

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIRMAN
FEBRUARY 2, 2021**

**MOLLY GOEBEL, SPECIAL ASSISTANT ATTORNEY GENERAL,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY IN OPPOSITION TO HOUSE BILL 1410**

Chairman Klemin and members of the House Judiciary Committee, for the record, I am Molly Goebel, Legal Counsel for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here today to provide testimony in opposition to House Bill 1410. Also here today are Colby Braun, DOCR Director of Facility Operations, and Lance Anderson, DOCR Deputy Director of Facility Inspections.

North Dakota state and local correctional facility residents' rights to religious practices are well-protected by federal law, as well as North Dakota state and local correctional policy, procedure, and practice.

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") is a federal law enacted in 2000 with the specific intent and purpose of protecting the religious practices of incarcerated and institutionalized individuals. RLUIPA already prevents correctional facilities from placing "a substantial burden on the religious exercise" of an institutionalized person unless the government demonstrates that the burden "is the least restrictive means of furthering [a] compelling governmental interest." Public Law No. 106–274 [42 U.S.C. § 2000cc et seq.]. The law applies to all DOCR facilities and North Dakota regional and county correctional facilities. RLUIPA has been in effect long enough to have an established body of case law that provides strong protections for residents' religious rights. The Supreme Court characterizes RLUIPA's least-restrictive-means standard for placing a substantial burden on religious exercise by a prisoner as "exceptionally

demanding” and requires a correctional facility “sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].” Holt v. Hobbs, 574 U.S. 352, 357 (2015) (quoting Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 728 (2014)).

At the state level, DOCR has a strong policy, a comprehensive set of procedures, and a detailed supplemental guide it follows to protect residents’ religious practices. There are interfaith chaplains at each DOCR facility who devote their time to providing extensive access to sacred literature, appropriate religious objects, holy days, dietary accommodations, and access to a wide range of religious practice opportunities. Residents may include clergy or religious spiritual advisors on their visitation list who are vetted by DOCR staff, and there is also the opportunity for video visitation, telephone communication, and non-contact visitation.

There have been very few DOCR grievances related to religious practices; and during 2020, neither the Missouri River Correctional Center nor the James River Correctional Center received grievances related to religious rights. The North Dakota State Penitentiary only received two grievances regarding religious practices, and both were resolved through the informal process that precedes the full grievance process. And, there have been no legal cases brought against the DOCR related to access to religion practices in almost three years.

The DOCR also has strong confidence that county and regional correctional facilities in North Dakota are protecting and honoring residents’ religious rights. The DOCR is legislatively mandated to create and monitor compliance with correctional facility standards for North Dakota county and regional correctional facilities. Currently, there are

three standards that protect residents' religious rights—Standard 89, which requires each correctional facility to have a written policy and procedure for the practice of religion and the right to reasonable opportunities to exercise religious beliefs; Standard 69, which protects religious grooming requirements; and Standard 72, which protects the right to special diets for those residents whose religious beliefs require it. The DOCR conducts inspections of North Dakota county and regional correctional facilities and provides direct access to inmates to file complaints about violations of policy and infringements on their rights. In 2020, the DOCR found no examples of violation of religious rights in inspections and received no complaints regarding religious rights in North Dakota county or regional correctional facilities.

House Bill 1410 addresses issues that are not problems in North Dakota and is not needed. Chairman Klemin and members of the committee, I ask that you give House Bill 1410 a do not pass recommendation. I will now stand for questions.