

Chair Klemin, Vice Chair Karls, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to HB1136.

Freedom of religion is one of our most fundamental rights as Americans. It is protected in the state and federal constitutions. The Constitution protects not only the right to believe (or not to believe), but also the right to express religious beliefs. In this country, we have the absolute right to believe whatever we want about God, faith, and religion, and we have the right to act on our beliefs, but we do not have the right to harm others or impose our beliefs on others. The ACLU has been protecting religious freedom since its founding in 1920. We have a long history<sup>1</sup> of protecting religious believers of all backgrounds and faiths, whether it is defending a student's right to read his Bible during free reading periods at his school<sup>2</sup> or the right of a Muslim man to wear religious headwear in a courtroom.<sup>3</sup>

Unfortunately, HB1136 is broadly written and there may be unforeseen and harmful consequences to our state. If passed, this bill could excuse any person from any state or local law that they claim "burdens" their exercise of religion. This includes beliefs that do not stem from any established religion. Thus, any individual religious belief can determine which state and local laws a person chooses to honor.

In other states, we have seen individuals and groups use religious freedom as a justification for a wide range of behavior, some of it potentially criminal. Here are just a few examples:

- Police officers have used religious freedom as an excuse to refuse orders they claimed ran contrary to their personal religious views. For instance, a police officer in Oklahoma asserted a religious objection to his attending a community relations event held at a mosque, claiming a "moral dilemma."<sup>4</sup>
- Pharmacists in many states, including Ohio, Texas, and Wisconsin, have used religious freedom as a defense for refusing to dispense contraception.<sup>5</sup>
- In New Mexico, a local religious leader cited religious protection when he appealed a conviction for sexually abusing two teenagers.<sup>6</sup>
- The Department of Labor was barred from fully investigating possible child labor law violations because the individual being investigated said that his religious beliefs forbade him from discussing such matters with the government.<sup>7</sup>
- In Georgia, a graduate student training to be a school guidance counselor refused to work with a LGBTQ+ client because of the counselor's religious beliefs, and sued her university when they asked her to work with all clients.<sup>8</sup>

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<sup>1</sup> For more information on the ACLU's work to defend the rights of religious believers, consult "The ACLU Defends Religious Practice and Expression", <https://www.aclu.org/aclu-defense-religious-practice-and-expression>.

<sup>2</sup> <https://www.aclu.org/religion-belief/aclu-tn-protects-students-right-read-bible-school>

<sup>3</sup> <http://acluofnc.org/blog/report-man-removed-from-lenoir-courthouse-for-wearing-religious-attire.html>

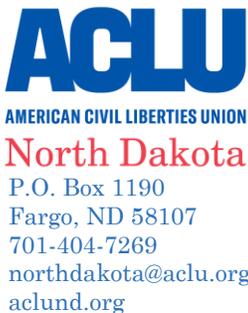
<sup>4</sup> *Fields v. City of Tulsa*, 753 F.3d 1000 (10th Cir. 2014).

<sup>5</sup> Rob Stein, Pharmacists' Rights at Front Of New Debate, Washington Post (Mar. 28, 2005), available at <http://www.washingtonpost.com/wp-dyn/articles/A5490-2005Mar27.html>.

<sup>6</sup> *Religious Group Leader's Conviction For Sexual Contact With Minor Upheld*, Religion Clause (Sept. 18, 2013), available at <http://religionclause.blogspot.com/2013/08/religious-group-leaders-conviction-for.html>.

<sup>7</sup> *Perez v. Paragon Contractors, Corp.* (Dist. Utah, Sept. 11, 2014).

<sup>8</sup> *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011).



- Parents sued their child’s school district and two principals for requiring all students to use a “Smart ID” card, claiming that requiring their daughter or permitting other students to use the ID card violated their religious beliefs.<sup>9</sup>
- By allowing someone who files a lawsuit to recoup damages, this bill could be an invitation for people to sue the government. The bill may increase congestion in our state courts and divert the already scarce resources of law enforcement agencies and governments at both the state and local level.

Similar legislation in Arizona was vetoed by Governor Jan Brewer after opposition from the general public and business community including Arizona Cardinals and the National Football League; major corporations representing a wide range of industries, including airlines, technology, and hospitality, to name just a few; and, politicians from both sides of the aisle, including Senators John McCain and Jeff Flake.



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Similarly, the people of North Dakota have already spoken their opposition to this kind of legislation: a 2012 proposed state constitutional amendment with very similar language and sentiment to HB1136 was resoundingly defeated by 64% when put on the ballot. North Dakotans know their religious freedom is sufficiently protected in this state and this country without this unnecessary legislation which comes with a host of potential unintended consequences.

For the reasons we have stated here, we urge you to reject HB1136.

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<sup>9</sup> *A.H. ex rel. Hernandez v. Northside Ind. Sch. Dist.*, 916 F. Supp. 2d 757, 765 (W.D. Tex. 2013).