



Office of the General Counsel

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Via E-Mail

July 2, 2014

Committee on the Judiciary and Public Safety
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Committee Member:

I write on behalf of the United States Conference of Catholic Bishops (“Conference”) in strong opposition to the Reproductive Health Non-Discrimination Amendment Act of 2014.

The Conference, a nonprofit organization incorporated, and with its principal offices, in the District of Columbia, is an assembly of the leadership of the Catholic Church in the United States. The Conference seeks to unify, coordinate, encourage, promote and carry on Catholic activities in the United States; to organize and conduct religious, charitable, and social welfare work at home and abroad; to aid in education; to care for immigrants; and generally to further these goals through education, publication, and advocacy. To that end, the Conference provides and promotes a wide range of spiritual, educational, and charitable services throughout this country and around the world. Its responsibilities include activities of education, advocacy, pastoral care and prayer promoting greater respect for human life before as well as after birth, and upholding the teachings of the Catholic Church on sexuality and procreation.

The Reproductive Health Non-Discrimination Amendment Act, similar to bills introduced in several states at the urging of the National Women’s Law Center, would forbid an employer to “discriminate against an individual” on the basis of “the individual’s or a dependent’s reproductive health decision making, including a decision to use or access a particular drug, device or medical service....” This kind of bill represents a radical attempt to undermine religious and associational liberty, and to date has not passed anywhere in the country.

The Archdiocese of Washington has submitted testimony strongly opposing the D.C. bill. As one of many organizations that would be directly and adversely affected were the bill to pass, we add our voice to theirs in opposing it.

No organization should be required to hire and retain persons whose speech or conduct hinder or contradict the organization’s identity and purpose. This is a matter of constitutional right and common sense. An organization committed to prison reform, environmental protection, or service to immigrants clearly should not be required to hire persons who, by speech or conduct, are *opposed* to those goals. The same can be said of organizations that engage in pro-life advocacy, counsel natural family planning, or assist pregnant women to carry their unborn children to term.

It is not invidious discrimination for such organizations to insist that persons selected to advance their mission refrain from speech and conduct that hinders, opposes, or contradicts that mission. To bar such staffing decisions would run afoul of an organization's right of association and (to the extent that its activities are informed by sincerely-held religious values) burden its right of religious liberty. Insofar as the term "reproductive health decision making" is read to include decisions with respect to abortion, sterilization, in vitro fertilization, and contraceptives, the bill would place the coercive power of the government on one side of a set of controversial moral and social issues on which reasonable people in our society hold a diversity of views. The diversity of that society is undermined, not served, when government mandates that organizations on one side of such issues are legally required to hire and retain employees committed by word or action to the opposing view.

The federal Religious Freedom Restoration Act ("RFRA"), which by its terms applies to the District of Columbia (42 U.S.C. § 2000bb-2(2)), prohibits the government from substantially burdening the exercise of religion unless the burden serves a compelling interest by the means least restrictive of religious exercise. RFRA applies to government mandates with respect to the employment relationship, and is not limited in its application to religious organizations. *Burwell v. Hobby Lobby Stores*, No. 13-354 (U.S. June 30, 2014). The Reproductive Health Non-Discrimination Amendment Act, we submit, would run afoul of RFRA.

The right to employ staff whose views comport with an organization's identity and mission is even more compelling, and the legal constraints on government even stricter, in the case of a *religious* organization such as the USCCB. Over a century of Supreme Court precedent supports the right of religious organizations to govern and manage their internal affairs free of government encroachment. Just two years ago, the Supreme Court unanimously reaffirmed that a religious employer has a constitutionally protected interest in choosing who will carry out its mission, and that includes hiring and retaining a workforce consistent with its religious values. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012).

As the nation's capital, the District of Columbia is home to many advocacy and service groups with many different viewpoints, religious and otherwise. Rejection of this bill is necessary to ensure that the District remains a hospitable place for them and for groups on all sides of the political and social spectrum. Approval of the bill, on the other hand, would be a blow to organizational diversity, and would be a direct attack on the freedom of countless organizations to engage in advocacy and to provide services in the District.

We urge the Committee to reject this bill.

Sincerely,

A handwritten signature in blue ink that reads "Anthony R. Picarello, Jr." The signature is written in a cursive style.

Anthony R. Picarello, Jr.
Associate General Secretary and
General Counsel