



# NORTH DAKOTA

## *Family Alliance* LEGISLATIVE ACTION

### Testimony in Support of House Bill 1136

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March 22, 2023

Good afternoon Madam Chair Larson and members of the Senate 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.<sup>1</sup> It was written in reaction to the Supreme Court’s weakening of religious freedom protections in *Employment Division v. Smith*.<sup>2</sup>

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 the 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.<sup>3</sup>

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<sup>1</sup> H.R.1308 - Religious Freedom Restoration Act of 1993

<sup>2</sup> *Employment Div. v. Smith* 494 U.S. 872 (1990).

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

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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.<sup>4</sup>

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 sometimes wins 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).<sup>5</sup> 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.<sup>6</sup>
- 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.<sup>7</sup> The Court concluded, and both parties agreed, that the government could provide contraceptive services another way without coopting the religious group's health plan.<sup>8</sup>

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<sup>4</sup> 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.

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

<sup>6</sup> *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.")

<sup>7</sup> *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup>
- 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 state 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 and 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.<sup>11</sup>

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 discernable 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 that 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.

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

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

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

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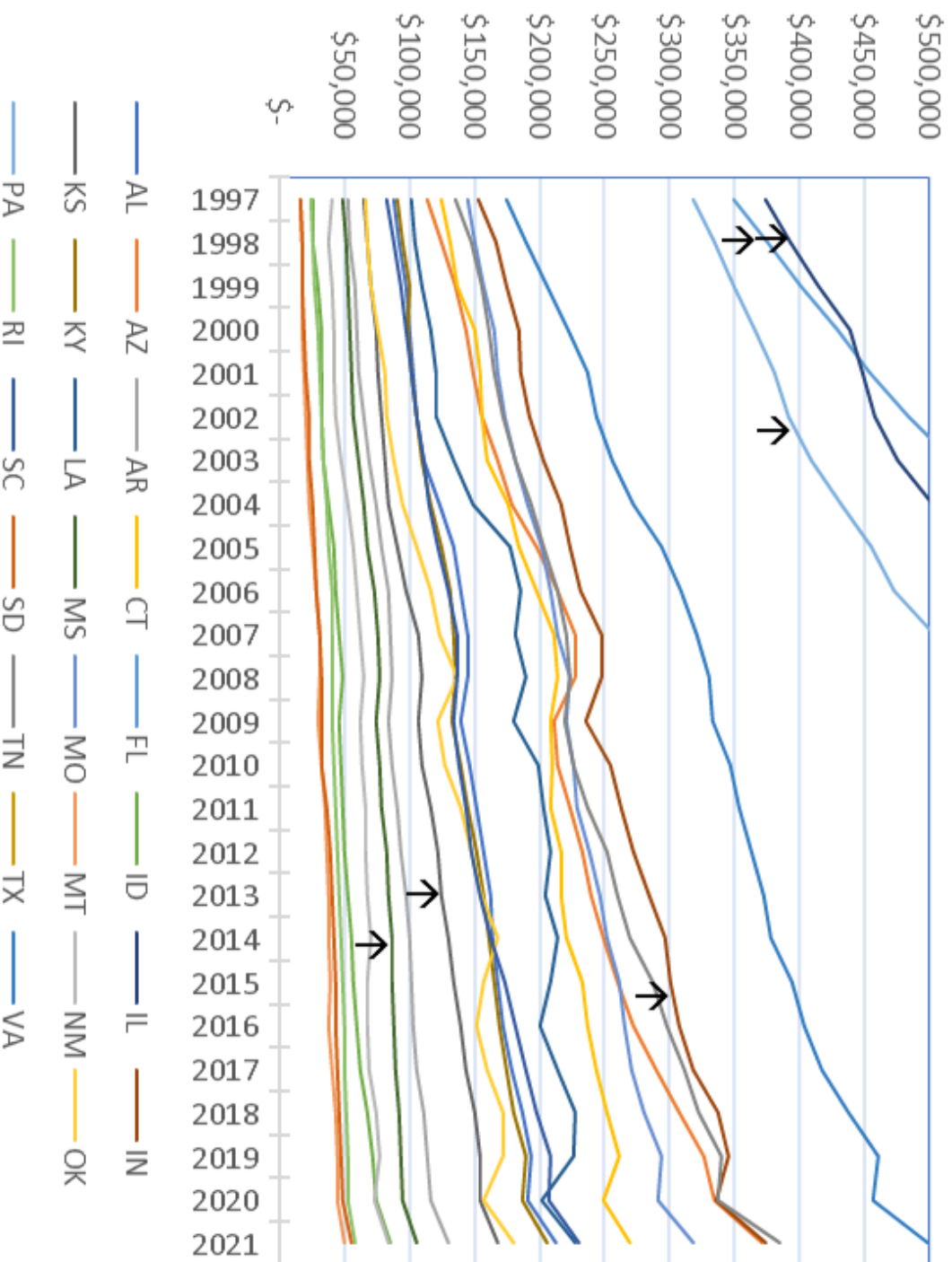
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# **Attachment A**

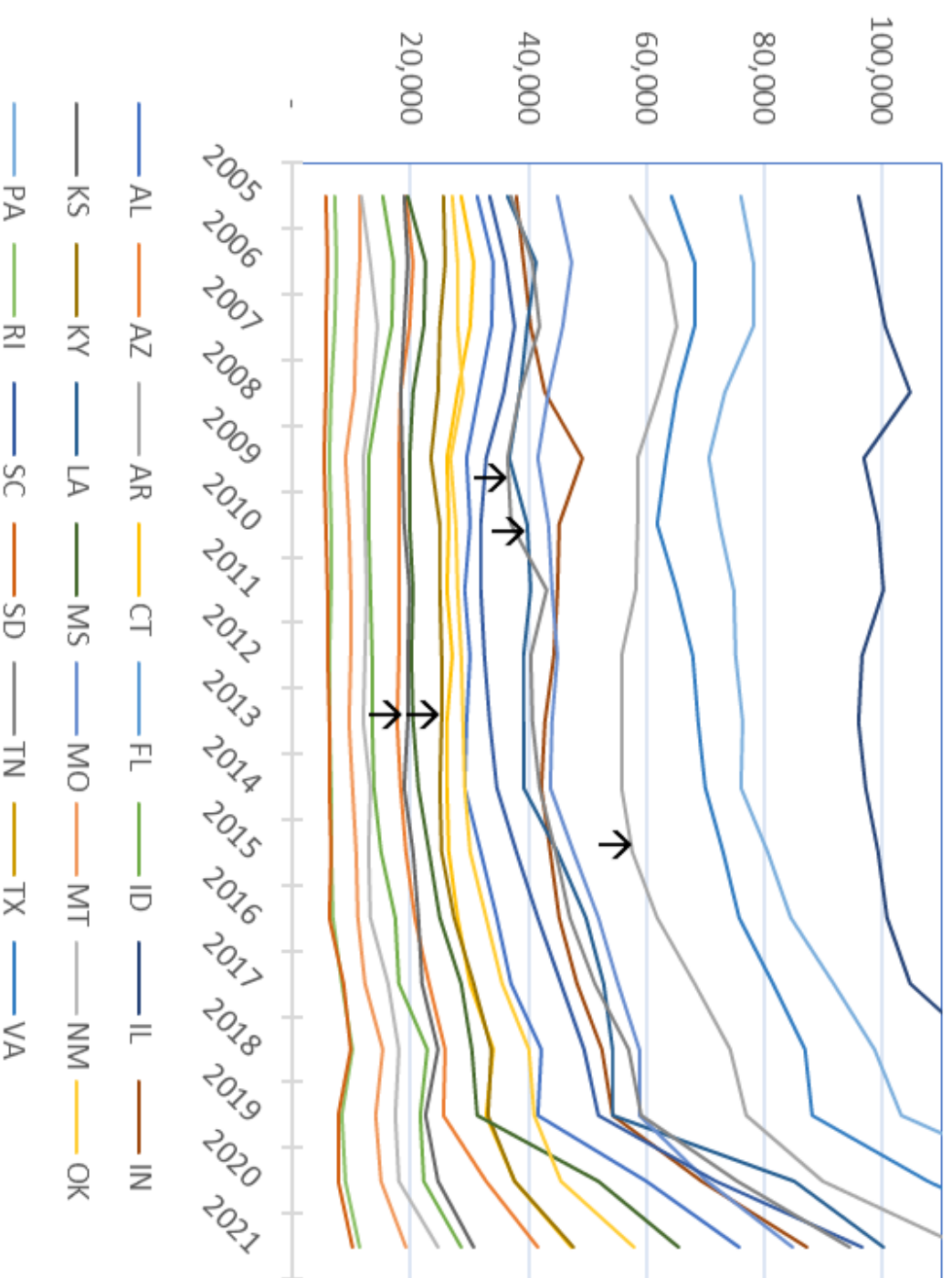
## State Private Industry Annual GDP (millions of current dollars)



Source: U.S. Bureau of Economic Analysis, Regional Economic Accounts. An arrow indicates the year RFR 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.