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LEGISLATIVE MEMORANDUM

To: Members, Wisconsin State Senate and Assembly
From: Julaine K. Appling, President
Date: May 23, 2013
Re: Co-sponsoring Wisconsin's Religious Freedom Amendment, LRB 1496/1 (First Consideration)

Wisconsin Family Action urges you to co-sponsor the Religious Freedom Amendment (LRB 1496/1), authored by Senator Joe Leibham and Representative David Craig.

The right to religious freedom is guaranteed to Wisconsin citizens in both the US Constitution (First Amendment) and the Wisconsin Constitution (Article I, Section 18). However, experience has taught us that in spite of these provisions, our citizens have had their religious freedom threatened and, at times, abridged. Recent examples, unfortunately, abound.

- Officials at the University of Wisconsin-Eau Claire adopted a discriminatory policy that prohibited resident assistants in college dorms from holding Bible studies in their dorms.
- A public high school in Tomah disciplined a student for depicting a cross and a Bible verse in student artwork because the student allegedly violated a classroom rule that prohibited students from engaging in religious expression in their artwork.
- A police officer in Janesville was prohibited from posting an announcement for an off-site prayer group on a public bulletin board in the department even though he had routinely did so because someone found the posting offensive. Others frequently used the bulletin board to post announcements for various off-site events and groups.
- The village of Kewaskum prohibited an individual from distributing flyers sharing his religious belief on homeowners' door handles because it violated a city ordinance.

The joint resolution proposed by Sen. Leibham and Rep. Craig adds additional language to the Wisconsin Constitution; it does not replace or change any existing wording. The wording reflects the very best legal language that protects religious freedom in Wisconsin and clearly codifies our right to exercise our religious beliefs and conscience. The language is largely based on case law and precedent dealing with "compelling interest."

The use of the compelling state interest standard in Wisconsin case law is a relatively recent development in our state's free exercise jurisprudence. The Wisconsin Supreme Court first applied this standard in 1996. There is not enough appellate case law in this state, though, to definitively state that Wisconsin courts will continue to apply this standard. Further, because the standard is only set forth in case law, judges can decide to change this standard in the future. Nothing prevents judges in this state from doing this because the standard set forth in *Employment Division v. Smith* is the baseline for free exercise claims.

It is prudent that Wisconsin take this decisive action at this time to ensure no court capriciously begins deciding cases involving religious freedom in any other way than would be proscribed by this amendment.

Wisconsin Family Action fully supports the Religious Freedom Amendment and urges you to co-sponsor the measure. Sen. Leibham and Rep. Craig have set Tuesday, May 27, 2013, as the deadline for co-sponsoring.

If you have questions, please let me know. Thank you for your attention to this important resolution.