

FREEDOM FROM RELIGION *foundation*

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April 1, 2015

The Honorable Terry McAuliffe
Governor of Virginia
1111 East Broad Street,
Richmond, VA 23219

Re: Virginia's RFRA Law

Dear Governor McAuliffe:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to thank you for publicly denouncing Indiana's passage of a so-called Religious Freedom Restoration Act. FFRF is a nationwide nonprofit organization with over 22,000 members across the country, including over 500 members in Virginia. Our purpose is to protect the constitutional separation between church and state.

We commend both the creativity and spirit of your open letter to Indiana businesses. We think it is important to protect all citizens from, as you put it, "discrimination based on race, gender, religion and sexual orientation." The executive order you signed to protect state employees from discrimination is an excellent start. But it does not protect all citizens. The fact is, your state has had a law nearly identical to Indiana's in place for eight years. Given your loathing of discrimination against "those who are supporting local businesses and generating economic activity," we ask you to lead the charge against Virginia's RFRA.

Many may not be aware that in 2007, Virginia adopted a RFRA law similarly worded to the law adopted in Indiana. This law is also vulnerable to exploitation by religious groups seeking to discriminate against minorities. Virginia's version reads: "No government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest."¹ Indiana's new law is nearly identical.²

RFRA effectively allows religious individuals and for-profit businesses to discriminate against gay people, religious minorities and the nonreligious, and any other group that has traditionally been protected by civil rights laws, all in the name of "religious liberty." But it also goes far beyond that, allowing any person (or corporation) free reign to break *any law* in the name of their personal religion, unless the government can meet an exacting standard.

¹ VA. CODE ANN. § 57-2.02.

² See IND. CODE ANN. § 34-13-9-9 ("a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. (b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.").

In fact, the first RFRA—the federal version—was foisted on this nation because two religious practitioners serving as drug counselors were fired for their use of peyote. They claimed the drug was used for religious purposes and sought unemployment benefits. The Supreme Court upheld the denial of benefits to the ex-employees, because the law against drug use was not “prohibiting the exercise of religion;” the religious burden was “merely the incidental effect of a generally applicable and otherwise valid provision.”³

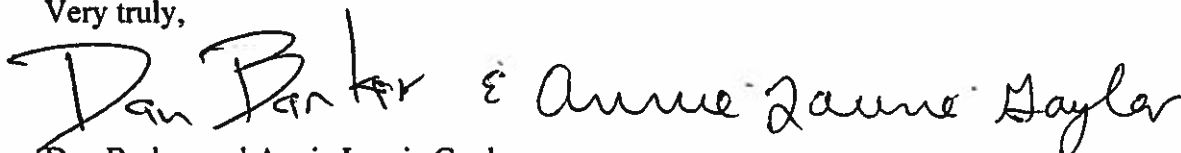
Congress responded rashly to the decision by adopting the federal RFRA, which was sold as a law to protect religious minorities from laws that may inadvertently lead to discrimination. No doubt Virginia’s RFRA was passed with a similar understanding of its intended effects.

But in the wake of the Supreme Court’s Hobby Lobby decision, which allows for-profit corporations to exercise their so-called “religious conscience” in order to restrict employees’ access to contraceptives, RFRA has undergone a massive transformation. RFRA is no longer a shield, but a sword used by religious people and for-profit corporations to discriminate against minority groups. RFRA breaks from the tried-and-true default where everyone is required to follow the law, regardless of their personal objections.

The right to the free exercise of religion has been protected in this nation since the First Amendment was adopted. State and federal RFRA are not needed. RFRA instead elevate one individual’s personal religious beliefs above the law, effectively allowing “every citizen to become a law unto himself.”⁴

The purpose of Indiana’s RFRA law is to allow the religious to discriminate. Perhaps that was not the original purpose behind Virginia’s version, but the risk of it being used that way is just as great. For this reason, we respectfully urge you to use your leadership to repeal Virginia’s RFRA law.

Very truly,

Handwritten signatures of Dan Barker and Annie Laurie Gaylor in cursive script.

Dan Barker and Annie Laurie Gaylor
Co-Presidents
Freedom From Religion Foundation

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³ Emp’t Div., Dep’t of Human Res. v. Smith, 494 U.S. 872, 878 (1990).

⁴ *Id.* at 879.