



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
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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**.