

FAQ

The Reproductive Health Non-Discrimination Act (RHNDA)

WHAT DOES THE BILL DO AND WHY IS IT A PROBLEM?

RHNDA prevents religious institutions, other faith-based employers, and pro-life advocacy organizations from making employment decisions consistent with their institutional mission and deeply held moral and religious beliefs about human life and sexuality.

Framed in the language of “non-discrimination” with respect to “reproductive health decisions,” it requires organizations to adopt the D.C. Council’s view of human life and sexuality, face lawsuits, or leave the District. People should be free to organize universities, schools, advocacy organizations, or charitable programs with staff that are committed to the same principles.

This bill infringes on the guaranteed First Amendment rights of freedom of speech, freedom of religion and freedom of association. Besides being unjust and bad social policy, its abridgement of rights is forbidden under the First Amendment as well as the Religious Freedom Restoration Act (RFRA) – a fact that former Mayor Vincent Gray and the D.C. Office of the Attorney General communicated to the D.C. Council before it approved the bill.¹

ISN'T RHNDA ALREADY CURRENT LAW?

Because of D.C.’s unique character as a federal district rather than a city or state, the Constitution grants Congress the authority to legislate in D.C. The D.C. Home Rule Act of 1973 gave the District the ability to pass laws, but, in addition to other oversight tools,

retained to Congress a specific 30-day window in which to review legislation before it goes into effect. RHNDA was signed by newly elected Mayor Bowser on January 23, 2015, and it was officially transmitted to Congress on March 6. Congress now has 30 legislative days to disapprove.

ISN'T THIS JUST ABOUT NOT DISCRIMINATING AGAINST PEOPLE WHO HOLD DIFFERENT PERSONAL VIEWS FROM THEIR EMPLOYER? WHY DO YOU OPPOSE THAT?

No. It’s about common sense. It’s not discriminatory for churches, religious schools, or advocacy organizations to believe, for example, that life begins at conception, or that sex should be saved for marriage. It’s not discriminatory for them to practice those beliefs. And it’s not discriminatory for them to expect their employees to uphold and defend those beliefs.

In the same way, it does not make sense for People for the Ethical Treatment of Animals to hire a job applicant who comes to the interview in a fur coat, or allow their spokesperson to advocate for harmful animal experimentation. This is not discrimination; it is common sense.

IS THIS THE SAME ISSUE AS THE RECENT CONTROVERSY IN INDIANA?

No. That was about what rights individual business owners have to exercise religion in the way they run their for-profit businesses. RHNDA denies religious and pro-life organizations the right to practice their faith and be true to their mission.

1. Letters from Mayor Vincent C. Gray to the D.C. Council, December 2 and December 17, 2014

ISN'T THERE A MINISTERIAL EXCEPTION FOR RELIGIOUS GROUPS ALREADY, WHICH SHOULD PROTECT CHURCHES AND RELIGIOUS ORGANIZATIONS UNDER THE SUPREME COURT DECISION IN HOSANNA V. TABOR? WHY ISN'T THIS SUFFICIENT?

Not all employees of religious organizations are considered by the courts to be “ministers” for purposes of the ministerial exception. That means organizations can still be vulnerable to lawsuits for following employment policies that enable them to pursue their missions consistent with their sincerely-held beliefs.

AREN'T THERE EXEMPTIONS FOR RELIGIOUS GROUPS ALREADY IN DC LAW?

Unfortunately, in spite of numerous requests, no exemptions were included in the Reproductive Health Non-Discrimination Act for either moral or religious objections.

The District’s Human Rights Act contains statutory protection only for religious organizations’ right to prefer co-religionists in employment (for example, Catholic organizations can choose to hire only Catholics without being in violation of the D.C. Human Rights Act or Title VII).

RHNDA, as enacted, has no religious exemption, and the legislative history suggests that it may have been passed specifically to target faith-based employers. These organizations can still be forced to hire, retain, and promote people who oppose and act against their specific religious or moral mission.

NOBODY WOULD REALLY FORCE A PRO-LIFE GROUP TO HIRE SOMEONE WHO ACTIVELY SUPPORTS ABORTION RIGHTS, RIGHT? IS IT REALISTIC TO EXPECT THAT THIS BILL MIGHT ACTUALLY AFFECT PRO-LIFE GROUPS?

This bill would make organizations who have offices and staff within the District vulnerable to numerous and costly lawsuits if an employee or candidate for employment decides that he or she was passed over for promotion, reprimanded, or not hired because of a “reproductive health choice” – such as advocating for or procuring an abortion.²

Ironically, the bill does not even make exceptions for religious organizations, non-profits, and others who may be organized specifically to advocate for the protection of human life. The bill does not even clearly allow for conversations or explanations of policies or handbooks that may address these topics.

IN ADDITION TO THE VIOLATIONS OF FREEDOM OF SPEECH, FREEDOM OF RELIGION AND FREEDOM OF ASSOCIATION THAT THE EMPLOYMENT REQUIREMENTS WOULD PUT ON ORGANIZATIONS, DOES RHNDA REQUIRE PRO-LIFE ORGANIZATIONS TO COVER ABORTION IN THEIR INSURANCE PLANS?

The language of the bill itself is not clear on this point but arguably could be read to require religious and pro-life organizations to subsidize elective abortions through their employee health plans. Actions from the D.C. Council further point to this conclusion.

2. RHNDA reads “For the purposes of this section, the term “reproductive health decisions” includes a decision by an employee, an employee’s dependent, or an employee’s spouse related to the use or intended use of a particular drug, device, or medical service, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy.”

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In legislative hearings in 2014, the bill's sponsors stated that they meant for the law to require employee health plans to cover contraception,³ and the law's definition of a reproductive health decision includes a clear reference to elective abortion ("the planned or intended...termination of a pregnancy").

On January 30, 2015, the Council publicly announced its intention to consider an emergency amendment to fix this particular problem. However, to date no amendments have been enacted, and the amendments announced would only temporarily exempt employers from mandatory abortion coverage even if enacted.

IT SOUNDS LIKE THE BILL IS UNCONSTITUTIONAL ANYWAY, SO WHY DOES CONGRESS NEED TO GET INVOLVED?

Because the bill would make numerous religious organizations, pro-life advocacy groups, and others vulnerable to unfair and costly lawsuits and because the District is under the direct jurisdiction of the Federal Government, it is Congress's duty to ensure the laws of D.C. comply with Federal law and the standards of the First Amendment.

Moreover, RHNDA is not the first bill of its kind to be considered by state and local legislatures, but it is the first of its kind to be passed. The longer it stands, the longer it will serve as an example for other legislatures across the country.

It is important for Congress to be on record protecting fundamental rights including the freedom of speech, freedom of religion and freedom of association, which this bill flagrantly undermines.

DOESN'T D.C. HAVE THE RIGHT TO MAKE ITS OWN LAWS AND GOVERN ITSELF JUST LIKE STATES?

Under the Constitution, Congress has exclusive jurisdiction over the District of Columbia "in all cases whatsoever." (Art. I, Section 8.) While Congress granted certain local governing functions to the District in 1973, Congress still has official oversight responsibility and the District must follow all federal laws.

This bill is unconstitutional, violates federal law, and is bad policy. Such an aggressive move against religious and prolife organizations within our Nation's Capital should not be agreed to or allowed by Congress.

3. When questioning witnesses from the Archdiocese of Washington at a public hearing on RHNDA, Councilmember David Grosso, the primary sponsor of the bill, stated that "What we're saying here in the District of Columbia is that ... we believe that in the District of Columbia, you know, you should include contraceptive coverage in your coverage for your insurance for your employers—employees – that all employers should do that."