



Opening Statement

COMMITTEE ON EDUCATION & LABOR

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The Hon. Robert C. "Bobby" Scott • Chairman

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Full Committee Hearing in the House Committee on Education and Labor

Do No Harm: Examining the Misapplication of the Religious Freedom Restoration Act (RFRA)

2175 Rayburn House Office Building

Tuesday, June 25, 2019 at 10:15 a.m.

Seventy-eight years ago, today, President Franklin D. Roosevelt signed Executive Order 8802, the first action to promote equal opportunity and prohibit employment discrimination in federal contracting in the United States. The Order barred private, defense-related contractors from discrimination and required certain defense-related programs to be administered without discrimination as to, 'race, creed, color, or national origin.' Subsequent orders and amendments have been signed to confirm the principal that discrimination is prohibited when using federal money.

It is against this backdrop that we examine the challenge of protecting our civil rights while maintaining our fundamental commitment to religious liberty.

Religious liberty is a fundamental American value. Our Founding Fathers knew from personal experience the dangers of governmental entanglement with religion. In 1779, Thomas Jefferson, in my home state of Virginia, introduced and helped pass the nation's precursor to the First Amendment, which states, 'Our civil rights have no dependence on our religious opinions, any more than our opinions on physics and geometry.'

The Virginia statute on religious freedom became the foundation for the First Amendment in our nation's constitution, which stipulates that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The First Amendment makes clear that all Americans have the right to practice the religion of their choice, or none at all, and reflects our country's commitment to separating religion from government, or 'church and state.'

Religion has played a vital role in our nation's history. It has furthered social justice causes, such as the abolitionist movement, civil rights movement, and movement to end child labor.

However, some have used religion as a pawn to justify slavery, Jim Crow, the slaughter of our native populations, and other horrific acts.

In fact, when I was growing up, segregation was preached from the pulpit. Before the Supreme Court struck down the ban on interracial marriage in *Loving v. Virginia*, the judge, in the circuit court in Virginia, in a 1965 lower court decision, relied on his own religious belief to conclude: 'Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix.'

That was the basis for the original decision in *Loving v. Virginia* that was overturned by the Supreme Court. And while some religions have been protected in the courts, others have experienced less, or no protection at all. In 1990, the Supreme Court's decision in *Employment Division v. Smith* upheld the firing of two Native American employees for participating in ceremonial peyote-smoking during personal time.

In response, Congress passed the *Religious Freedom Restoration Act (RFRA)* in 1993 on a bipartisan basis to expand protections for religious exercise. Under RFRA, Congress addressed the Court's 1990 decision by clarifying that government action may only infringe on a person's exercise of religion if there is compelling government interest and if it is the least restrictive means to achieve that interest.

The passage of RFRA was meant to re-instate a broader protection of free exercise rights. It was not meant to erode civil rights under the guise of religious freedom. Importantly, it did not change the First Amendment's Establishment Clause, which ensures that the government cannot elevate certain religious or moral beliefs above the law.

No sooner than RFRA was enacted, the floodgates began to open and RFRA has since been used to:

- Legitimize housing discrimination against single mothers and minorities,
- Shield church groups from paying child abuse victims, and
- Impose extreme emotional harm on schoolchildren based on their gender identity.

Since the beginning of the Trump administration, this troublesome trend has only gotten worse. On May 4th, 2017, the Trump administration issued an Executive Order, undermining RFRA's original intent and allowing individuals to use 'conscience-based objections' to override civil rights protections.

That Executive Order directed Attorney General Sessions to issue guidance interpreting religious liberty protections in federal law. Instead, the Attorney General issued guidance following his own personal religious beliefs and without regard to other beliefs. The guidance has provided legal cover for the administration to permit – or even promote – government-sanctioned attacks on civil rights in employment, health care, foster care, and other areas, under the guise of religious liberty.

These attacks are spreading. For example, the Department of Education has proposed altering which institutions of higher education count as 'religious' in the accrediting process to allow colleges with any religious affiliation to freely discriminate.

The Department of Health and Human Services misapplied RFRA to propose rolling back the Affordable Care Act's protections for patients against discrimination on the basis of race, color, national origin, sex, age, or disability. The administration has also eroded women's reproductive rights by moving to allow employers to skirt the ACA and deny coverage for contraception on the basis of religion.

The Trump administration is misapplying RFRA when it allows federal funds to be used to discriminate against families when placing foster children and recently permitted a federally-funded organization in South Carolina to restrict placement of foster children only to evangelical Christian families. This discrimination is being used to deny taxpayer-funded placements of vulnerable refugee children in addition to other discrimination.

Finally, the Office of Federal Contract Compliance Programs (OFCCP) is allowing federal contractors to violate civil rights laws based upon a RFRA exemption, without the ability to question the sincerity or legitimacy of the claim.

These examples are just a few of the ways this Administration has twisted RFRA to threaten basic civil rights embedded in the *Civil Rights Act of 1964* and other protective laws.

In other words, the path of religious exemptions we are on today not only strays from President Roosevelt's original Executive Order signed 78 years ago but threatens our civil rights and our democracy. Unfortunately, history tells us that our country will only continue this trajectory unless we act.

That responsibility falls on Congress. We must pass legislation that restores RFRA's original intent. H.R. 1450, the *Do No Harm Act*, would help ensure that our right to religious liberty does not threaten fundamental civil and legal rights.

Specifically, the bill would prevent RFRA from being used to deny:

- Equal opportunity and protection against discriminatory laws;
- Workplace protections and protections against child abuse;
- Health care access, coverage, and services; and,
- Contracted services.

I hope all of us here can agree that while religious liberty remains a fundamental value, it cannot and should not be used as a weapon to cause harm to others, but rather as a shield to protect the civil rights of people of all faiths, not just a favored few.

I now recognize the distinguished Ranking Member for the purpose of making an opening statement.