	470,000	480,000	490,000	500,000	510,000	520,000	530,000	540,000	550,000	560,000	570,000	580,000	590,000
NY	300,000	310,000	320,000	330,000	340,000	350,000	360,000	370,000	380,000	390,000	400,000	410,000	420,000	430,000	440,000	450,000	460,000	470,000	480,000	490,000	500,000	510,000	520,000	530,000	540,000
FL	250,000	260,000	270,000	280,000	290,000	300,000	310,000	320,000	330,000	340,000	350,000	360,000	370,000	380,000	390,000	400,000	410,000	420,000	430,000	440,000	450,000	460,000	470,000	480,000	490,000
IL	200,000	210,000	220,000	230,000	240,000	250,000	260,000	270,000	280,000	290,000	300,000	310,000	320,000	330,000	340,000	350,000	360,000	370,000	380,000	390,000	400,000	410,000	420,000	430,000	440,000
PA	150,000	160,000	170,000	180,000	190,000	200,000	210,000	220,000	230,000	240,000	250,000	260,000	270,000	280,000	290,000	300,000	310,000	320,000	330,000	340,000	350,000	360,000	370,000	380,000	390,000
OH	100,000	110,000	120,000	130,000	140,000	150,000	160,000	170,000	180,000	190,000	200,000	210,000	220,000	230,000	240,000	250,000	260,000	270,000	280,000	290,000	300,000	310,000	320,000	330,000	340,000
WA	80,000	85,000	90,000	95,000	100,000	105,000	110,000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000	155,000	160,000	165,000	170,000	175,000	180,000	185,000	190,000	195,000	200,000
MI	70,000	75,000	80,000	85,000	90,000	95,000	100,000	105,000	110,000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000	155,000	160,000	165,000	170,000	175,000	180,000	185,000	190,000
CO	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000	100,000	105,000	110,000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000	155,000	160,000	165,000	170,000	175,000	180,000
GA	50,000	55,000	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000	100,000	105,000	110,000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000	155,000	160,000	165,000	170,000
NC	40,000	45,000	50,000	55,000	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000	100,000	105,000	110,000	115,000	120,000</								

Source: U.S. Bureau of Economic Analysis, Regional Economic Accounts. An arrow indicates the year RFA was implemented in some example states.

Attachment B

Annual Seasonally Adjusted Business Applications



Source: U.S. Census Bureau, Business & Industry Time Series. An arrow indicates the year RFR was implemented in some example states.