



Nevada Advocates for Planned Parenthood Affiliates, Inc.

To: Members of Assembly Judiciary Committee

From: Elisa Cafferata, President & CEO

Date: May 16, 2013

Re: SB 192 Religious Freedom

You're familiar with the First Amendment to the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It's the first protection granted in the Bill of Rights at the federal level. As far as legal precedents go, that is pretty much the highest level of legal protection there is.

But there is a national movement to get states to adopt so-called "religious freedom restoration acts" or RFRAs. The federal Religious Freedom Restoration Act that passed in 1993 was found unconstitutional in the Boerne v. Flores case. Marci Hamilton, Paul R. Verkvil Chair in Public Law at Cardozo Law School, summarizes:

The federal "RFRA presented a public-policy problem, for it created a presumption against every law, and in favor of the religious actor. Laws exist to protect the vulnerable. When a religious actor gets wide latitude to ignore the law, as RFRA invited such actors to do, the vulnerable get hurt."¹

What's the problem? Basically, the courts have ruled that the First Amendment says the federal, state and local governments can't pass laws that prevent people from freely exercising their religion. At the same time, as Marci Hamilton noted:

The courts have repeatedly ruled that "religious believers do not have the right to trump the neutral, generally applicable laws that govern everyone else: According to long-established Supreme Court precedent, a Mormon man in the Nineteenth Century did not have a right to practice polygamy, and an Amish employer in the Twentieth did not have the right to avoid Social Security taxes."²

In the central case on the issue, Justice Antonin Scalia wrote that "the First Amendment's protections do not mean individuals are free to violate valid laws simply by claiming a sincere religious objection. To

¹ The New Wave of Extreme State Religious Freedom Restoration Act (RFRA) Legislation: Why It's Dangerous, Marci Hamilton, October 14, 2010.

² Verdict from Justia.com, "The Plague of Proposed Legislation by Religious Entities in the States: An Explosion in Foolhardy State Religious Liberty Proposals and a Sneaky Addition to the Pennsylvania Task Force's Legislative Proposals," April 4, 2013 by Marci Hamilton. <http://verdict.justia.com/2013/04/04/the-plague-of-proposed-legislation-by-religious-entities-in-the-states>

“make the professed doctrines of religious belief superior to the law of the land” would have the anarchic effect of permitting “every citizen to become a law unto himself.”³

SB 192 the “Nevada Religious Freedom and Preservation Act” would create a new legal standard in Nevada, essentially creating special religious exemptions for Nevadans who claim to have a sincerely held religious belief. Naturally, many organizations, including Planned Parenthood, have raised concerns.

To be clear, under the First Amendment, our government can not pass a law to prohibit us from practicing our religion. What government CAN do is pass “neutral, generally applicable laws that govern everyone.”

If a general law that applies to everyone prohibits a person from practicing his or her religion, that person can sue for relief. This is the existing law which balances the competing interests of community order and religious freedom.

SB 192 could completely upend this balance of legal interests. SB 192 says the provisions of the Nevada Religious Freedom and Preservation Act “do not authorize a governmental entity **TO BURDEN** any religious belief of a person.” Not “substantially” or “significantly” or “materially” or any other qualifier ... the bill says in the simplest terms that a government entity is not authorized to burden the religious belief of a person.

This opens the door for certain people to ignore the laws the rest of us follow based on their religious beliefs. And the law would apply even if the belief is NOT compulsory or central to that person’s belief. They just have to believe it.

If religious freedom is protected in the constitution, why are we even seeing this legislation?

Marci Hamilton advances the theory that one reason states are seeing these RFRA bills is that religious leaders are losing the battles over “statutes of limitations for child sex-abuse victims (check out www.sol-reform.com), (2) gay marriage, and (3) contraception.” And indeed, this session there are bills to increase the statutes of limitations for child sex-abuse and to recognize gay marriage.

A recent guest editorial in the [Reno Gazette](#) Journal focused on Planned Parenthood’s objections.

Senator Cegavske has said “there are no recorded cases under either the federal RFRA or any state RFRA where a pharmacist has been permitted to refuse to provide contraceptives or morning-after pills based on his or her deeply held religious beliefs.” I’m not an attorney and don’t have the ability to research lawsuits in all of the states with RFRA laws.

I do know that over 50 RFRA lawsuits have been filed by companies claiming the federal contraceptive coverage rule violates their religious beliefs. These lawsuits are not just from churches; they are also being filed by private businesses including pizza chains and craft stores.

³ The New York Times, “Back to First Principles on Religious Freedom,” February 25, 2012, by Dorothy Samuels, <http://www.nytimes.com/2012/02/26/opinion/sunday/back-to-first-principles-on-religious-freedom.html>

For all American women and families, concern over access to basic health care, starting with birth control, is very real. In America, 99% of all women, including 98% of Catholic women use some form of birth control during their lives.⁴

Marci Hamilton explains how RFRA's are being used to obstruct access to health care:

“Focus on the Family is also apparently seeking to empower entire drugstore chains to refuse to provide emergency or ordinary contraception to patients, because the business owners object to women's obtaining such medical care.”

In fact, Libertas Nevada indicates that emergency contraception (Ella and Plan B) which is just a heavy dose of contraception with abortifacients (mifipristone).⁵ This is a commonly used tactic to limit access, not only to abortion care but also to birth control. We've seen these arguments used in Nevada. In the last election cycle, six so-called “personhood” initiative petitions were filed. These petitions, if passed, could outlaw the most commonly used methods of contraception: birth control pills, as well as in vitro fertilization and life-saving ectopic pregnancy treatments.

We've provided information, available on NELIS, on cases where women's access to reproductive health care has been challenged. We see these challenges in states with or without RFRA's. Our major concern is the invitation to litigate these issues to test out the new state standard.

Marci Hamilton points out that children's safety is put at risk by RFRA laws as well:

Child safety has routinely been undermined by religious organizations arguing for religious liberty "guarantees" in cases involving medical neglect by faith-healing parents; the regulation of religious schools, camps and social-service providers; and child sex abuse by clergy.⁶

If the public understood all of the organizations that oppose RFRA bills around the country, they would probably take a closer look. Women's health organizations aren't the only ones opposed. Child protection advocates, domestic violence organizations, and the LGBT community have seen RFRA's used to let certain people say their religious beliefs give them the right to ignore the law.

That's why we've seen the following groups oppose RFRA in other states: “organizations that lobby to protect children, like the American Academy of Pediatrics and the National Association of Regulatory Agencies; and cities, mayors, attorneys general, and district attorneys who wanted to see the laws on the books uniformly enforced, not selectively disregarded wherever religious individuals or groups were concerned.”⁷

⁴ Center for Disease Control, National Health Statistics, February 2013, <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>

⁵ Libertas Nevada Blog, “Nevada Senate Bill 192: Religious Freedom Preservation,” March 17, 2013, <http://religiouslibertynnblog.wordpress.com/page/3/>

⁶ The New Wave of Extreme State Religious Freedom Restoration Act (RFRA) Legislation: Why It's Dangerous, Marci Hamilton, October 14, 2010, <http://writ.news.findlaw.com/hamilton/20101014.html>

⁷ *ibid*