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NORTH DAKOTA SUPREME COURT

SUPREME COURT CASE NO. 20260075

DISTRICT COURT No. 08-2023-CV-02189

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

T.D., by and through his parents, Devon Dolney and Robert Dolney, DEVON DOLNEY, an individual, ROBERT DOLNEY, an individual, PAMELA ROE, by and through her parents, Peter Roe and Paula Roe, PETER ROE, an individual, PAULA ROE, an individual, JAMES DOE, by and through his parents, John Doe and Jane Doe, JOHN DOE, an individual, JANE DOE, an individual, and DR. LUIS CASAS, an individual, on behalf of himself and his patients,

Plaintiffs-Appellants,

vs.

DREW H. WRIGLEY, in his official capacity as Attorney General for the State of North Dakota, KIMBERLEE JO HEGVIK, in her official capacity as the State's Attorney for Cass County, JULIE LAWYER, in her official capacity as the State's Attorney for Burleigh County, and AMANDA ENGELSTAD, in her official capacity as the State's Attorney for Stark County,

Defendants-Appellees

**Appeal from Amended Judgment Dated December 19, 2025
Burleigh County District Court, South Central Judicial District
Hon. Jackson J. Lofgren, District Court Judge**

BRIEF OF *AMICI CURIAE* BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AND PROFESSOR ROBERT F. WILLIAMS

IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL OF JUDGMENT BELOW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES *3*

STATEMENT OF INTEREST AND IDENTITY OF AMICI CURIAE .... ¶*1*

STATEMENT OF AUTHORSHIP AND SUPPORT .... ¶*3*

SUMMARY OF ARGUMENT .... ¶*4*

ARGUMENT .... ¶10

I. The Decision Below Erroneously Applied a Presumption that Aligns North Dakota Constitutional Protections with the U.S. Constitution .... ¶10

a. Presumptive Alignment with Federal Constitutional Protections Disregards This Court's Instruction to Interpret North Dakota's Constitution Holistically .... ¶11

b. North Dakota's Constitutional History Counsels Against Presumptive Alignment with the Federal Constitution .... ¶16

II. Independent Interpretation of State Constitutions Preserves Federalism Better than Presumptive Alignment with Federal Constitutional Law .... ¶18

a. Adopting Federal Constitutional Analysis Imports Federal Prudential Concerns that Do Not Apply When State Courts Adjudicate State Constitutional Claims .... ¶20

b. Independent State Constitutional Interpretation Preserves Stability When Federal Constitutional Doctrine Shifts .... ¶24

III. State Courts Have Found That More Flexible Equal Protection and Fundamental Rights Frameworks Better Effectuate State Constitutional Principles ¶26

CONCLUSION .... ¶30

TABLE OF AUTHORITIES

Cases

Access Indep. Health Servs. v. Wrigley, 2025 ND 199, 28 N.W.3d 850 (Mem) (2025) ...¶7

Access Indep. Health Servs. v. Wrigley, 2025 ND 26, 16 N.W.3d 902 ....¶5

Application of Bettine, 840 P.2d 994 (Alaska 1992) ....¶28

Baker v. State, 744 A.2d 864 (Vt. 1999)...¶28

Bd. of Educ. of Cnty. of Kanawha v. W. Va. Bd. of Educ., 639 S.E.2d 893
(W. Va. 2006) ....¶13

Breen v. Carlsbad Mun. Schs., 2005-NMSC-028, 138 N.M 331, 120 P.3d 413 ....¶27

Cardiff v. Bismarck Pub. Sch. Dist., 263 N.W.2d 105 (N.D. 1978) ....¶11

Davenport v. Garcia, 834 S.W.2d 4 (Tex. 1992) ....¶4

Dupuis v. Roman Cath. Bishop of Portland, 2025 ME 6, 331 A.3d 294.........................¶14

Kelsh v. Jaeger, 2002 ND 53, 641 N.W.2d 100 ....¶11

Kerrigan v. Comm'r of Pub. Health, 957 A.2d 407 (Conn. 2008) ....¶27

Kligler v. Att'y Gen., 198 N.E.3d 1229 (Mass. 2022)...¶29

MKB Mgmt. Corp. v. Burdick, 2014 ND 197, 855 N.W.2d 31.......................................¶14

Morris v. Brandenburg, 2016-NMSC-027, 376 P.3d 836 ....¶14

N.D. Legis. Assembly v. Burgum, 2018 ND 189, 916 N.W.2d 83 ....¶4

Pauley v. Kelly, 255 S.E.2d 859 (1979)...¶13

San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) ....¶23

Snyder's Drug Store, Inc. v. N.D. State Bd. of Pharmacy, 219 N.W.2d 140 (N.D. 1974) ¶6

State ex rel. City of Fargo v. Wetz, 168 N.W. 835 (1918)..¶11

State ex rel. Cleveringa v. Klein, 249 N.W. 118 (1933) ....¶7, ¶13

State v. $129,970.00, 2007 MT 148, 161 P.3d 816 .... ¶13

State v. Allesi, 216 N.W.2d 805 (N.D. 1974) .... ¶5, ¶7

State v. Ball, 471 A.2d 347 (N.H. 1983) .... ¶4

State v. Jacobson, 545 N.W.2d 152 (N.D. 1996) .... ¶4

Thompson v. Jaeger, 2010 ND 174, 788 N.W.2d 586 .... ¶5

United States v. Skrmetti, 605 U.S. 495 (2025) .... ¶6, ¶23

Other Authorities

Anthony B. Sanders, *Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees*, 93 UMKC L. Rev. 642 (2025) .... ¶15

Hon. Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L.J. 771 (2021) .... ¶4, ¶16

Hon. Elizabeth Bently, *State Court Adherence to Decisions Incorporating Federal Constitutional Law*, 110 Iowa L. Rev. 1013 (2025) .... ¶24

Hon. Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (Oxford Univ. Press 2018) .... ¶8, ¶19, ¶20, ¶26

Hon. Jeffrey S. Sutton, *What Should Be National and What Should Be Local in American Judicial Review*, 2022 Sup. Ct. Rev. 191 (2022) .... ¶22

Hon. Jerod Tufte, *The North Dakota Constitution: An Original Approach Since 1889*, 95 N.D. L. Rev. 417 (2020) .... ¶7, ¶13, ¶17

Hon. Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties*, 82 Alb. L. Rev. 1353 (2019) .... ¶18, ¶19

Hon. Nels S.D. Petersen, *Principles of Georgia Constitutional Interpretation*, 75 Mercer

L. Rev. 1 (2023) ....¶17

Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 Colum. L. Rev. 1855 (2023) ....¶21

Justice R. Patrick DeWine, *Ohio Constitutional Interpretation*, 86 Ohio St. L.J. (forthcoming, written Oct. 14, 2024) (on file with author).................................¶17

Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 Harv. L. Rev. 1212 (1978) ....¶23

Michael L. Smith, *Holistic Constitutional Interpretation*, 24 Geo. J.L. & Pub. Pol'y (forthcoming 2026) (on file with author)...¶11

Robert F. Utter & Sanford E. Pitler, *Presenting a State Constitutional Argument: Comment on Theory and Technique*, 20 Ind. L. Rev. 635 (1987) ....¶16

Robert F. Williams & Lawrence Friedman, *The Law of American State Constitutions* (2d ed. 2023) ....¶9, ¶26

Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021)...¶13

The Federalist No. 51 (James Madison)...¶8

STATEMENT OF INTEREST AND IDENTITY OF *AMICI CURIAE*

[¶ 1] The Brennan Center for Justice ("Brennan Center") is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve U.S. systems of democracy and justice.[1] The Brennan Center studies state constitutional legal trends and regularly participates as *amicus curiae* before appellate courts on these issues.

[¶ 2] Professor Robert F. Williams is a Distinguished Professor of Law Emeritus at Rutgers University School of Law. He is a leading expert in state constitutional law and directed the Center for State Constitutional Studies at Rutgers. Professor Williams has authored extensive legal scholarship on state constitutional law, including two of the leading textbooks in the field and over 90 law review articles.

STATEMENT OF AUTHORSHIP AND SUPPORT

[¶ 3] This brief was authored solely by the undersigned attorneys. No other party or person contributed money to support the preparation or submission of this brief.

SUMMARY OF ARGUMENT

[¶ 4] State courts have a "duty" to "make an independent determination of the protections afforded under [a state constitution]. . . . When a state court interprets the constitution of its state merely as a restatement of the Federal Constitution, it both insults the dignity of the state charter and denies citizens the fullest protection of their rights." Hon. Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L.J. 771, 786 (2021) (first quoting *State v. Ball*, 471 A.2d 347, 350 (N.H. 1983); and then quoting

[1] This brief does not purport to convey the position of New York University School of Law.

Davenport v. Garcia, 834 S.W.2d 4, 12 (Tex. 1992)); *see also N.D. Legis. Assembly v. Burgum*, 2018 ND 189, ¶ 42, 916 N.W.2d 83 ("[U]ltimately we are charged with interpreting the North Dakota Constitution and its distinct provisions."); *State v. Jacobson,* 545 N.W.2d 152, 160 (N.D. 1996) (Levine, J., dissenting) ("If we deny our state constitution a life of its own, it becomes a mere appendage to the federal constitution.").

[¶ 5] In North Dakota, this independent analysis includes close scrutiny of the "language" and "history" of the North Dakota Constitution, while factoring in that it is "different in nature than the federal constitution." Findings of Fact, Conclusions of Law, and Order for J. at ¶¶ 30–31, *T.D. v. Wrigley*, No. 08-2023-CV-02189 (N.D. Dist. Ct. Oct. 8, 2025) ("T.D. Lower Court Opinion") (first quoting *Thompson v. Jaeger*, 2010 ND 174, ¶ 7, 788 N.W.2d 586; then quoting *State v. Allesi*, 216 N.W.2d 805, 817 (N.D. 1974); and then quoting *Access Indep. Health Servs. v. Wrigley*, 2025 ND 26, ¶ 7, 16 N.W.3d 902).

[¶ 6] Despite this Court's pronouncements on the importance of the text, history, and nature of the North Dakota Constitution when resolving state constitutional claims, the decision below interpreted this Court's precedent to require it to "align its equal protection analysis with that of the United States Supreme Court." T.D. Lower Court Opinion ¶ 66. Moreover, while state courts may look to federal constitutional precedent as persuasive authority in interpreting state provisions, the court below appeared to go further and assumed that a "compelling reason" was necessary to "give meaning to Sections [22] and [21] of our State Constitution relating to Equal Protection . . . different from that which the United States Supreme Court may give to the Equal Protection [Clause] of the Fourteenth Amendment to the United States Constitution." T.D. Lower Court Opinion ¶ 54 (quoting *Snyder's Drug Store, Inc. v. N.D. State Bd. of Pharmacy*, 219 N.W.2d 140, 150 (N.D.

1974)). Accordingly, the court resolved the plaintiff's claims under North Dakota's inalienable rights and privileges and immunities clauses by largely replicating the U.S. Supreme Court's analysis in *United States v. Skrmetti*. *See* 605 U.S. 495, 511 (2025).

[¶ 7] This presumptive alignment of North Dakota's distinct state constitutional protections with the federal Equal Protection Clause is inconsistent with this Court's prior precedent and undermines the role of state constitutions in our federalist system. First, this presumptive alignment hinders North Dakota courts from applying interpretive principles already embraced by this Court. This Court has been clear that when interpreting the North Dakota Constitution, jurists should engage in holistic review, "examin[ing] the whole instrument in order to determine the true intention of every part so as to give effect to each section and clause," and that they should interpret constitutional text "in the light of history." *Access Indep. Health Servs. v. Wrigley,* 2025 ND 199, ¶ 88, 28 N.W.3d 850 (Mem) (2025) (Tufte, J., dissenting) (quotations and citations omitted); *Allesi*, 216 N.W.2d at 817. Presumptively aligning North Dakota constitutional protections with federal constitutional rights sidesteps both of these principles: it overlooks the ways in which state constitutional provisions interact and can bolster state protections, *e.g.*, *State ex rel. Cleveringa v. Klein*, 249 N.W. 118, 123–24 (1933) (finding that Section 20's pronouncement that the Declaration of Rights "shall forever remain inviolate" prevents legislative infringement of those rights); and it anchors the meaning of the North Dakota Constitution to the U.S. Constitution, despite the fact that "the North Dakota Constitution has its origins in a dramatically different historical context" that predates incorporation of the federal Bill of Rights against the states. Hon. Jerod Tufte, *The North Dakota Constitution: An Original Approach Since 1889*, 95 N.D. L. Rev. 417, 419 (2020).

[¶ 8] Second, by overlooking differences in the structure and function of the federal constitution and state constitutions, presumptive alignment between federal and state constitutional protections risks undermining the "double security" of liberty inherent in federalism. *The Federalist No. 51* (James Madison). Unlike state courts, federal courts must act with heightened restraint in federal constitutional cases "in view of the number of people affected and the range of jurisdictions implicated." Hon. Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 175 (Oxford Univ. Press 2018). Presumptively aligning North Dakota constitutional rights with federal precedent risks incorporating federal underenforcement into North Dakota's constitution even though this "federalism discount" is inapposite in state constitutional cases. *Id.*

[¶ 9] This Court should affirm its commitment to independent constitutional interpretation by clarifying that it does not endorse presumptively aligning the meaning of the North Dakota Constitution with the Federal Constitution, absent a thorough review as to whether the federal and state provisions share the same text, history, and context and a finding that, despite federal underenforcement, alignment is nonetheless appropriate. Many states have found that state-specific approaches to equal protection and fundamental rights analysis preserve federalism and operationalize state constitutional principles with greater fidelity to state constitutions than federal standards. *See* Robert F. Williams & Lawrence Friedman, *The Law of American State Constitutions* 252–53 (2d ed. 2023) (noting that Alaska, Idaho, Indiana, Iowa, Minnesota, New Mexico, Ohio, Utah, Vermont, Washington, and Wisconsin have moved to "decouple their state constitutional equality doctrines from . . . federal equal protection analysis"). This Court may find that such approaches better vindicate North Dakota's distinct constitutional interests than federal standards.

ARGUMENT

I. The Decision Below Erroneously Applied a Presumption that Aligns North Dakota Constitutional Protections with the U.S. Constitution

[¶ 10] The decision below presumptively aligned the protections of Sections 20 and 21 of the North Dakota Constitution with the federal Equal Protection Clause. Such an approach is inconsistent with two interpretive principles endorsed by this Court: (1) the imperative that courts interpret the North Dakota Constitution holistically; and (2) the importance of North Dakota history when interpreting the North Dakota Constitution.

a. Presumptive Alignment with Federal Constitutional Protections Disregards This Court's Instruction to Interpret North Dakota's Constitution Holistically

[¶ 11] "In construing a written constitution . . . . [courts] must examine the whole instrument in order to determine the true intention of every part so as to give effect to each section and clause." *Cardiff v. Bismarck Pub. Sch. Dist.*, 263 N.W.2d 105, 107 (N.D. 1978). Such practice, prevalent among state courts, flows out of the recognition that "[w]hen interpreting [a] state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement," and "[i]t should not be assumed that words have been used to no purpose." *Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100; *State ex rel. City of Fargo v. Wetz*, 168 N.W. 835, 849 (1918); s*ee also* Michael L. Smith, *Holistic Constitutional Interpretation*, 24 Geo. J.L. & Pub. Pol'y (forthcoming 2026) (manuscript at 23 n.127, 26) (on file with author) (identifying forty states that interpret state constitutions holistically in contrast to the U.S. Supreme Court's "tend[ency] toward a clause-bound approach when interpreting the Constitution—focusing on single provisions or even individual words within those provisions").

[¶ 12] Presumptively aligning state constitutional protections with the Federal Constitution risks eschewing this principle of holistic interpretation because it short circuits an inquiry into how other state constitutional clauses – some of which, like inalienable rights clauses, lack a federal analogue – impact the meaning of any individual provision.

[¶ 13] When state courts apply holistic review, "put[ting] the words, phrases, and clauses into the context of the section, article, or Constitution, as a whole," Tufte, *supra*, at 453, they sometimes find that a state constitutional provision "augments" another provision found elsewhere in the state constitution. *State v. $129,970.00*, 2007 MT 148, ¶ 26, 161 P.3d 816 ("The right to privacy in Article II, Section 10 of the Montana Constitution augments the protection against unreasonable searches and seizures."); *see also State ex rel. Cleveringa*, 249 N.W. at 123–24 (recognizing that Article I, Section 20 of North Dakota's Constitution bolsters limitations on governmental interference with the rights contained in North Dakota's Bill of Rights). In such circumstances, courts often apply more rigorous scrutiny to state legislation, such as by elevating the standard of review or requiring courts to be less tolerant of legislative classifications that would otherwise satisfy judicial review. For instance, the Supreme Court of Appeals of West Virginia has found that its state constitution's equal protection clause enhances its public education mandate, such that "any discriminatory classification found in the State's educational financing system cannot stand unless the State can demonstrate some compelling State interest to justify the unequal classification." *Bd. of Educ. of Cnty. of Kanawha v. W. Va. Bd. of Educ*., 639 S.E.2d 893, 899 (W. Va. 2006) (citing *Pauley v. Kelly*, 255 S.E.2d 859 (1979)); *see generally* Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021).

[¶ 14] State courts should be particularly attuned to holistic review when evaluating claims that implicate inalienable rights clauses because such clauses are broad provisions with no federal analogue that, as this Court has acknowledged, often function jointly with other state constitutional provisions. *See, e.g.*, *MKB Mgmt. Corp. v. Burdick*, 2014 ND 197, ¶ 26, 855 N.W.2d 31 ("This Court has recognized the due process language in N.D. Const. art I, § 12 protects and insures the use and enjoinment of the rights declared by N.D. Const. art. I, § 1." (cleaned up)). Giving full effect to such clauses has led state courts to apply more exacting scrutiny than they would otherwise. For example, New Mexico regards its inalienable rights clause as "a prism through which [it] view[s] due process and equal protection guarantees." *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 46, 376 P.3d 836. It "incorporat[es] [the clause] as a central component of [its] due process analysis" and "as an overarching principle which inform[s] the equal protection guarantee." *Id.* at ¶¶ 47, 49. Similarly, the Maine Supreme Court found that effectuating multiple state constitutional provisions including its inalienable rights clause requires courts to apply a more rigorous standard to review retroactive legislation than federal courts. *Dupuis v. Roman Cath. Bishop of Portland*, 2025 ME 6, ¶¶ 19–29, 34–36, 331 A.3d 294.

[¶ 15] By anchoring its state constitutional analysis to federal equal protection precedent, the court below neglected its obligation to apply principles of holistic interpretation. In doing so, it failed to give effect to North Dakota's inalienable rights clause, contravening the historical importance of such clauses. *See* Anthony B. Sanders, *Social Contracts: The State Convention Drafting History of the Lockean Natural Rights Guarantees*, 93 UMKC L. Rev. 642, 679 (2025) (noting that some state convention

delegates considered these clauses "so expansive that they did not think other, basic rights were worth mentioning").

b. <u>North Dakota's Constitutional History Counsels Against Presumptive Alignment with the Federal Constitution</u>

[¶ 16] Turning to the U.S. Supreme Court to guide analysis of the North Dakota Constitution sits uneasily with North Dakota's history. The North Dakota Constitution was ratified decades before the U.S. Supreme Court began the process of incorporation of the Bill of Rights against the states. Pre-incorporation, "state constitutions provided the primary protections for individual rights." Bolick, *supra*, at 773. Against this backdrop, North Dakotans would have expected that their state constitution would have independent force in constraining state power and protecting the rights of North Dakotans. *See also* Robert F. Utter & Sanford E. Pitler, *Presenting a State Constitutional Argument: Comment on Theory and Technique*, 20 Ind. L. Rev. 635, 646 (1987) (explaining why, for this reason, interpreting state constitutions in lockstep with the Federal Constitution "contradicts the historical relationship between the state and federal constitutions").

[¶ 17] In light of the substantially different contexts in which the North Dakota Constitution and the Federal Constitution were ratified, this Court's "consistent approach . . . to read provisions of the state Constitution as having a meaning fixed at the time of adoption" also counsels against presumptively aligning North Dakota's constitutional protections with federal constitutional rights. Tufte, *supra*, at 434. In fact, leading jurists have argued in favor of an opposite presumption: rather than defaulting to "align[ing] . . . equal protection analysis with that of the United States Supreme Court," T.D. Lower Court Opinion ¶ 66, they have urged courts inclined to mirror federal analysis to require "an affirmative showing" that "(1) the federal provision and the state provision share the same

text, history, and context, and (2) the federal decision was guided by that same text, history, and context." Hon. Nels S.D. Petersen, *Principles of Georgia Constitutional Interpretation*, 75 Mercer L. Rev. 1, 19, 21 (2023) (arguing that interpreting state constitutions in lockstep with the Federal Constitution "appears wholly incompatible with the principles of fixed meaning, textualism, and the independence of state constitutions"); *see also* Justice R. Patrick DeWine, *Ohio Constitutional Interpretation*, 86 Ohio St. L.J. (forthcoming, written Oct. 14, 2024) (manuscript at 2) (on file with author) ("[W]e should give minimal stare decisis effect to precedent that announces without analysis that a particular provision of the Ohio Constitution has the same meaning as a similar provision in the federal constitution").

II. Independent Interpretation of State Constitutions Preserves Federalism Better than Presumptive Alignment with Federal Constitutional Law

[¶ 18] State constitutional law "plays an important role in securing the liberties that flow from federalism." Hon. Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties*, 82 Alb. L. Rev. 1353, 1353, 1356 (2019). "Just as separation of powers among the three branches of government . . . guard against overconcentration of authority, so does federalism's diffusion of power between federal and state governments." *Id.* at 1356.

[¶ 19] Independent interpretation of state constitutions preserves the liberties of federalism better than presuming alignment with federal law. Sutton, *51 Imperfect Solutions*, *supra*, at 174 (arguing that lockstepping poses "[a] grave threat to independent state constitutions"); Rush & Miller, *supra*, at 1357–58 (arguing that lockstepping "weaken[s] the federalism framework that wards off overconcentration of authority").

a. <u>Adopting Federal Constitutional Analysis Imports Federal Prudential Concerns that Do Not Apply When State Courts Adjudicate State Constitutional Claims</u>

[¶ 20] The prudential concerns that often undergird federal constitutional rulings can render them an inaccurate compass for state judges enforcing state constitutional rights. As acknowledged by federal judges, "the institutional position of the federal Supreme Court cause[s] it to underenforce constitutional norms." Sutton, *51 Imperfect Solutions*, *supra*, at 187 (cleaned up). State courts are differently positioned and have no analogous reason to act with identical restraint when enforcing state constitutional protections.

[¶ 21] In fact, state judges should, if anything, take extra care to avoid underenforcing state constitutional rights against legislative majorities. Unlike the Federal Constitution, state constitutions "have been amended to empower other actors—including state courts—to act as popular checks on the legislature." Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 Colum. L. Rev. 1855, 1904 (2023) (identifying "skepticism of state legislative power" as one of "the most important themes in state constitutional law" (cleaned up)). By tethering state constitutional protections to underenforced federal rights, presumptive alignment overlooks this key principle of state constitutions.

[¶ 22] Relatedly, federal judges also underenforce constitutional rights because it is difficult to correct erroneous constitutional rulings via the federal amendment process. *See* Hon. Jeffrey S. Sutton, *What Should Be National and What Should Be Local in American Judicial Review*, 2022 Sup. Ct. Rev. 191, 213 (2022). But "the political accountability risks facing the federal courts when it comes to the development of new rights does not apply in the states. The state constitutions are more readily amendable." *Id.*

[¶ 23] Federal constitutional underenforcement is especially pronounced in the equal protection context, where the U.S. Supreme Court has chosen to act with restraint in recognition of both state prerogatives and the potentially seismic impact of changes in Equal Protection jurisprudence on our federalist system. *See* Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 Harv. L. Rev. 1212, 1213–18 (1978). For instance, in *San Antonio Independent School District v. Rodriguez*, the U.S. Supreme Court declined to recognize wealth as a suspect class not only because it lacked expertise in areas traditionally regulated by the states but also out of recognition that "every claim arising under the Equal Protection Clause has implications for the relationship between national and state power under our federal system" and thus the potential "to abrogate systems . . . in virtually every State." 411 U.S. 1, 40, 44 (1973); *see United States v. Skrmetti*, 605 U.S. 495, 550 (2025) (Barrett, J., concurring) (noting that the U.S. Supreme Court's "restraint" in identifying new suspect classes reflects that "when social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude" (cleaned up)). State constitutional enforcement does not implicate these concerns.

b. **Independent State Constitutional Interpretation Preserves Stability When Federal Constitutional Doctrine Shifts**

[¶ 24] Once a state ties the sails of its state constitution to the Federal Constitution, subsequent developments in federal constitutional law can weaken state constitutional protections and create uncertainty as to the status of state constitutional rights vis-à-vis federal rights. *See* Hon. Elizabeth Bently, *State Court Adherence to Decisions Incorporating Federal Constitutional Law*, 110 Iowa L. Rev. 1013, 1027 (2025) (suggesting that alignment between state and federal constitutional rights, coupled with

subsequent changes in federal constitutional precedent, "create 'stranded' state constitutional doctrine that requires state courts to react and clarify the status of state constitutional law"). When this happens, state trial courts can be put in the difficult position of having to opine on what state appellate courts would have thought about subsequent federal jurisprudence. *See* T.D. Lower Court Opinion ¶¶ 57–63.

[¶ 25] Avoiding presumptions in favor of federal law prevents creating stranded doctrine, providing stability over time when the federal constitutional landscape shifts.

III. State Courts Have Found That More Flexible Equal Protection and Fundamental Rights Frameworks Better Effectuate State Constitutional Principles

[¶ 26] Differences in the text, history, and function of state and federal constitutions have led "[m]ore and more states . . . [to] reject[] the constructs developed by the U.S. Supreme Court in interpreting the federal Equal Protection Clause" in favor of approaches that better effectuate a state constitution's unique principles and values. Williams & Friedman, *supra*, at 252. Because "state constitutions are more likely to share historical and linguistic roots," "necessarily will cover smaller jurisdictions than the National High Court," and "[i]n almost all instances they will be construing individual-liberty guarantees that originated in state constitutions," this Court may find such approaches persuasive. Sutton, *51 Imperfect Solutions*, *supra*, at 175.

[¶ 27] Although state courts often draw on the same indicia of suspect classes as federal courts, they are free to apply such factors with greater flexibility in order to accommodate unique state constitutional considerations. For example, while the court below held that because transgender identity "is . . . not an immutable characteristic like race" it is "therefore, not the type of immutable characteristic that would result in

transgender individuals being considered a suspect classification," T.D. Lower Court Opinion ¶ 119, in *Kerrigan v. Commissioner of Public Health*, the Connecticut Supreme Court deemed sexual orientation a quasi-suspect class without needing to "decide whether sexual orientation is immutable in the same way and to the same extent that race, national origin and gender are immutable," 957 A.2d 407, 436–37, 438 (Conn. 2008). Similarly, while the decision below bolstered its holding that transgender identity is not a suspect class by pointing out that transgender individuals are not entirely "politically powerless," T.D. Lower Court Opinion ¶ 120, in *Breen v. Carlsbad Municipal Schools*, the New Mexico Supreme Court held that mentally disabled people are a suspect class, despite a finding that they are "active participants in the political process" because "their effective advocacy is seriously hindered by the need to overcome the already deep-rooted prejudice against their integration in society." 2005-NMSC-028, ¶ 29, 138 N.M 331, 120 P.3d 413.

[¶ 28] Other state courts assess equality-based constitutional claims by eschewing the tiered scrutiny framework altogether, finding that state constitutions require a different approach. For instance, after examining the constitutional language and history of Vermont's closest analogue to the Equal Protection Clause, the Vermont Supreme Court determined that the "inclusionary principle at its core[] must govern our analysis of laws challenged under the Clause," abandoned the federal tiers of scrutiny, and adopted a balancing test. *Baker v. State*, 744 A.2d 864, 877–89 (Vt. 1999); *see also Application of Bettine*, 840 P.2d 994, 997–98 (Alaska 1992) (Compton, J., dissenting) (acknowledging that the Alaska Supreme Court's "discontent" with the rigidity of federal equal protection analysis prompted it to adopt "a single flexible test" for equal protection claims that "provides varying levels of scrutiny depending on the importance of the right involved").

[¶ 29] Similarly, state courts have adopted frameworks for determining whether a right should be deemed fundamental that align better with the overlapping protections of a state constitution than the prevailing federal test. For example, in *Kligler v. Attorney General*, the Massachusetts Supreme Judicial Court found the prevailing federal fundamental rights framework inconsistent with its constitution where "the asserted liberty interest converges with an equality interest." 198 N.E.3d 1229, 1250 (Mass. 2022). In its place it developed a test requiring judges to "exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect," and define the right "at a higher level of general[ity]" to "strip[] [the right] of the particulars of who is exercising it . . . in an effort to avoid invidious discrimination." *Id.* at 1249, 1250. To the extent this Court believes the interests at stake in this case implicate both liberty and equality, it should take care to avoid defining the right at issue so narrowly as to inadvertently perpetuate discrimination against those seeking to exercise it.

CONCLUSION

[¶ 30] The decision below acknowledged the independence of North Dakota's Constitution but read prior pronouncements by this Court to favor aligning North Dakota's privileges and immunities clause with the federal Equal Protection Clause. This Court should take this opportunity to affirm its commitment to independent enforcement of North Dakota's Constitution by clarifying that North Dakota courts should not presumptively align North Dakota's constitutional protections with the Federal Constitution.

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Respectfully submitted,

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Certificate of Compliance

The undersigned, as attorneys for *Amici Curiae* Brennan Center for Justice at NYU School of Law and Professor Robert F. Williams in the above matter, and as the authors of the above motion, hereby certify, in compliance with Rule 32(d) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with Times New Roman type style in size 12-point font and that the brief totals 19 pages, not including the signature page.

Date: April 6, 2026

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