

Vetter, Steve M.

From: Vetter, Steve M.
Sent: Tuesday, February 2, 2021 8:24 AM
To: Vetter, Steve M.
Subject: 1410

Good Morning Chairman Klemin and fellow members of the Judiciary committee,

The purpose of HB 1410 is to apply our 1st Amendment rights of religious protections to our century code. It has two main components. The first component is Section 3 and Section 5. The second is Sections 1, 2 & 4.

I. Prevents an emergency order issued by the Governor and State Health Officer from unduly restricting a person's exercise of religion.

A. Incorporates what is already the standard for all federal laws and the laws of most states in the country into North Dakota law.

1. It does give not completely prohibit orders that might impact religion nor does it allow any activity in the name of religion. Instead, it gives strong protection for religion while providing a framework for determining whether the government order is too burdensome.

2. Language: May not substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;

a) This is a well-established legal standard

b) Courts know what this language means

B. It prevents Health orders or Emergency orders from giving preference to secular conduct for alleged economic benefit and without evidence it poses an extraordinary health risk.

II. Codifies into state law religious protections for persons placed in institutional settings — jails, prisons, state hospital, residential centers. (Sections 1, 2, and 4)

A. Uses the same standard that those institutions must already follow under the federal Religious Land Use and Institutionalized Persons Act

1. Therefore, requires no change to current practices;

but provides a state remedy for persons who feel aggrieved; and

3. Makes clear that the standards apply to health emergencies.

4. Language: May not substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;

a) Well-established legal standard

b) Courts know what it means

B. Prevents giving preference to secular conduct. It prevents jails, prisons, state hospital, residential centers from giving preference to secular conduct without evidence it poses an extraordinary health risk and denial is the least restrictive means.

This bill is based off of other state laws that are in the majority of states. The 2nd part is based off of RLUIPA and the recent Supreme Court decision *Diocese of Brooklyn v. Cuomo*.

42 U.S. Code § 2000cc–1

(a) General rule No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1)

in furtherance of a compelling governmental interest; and

(2)

is the least restrictive means of furthering that compelling governmental interest.

42 U.S. Code § 2000cc–2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Diocese of Brooklyn is a thirty-plus page opinion, but it boils down to the principle that government cannot treat a religious activity harsher than a comparable secular activity unless the religious activity can be shown to require the disparate treatment. That is all that subsections b and c of Subsection 1, 2 & 4 of HB1410 intend to say.

In the last two sessions that I served on Judiciary committee, criminal justice reform has been a focus. I believe having the option of faith based programs are crucial to the long term rehabilitation of inmates. HB 1410 just sets a minimum standard in century code that our jails and correctional centers are likely already doing.

After listening to the county jails and the DOCR, they are concerned inmates will abuse the system. However, most of this bill they are already required to do.

ie two subsections do not change the ability of a jail to pursue legitimate penological interests ("shut doors, restrict access, restrict face-face gatherings, prevent items (contraband), restrict food/beverage, restrict fire threats, or other orders to protect those in their care").

It does not single out corrections and jails. It covers the emergency orders and all institutionalized persons, including patients in the state hospital and residents at the Life Skills Transition Center.

I hope I can work with the jails and DOCR to come up with language that works for them while allowing clergy and religious groups to help rehabilitate the inmates for eventual release into the outside world.

(b) Treat religious conduct more restrictively than any comparable secular conduct unless the correctional facility demonstrates that the disparate treatment is necessary to further a compelling penological interest and is the least restrictive means of furthering the compelling penological interest; or

(c) Deny clergy access to an offender in the custody of the correctional facility for the purpose of providing religious services unless the correctional facility demonstrates that the denial is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest.

Thank you and I will stand for questions.