

Comment Report

SF 2170

A bill for an act prohibiting the burdening of a person's free exercise of religion.(See SF 2284.)

Subcommittee Members: Garrett-CH, Hogg, Williams

Date: 02/09/2022

Time: 12:00 PM

Location: Room G15

Name: Carl Olsen

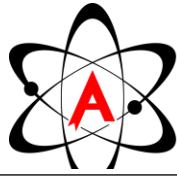
Comment: If the exact same activity is being allowed for secular purposes, why on earth would it be prohibited for religious purposes? I thought this was already a constitutional right. This bill seems redundant. But, it is certainly worth repeating.

Name: Pete McRoberts

Comment: The American Civil Liberties Union is the country's most successful defender of religious rights. We have seen governments all around the country attempt to degrade fundamental rights, and we fight them every step of the way. For that reason, we strongly agree with the motives and sentiment of this legislation. We believe that local governments should not have the power to arbitrarily restrict the rights of people to freely express their beliefs. We regrettably oppose this legislation on account of the way it is written. For example, a statutory provision of strict scrutiny as part of a defense to a judicial or administrative act does not do the same thing as a constitutional provision. We believe this segment of the bill would create a legal framework in which even the judicial middle management would have the power to survey or question the religious beliefs of people before them. Not their sincerity of a professed belief, but the religion itself. I believe the broadness of this legislation makes that inevitable, and believe that no government official should have that right. We are also frankly concerned about the judiciary's ability to correctly interpret the legislative intent of this language. For example, this language creates an affirmative defense that has successfully been used in other states when people violated child labor laws, for example. At the time the defense language was proposed several years ago, we realized immediately this would create an affirmative defense for specific crimes against children and adult women that cause significant bodily harm yet are also associated with certain established religious practices. This is not what we mean by protecting Iowans' first amendment rights to free expression of religion. We are ready and willing to work with Legislators to help resolve Iowans' concerns about local governments stepping on our fundamental rights. It happens regularly, and people are right to be concerned. As we as a state begin the process of looking back at what worked during our long emergency response to Covid, further limitations on governments may be necessary. We do want to make sure that a house of worship is not treated worse than a movie theater or that local finances can't be a determining factor in some emergency declaration in the future. So, while we can't support this, and we discourage Legislators advancing it, we would like to be a part of your next steps to protect Iowans' rights of free expression, and in a way that prevents government officials from entangling themselves into religious doctrine as a matter of law. We will continue our work to protect this fundamental right and all fundamental rights on behalf of people who need help from government overreach.

Name: Brett Parker

Comment: See attached testimony in opposition to SF2170.



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

Name: Ryan Jayne

Comment: Please see attached pdf comment.

FREEDOM FROM RELIGION *foundation*

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February 9 , 2022

SUBMITTED ONLINE

The Hon. Julian B. Garrett, Chair
The Hon. Rob Hogg
The Hon. Craig Steven Williams
Senate Local Government Subcommittee

Re: Testimony in strong opposition to S.F. 2170

Dear Senator Garrett and Local Government Committee members:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) and our Iowa membership to urge the subcommittee not to advance S.F. 2170, a state “Religious Freedom Restoration Act” (RFRA). FFRF is a national nonprofit organization with more than 37,000 members across the country, including more than 200 members in Iowa. FFRF protects the constitutional separation between state and church and educates about nontheism.

The federal RFRA law is directly responsible for the U.S. Supreme Court’s *Hobby Lobby* debacle, allowing religious business owners to avoid following laws that they say conflict with their religious beliefs. State RFRA’s, based on the federal version, embolden corporations and business owners to discriminate against LGBTQ people, religious minorities, the nonreligious and any other group their religion declares inferior.

FFRF has been warning against the dangers of RFRA’s since before the *Hobby Lobby* case was decided.¹ While some of RFRA’s initial advocates intended the law to protect minority religious rights, the reality has been that the law allows evangelical Christians and members of other major religions to discriminate against already marginalized minorities by citing a religious justification. This not only hurts LGBTQ people, but also directly harms religious minorities. This ironically hinders religious freedom, revealing the bill’s name as a misnomer.

¹ See FFRF *amicus curiae* brief to the U.S. Supreme Court (Jan. 27, 2014), available at ffrf.org/news/news-releases/item/19996-ffrf-other-advocates-file-brief-against-hobby-lobby.

Americans are no longer ignorant to the harm caused by these bills. Other states that have passed RFRA's have reeled from the economic blowback as major companies and grassroots organizers alike have pushed for statewide boycotts based on the discriminatory rule. This was perhaps most memorably seen in Indiana, when then-governor Mike Pence signed the bill into law and the backlash was so severe that he scrambled to "fix" the bill, leaving discriminatory evangelicals feeling betrayed.² Indiana would have been far better off if it had never passed the bill.

Non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.³ A recent survey found that 21 percent of Americans born after 1999 are atheist or agnostic.⁴

This bill would allow discrimination under the guise of protecting religious freedom. Please oppose S.F. 2170. Thank you for your time.

Very truly,



Annie Laurie Gaylor & Dan Barker
Co-presidents
ALG/DB:rdj

² See, e.g., Dwight Adams, *RFRA: Why the 'religious freedom law' signed by Mike Pence was so controversial*, IndyStar (Apr. 25, 2018).

³ Pew Research Center, "In U.S., Decline of Christianity Continues at Rapid Pace," (Oct. 17, 2019) at <https://pewrsr.ch/2VPiES7>.

⁴ *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), <https://www.barna.com/research/atheism-doubles-among-generation-z/>.