



AMERICAN ATHEISTS

March 20, 2019

The Honorable Rep. Drew Hansen
Chair, House Committee on College and
Workforce Development
225A John L. O'Brien, P.O. Box 40600
Olympia, Washington 98504-0600

Re: OPPOSE SB 5166, Testimony from American Atheists in opposition to legislation creating religious exemptions in higher education

Dear Chairperson Hansen and Members of the Committee on College and Workforce Development:

American Atheists, on behalf of its nearly 1,500 constituents in Washington State, writes in opposition to SB 5166, legislation which would mandate broad religious accommodation by Washington's institutions of higher education. Although we believe this legislation to be well-intentioned, the current language is vague, overly broad, ripe for abuse, and will undoubtedly lead to harmful unintended consequences, including discrimination. Therefore, we strongly urge you to vote against this legislation and to consider other mechanisms to achieve these aims.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the "wall of separation" between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation's communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious liberty, American Atheists believes that no young person should be denied educational opportunities based on their religious beliefs.

SB 5166 is intended to allow students to attend postsecondary education in Washington while ensuring that they are able to fully practice their religious beliefs. To that end, the bill requires that "Students' sincerely held religious beliefs and practices must be reasonably accommodated with respect to all examinations and other requirements to successfully complete a program."¹

This bill is clearly a well-intentioned attempt to accommodate minority faiths in higher education. However, as we have seen in numerous examples over the last several years, accommodations originally

¹ Washington SB 5166, Substitute Senate Bill, Sec. 1(2), (2019). Available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5166-S.pdf#page=1> [Retrieved 3/18/19].

intended to protect minority religions are frequently misused or misinterpreted for the benefit of majoritarian religions, often at the expense of third parties. The best example of this is the federal Religious Freedom Restoration Act (RFRA), which was passed in 1993 in order to ensure that minority religious beliefs were not burdened by generally applicable laws.² In 2014, however, the US Supreme Court ruled that under RFRA, Hobby Lobby was exempt from a requirement to provide contraceptive coverage to employees because doing so would burden the corporation's religious beliefs.³ Since the passage of RFRA, 21 other states have passed similar laws,⁴ and it has become increasingly clear in recent years that these laws may be misused to undermine nondiscrimination laws and important protections for program beneficiaries.⁵

SB 5166 provides that "The postsecondary education institution must make alternative accommodations for a student when: (a) A student's sincerely held religious belief or practice materially impacts the student's ability to perform on an examination or meet a requirement to successfully complete a program."⁶ Moreover, the bill requires that "[i]nstructors must accept at face value the sincerity of the student's religious beliefs and must keep requests for accommodation confidential unless disclosure of the request is required to facilitate the accommodation with campus administrators."

Unfortunately, this language is so vague and overbroad that it will have severe intended consequences. For example, consider:

1. A Christian social work student who requests an accommodation so that she does not have to work with, counsel, or learn about LGBTQ people, as normally required by the program.
2. A Catholic medical student who requests an accommodation so that she does not need to learn about or work with contraception or other reproductive health requirements of the curriculum.
3. A student who, based on their religion, refuses to abide by the educational institution's code of ethics, and therefore requests that they are waived as an accommodation.
4. A student who claims that studying is against his religion (which must be taken as sincere under this bill), and therefore requests as an accommodation that all examinations be allowed open-book.

SB 5166 sets virtually no limits on the types of accommodations in the name of religion which must unquestionably be provided to students who so request. Moreover, the bill has no explicit protections

² Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 42 U.S.C. § 2000bb (Nov. 16, 1993). Introduced by Congressman Chuck Schumer and Senator Ted Kennedy, this legislation passed unanimously in the House and nearly unanimously in the Senate. It was signed into law by President Bill Clinton.

³ *Burwell v. Hobby Lobby*, 573 U.S. ___ (2014).

⁴ National Conference of State Legislatures. (2017). State Religious Freedom Restoration Acts. Available at <http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx>.

⁵ Adams, Dwight. (2018). RFRA: Why the 'religious freedom law' signed by Mike Pence was so controversial. *IndyStar Online*, Apr. 25, 2018. Available at <https://www.indystar.com/story/news/2018/04/25/rfra-indiana-why-law-signed-mike-pence-so-controversial/546411002/>.

⁶ Washington SB 5166, Substitute Senate Bill, Sec. 1(2), (emphases added).

which would prevent religion-based accommodations from burdening third parties, such as educators and other students. This bill would establish a system where instructors must accommodate student's requests for accommodations, no matter how absurd, so long as they are framed in terms of religion. This situation is ripe for abuse – and there is no possible oversight since the requests and accommodations must be kept confidential.

We ask that Washington lawmakers carefully consider and learn from the unintended consequences of RFRA and similar bills. There are other ways that basic accommodations for religious minority students can be accomplished other than by hard-coding automatic and unquestionable accommodation to religious belief into the law. To name just a few: relevant Washington state agencies could be tasked with developing a list of relevant religious holidays and/or suitable regulations for accommodation, public universities could be encouraged to pass suitable accommodation policies, or more narrow legislation could be drafted that applies only to religious holidays.

Finally, we note that even if Washington lawmakers believe that these types of vague and overbroad religious accommodations are suitable for Washington State, other states will certainly follow suit and pass similar laws because of Washington's reputation as a liberal state. And Washington State will soon acquire the dubious honor being a national model for poorly drafted, overly broad religious exemption laws. We posit that this type of legislation would be applied less even-handedly in Idaho or Indiana than in Washington.

We strongly urge you reconsider this misguided legislation. The religious exemptions created by this bill will have severe and unpredictable effects on Washington's higher education system. We recommend that you instead consider less intrusive and prescriptive ways to protect minority religious belief in higher education. If you should have any questions regarding American Atheists' opposition to SB 5166, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,



Alison Gill, Esq.
Vice President, Legal and Policy
American Atheists

cc: All Members of the Washington House Committee on College and Workforce Development