

Vetter, Steve M.

From: Vetter, Steve M.
Sent: Monday, March 29, 2021 12:30 PM
To: Vetter, Steve M.
Subject: 1410

HB 1410

Madame Chair Larson and Senators of the Judiciary committee

Introduction

The purpose of HB 1410 is to apply our 1st Amendment rights of religious protections to our century code for all North Dakotans. Religious Freedom was that important to our Founders that they choose to speak of it first in the very 1st Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Let me go through the Bill. HB 1410 has two main components. One component is Sections 1, 2 & 4. The other component is Section 3 and Section 5.

Sections 3&5

This part of the bill was already passed by the House and Senate so I won't through it but you can read a short explanation in my testimony.

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

Section 1,2 & 4

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

So therefore, requires no change to current practices;

The second part of the language in the bill use well-established legal standard and Courts know what it means. It prevents giving preference to secular conduct. It prevents jails, prisons, state hospital, residential centers from giving preference to secular conduct without evidence it poses a risk and denial is the least restrictive means.

It provides a state remedy for persons who feel aggrieved after appropriate administrative remedies have been exhausted.

It prevents giving preference to secular conduct. It prevents jails and prisons from giving preference to secular conduct without evidence it poses a compelling penological interest and denial is the least restrictive means.

Penological is defined as “interests that relate to the treatment (including punishment, deterrence, rehabilitation, etc.) of persons convicted of crimes.”

This language was added to the bill to fix issues brought by the opposition to the bill.

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. 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.

There is one minor amendment given to me by the DOCR. I would hope that you would add this minor amendment.

Page 3, line 19, after “and” insert “, if the offender is the prevailing party,”

If this amendment is added I was told that the DOCR will not be opposed to the bill.

Other opposition.

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. This is important legislation to give all North Dakotans religious freedom.

I respectfully ask for a DO PASS recommendation.

Thank you and I will stand for questions.

RLUIPA

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)

is 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.

The 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 covers the emergency orders and all institutionalized persons, including patients in the state hospital and residents at the Life Skills Transition Center.