

ISSUE BRIEF

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Congress Should Protect Religious Freedom in the District of Columbia

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On March 6, District of Columbia Mayor Muriel Bowser transmitted to Congress two pieces of legislation that will seriously infringe on conscience rights and religious freedom in our nation's capital. Congress now has 30 legislative days to pass a resolution of disapproval, which, if signed by the President, would effectively veto these bad laws and protect the rights of DC residents.

The two euphemistically titled acts are the Reproductive Health Non-Discrimination Act (RHNDA) and the Human Rights Amendment Act (HRAA). These policies will saddle religious organizations and employers with a choice between complying with coercive laws that force them to violate their religious beliefs and organizational missions and staying true to their beliefs in defiance of unjust laws.

RHNDAs discriminates against pro-lifers and HRAA violates religious liberty. The former could force employers in the nation's capital to cover elective, surgical abortions in their health plans and require pro-life organizations to hire individuals who advocate for abortion. The latter could force Christian schools to violate their beliefs about human sexuality and recognize an LGBT student group or host a "gay pride" day on campus.

DC Laws Will Severely Infringe on Rights of DC Residents

The Reproductive Health Non-Discrimination Act poses a serious threat to the conscience rights of many organizations in DC such as the Susan B. Anthony List, March for Life, Family Research Council, and the Archdiocese of Washington, among others. Organizations whose mission is to empower women facing unplanned pregnancies with physical and emotional support or who advocate for policies that affirm the dignity and value of both mother and child could be forced to provide health insurance for the life-ending procedure they oppose. The legislation could also prohibit a pro-life organization from making employment decisions in accordance with their beliefs so as to maintain the integrity of their pro-life mission.¹

Even former DC Mayor Vincent Gray urged the council to postpone voting on the abortion bill due to concerns that it may be unconstitutional, noting a review of the legislation by the Office of the Attorney General (OAG) "deemed the legislation legally insufficient." The mayor's letter continued:

According to the OAG, the bill raises serious concerns under the Constitution and under the Religious Freedom Restoration Act of 1993 (RFRA). Religious organizations, religiously-affiliated organizations, religiously-driven for-profit entities, and political organizations may have strong First Amendment and RFRA grounds for challenging the law's applicability to them.²

The DC Council is in the process of passing a supposed fix to RHNDAs that would prevent the law from

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being used to mandate coverage of elective abortions—tacitly admitting that the legislation contains serious legal flaws. But even that temporary legislation is just that: temporary. That so-called solution will expire 225 days after enactment and pro-life organizations in the District could, once again, be forced to pay for life-ending procedures in their health plans. Rather than tinker with the legislation after the fact, the city should never have passed such a legally suspect law in the first place.

Likewise, the Orwellianly titled Human Rights Amendment Act of 2014 eliminates an important protection for a key human right: religious liberty. It does so by rescinding the Nation's Capital Religious Liberty and Academic Freedom Act, popularly known as the Armstrong Amendment. Passed by Congress in 1989, the Armstrong Amendment has protected religious schools in DC from being coerced by the government into violating their beliefs about human sexuality by “promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.”³

If the Human Rights bill goes into effect, it will severely infringe on the ability of DC religious schools to operate according to their religious beliefs.⁴ After all, many religions believe that we are created male and female and that male and female are created for each other. The government should not force religious institutions to violate these beliefs.

Congress Has the Authority to Overrule the DC Bills

Congress should prevent these bills from going into effect and should restore pro-life conscience and religious liberty protections in the District.⁵

The U.S. Constitution (Article 1, Section 8) empowers Congress to “exercise exclusive legislation in all cases whatsoever” over the District. Congress delegated some of this authority in 1973 when it passed the Home Rule Act, which created a city council and mayor. However, it retained authority for Congress to overrule bad policies enacted by the DC government.⁶

Congress can pass a Resolution of Disapproval which, when signed by the President, effectively overturns the District legislation in question. Congress can also attach riders to annual appropriations bills which provide federal funds to the District, preventing taxpayer monies from being used to put a law into effect.

Congress should do this because no governmental entity should force a citizen to promote or pay for abortion, or violate their beliefs that men and women are made for each other in marriage and that sexual relations are reserved for such a union.

Congress Should Protect Conscience Rights and Religious Freedom

In addition to the specific actions Congress can take to remedy the problems with the DC legislation, Congress should also act to protect conscience and religious liberty more broadly.

Abortion Non-Discrimination Act. Since 2004, the federal Weldon Amendment has prohibited state and local governments receiving certain federal funds from discriminating against health care entities that decline to “provide, pay for, provide coverage of or refer for abortions.”⁷ That protection extends to health care plans. To the extent

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1. M. Casey Mattox, Senior Counsel, Alliance Defending Freedom, et al., letter to Chairman Phil Mendelson, December 16, 2014, <http://www.adfmedia.org/files/Bill20-790letter.pdf> (accessed February 24, 2015).
 2. Vincent C. Gray, Mayor, District of Columbia, letter to Chairman Phil Mendelson, December 2, 2014, <http://lims.dccouncil.us/Download/31673/B20-0790-Mayor-s-Letter-regarding-Legislative-Meeting1.pdf> (accessed February 24, 2015).
 3. William C. Duncan and Michael T. Worley, “D.C. Council: Religious Schools Must Adopt Its Views on Sexual Morality,” *National Review Online*, December 5, 2014, <http://www.nationalreview.com/corner/394106/dc-council-religious-schools-must-adopt-its-views-sexual-morality-william-c-duncan> (accessed February 24, 2015), and District of Columbia Code, Sec. 2-1402.41.
 4. Patrick J. Reilly, “School Ground Bullies in the Nation’s Capital,” *The Wall Street Journal*, December 26, 2014, <http://www.wsj.com/articles/patrick-reilly-schoolyard-bullies-in-the-nations-capital-1419636856> (accessed February 24, 2014).
 5. Council of the District of Columbia, “How a Bill Becomes a Law,” <http://dccouncil.us/pages/how-a-bill-becomes-a-law> (accessed February 24, 2015).
 6. Council of the District of Columbia, “DC Home Rule,” <http://dccouncil.us/pages/dc-home-rule> (accessed March 5, 2015), and District of Columbia Home Rule Act, Public Law 93-198, Sec. 601-604.
 7. U.S. Department of Health and Human Services, Office of Civil Rights, “Overview of Federal Statutory Health Care Provider Conscience Protections,” <http://www.hhs.gov/ocr/civilrights/faq/providerconsciencefaq.html> (accessed February 24, 2014).
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that the DC Reproductive Health Non-Discrimination Act would force pro-life organizations to pay for abortion coverage, the legislation would be in violation of the Weldon Amendment. Enforcement of the conscience policy, however, is left to the discretion of officials in the Department of Health and Human Services.

Congress should provide victims of conscience rights violations the ability to defend their rights in court, not leave them to wait on bureaucrats in the Obama Administration. The Abortion Non-Discrimination Act of 2015, S. 50, recently introduced by Senator David Vitter (R-LA), would do just that by modifying the Weldon Amendment to provide a private right of action for individuals and institutions that are discriminated against because they decline to participate in or pay for coverage of abortion.⁸

Marriage and Religious Freedom Act. In addition to protecting conscience rights in the abortion context, Congress should protect marriage and religious liberty. Policy should prohibit the government from discriminating against any individual or group, whether nonprofit or for-profit, based on their beliefs that marriage is the union of a man and woman or that sexual relations are reserved for marriage. The government should be prohibited from discriminating against such groups or individuals in tax policy, employment, licensing, accreditation, or contracting.⁹

The Marriage and Religious Freedom Act, which is expected to be introduced again in the 114th Congress by Representative Raul Labrador (R-ID) in the House and by Senator Mike Lee (R-UT) in the Senate, would prevent the federal government from taking such adverse actions.¹⁰

States need similar policy protections, including broad protections provided by state-level versions of the Religious Freedom Restoration Act and specific protections for beliefs and actions about marriage and abortion.

Protecting Religious Freedom Protects Pluralism

Protecting religious liberty and the rights of conscience is the embodiment of a principled pluralism that fosters a more diverse civil sphere—and a peaceful coexistence even amid disagreement. In a nation founded on limited government and religious freedom, government should not attempt to coerce any citizen, association, business, or school into promoting or paying for abortion or celebrating same-sex relationships.

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8. Abortion Non-Discrimination Act of 2014, S. 50, 114th Congress, 1st Sess.

9. Ryan T. Anderson and Leslie Ford, "Protecting Religious Liberty in the State Marriage Debate," Heritage Foundation *Backgrounder* No. 2891, April 10, 2014, <http://www.heritage.org/research/reports/2014/04/protecting-religious-liberty-in-the-state-marriage-debate>.

10. Marriage and Religious Freedom Act, H.R. 3133, 113th Cong. 1st Sess., and Marriage and Religious Freedom Act, S. 1808, 113th Cong. 1st Sess.