



ARIZONA REGIONAL OFFICE

January 16, 2014

Dear Senator Burges,

On behalf of the Anti-Defamation League (ADL), we write to urge you to oppose Senate Bill 1062, an act relating to “free exercise of religion” when it is heard by the Senate Committee on Government and Environment on January 16, 2014. Although ADL is an ardent advocate of religious freedom for all Americans, this unnecessary legislation would be detrimental to the welfare of Arizonians.

Arizona already provides greater religious freedom protection for its citizens and religious institutions than the Free Exercise Clause of the First Amendment to the U.S. Constitution. Indeed, in response to the U.S. Supreme Court’s 1990 decision in *Division v. Smith*, Arizona adopted a Religious Freedom Restoration Act, entitled “Free exercise of religions protected” (hereafter “RFRA”). See A.R.S. § 41-1493.01. The *Smith* decision lowered the level of constitutional scrutiny required to uphold federal, state or local laws that are neutral towards religion, but nonetheless burden religious exercise. The RFRA restored the pre-*Smith* standards by requiring government to demonstrate the “strict scrutiny” standard – the highest constitutional standard – where a neutral law or practice substantially burdens religious exercise.

The RFRA seeks to strike a balance between free exercise rights and the State’s welfare and safety interests. SB 1062, however, would undermine these interests for two reasons. First, SB 1062 would vastly expand the meaning of government action to include private enforcement of state or local laws where no government entity is a party to the lawsuit. Currently, an action only can brought under the RFRA, or for that matter under the federal Religious Land Use and Institutionalized Person Act or Religious Freedom Restoration Acts, where government – whether state or local – actually substantially burdens religious exercise. Therefore, the legislation would be unprecedented in that it could be used as a defense to private enforcement of important state laws or local ordinances which are traditionally enforced by private citizens.

Second, SB 1062 would vastly expand the individuals and entities that could bring actions under RFRA. Currently, the RFRA only applies to an individual, religious assembly or religious institution. The bill would expand the RFRA’s definition of “person” to include “[a]ny individual, association, partnership, corporation, church, religious assembly or institution, estate, trust, foundation or other legal entity.” This is particularly troublesome. This broad definition of person would essentially include any for-profit business corporation or business entity providing them with a powerful affirmative defense to the enforcement of any state law or local ordinance which the entity deems religiously offensive.

As a result, SB 1062 could have the unintended consequence of severely impacting individual rights and allowing economic power to dictate the free exercise of religion. For instance, under the proposed legislation, the following would be permitted:

- An employer could raise SB 1062 as defense to an employee's equal pay claim under A.R.S. §23-341 arguing that his or her religious beliefs require that men be paid more than women.
- The legislation could be used as defense to paying statutorily accrued interest on liens or other amount owed to individuals or private entities based on a religious objection to paying interest.
- A secular corporation with religious owners could refuse to hire someone from a different religion, so as to avoid paying a salary that might be used for a purpose that is offensive to the owners' religious views.
- A Christian-owned hotel chain might refuse to rent rooms to those who would use the space to study the Koran or Talmud.
- A Muslim-owned cab company might refuse to drive passengers to a Hindu temple.

Even in those cases where private enforcement of the challenged laws survive application of strict scrutiny, the legislation would result in more lengthy and costly litigation to claimants and a greater burden on our already inundated court system. .

Arizona already provides robust religious freedoms, but this unnecessary legislation will likely prove costly and harmful to the State and its citizens. In light of these unintended, but very detrimental consequences, we urge you to oppose SB 1062.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Stewart". The signature is written in a cursive, somewhat stylized font.

Tracey Stewart
Arizona Assistant Regional Director