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HB 1145
Testimony of KrisAn Norby-Jahner
House Judiciary
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Chair Klemin and members of the House Judiciary Committee, for the record my name is KrisAnn Norby-Jahner. I am in-house legal counsel for the North Dakota School Boards Association. The NDSBA represents all 168 North Dakota public school districts and their boards. I am here today in opposition to HB 1145.

HB 1145 seeks to add a new section to N.D.C.C. ch. 15.1-09, which is a chapter outlining public school boards' duties, powers, and various legal obligations. HB 1145 would require school boards to display the ten commandments in each classroom and building on school grounds, and the Bill mandates specific display and text version requirements. The NDSBA opposes HB 1145 because it would cause public school districts to violate the Establishment Clause of the First Amendment of the U.S. Constitution, likely subjecting our schools to costly litigation and legal challenges. The Establishment Clause is central to the analysis of cases addressing religious instruction or materials in public schools. Under the Establishment Clause, "…Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…." The Establishment Clause has formed the basis for numerous challenges to state laws mandating that public school districts display the Ten Commandments.

Most recently, when the State of Louisiana passed a law similar to HB 1145, a coalition of parents swiftly filed a lawsuit, asserting facial challenges under the Establishment Clause and Free Exercise Clause of the U.S. Constitution. The U.S. District Court issued a preliminary injunction in November 2024 and specifically found that there is **no** "constitutional way to display the Ten Commandments" under a state law that contains almost the exact same requirements as those proposed in HB 1145. Specifically, like the Louisiana law, HB 1145 violates the Establishment Clause as outlined by the still-controlling U.S. Supreme Court case, *Stone v. Graham* in 1980. Even though *Stone* based its decision on the test established by *Lemon v. Kurtzman* (1971), which has since been abrogated, district courts remain bound to follow *Stone* until the Supreme Court specifically overrules it. The state law found to be unconstitutional in *Stone* shares the following similarities with HB 1145 that make them legally indistinguishable: (1) both require the Ten Commandments to be

displayed in every school classroom and building; (2) both impose comparable minimum size requirements for the display; (3) both allow for financing by private/ donated contributions; (4) both require the Ten Commandments to be the "*central*" focus or display, while failing to give preferential treatment to foundational documents like the U.S. Constitution, the Declaration of Independence, or the Magna Carta; and (5) neither require the Ten Commandments to be "integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like," *Stone*, 449 U.S. at 42.

HB 1145 is analogous to the unconstitutional law in *Stone*, where the U.S. Supreme Court held, "[i]f the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, mediate upon, perhaps to venerate and obey, the Commandments," and that "is not a permissible state objective under the Establishment Clause." Cases that have been heard in federal courts across the country since *Stone* have consistently emphasized the impressionability of young students and the fact that they are captive audiences in a school building who are significantly influenced.

Even if *Stone* did not control, HB 1145 would still be unconstitutional under the U.S. Supreme Cout's 2022 decision in *Kennedy v. Bremerton School District* (where a football coach lost his job after kneeling midfield after games to offer a quiet, personal prayer). A school employee ***choosing*** to exercise a constitutional right is different from a public school being ***required*** to adopt and display a specific religious observation. The current standard for determining the constitutionality of religious display in a public school is whether the practice at issue "fits within" or is "consistent with a broader tradition," which is determined by looking at "reference to historical practices and understandings." In Louisiana, the U.S. District Court found that even if the practice of posting the Ten Commandments in public-school classrooms did fit within a broader tradition at the time of the Founding or incorporation of the First Amendment, the state law mandating a specific display of the Ten Commandments as a focus was still unconstitutional. HB 1145, like the state law in Louisiana, is unconstitutional because it fails to select historical documents generally and it mandates a specific version of a document "without regard for belief," which make the practice discriminatory.

Most critically, however, HB 1145's mandatory practice is coercive. Requiring public school boards to permanently post a specific version and display of the Ten Commandments in every public-school classroom and building unconstitutionally pressures students into religious observance of a specific religious scripture. Under the U.S. Supreme Court test laid out in *Kennedy,* this message coerces students to adopt a specific version of the Ten Commandments and refrain from expressing any individual faith practices or beliefs that are not aligned with the State's religious preferences. This is a substantial interference with and burden on the rights of parents to direct the religious education and upbringing of their children (which also establishes a

viable Free Exercise claim that parents may bring in court). HB 1145 presents a real and substantial likelihood of coercion because students will be compelled to participate and prescribe to specific religious exercise in their school classrooms and buildings. Overall, it is highly unlikely that any North Dakota public school will be able to prove that it has a "compelling State interest" (e.g., for education or history) when following the requirements of HB 1145 in displaying a specific text/ version of the Ten Commandments in its classrooms and buildings.

A lawsuit brought forth as a result of HB 1145 will likely end with the same result as a lawsuit that was brought in North Dakota in 1980, where a **1927 North Dakota statute requiring Ten Commandment displays was invalidated**. The 1927 statute directed local school boards as well as public institutions of higher education to "cause a placard containing the ten commandments of the Christian religion to be displayed in a conspicuous place in every schoolroom, classroom, or other place where classes convene for instruction." The federal district court in that case, as in *Stone* and other cases, struck down the state law and found "not even a pretense of a secular purpose in the statute" that clearly only served to advance a particular religious purpose. It is clear that if HB 1145 were to pass and were challenged (as it almost certainly would be), it would suffer the same fate as other state statutes directed at the same goal. State laws cannot mandate displays that the U.S. Constitution already forbids. For this reason, the NDSBA opposes HB 1145.

Based on the foregoing reasons, NDSBA asks this Committee to issue a **do not pass** recommendation on HB 1145. Thank you for your time, and I would be happy to stand for any questions.