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The Honorable Lawrence Klemin
Chair
Judiciary Committee
North Dakota House of Representatives
600 East Boulevard
Bismarck, ND 58505

The Honorable Karen Karls
Vice Chair
Judiciary Committee
North Dakota House of Representatives
600 East Boulevard
Bismarck, ND 58505

Re: Oppose SB 2308 – Ten Commandments Displays In Public Schools Are Unconstitutional

Dear Chair Klemin and Vice Chair Karls:

On behalf of the North Dakota members and supporters of Americans United for Separation of Church and State, I urge you to oppose SB 2308, which would authorize public school teachers to post the Ten Commandments in classrooms. This bill should be rejected because it is unconstitutional and will likely result in costly litigation¹ that school districts are sure to lose.

The U.S. Constitution Prohibits Displaying the Ten Commandments in Public Schools

In *Stone v. Graham*, the Supreme Court held that the Ten Commandments are “undeniably a sacred text in the Jewish and Christian faiths.”² Displaying the Ten Commandments in public schools is, therefore, unconstitutional; it “serves no . . . educational function” and serves only to “induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.”³ SB 2308 would encourage public schools to defy this clear constitutional command and violate the religious freedom of their students, teachers, and school employees. And North Dakota taxpayers will be forced to foot the bill for the inevitable federal lawsuits that the schools will undoubtedly lose.⁴

¹ Although the bill includes a provision to make school boards, districts, and officials immune from liability, the state cannot create immunity from federal lawsuits. As a result, the state would be responsible for any damages that result from the bill.

² 449 U.S. 39, 41 (1980) (per curiam); see also *Prescott v. Oklahoma Capitol Preservation Com’n*, 2015 OK 54, 373 P.3d 1032, at 1034 (“[T]he Ten Commandments are obviously religious in nature and are an integral part of the Jewish and Christian faiths”); *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 868 (2005) (The Ten Commandments are “a central point of reference in the religious and moral history of Jews and Christians” and “unmistakably rest . . . on the sanction of . . . divinity” and proclaim the existence of god and regulate details of religious obligation).

³ *Stone*, 449 U.S. at 42.

⁴ For example, in *Glassroth v. Moore*, the case holding Roy Moore’s Ten Commandments monument in the Alabama Supreme Court unconstitutional, defendants paid around \$850,000 to the plaintiffs for attorneys’ fees.

The bill sponsor has made clear that bill's purpose is to convince students to obey the Ten Commandments. During debate on the bill, Senator Myrdal said that "after we took prayer . . . and the 10 Commandments out of the public school" pregnancy and divorce rates rose and that she is "sick and tired of . . . putting band-aids on all the things we see in society that [are] so scary."⁵ She believes displaying the 10 Commandments in public schools would fix the "murky" state of society.⁶

Authorizing Placement of the Ten Commandments Would Be Divisive and Unwise

Our public schools should respect the religious freedom of all students and all school employees, not just those who follow a particular religion. No one should ever be made to feel unwelcome at school because of their or their families' faith or because they are nonreligious.⁷ Displaying the Ten Commandments, which is sacred only to people of certain religions, however, sends the message to some that they "are outsiders, not full members of the . . . community, and an accompanying message to [only certain] adherents that they are insiders, favored members of the . . . community."⁸

The Ten Commandments, for example, hold no religious meaning for Muslims, Hindus, Buddhists, Sikhs, or the many North Dakota students who practice other religions or no religion at all. Even adherents to the Ten Commandments have significant disagreements about their text and meaning. The disagreements lie not only among Jews and Christians, but also among Catholics, Lutherans, and other Protestants. Picking any version of the text to display, therefore, necessarily takes a position on a theological debate.

Posting the Ten Commandments, therefore, is divisive and disrespectful of the religious diversity of the students in North Dakota.

Government Postings of the Ten Commandments Trivialize and Harm Religion

Although some may try to claim that posting the Ten Commandments in public schools honors religion, it actually harms religion. The Ten Commandments are a revered religious code. Jews and Christians believe that the Ten Commandments were "inscribed by the finger of God" and represent a covenant between God and his people. Describing and treating the creed as a secular code demeans and trivializes the Commandments.

Perhaps even worse, the bill represents another example of using religion for political gain and purposes. Although passage might be politically expedient, it harms religion, making it yet another pawn in the political process. This is exactly the type of behavior that our Founders tried to prevent when they drafted the Establishment Clause.

⁵ 67th North Dakota General Assembly, [Senate Floor Session – 20th Legislative Day](#), 1:33:35-1:34:10, Feb. 3, 2020.

⁶ *Id.* at 1:46:50-1:47:07.

⁷ See *Van Orden v. Perry*, 545 U.S. 677, 703 (2005) (controlling concurring opinion of Breyer, J.).

⁸ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

Conclusion

Posting the Ten Commandments in public schools is unconstitutional, divisive, and harmful to religion. I urge you to protect religious freedom for all North Dakotans by opposing SB 2308.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikolas Nartowicz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nikolas Nartowicz
State Policy Counsel

cc: Members of the House Judiciary Committee