

**2021 SENATE JUDICIARY**

**SB 2181**

# 2021 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2181  
1/19/2021

A BILL for an Act to amend and reenact section 37 17.1 03 of the North Dakota Century Code, relating to freedom of religion and assembly.

**Chairwoman Larson** called the committee to order at 2:00 PM  
Senators Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson were present.

**Discussion Topics:**

- Religious assembly during an emergency declaration
- Clarifying language onto “The Free Exercise Thereof”, and provides statutory definition

**Senator Clemens**, District 16, introduced the bill, testified in favor #1708 [2:00 PM]

**Christopher Dodson**, ND Catholic Conference, testified in favor [2:19 PM]

**Additional written testimony:**

**Taya Dukart**, a Hazen resident in favor #1582

**Melyssa Howry**, a New Town ND resident in favor #1479

**Mark Jorritsma**, Family Policy Alliance in favor #977

**Lisa Pulkrabek**, a Mandan resident in favor #1604

**Chairwoman Larson** closed the hearing at 2:30pm.

*Jamal Omar, Committee Clerk*

January 19, 2021

SENATE BILL 2181

SEN DAVID A. CLEMENS

MY NAME IS DAVID CLEMENS AND I AM THE SENATOR FROM DISTRICT 16 IN WEST FARGO/FARGO. I AM HERE TO INTRODUCE SENATE BILL 2181 THAT ADDRESSES THE FREEDOM OF RELIGION DURING AN EMERGENCY DECLARATION BY THE GOVERNOR.

I BELIEVE THAT IF WE ARE UNDER AN EMERGENCY DECLARATION OR NOT, SOME THINGS ARE NOT TO BE REGULATED BY THE STATE. ONE OF THESE IS THE FREEDOM OF RELIGION. A CHURCH OR ANY OTHER RELIGIOUS ORGANIZATION IS FULLY CAPABLE OF MANAGING THEIR OWN AFFAIRS AND WILL ULTIMATELY SET THEIR OWN POLICIES CONCERNING ATTENDANCE AND OTHER MATTERS.

OUR FOUNDING FATHERS WERE VERY CONCERNED ABOUT THE FREEDOM OF RELIGION. IT WAS FOREMOST IN THEIR MINDS AS THEY WROTE OUR UNITED STATES AND NORTH DAKOTA CONSTITUTIONS.

ND CONSTITUTION PREAMBLE

WE, THE PEOPLE OF NORTH DAKOTA, GRATEFUL TO ALMIGHTY GOD FOR THE BLESSINGS OF CIVIL AND RELIGIOUS LIBERTY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION.

ARTICLE 1, DECLARATION OF RIGHTS

SEC 3: THE FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP, WITHOUT DISCRIMINATION OR PREFERENCE, SHALL BE FOREVER GUARANTEED IN THIS STATE.

US CONSTITUTION

1<sup>ST</sup> AMENDMENT: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THERE OF; 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.

WHAT THIS BILL DOES, IN SECTION 37-17.1-03 OF NORTH DAKOTA CENTRUY CODE, IS ADD A LIMITATION UNDER SECTION 1: NOTHING IN THIS CHAPTER MAY; LILMIT THE FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP OR THE RIGHT OF THE CITIZENS TO ASSEMBLE FOR THE COMMON GOOD.

I WOULD ASK YOU, AS THE JUDICIARY COMMITTEE, TO GIVE THIS BILL A "DO PASS".

ANY QUESTIONS

**IN FAVOR: SB 2181**

Relating to freedom of religion and assembly.

**Dear Senate Judiciary Committee,**

**My name is Tara Dukart. I am from Hazen, ND, and I urge you to support SB 2181. The freedom to assemble and the freedom to gather together to worship are privileges that I never anticipated would be in jeopardy in my lifetime.**

**However, I have witnessed our government make recommendations that closed my church doors and prevented us from gathering together for in-person worship. Under the guise of a fear-based pandemic, the closure of other buildings and events decreased our rights and abilities to assemble. I believe this is government overreach. I think we are on a slippery slope.**

**People who want to assemble should have the right to assemble. People who don't want to assemble should have the right to not assemble. Either way, each person assumes their own personal risk.**

**Please vote to protect our rights to religious freedom and assembly.**

**"For where two or three are gathered together in My name, I am there in the midst of them." -Matthew 18:20**

**Thank you very much for your time and consideration. May God bless and guide you.**

**Tara Dukart**

**Hazen, ND**



Members of the committee, I thank you for your time. My name is Melyssa Howry and I live in New Town, ND. I strongly support SB2181 and I am grateful to the senators and representatives who came together in order to shore up our protections in regards to the constitutional right to gather in worship. I would just like to share my personal viewpoint on the importance of gathering in person, and why I believe this extra support from the legislature is welcome and needed.

Throughout this past year, our church family is what kept us going. We moved here more than 2 years ago from New England, and knew no one when we arrived. Having a church home has been vital for our family. If we had not been able to gather regularly with them over the past 9-10 months, it would have had an immeasurable negative impact on us and our children. There are a couple reasons for this. First of all, the Bible commands us to gather with other believers (Hebrews 10:25), and first and foremost, we must obey the Word of God. Second, personal contact is essential for mental, emotional, and even physical health. Long-term isolation is dangerous. "Attending" church online sounds nice at first, but I assure you, it is lacking. As one pastor put it recently, watching church on a screen is like watching a fire without feeling the warmth. It is empty of all the things that church should be. While it is a nice option once in a while, it cannot and will not ever replace a true worship gathering.

The third reason (and perhaps the most compelling in light of the events of the past year) that the church is vital is that we are called to be the hands and feet of Jesus. During the Spanish flu pandemic, the Christians were the ones who stayed in the cities and ministered to the sick, while others fled out of fear. We are called to stand in the gap and serve those who are in need, not run away and hide. I often think of how Jesus dealt with infectious disease, and I can recall many circumstances where he laid hands on people to heal them, and did not avoid them. His disciples and the apostles did this as well. One particular example is when Jesus healed the leper. People criticized him for even going near a person with leprosy, let alone touching him. However, Jesus did not shy away. He boldly stepped out in faith. This is what Christians are called to do as well, and it is something I am strongly convicted to keep doing, pandemic or not. To keep us from gathering and ministering to those around us is to cut us off from what we have been commissioned to do.

Again, I thank those who sponsored this bill, and I ask that you please vote "Do Pass". Thank you for your consideration!

#977



January 16, 2021

Dear Senate Judiciary Committee,

Chairman Larson and Senators of the Senate Judiciary Committee, Family Policy Alliance of North Dakota would like to formally indicate its support of Senate Bill 2181. We firmly believe that rights enumerated in the First Amendment, in this case particularly those pertaining to freedom of religion and assembly, form a cornerstone of our nation's freedoms and democracy. To infringe upon these rights, even in the case of emergency situations, is no more valid than infringing on the other rights contained in the First Amendment (see freedom of press already addressed in chapter 37-17.1-03.2 of the Century Code). Our country was birthed on freedom of religion and this must be protected at all costs. For these reasons, we respectfully ask for a "DO PASS" committee recommendation on SB2181.

Thank you for your consideration,

A handwritten signature in black ink that reads "Mark Jorritsma". The signature is fluid and cursive, with the first name "Mark" being more legible than the last name "Jorritsma".

Mark Jorritsma  
Executive Director  
Lobbyist #147

1515 Burnt Boat Drive., Ste. C148  
Bismarck, ND 58503

P 866.655.4545

UNLEASHING CITIZENSHIP

[FamilyPolicyAlliance.com/NorthDakota](http://FamilyPolicyAlliance.com/NorthDakota)



# #1604

Lisa Pulkrabek  
4795 Co Rd 82  
Mandan, ND 58554  
701-595-4264  
wadenlisa@aol.com  
Jan 19, 2021

Members of the Senate Judiciary,

I am writing to you today in support of SB 2181 relating to the freedom of religion and assembly. I kindly urge you to adopt the amendments of the century code to include 37-17.1-03. Limitations.

Thanks for your time and consideration.

Lisa Pulkrabek

# 2021 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2181  
1/20/2021  
AM

A BILL for an Act to amend and reenact section 37 17.1 03 of the North Dakota Century Code, relating to freedom of religion and assembly.

**Chairwoman Larson** Calls committee work to order [10:18]  
Senators Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson were present.

**Discussion Topics:**

- Amendment to SB 2181
- Strict scrutiny standards
- Religious burden

**Christopher Dodson** proposed an amendment and testified in favor #5283. [10:20]

**Senator Dwyer** moved to adopt proposed amendment [LC.21.0640.01001]

**Senator Heitkamp** seconded the motion

Roll Call Vote

Motion passed 7-0-0

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

**Chairwoman Larson** adjourns meeting [10:41]

*Jamal Omar, Committee Clerk*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's authority and the governor's authority during a declared disaster or emergency; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. Written orders issued under this section shall have the same effect as a physician's standing medical order. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
  - a. Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:
    - (1) 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;
    - (2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
    - (3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
  - b. A person claiming to be aggrieved by a violation of subdivision a may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

**SECTION 2. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

### 37-17.1-05. The governor and disasters or emergencies - Penalty.

1. The governor is responsible to minimize or avert the adverse effects of a disaster or emergency.
2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.
3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.
4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
  - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.



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- b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
  - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
  - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
  - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
  - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
  - i. Make provision for the availability and use of temporary emergency housing.
  - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
  - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:
- a. 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;

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- b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
  - c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees."

Renumber accordingly



*I replace original bill*

#5283

A BILL for an Act to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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a. Notwithstanding any other provision of law, an order issued pursuant to this section may not:

(1) 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 government interest;

(2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or

(3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.

b. A person claiming to be aggrieved by a violation of this section, may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

**SECTION 2. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is 22 amended and reenacted as follows:

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2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.

4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.

5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.

6. In addition to any other powers conferred upon the governor by law, the governor may:

a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.

b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.

c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.



- d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
  - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
  - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
  - i. Make provision for the availability and use of temporary emergency housing.
  - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
  - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
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10. A person claiming to be aggrieved by a violation of this subsection, may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

SB 2181  
1/27/2021

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**11:11 AM Chairwoman Larson** Calls committee work to order

Senators present: Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson

### Discussion Topics:

- New Your Supreme Court challenge of language
- Regulation of religious gatherings

**11:12 AM Senator Heitkamp** moved amendment [LC 21.0640.01001]

**11:13 AM Senator Myrdal** seconded the motion

Roll Call Vote

Motion passes 7-0-0

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

**Senator Heitkamp** [11:17] moved for a DO PASS as Amended

**Senator Myrdal** seconded the motion

Roll Call Vote

Motion passed 7-0-0

**Senator Heitkamp** will carry the bill.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

**11:20 AM Chairwoman Larson** adjourns the meeting

*Jamal Omar, Committee Clerk*

January 20, 2021

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

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5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
  - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.



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- b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
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  - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
  - i. Make provision for the availability and use of temporary emergency housing.
  - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
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7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:
- a. 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;

- CJ  
1/22  
4 of 4
- b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
  - c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees."

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**SB 2181: Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's authority and the governor's authority during a declared disaster or emergency; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. Written orders issued under this section shall have the same effect as a physician's standing medical order. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

a. Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:

- (1) 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;
- (2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
- (3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.

b. A person claiming to be aggrieved by a violation of subdivision a may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

**SECTION 2. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-05. The governor and disasters or emergencies - Penalty.**

1. The governor is responsible to minimize or avert the adverse effects of a disaster or emergency.
2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.
4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
  - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
  - b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
  - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
  - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
  - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor

- deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
- f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
  - i. Make provision for the availability and use of temporary emergency housing.
  - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
  - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:
- a. 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;
  - b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
  - c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees."

Renumber accordingly

**2021 HOUSE JUDICIARY**

**SB 2181**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

SB 2181  
3/16/2021

Relating to the state health officer's authority and the governor's authority during a declared disaster or emergency; and to provide a penalty.

**Chairman Klemin** called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

### Discussion Topics:

- Religious exercise
- Emergency disaster

**Senators Clemens:** Introduced the bill. Testimony #9464

**Christopher Dodson, Catholic Christian Conference:** Testimony # 9403

**Chairman Klemin** closed the hearing at 8:40.

**Rep. Karls:** Do Pass Motion

**Rep. Vetter:** Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	A
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	A
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	N

11-1-2 Carrier: **Rep. Cory**

House Judiciary  
SB 2181  
March 16, 2021  
Page 2

**Additional written testimony:** 9028 (Duplicate testimony #'s 9029, 9033, 9042, 9155, 9219, 9220, 9276, 9373), 9043, 9292, 9296, 9297, 9370, 9382, 9410.

Stopped 8:41 AM

DeLores D. Shimek and Donna Whetham  
Committee Clerk

**REPORT OF STANDING COMMITTEE**

**SB 2181, as engrossed: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2181 was placed on the Fourteenth order on the calendar.

March 16, 2021

House Judiciary Committee

Senate Bill 2181

I am David Clemens, Senator from District 16, West Fargo and Fargo. I am here today to introduce Senate Bill 2181.

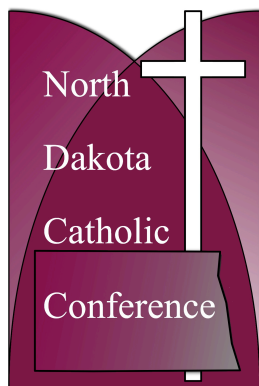
Senate Bill 2181 deals with a person's exercise of religion and would amend the Century Code in Section 23-01-05 and Section 37-17.1-05. Section 23 addresses issues relating to disease control measures deemed necessary to prevent the spread of communicable diseases. Section 37 is when the governor is responsible to minimize or avert the adverse effects of a disaster or emergency.

Both Section 23 and Section 37 are amended with the same language. Section 23 is addressed in Sec 1, page 1 of the bill and Section 37 is addressed in Sec 2, page 4 of the bill.

The changes basically say that a person's exercise of religion may not be substantially burdened and is the least restrictive means in accordance with the government interest and may not treat religious conduct more restrictive than any secular conduct.

I appreciate your support of SB2181 and am open for any questions.





Representing the Diocese of Fargo  
and the Diocese of Bismarck

103 South Third Street  
Suite 10  
Bismarck ND 58501  
701-223-2519  
ndcatholic.org  
ndcatholic@ndcatholic.org

**To:** House Judiciary Committee  
**From:** Christopher Dodson, Executive Director  
**Subject:** Senate Bill 2181  
**Date:** March 16, 2021

The North Dakota Catholic Conference supports Senate Bill 2181 to ensure basic protections for religious exercise during emergency orders.

The nationwide pandemic has brought renewed attention to how government actions can, intentionally or not, restrict the exercise of religious freedom. For the most part, North Dakota has been spared the imposition of rules and policies unduly interfere with religious activity. Nevertheless, both the state and people of faith could benefit from established protections and parameters in the law.

If Senate Bill 2181 looks familiar, it is because it is identical, word for word, to Sections 3 and 5 of House Bill 1410, which received a Do Pass recommendation from this committee, passed the House, and is now before the Senate. In other words, it is HB 1410 without the sections concerning the state institutions. It only addresses emergency orders by the Governor or State Health Officer.

To review, it establishes the “strict scrutiny” standard for emergency orders and the non-disparate treatment standard of recent U.S. Supreme Court opinions.

The first subsection of both sections restates of the “strict scrutiny” standard that applies to all federal laws and rules under the Religious Freedom Restoration Act (RFRA), and all laws and policies in a majority of the states. It does not apply, however, to North Dakota emergency orders unless the Legislative Assembly makes it applicable. The advantage of using the language from RFRA is that it sets forth clear parameters that courts have applied for decades. It provides strong protection for religious freedom while allowing the state to act if it has a legitimate and compelling interest and is using the least restrictive means.

Subsections 2 and 3 codify the principle that the government cannot treat religious activity more severely than comparable secular activity unless it can show that the religious activity poses a greater risk. This principle is in line with the U.S. Supreme Court Case of *Church of Lukumi Babalu Aye, Inc. v. Hialeah* and the recent decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*. The constitutional requirements are clearly discussed in *Cuomo*. The Constitution requires “a minimum requirement of neutrality” to religion. Government cannot “single out” religious activity, treat comparable activity “less harshly,” or engage in “disparate treatment” of religion.

SB 2181 would codify these principles into the Century Code, clearly establishing religious protections and parameters for emergency orders by the Governor and the State Health Officer.

We ask for a **Do Pass recommendation**.

#9028 Duplicate #'s 9029, 9033, 9042,  
9155, 9219, 9220, 9276, 9373)

Dear Committee Members,

I would like to voice my support for HB 2181 because it seeks to preserve our religious liberties when the government limits religion due to an emergency which is when the church is needed most.

America was founded upon the idea of religious liberty, among other liberties.

*The Declaration of Independence began this idea with "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."*

*The Preamble of the US Constitution furthers this with "and secure the Blessings of Liberty".*

*Finally, the First Amendment within the Bill of Rights concluded with "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."*

While the health care community continues to work hard and work miracles, government's only contribution to COVID-19 has been to take away the God-given rights of Americans. Masks! Social distancing! Travel restrictions! Quarantine! They have been doing this FOR OVER A YEAR, and cannot provide a convincing argument of any positive effect.

Government is not medicine. Government never admits its mistakes.

*Shall we be compelled to mask our faces in worship?*

*Shall we be compelled to distance from fellow believers?*

*Do we revere the Governor or Mayor more than God?*

Dr. Fauci and the CDC would have us believe that it is moral and good to prohibit worshipping together. This is exactly the wrong idea. Government has benched the church when it is most needed on the field.

HB 2181 is a modest bill designed to keep government accountable when restricting the exercise of religion. This bill does three things in the context of disease response: 1) it ensures that religious activity is not treated more harshly than similar secular activity, 2) it ensures that limitations upon religion are the last recourse, and 3) it provides for a citizen's right to pursue penalty for government overreach. It is clear that this bill is needed after the endless government overreach this past year.

Please render a DO PASS on SB 2181

Dear NDCA Member,

HB 2181 is a bill preserving our religious liberties when: 1) the government limits religion due to emergency, and 2) the church is needed most.

Readers of this understand that America was founded upon the idea of religious liberty, among other liberties.

The Declaration of Independence began this idea with We

hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

The Preamble of the US Constitution furthers this with and secure the Blessings of Liberty.

Finally, the First Amendment within the Bill of Rights concluded with 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.

While the health care community continues to work hard and work miracles, governments only contribution to COVID-19 has been to take away

the God-given rights of Americans. Masks! Social distancing! Travel restrictions! Quarantine! They have been doing this FOR OVER... A... YEAR... and have yet to provide the public with anything beyond superficial evidence that the mitigations helped stop the spread of the virus.

Government is not medicine. Government never admits its mistakes.

Shall we be compelled to mask our faces in worship?

Shall we be compelled to distance from fellow believers?

Do we revere the Governor or Mayor more than God?

Dr. Fauci and the CDC would have you believe that it is moral and good to prohibit worshipping together. This is exactly the wrong idea.

Government has benched the church when it is most needed on the field.

HB 2181 is a modest bill designed to keep government accountable when restricting the exercise of religion. This bill does three things

in the context of disease response: 1) it ensures that religious activity is not treated more harshly than similar secular activity, 2) it ensures that limitations upon religion are the last recourse, and 3) it provides for a citizens right to pursue penalty for government overreach.

The blatant and draconian overreach by our government over the last year has clearly shown that this bill is a much needed piece of legislation.



Nikolas Nartowicz  
State Policy Counsel

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americansunited@au.org

1310 L Street NW  
Suite 200  
Washington, DC 20005

March 15, 2021

The Honorable Lawrence Klemin  
Chair  
Judiciary Committee  
North Dakota House of Representatives  
600 East Boulevard  
Bismarck, ND 58505

The Honorable Karen Karls  
Vice Chair  
Judiciary Committee  
North Dakota House of Representatives  
600 East Boulevard  
Bismarck, ND 58505

## **Re: Oppose SB 2181–Government Must Be Able to Protect Public Health**

Dear Chair Klemin and Vice Chair Karls:

On behalf of the North Dakota members and supporters of Americans United for Separation of Church and State, I write to express our opposition to SB 2181, which would limit the ability of government officials to adopt public health or emergency measures that restrict the religious exercise. We understand that in difficult times, many people look to their faith for comfort and guidance, but that does not mean religious activities cannot or should not be regulated during an emergency. This bill should be rejected because it is unnecessary, would adopt uncertain legal standards, and, unfortunately, would put the public health at risk.

### **This Bill is Unnecessary**

The United States Constitution already protects the free exercise of religion. Recently, the U.S. Supreme Court issued several decisions holding that government can place limits on religious activities in emergency situations<sup>1</sup> so long as such limitations are neutral and generally applicable or “narrowly tailored” to serve a “compelling” state interest.<sup>2</sup>

Religious exercise is also protected by the North Dakota Constitution, which says that the “free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state.”<sup>3</sup> The North Dakota Supreme Court has held that the “resolution of a conflict between the free exercise of religious beliefs and the state's interest in the health, safety, and welfare of its citizens requires a delicate balance to accommodate these interests.”<sup>4</sup> Because these religious freedom protections

<sup>1</sup> *S. Bay United Pentecostal Church v. Newsom*, 592 U.S. \_\_ (2021) (striking down a prohibition on indoor worship services); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020) (striking down numerical limits on in-person worship where “the regulations cannot be viewed as neutral because they single out houses of worship for especially harsh treatment.”).

<sup>2</sup> *Roman Catholic Diocese of Brooklyn*, 141 S.Ct. at 66-67.

<sup>3</sup> N.D. Const. art. I, § 3.

<sup>4</sup> *State v. Rivinius*, 328 N.W. 2d 220, 224 (N.D. 1982).

already exist, there is no need for a new state law that would make it harder for government to protect the public health.

### **This Bill Would Create New Vague and Uncertain Legal Standards**

It is a fundamental responsibility of the government to protect the public during an emergency, including a pandemic, and limiting its ability to do so could cost lives. Yet the bill would subject emergency orders to new and uncertain legal standards, making it harder to protect public health.

For example, the bill would prohibit the governor and public health officials from regulating religion “more restrictively than any secular conduct of reasonably comparable risk unless . . . a particular religious activity poses an extraordinary health risk.” The bill, however, does not define what constitutes an “extraordinary health risk,” and the term does not apply anywhere else in North Dakota law. The governor and public health officials would also be prohibited from treating “religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.” But neither of these standards have been used in religious freedom cases elsewhere and could be interpreted broadly, significantly tying the hands of state officials in the future.

Furthermore, this language is designed to apply in the pandemic, but the bill fails to limit the use of this provision to the pandemic or other health-related scenarios. This could result in unforeseen and unintended consequences.

### **This Bill Would Put the Public Health and Safety at Risk**

Over the course of the pandemic, nearly two-thirds of the states temporarily suspended or limited all mass gatherings, including those at houses of worship.<sup>5</sup> That is because, like any virus, COVID-19 is just as likely to spread at religious gatherings as at other gatherings.<sup>6</sup> Indeed, numerous outbreaks of COVID-19 have been connected to houses of worship.<sup>7</sup> As cases rise and fall, public health restrictions will likely need to change as well. Under SB 2181, however, the state health officer might not be able to effectively respond to changing circumstances and instate gathering limits if needed to stop the spread of disease.

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<sup>5</sup> See e.g. [Ga. Exec. Order 04.02.20.01](#) (Mar. 23, 2020); [Ill. Exec. Order 2020-10](#) (Mar. 20, 2020); [Ky. Cabinet for Health and Family Services Order](#) (Mar. 19, 2020); [La. Proclamation No. 41 JBE 2020](#) (Apr. 2, 2020); [Me. Exe. Order 14 FY19/20](#) (Mar. 18, 2020); [Md. Exec. Order 20-03-30-01](#) (Mar. 30, 2020); [Mass. COVID-19 Order No. 13](#) (Mar. 23, 2020); [Okla. Exec. Order 2020-13](#) (Apr. 8, 2020).

<sup>6</sup> According to the Center for Disease Control, “[t]he more people an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19.” Center for Disease Control and Prevention, [Considerations for Events and Gatherings](#), Jan. 8, 2021.

<sup>7</sup> At least twelve people died and 213 people tested positive after a North Carolina church event. Mecklenburg County Government, [COVID-19 Update on United House of Prayer for All People Convocation Events](#), Nov. 19, 2020. After an Ohio man attended church service while infected, COVID-19 “spread like wildfire,” and 91 people from five counties developed symptoms. [Ohio Churchgoer with COVID-19 Infects 91 Others as State Struggles to Contain Spread of Virus](#), WKYC, Aug. 4, 2020. And in New Rochelle, New York, 100 people, most of whom were members of the same synagogue, were forced into quarantine after a man who was carrying the virus attended events at the synagogue. Joseph Spector & Jon Campbell, [Coronavirus Quarantine Lifted in New Rochelle as N.Y. Changes Statewide Policy](#), *Lohud*, Mar. 28, 2020.

The danger that the bill would create in non-pandemic scenarios is equally troubling. For example, in a worst-case scenario, if an accident caused an explosion at a chemical plant, the governor might have to close all schools, including religious schools, in an area that is highly hazardous. Or if the state were hit by tornadoes or flooding, the governor would need to enforce orders that keep all buildings in certain areas, including houses of worship, off limits because of damage. SB 2181 could prohibit government officials from issuing such orders, and as a result, North Dakotans could get sick, injured, or worse.

### **Conclusion**

Many faiths teach that in emergency circumstances, protecting people's lives comes first, and that it is an act of charity, justice, and love to stay home and to worship through alternative means. To protect people who attend religious worship services, as well as those who don't, we should encourage these efforts, not create confusing legal standards or exempt religious activities from emergency restrictions. Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nikolas Nartowicz", with a stylized, flowing script.

Nikolas Nartowicz  
State Policy Counsel

cc: Members of the House Judiciary Committee



March 16, 2021

Dear House Judiciary Committee,

Chairman Klemin and members of the House Judiciary Committee, Family Policy Alliance of North Dakota would like to formally indicate its support of Senate Bill 2181.

We firmly believe that rights enumerated in the First Amendment, in this case particularly those pertaining to freedom of religion and assembly, form a cornerstone of our nation's freedoms and democracy. To infringe upon these rights, even in the case of emergency situations, is no more valid than infringing on the other rights contained in the First Amendment (see freedom of press already addressed in chapter 37-17.1-03.2 of the Century Code). Our country was birthed on freedom of religion and this must be protected at all costs. For these reasons, we respectfully ask for a "DO PASS" committee recommendation on SB2181.

Thank you for your consideration,

A handwritten signature in black ink that reads "Mark Jorritsma". The signature is fluid and cursive, with the first name "Mark" being more legible than the last name "Jorritsma".

Mark Jorritsma  
Executive Director  
Lobbyist #147

1515 Burnt Boat Drive., Ste. C148  
Bismarck, ND 58503

P 866.655.4545

UNLEASHING CITIZENSHIP

[FamilyPolicyAlliance.com/NorthDakota](http://FamilyPolicyAlliance.com/NorthDakota)





# AMERICAN ATHEISTS

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March 15, 2021

The Honorable Rep. Lawrence R. Klemin  
Chairperson, House Judiciary Committee  
600 E Boulevard Ave., Room JW327B  
Bismarck, North Dakota 58505

**Re: AMEND SB 2181, Testimony from American Atheists regarding legislation concerning protection for religious freedom**

Dear Chairperson Klemin and Members of the House Judiciary Committee:

American Atheists, on behalf of its constituents in North Dakota, writes in opposition to SB 2181, a bill that seeks to protect religious freedom by placing limits on public health restrictions to allow in-person religious activities during a public health crisis. Although North Dakota does not have a Religious Freedom Restoration Act (RFRA), this bill introduces RFRA-like language into the law that may have unforeseeable consequences. Nevertheless, there is much in this bill to be admired. Therefore, we recommend that you remove the harmful, RFRA-like provisions of this bill and continue consideration of the measure.

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 the health, safety, and well-being of all Americans, American Atheists objects to efforts to subordinate the health and safety of all to the religious beliefs of a few.

To contain outbreaks of COVID-19, governors and health departments across the country have issued public health restrictions to prevent in-person gatherings that may spread this disease. No one likes these restrictions, but most reasonable Americans realize they are necessary both to protect immune-compromised citizens and to hasten the end of the pandemic. Unfortunately, the Centers for Disease Control and Prevention (CDC) has shown that, despite good intentions and safety precautions taken, church services can serve as a vector for the spread of this deadly disease.<sup>1</sup> Throughout the pandemic, many thousands of religious organizations and places of worship have adapted to these conditions by meeting safely through virtual gatherings.

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<sup>1</sup> James A., Eagle L., Phillips C., Hedges D.S., Bodenhamer C., Brown R., Wheeler G., and Kirking H. (2020). High COVID-19 Attack Rate Among Attendees at Events at a Church – Arkansas, March 2020. *CDC Morbidity and*



SB 2181 attempts to prevent government overreach of public health restrictions during the COVID-19 pandemic by establishing clear safeguards in North Dakota law. The limits this bill places on public health emergency orders are fair and appropriate. Specifically, this language clarifies that the state may not, “treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk.” This provision has well-established support in First Amendment law, and it protects religious activity by comparing it to like secular activity.

However, the bill overreaches where it prohibits the government from “substantially burden[ing] 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.” This language is similar to a RFRA, and it is likely to have unintended consequences. Moreover, the language is unnecessary because the aforementioned provisions already fulfil the goal of the legislature to protect religious exercise.

RFRA is a common acronym for a Religious Freedom Restoration Act, a state law that provides that government action may only burden religious exercise if it meets a stringent legal test. In order to meet this test, the government must show that its action was intended to meet a compelling government interest and the action taken was narrowly tailored, meaning that alternative methods will not be as effective to meet the government’s goal. While RFRA laws were originally introduced at the federal and state level to protect religious exercise, in recent years RFRA language has been used in ways its supporters and sponsors would never have imagined, such as trumping nondiscrimination, public health, and safety laws.

Especially when it comes to public health, the state government requires the flexibility to respond to emergencies appropriately, and the introduction of such a stringent test will hamper efforts to stop the spread of disease and deal with other emergencies.

Further, although the RFRA language in this bill applies in limited circumstances, it is likely to permeate to other areas of the law. Once this compelling interest standard for religious exercise in public health matters is introduced to the law, courts will apply it in other areas not foreseen by this legislation. In some circumstances, RFRA language has been used to prevent people from accessing healthcare, such as emergency services, contraception, fertility treatments, and mental health counseling. When religion is used as a justification to deny healthcare, it puts patients’ health and well-being in jeopardy.

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*Mortality Weekly Report*, 69(20); 632-635, May 22, 2020. Available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm>; Hamner L., Dubbel P., Capron I., Ross A., Jordan A., Lee J., Lynn J., Ball A., Narwal S., Russell S., Patrick D., and Leibrand H. (2020). High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice – Skagit County, Washington, March 2020. *CDC Morbidity and Mortality Weekly Report*, 69(19); 606-610, May 15, 2020. Available at [https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm?s\\_cid=mm6919e6\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm?s_cid=mm6919e6_w).

Aside from the RFRA-like provisions, SB 2181 strikes a good balance by treating religious organizations the same as similarly situated secular ones. Therefore, we urge you to amend this legislation to remove the RFRA-like provisions. If you should have any questions regarding American Atheists' position regarding SB 2181, please contact me at 908.276.7300 x309 or by email at [agill@atheists.org](mailto:agill@atheists.org).

Very truly yours,

A handwritten signature in black ink, appearing to read 'AGill', with a long horizontal flourish extending to the right.

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

House Member,

**Under no circumstance should our Constitutional rights be violated in an emergency of any kind!**

Even the US AG said that the constitution does not get thrown out the window in a pandemic!

Thank you,

**Mitchell S. Sanderson**

HB2181

Submitted by : Rena Rustad, District 4

Greetings committee members and thank you for reading my testimony on this very important bill.

One of the many things I have learned during the past year it is exactly how important it is to be IN church and WITH my church family. I completely support HB 2181. The fact that we even have to have a bill to protect our given rights to assemble and come together for worship is a sign of where our country is falling into. What was once taken for granted because of the Bill of Rights now comes under fire.

Because of government recommendations and warnings of massive death, I am one of the members of the "deer stand" outdoor church in Ryder, ND. (remember, even the governor recognized it during one of the press conferences) Right away our doors were shut and church was held outside. We became the "hay trailer" outdoor church last spring. As fall drew into winter, our pastor had to have some sort of shelter and now relays the message from a portable deer stand. But it's not church to me. It's some songs, a few bible passages and a very short sermon followed by some more songs while we all sit in our vehicles. Our 'old church' was a wonderful 1-1.5 hours long with lots of praise and worship and interaction of attendees. The pastor's family stands BY the church now and waves as people exit the parking lot. This is not church. It's a fantastic attempt at trying to keep things going but it's not church.

We are commanded to gather with other believers as stated in the bible. We are commanded to put God first. In this year, 2021 of the cancel culture of religious believers, don't follow the wrong path, stay on the lighted path and vote YES on 2181. Preserve our right to assemble and gather to worship as it is intended in the Bill of Rights.

Testimony in favor of 2181

I implore you to vote yes on 2181. Religious Freedom is the crowning jewel of living in the United States. The church is an indispensable resource for communities during times of emergency. Protect the right of churches and religions to apply the values they believe in helping each other practically. Please make sure that religious groups are: 1) religious activity is not treated more harshly than similar secular activity, 2) limitations upon religion are the last recourse, and 3) provides for a citizen's right to pursue penalty for government overreach.

Thank you,  
Hannah