

House Bill No. 5958
Michigan Religious Freedom Restoration Act

On behalf of People For the American Way, I am here to speak in opposition to House Bill 5958, the Michigan Religious Freedom Restoration Act.

Religious liberty is a central part of our mission. In the early '90s, People For the American Way was proud to play a leading role in a large bipartisan coalition spanning the political spectrum that successfully pressed for the adoption of the federal Religious Freedom Restoration Act, or RFRA.

More than 20 years later, our commitment to religious liberty is as strong as ever. And that is why we oppose the Michigan RFRA. Although the bill before you today has the same name as the federal law and tracks its language in several places, it is, in intent and effect, completely different.

Supporters of the bill have been quite explicit about one of its main purposes: to empower businesses to exempt themselves from laws prohibiting discrimination against LGBT people based on their owners' religious beliefs. Indeed, according to press reports, the bill's sponsor has called it a necessary companion to legislation designed to prohibit discrimination on the basis of sexual orientation and gender identity.

Nothing could possibly be further from the ideals that motivated Congress to adopt the federal RFRA nearly unanimously. That law was passed to protect people like Alfred Smith, who was fired and then denied unemployment insurance by the state of Oregon because he smoked peyote as part of a religious ceremony. The Supreme Court had upheld the state's action, saying it didn't violate the Constitution's Free Exercise Clause. So Congress adopted RFRA. It garnered near-universal support because it was designed to be a shield to protect individuals' ability to exercise their religion. There was no discussion of people using the law as a sword to deny other people their legal rights. But we are told that that's exactly what House Bill 5958 is designed to do.

The use of religion as a weapon that people and corporations can use to deny other people's freedom and legal rights has nothing to do with religious liberty.

But that is almost certainly how House Bill 5958 will be interpreted by the courts, even though it tracks the language of the federal RFRA in many places. There are three major reasons for this.

First, while the legislative history of the federal RFRA shows that no one was thinking of it as a vehicle to neuter anti-discrimination laws, this bill's legislative history shows exactly the opposite.

Second, to the extent that the bill tracks the federal RFRA, state courts are likely to follow the guidance of the United States Supreme Court in how to interpret identical language. Unfortunately, with last June's 5-4 *Hobby Lobby* decision, the Supreme Court gravely misinterpreted that law. Five Justices concluded that for-profit corporations can exercise religion and are therefore "protected" by the law, and they essentially excised from the statute the requirement that it can be triggered only by a significant burden on religious exercise. Under *Hobby Lobby*, having your religious beliefs offended is enough. So a state court following the *Hobby Lobby* logic could easily equate a business owner's being religiously offended by a gay employee or customer's "lifestyle choice" with a significant burden on their religious liberty. The bill transform religious liberty from a shield into a sword.

Finally, lest there be any doubt, Section 6(2) of the bill essentially directs courts to rule this way. It says:

This act shall be construed in favor of broad protection of religious exercise to the maximum extent permitted by the terms of this act, the state constitution of 1963, and the United States constitution.

With that language, Michigan's courts would be hard pressed to interpret "substantially burden" in the state RFRA any less broadly than the U.S. Supreme Court has done for the federal one.

This bill would ~~dramatically transform~~ distort the concept of religious liberty, ~~and for no reason in order to legalize discrimination~~. The sponsor has said it is needed because of legislation to expand the anti-discrimination protections of the Elliott-Larsen Civil Rights Act of 1976. But non-discrimination laws are designed to uphold the constitutional principle of equality under the law. It doesn't make any sense to "balance" a non-discrimination law with a "right to discriminate" law. We cherish religious freedom, but that doesn't mean letting people use their religious beliefs to justify harming or discriminating against others.