



AMERICAN ATHEISTS

February 9, 2022

Members of the Iowa Senate Local Government Subcommittee
1007 East Grand Avenue
Des Moines, Iowa 50319

Re: OPPOSE SF 2170, Testimony from American Atheists in opposition to a bill that would undermine religious equality in Iowa

Dear Senators Garrett, Hogg, and Williams:

American Atheists, on behalf of its constituents in Iowa, writes in opposition to SF 2170. This dangerous legislation would undermine religious equality in Iowa, just as it has done in other states that have passed similar legislation. Because SF 2170 will interfere with the constitutional rights of all Iowans, we strongly urge you to oppose this bill.

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. Religious liberty is an individual right guaranteed by the First Amendment, and American Atheists opposes efforts to misuse these constitutional protections to undermine the civil rights or religious freedom of others.

SF 2170 is an example of a RFRA (a common acronym for a “Religious Freedom Restoration Act”), a bill 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 no alternative method will not be as effective to meet the government’s goal. This is the most difficult test that courts impose in constitutional law, and it is rarely met by the government.

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.¹

Freedom of religion is important and that is why it is already protected by both the US Constitution and the Iowa Constitution to protect individual beliefs. However, these protections do not create a special right for religious individuals and organizations to violate neutral laws or discriminate against groups they disfavor. SF 2170 would, under the guise of religious freedom, create special exemptions to a range of neutral laws to privilege religious organizations at the expense of everyone else. For example, this bill would potentially allow individuals and organizations to evade nondiscrimination laws. In Virginia, for example, there have already been efforts to use the state's RFRA to overturn the recently passed Virginia Values Act, a state LGBTQ nondiscrimination law.² The rule of law is important and we cannot simply create sweeping exemptions that allow people to pick and choose which laws they wish to follow. We should all be held to and protected by the same laws.

We oppose this bill because it violates the principle of religious equality, an essential component of religious freedom. Religious equality stands for the guiding and governing principle that one's religious identity should neither directly nor indirectly affect their civil rights under the law. This principle helped to shape both the First Amendment and the Iowa Constitution.³

Instead of religious equality, this bill would establish a new principle – that religious people and organizations (only) may claim exemption from laws and policies that conflict with their beliefs. As Justice Antonin Scalia pointed out in his landmark *Employment Division v. Smith* opinion, such a principle would be “a constitutional anomaly.”⁴

This bill is both dangerous and unnecessary. Iowa has existed for over 160 years without this provision, and there is no evidence that the religious freedom of Iowa's citizens has been routinely violated. Instead, religious liberty has historically been protected both through the First Amendment and through the Iowa Constitution. This bill would undermine those protections by compromising the very bedrock of religious freedom, the principles of religious equality and the separation of religion and government.

¹ For example, in its decision in *Burwell v. Hobby Lobby*, 573 US 682 (2014), the US Supreme Court relied upon the federal RFRA to both declare that certain types of businesses have religious freedom rights and that those rights may take priority over the right of employees to receive benefits, in this case depriving the employees of contraceptive coverage.

² *Updegrove v. Herring*, 1:20-cv-01141-CMH-JFA, Defendant's Combined Opposition to Preliminary Injunction and Memorandum in Support of Motion to Dismiss (E.D. Va. 2020). Available at <https://www.oag.state.va.us/files/2020/2020-11-16-Updegrove-Combined-Brief.pdf>.

³ Iowa Constitution of 1857, Art 1, Sec. 3

⁴ *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) (internal citations omitted).

This legislation threatens to radically rebalance state law to grant extraordinary privileges to organized religion. SF 2170 would establish an across-the-board exemption that allows for religious discrimination by making religious exercise a state-favored class of activity. We urge Iowa lawmakers to hold to the principle of the Iowa Constitution and to reject this harmful legislation. If you should have any questions regarding American Atheists' opposition to SF 2170, please contact me at bparker@atheists.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett Parker", with a stylized, flowing script.

Brett Parker
State Policy Manager
American Atheists