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## CORY TOMCZYK

STATE SENATOR • 29<sup>TH</sup> SENATE DISTRICT

Chairman Jacque and Committee Members,

Thank you all for being here today to hear SJR 54.

Both the U.S. and Wisconsin Constitutions broadly protect the freedom of assembly, religion, and speech. However, during the pandemic we saw places of worship forcibly closed at a time when many needed their faith communities and spiritual advisors most.

Unbelievably, this included parishes like Pilgrim Lutheran Church in West Bend, where a congregation was interrupted by law enforcement in the middle of the pastor's Palm Sunday sermon in April of 2020.

In America, in Wisconsin, law enforcement stopped a church service.

Even today, our state continues to grapple with the lasting challenges of those shutdowns including increased mental health and depression among children and adults.

Many people in our great state seek solace in times of difficulty within their church, synagogue, mosque, or other religious institution. It is critical that we continue to protect every individual's ability to gather and worship at the times when they rely on their faith the most.

This legislation makes crystal clear that these places of worship shall not be forced closed by the government during a state of emergency, regardless of that emergency protecting every individual's right of conscious and worship from those who might deem it unimportant.

Since 2021, nine states, including Arizona, Florida, Kentucky, Montana, New Hampshire, North Dakota, Oklahoma, South Carolina, and Tennessee, have passed similar reforms with several receiving bipartisan support. And rightly so, this is not a red vs blue issue.

It is my hope and prayer that Wisconsin becomes the 10<sup>th</sup>.

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# TY BODDEN

STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

## Testimony on Senate Joint Resolution 54

### Senate Committee on Licensing, Constitution and Federalism

Tuesday, July 18, 2023

Thank you Chairman Jacque, Vice-Chairman Bradley, and members of the Licensing, Constitution, and Federalism Committee for the opportunity to testify in favor of Senate Joint Resolution 54. I would also like to thank Senator Cory Tomczyk for authoring this joint resolution with me. We have the chance here today to further discuss one of our most basic rights as Americans, the right to assemble in a place of worship without government interference. The restoration of our constitutional principles is of vital importance.

When we take our oath of office, we swear to uphold the Constitution of Wisconsin and the United States of America. The First Amendment to the United States Constitution states that "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." However, during the COVID-19 pandemic, one of these fundamental rights was stripped from many individuals. Churches were forced to shut down in the name of public safety.

These actions exacerbated the mental health strain that the pandemic inflicted on residents who were unable to access their place of worship and spiritual leaders. In light of the Governor's declaration of this year as the year of mental health, this amendment will help protect our constitutional rights in the event of future emergencies.

Since 2021, nine states, including Arizona, Florida, Kentucky, Montana, New Hampshire, North Dakota, Oklahoma, South Carolina, and Tennessee, have passed similar legislation with several receiving bipartisan support. Places of worship for Christians, Jews, Muslims, Buddhists, Hindus, or any other practicing religions should not be closed by any level of government at any time; doing so interferes with religious practice and undermines the foundation of our state and nation.

This constitutional amendment simply prohibits the state or local government actors from closing or forbidding gatherings in places of worship in response to a state of emergency at the national, state, or local level, including an emergency related to public health.

I discussed this legislation with multiple religious groups and organizations around my district and they are excited to see this bill introduced this session. It is with shared belief that places of worship should never face the unjust wrath of our government and be forced to close their doors.

Passing this bill will restore the constitutional right given to the citizens of Wisconsin by allowing those who wish to practice their faith, even during a time of a public health emergency, the ability to do so.

Again, thank you for your time and consideration of this bill.



Senate Joint Resolution 54  
Public Testimony  
Senate Committee on Licensing, Constitution and Federalism  
July 18, 2023

Chairman Jacque, Vice-Chair Bradley, and members of the Licensing, Constitution and Federalism committee, I come before you burdened with a weight that is so monumental that the very thought of the issue that is before this committee causes such trepidation as to fear the crumbling and dissolution of our democratic republic. That an amendment to the Wisconsin Constitution is needed to clarify what is already stated unequivocally in the United States Constitution, Amendment 1 contained in the Bill of Rights, is a clear indication that our state is in danger of losing its moorings. My concern is grave as an unconscionable threat to our very democracy, our representative republic, and the freedoms of every citizen in the state of Wisconsin is before us. This threat is the disregard for our natural and Constitutional right to freedom of religion.

Amendment 1, to the Constitution of the United States, as passed by Congress on September 25, 1789 and ratified by the States on December 15, 1791 clearly articulates:

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

Our system of government is uniquely successful. For 232 years these foundational Bill of Rights have protected our individual freedoms. To erode this foundation for any reason erodes our Republic which for our freedom has been protected for 247 years since the Declaration of Independence.

Thomas Jefferson, our third President of the United States, expressed his desire to be known by three things which were indeed inscribed upon his memorial tombstone after his death on July 4, 1826:

- 1) his authorship of the Declaration of Independence
- 2) his founding of the University of Virginia in 1819
- 3) the Statute of Virginia that guaranteed religious freedom

Mr. Jefferson could have made requests of deeds by which to be known by including being an ambassador to France, or being appointed by President George Washington as the nation’s first secretary of state, or being the third President of the United States. However, Mr. Jefferson chose what I believe were the three most important accomplishments of his life, one of which is the issue that is before us today.

The Virginia Statute for Religious Freedom was drafted by Thomas Jefferson in 1776. Ten years later it was accepted by the Virginia General Assembly ending a decade of struggle for the separation of church and state in Virginia. It is this early state statute that was the foundational document that informed the religious freedom principles of the United States Constitution, Amendment 1.

Particularly notable is the conclusion of the Virginia Statute:

“And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to **narrow its operation** [emphasis mine], such act will be an infringement of natural right.”

Here we are 237 years later, an Assembly, not in Virginia, but in Wisconsin, that is once again considering the passage of legislation to fight for the separation of church and state, to protect the natural right of religious freedom, and to prevent a narrowing of the clear reading and intention of our constitutional freedom of practicing religion.

What could possibly be a narrowing of our constitutional right that has prompted such legislation as Senate Joint Resolution 54? This, of course, is a rhetorical question, as we are all full aware of the infringement that was placed on our religious right of freedom during the Covid-19 shuttering of our churches. To limit, impede, and forbid religious gatherings in the name of public health is not just a narrowing of the First Amendment of the U.S. Constitution, but an assault that disrupts the very underpinnings of this vital freedom.

This attack on religious freedom is unacceptable and must be repelled at every turn. Our foundational documents that guarantee our freedoms are immutable. If our bill of rights are changeable, then they cannot guarantee our freedoms. They become as worthless as the parchment on which they were penned.

Our country has survived for almost 250 years on a firm foundation. If we allow our foundation to erode, then our country is in danger of collapse; just as a building stands firm on a foundation, a shifting of the foundation puts the building in danger of full collapse.

As we confront those who claim various reasons to abuse our right to religious freedom let us recall the admonition of Thomas Jefferson in his first inaugural address:

“If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.”

As so eloquently stated by President Jefferson, we have reason—the power of the mind to think, understand, and form judgments by a process of logic—by which to combat the errors of opinion that threaten our religious freedom.

Mr. Chairman, I voice my full support behind Senate Joint Resolution 54 that the citizens of our state might retain their natural and Constitutional right of freedom of religion to peaceably gather at their own desire and discretion in the practice of their religion.





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**TESTIMONY IN SUPPORT OF SENATE JOINT RESOLUTION 54  
SENATE COMMITTEE ON LICENSING, CONSTITUTION AND FEDERALISM  
TUESDAY, JULY 18, 2023  
JULAINÉ K. APPLING, PRESIDENT**

Thank you, Chairman Jacque, for allowing us to testify on Senate Joint Resolution 54. Wisconsin Family Action supports this Resolution.

The Constitution acknowledges that we have liberty – freedom; not freedom to do as we please, but the freedom to do the right thing. The First Amendment to the Constitution enumerates some of those freedoms – our first freedoms, freedoms that come from our Creator – not that are granted to us by government. The Founders’ claimed that religious liberty is an unalienable natural right. Whereas a civil right is granted by government, a natural right is not. A natural right inheres in human nature. It is universal, grounded in the self-evident truth that all men are created equal.

Among other things, the First Amendment prohibits Congress from doing certain things, among those are prohibiting the free exercise of religion and the right of the people to peaceably assemble. For our fellow Wisconsinites to gather together in places of worship on any day of the week, to fellowship, encourage, be taught and challenged, and yes, to worship freely according to the dictates of their faith – these are unalienable natural rights.

The U.S. Supreme Court recognized the importance of this freedom in the 1937 case *De Jonge v. State of Oregon*, writing that “the right to peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.” According to the court the right to assemble is “one that cannot be denied without violating those fundamental principles which lie at the base of all civil and political institutions.”

In November of 2020, the US Supreme Court ruled in *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York* regarding the prohibiting churches from holding services. The Court stated that “even in a pandemic, the Constitution cannot be put away and forgotten. The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment’s guarantee of religious liberty.”

Wisconsin’s own Constitution clearly states in Article I, section 18 that freedom to worship “shall never be infringed; nor shall any control of, or interference with, the rights of conscience be permitted.”

Despite this clear instruction from our US Constitution and the Wisconsin state Constitution, there are apparently, as was witnessed in 2020, individuals with executive power who seem to think they can decide who assembles and who cannot. This was made abundantly clear during the recent COVID epidemic when, in the Spring of 2020, the executive of this state, as well as other elected and non-elected officials at the local level, seemed to rather indiscriminately decide to close churches, prohibiting the free assembly and free, peaceable speech.

Mr. Chairman, in times of crisis—or perceived crisis—for most people, and especially people of faith, nothing is more important than gathering together to fellowship and encourage, to seek Divine guidance, to be taught and strengthened by their local congregations’ leaders. These kinds of people tend to be thoughtful and reasonable people. They have the sense to know when being together in close quarters may be unhealthy or dangerous.

SJR 4 adds language to Section 18 of Article I of the Wisconsin Constitution, language that one might think is unnecessary as it already states rather clearly what the residents of this state have the freedom to do. But, as we saw in 2020, it took a lawsuit and a Supreme Court ruling to ensure the right of the people to assemble in places of worship.

Therefore, we support this language to make crystal clear that “We the People” have the freedom to assemble and that neither this state nor any political subdivision thereof may order the closure of or forbid gatherings in places of worship in response to a state of emergency at the national, state or local level.

Thank you for your attention; I am happy to answer any questions you may have.



WISCONSIN COUNCIL  
OF CHURCHES  
COURAGE. JUSTICE. HOLY IMAGINATION.

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To: Senator Jacque, Committee Chair  
Members of the Senate Committee on Licensing, Constitution and Federalism

From: Peter Bakken, Coordinator for Justice and Witness, Wisconsin Council of Churches

Date: July 18, 2023

Re: Testimony for information only on Senate Joint Resolution 54

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Thank you for this opportunity to testify on Senate Joint Resolution 54, relating to the freedom to gather in places of worship during a state of emergency.

I write on behalf of the Wisconsin Council of Churches a network of 21 Christian faith traditions, comprising approximately 2,000 congregations and over one million church members in Wisconsin. Seeking to follow the commandment to love our neighbor as ourselves, we work together to uphold the common good and the well-being of the most vulnerable.

We appreciate legislators' concern for safeguarding religious freedom and their recognition of the vital services that houses of worship provide, not only for their members but also for the wider community.

However, we wish to raise two concerns about this particular piece of legislation.

First, public statements and reporting about the effect of public health emergency orders on houses of worship very often misrepresent what is actually at stake for religious communities. A church or other house of worship is not "closed" or "shut down" simply because in-person gatherings are restricted due to public health or safety concerns. If the term, "house of worship" implies a building or other physical structure, that doesn't by any means capture everything that a community of faith is or does.

During the height of the COVID-19 pandemic, we learned from letters, surveys, and conversations with faith leaders that congregations continued to meet their members' and their communities' needs in spite of limits on in-person indoor gatherings. In many cases, they found that the new measures required by the public health emergency enabled them to reach people that they hadn't been able to connect with before.

Second, it isn't clear why or whether this sort of specific policy ought to be written into the state constitution. If a certain public health order actually does infringe on someone's religious freedom, is anything more than the existing constitutional language really necessary? Won't the new language raise questions of how "house of worship" is defined, or what terms like "closure" or "forbidding gatherings" actually mean in practice? Given the many other ways that the state might infringe on religious liberty or freedom of conscience, why should orders pertaining to public health emergencies be singled out in the state constitution?

Decisions about what particular measures are needed to protect the lives and health of the public and how to balance them against the claims of individual rights and freedom are extremely difficult matters for judgment. Making good choices about what to do in a public emergency requires closely attending to the particular circumstances at hand and using the best information and understanding available at the time. Trying to define the options in advance, without any clear idea of exactly what we could be facing in the future, is unwise. It short-circuits the sort of careful, informed public deliberation that is essential when the life and health of Wisconsin residents, especially those who are most vulnerable, hangs in the balance.

Care for people's health and well-being is common to the practices of diverse religious traditions and to the mission of our public health professionals and civil servants. We need to support both as they help us reach the shared goal of a Wisconsin in which every one can thrive. And we must not underestimate the adaptability and resilience of Wisconsin's faith communities, or limit our understanding of their ability to meet the needs of their members and communities even in extraordinary circumstances.

Thank you for your attention to our concerns.





**ProLife**  
LOVE. FOR LIFE. WI.

**Testimony in Support of Senate Joint Resolution 54: constitutional amendment guaranteeing the freedom to gather in places of worship during a state of emergency**

**Senate Committee on Licensing, Constitution and Federalism  
By Matt Sande, Director of Legislation**

**July 18, 2023**

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Good morning, Chairman Jacque and Committee members. My name is Matt Sande and I serve as director of legislation for Pro-Life Wisconsin. Thank you for this opportunity to express our support for Senate Joint Resolution (SJR) 54, legislation amending the Wisconsin Constitution to prohibit the state or a political subdivision of the state from ordering the closure of or forbidding gatherings in places of worship in response to a state of emergency at the national, state, or local level, including an emergency related to public health.

Pro-Life Wisconsin exists for a singular purpose: to restore and protect the unalienable right to life of all human beings in our state, whether born or preborn, young, old, disabled or terminally ill. We affirm that the right to life exists from the moment of conception and extends until natural death; this truth being handed down by God and articulated in the Declaration of Independence.

Believing that "it is never the will of the Father in heaven that one of these little ones should be lost" (Matthew 18:14), Pro-Life Wisconsin is a Christian organization relying on God to change hearts and minds toward His most precious creation of human life. Across our great state, Pro-Life Wisconsin affiliate groups change hearts and minds by spreading the Gospel of Life in their local communities.

Pro-Life Wisconsinites are engaged in a spiritual war against the culture of death, exemplified most horribly by the twin evils of abortion and assisted suicide that kill both the young and old with impunity. Our members fortify themselves in this epic battle by faithfully attending their communal places of worship and living sacramental lives. When they are cut off from this spiritual sustenance, it is difficult to be effective in their missionary work.

Just as food feeds the body, worship feeds the soul. Both are essential, and both must be treated as such. In a state of emergency, uninhibited access to our grocery stores is no more important than unrestricted access to our churches. SJR 54 recognizes and reinforces this reality. Moreover, the legislation upholds our unqualified federal First Amendment rights to freely exercise our religious beliefs and freely assemble and expands our unqualified state constitutional (Article 1, Section 18) freedom of worship right.

Thank you for your consideration, and I am happy to answer any questions committee members may have for me.

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