



FACT CHECK: ACLU MISREPRESENTATIONS REGARDING THE MICHIGAN RELIGIOUS FREEDOM RESTORATION ACT

The ACLU of Michigan recently analyzed the proposed Religious Freedom Restoration Act (RFRA) legislation. (See Appendix A) Rampant with misinformation, the ACLU analysis mischaracterizes and misleads. The following responds to the ACLU's claims:

ACLU CLAIM #1: RFRA “could allow individuals to decide that non-discrimination laws, child abuse laws, and domestic violence laws don't apply to them.”

THE TRUTH: The Michigan RFRA does not grant any new rights or immunities. Someone cannot simply say the magic word “RFRA” and do whatever they please. All RFRA does is require the government to have a compelling interest and use the least restrictive means when infringing upon a person's right to religious freedom.

We know the ACLU's allegations are not true because no cases exist allowing child abuse on the basis of a RFRA defense. Indeed, government has always had a compelling interest in protecting children from abuse. Further, the same compelling interest exists in domestic violence cases. Likewise, no cases exist allowing EMT workers to let people die. Moreover, federal law¹ requires EMTs and hospitals to provide emergency care to everyone.

ACLU CLAIM #2: RFRA “opens up local governments to expensive lawsuits from those who claim they have a religious right to ignore any municipal laws.”

THE TRUTH: Since when has the ACLU been concerned about clogging up a court's docket? Further, it is ironic that the American Civil Liberties Union is more concerned about the government's pocketbook than an individual's civil liberties. Again, RFRA only applies to government action, thus, the government has to act before RFRA can be utilized.

ACLU CLAIM #3: RFRA allows people to put their religious beliefs ahead of the “common good.”

THE TRUTH: Southern state governments justified their actions institutionalizing slavery as necessary to the “common good.” Thankfully the United States today is a nation that protects individual liberty against such government oppression. At least for the time being, citizens are free to say what they want, write what they want, and, thankfully, worship how they want. You would think the ACLU would support protecting these individual liberties against government actions, even those perpetuated in the name of the “common good.”

ACLU CLAIM #4: RFRA “allows individuals to use their religious beliefs as an excuse to harm others.”

THE TRUTH: RFRA only acts as a protection against government action substantially interfering with a citizen's religious conscience. It will have no effect on private business, schooling, or commerce. Ironically, all RFRA does is prevent the government from discriminating against people acting on their religious conscience.

For example, everyone has the right to self-defense. This does not give anyone the license to go out and murder people in the name of self-defense. In the same way, RFRA does not give anyone a license to discriminate, it is simply a defense against government action infringing on someone's religious conscience. It is nonsensical to assert that someone can simply say the magic word “RFRA” and harm anyone they please.

ACLU CLAIM #5: RFRA permits “any individual religious belief [to] determine which state and local laws a person chooses to honor.”

THE TRUTH: This is an outright falsehood and misrepresentation of RFRA. The language of RFRA does not allow individuals to “choose” which laws they want to honor. There is no “exemption” to any laws contained within RFRA.

¹ EMTALA, Emergency Medical Treatment and Labor Act.

It merely restores the same level of scrutiny courts used in this country for over 190 years to balance compelling government interests along with the First Amendment rights exercised by individuals with religious beliefs.

If the ACLU's claims were true, where is the avalanche of cases for the past 21 years under the federal RFRA allowing individuals to choose which federal laws they decide to honor? Such cases do not exist.

ACLU CLAIM #6: "Police officers across the country have used religious freedom as an excuse to refuse orders they claimed offended their personal religious views. A police officer in Oklahoma asserted a religious objection to his community policing duties at a mosque, claiming a "moral dilemma."

THE TRUTH: Contrary to the ACLU's portrayal of RFRA being used successfully in this manner, in this instance, the appeals court affirmed the lower court and held that RFRA could not succeed in that case.² A RFRA type law, therefore, was not successfully used in the manner as claimed by the ACLU.

ACLU CLAIM #7: "Pharmacists in many states, including Arizona, Montana, and Wisconsin, have used religious freedom as a defense for refusing to dispense daily birth control."

THE TRUTH: This is an attempt to make RFRA appear to have effects far beyond reality. It should be noted that of the three states listed here, neither Montana nor Wisconsin have ever passed a RFRA law, thus making the inference that pharmacists in those states have used RFRA in such a manner disingenuous and false. Again, RFRA only provides a defense for pharmacies or individuals against government action infringing on religious freedom.

ACLU CLAIM #8: "A pastor who helped kidnap a child in Virginia from her legal guardian cited religious freedom as his legal defense."

THE TRUTH: Once again, the ACLU's inference mischaracterizes the facts of this case. There is no indication of this pastor (Kenneth Miller) ever citing a RFRA statute as his defense.

Furthermore, he was properly found guilty on August 14, 2012, and sentenced to 27 months on March 4, 2014, for abetting an international parental kidnapping.³ He is currently appealing the decision but his appeal is only based on the grounds of improper venue. Even if someone like Miller tried to rely on a RFRA law, it would be unsuccessful since the government always has a compelling interest in protecting children from unlawful kidnapping.

ACLU CLAIM #9: "In New Mexico, a local religious leader cited the state RFRA when he appealed a conviction for sexually abusing two teenagers."

THE TRUTH: The local religious leader, Wayne Bent, was convicted by the district court of criminal sexual contact with a minor, and two counts of contributing to the delinquency of a minor.⁴ RFRA was never raised as a defense at trial. In the appeal, Bent's appellate counsel raised numerous issues, one being that his trial attorney was ineffective by failing to raise a defense under New Mexico's RFRA. The appeals court properly failed to see any error and affirmed the convictions. Further, the appeals court determined that even if RFRA had been raised as a defense in this case, Mr. Bent still would have lost, stating that the compelling governmental interest of protecting minors from sexual abuse and delinquency would override Mr. Bent's religious convictions. This case cited by the ACLU actually disproves their own contention that RFRA protects child abusers.

ACLU CLAIM #10: "A federal judge just held that the federal RFRA prevented the Department of Labor from fully investigating possible child labor law violations because the individual under investigation said that his religious beliefs forbade him from discussing those matters with the government."

THE TRUTH: This is yet another exaggeration. All the court ruled in this case was that one single witness did not have to testify.⁵ This hardly prevented the case from moving forward and did not prevent the government from investigating child labor law violations.

² *Fields v. City of Tulsa*, 753 F.3d 1000 (10th Cir. 2014)

³ *United States v. Miller*, 2:11-CR-161-1, United States District Court, District of Vermont (2012)

⁴ *State v. Bent*, 328 P.3d 677 (N.M. App. 2013)

⁵ *Perez v. Paragon Contractors, Corp.*, 2:13-CV-00281-DS, United States District Court, District of Utah, Central Division (2014)

ACLU CLAIM #11: “In Michigan, a school guidance counselor refused to help gay students because of the counselor’s religious faith.”

THE TRUTH: This is an outright misrepresentation of the facts of the *Eastern Michigan v. Julea Ward* case.⁶ This case has already been argued, reversed on appeal, and then settled between the parties. The issue was not a refusal on the part of Ward to help gay students, as the ACLU falsely claims. Rather, the University program required that in order for Ward to receive her degree, she would have to affirm gay relationships and counsel in their favor, in contradiction to her religious convictions. Even though the ACLU claims Ward supposedly was refusing to help gay students, the Court of Appeals stated, “Ward responded that she did not discriminate against anyone. She had no problem counseling gay and lesbian clients, so long as the university did not require her to affirm their sexual orientation.”

Even though the ACLU has attempted to give the impression that this was a case of malicious behavior towards gay students by Julea Ward, the court found that the behavior of numerous faculty members gave rise to a legitimate concern about religious discrimination against Julea Ward. The Court held that, “a reasonable jury could find that the university dismissed Ward from its counseling program because of her faith-based speech, not because of any legitimate pedagogical objective. A university cannot compel a student to alter or violate her belief systems based on a phantom policy as the price for obtaining a degree.” This was actually a case of discrimination against a person of faith, rather than discrimination against a gay student.

ACLU CLAIM #12: “The city of Dallas, Texas, is embroiled in an ongoing seven-year legal battle with a religious group that has used the Texas RFRA to claim that the city’s health code and food safety standards burden their exercise of religion when serving food to the homeless.”

THE TRUTH: This is the case of *Big Hart Ministries et al v. City of Dallas*.⁷ Big Hart Ministries and fellow plaintiffs had been engaging in feeding the homeless for many years prior to this suit being brought. It was the result

of the city deciding that by feeding the homeless on the streets, it would be tougher for the city to coerce and drive those same homeless individuals into organized shelters and treatment programs. The City of Dallas then moved forward with changes to its health code, and in a hollow and disingenuous act, included an exemption for groups that wanted to feed the homeless wherever they could be found. This exception, however, included onerous burdens such as requiring toilet facilities, wash basins, special wastewater disposal containers, etc. to be provided in the field at each and every location where a homeless person might be fed. These, and other equally burdensome requirements, effectively regulated out of existence the Christian ministries reaching out to the homeless. A federal district court highlighted the absurdity of these requirements in its opinion, and stated that the government was directly infringing on the exercise of these organizations’ religious beliefs in numerous instances without furthering a compelling government interest at all. Ironically, this case is yet another great example of why RFRA is needed. If a religious organization wants to feed the homeless, it should be able to do so in an effective and safe manner without unreasonable government requirements like requiring portable toilets at any location a homeless person might be served food.

CONCLUSION: In determining the real impact of RFRA, it is important to rely on the truth, not mischaracterizations and false claims. The above illustrates the absurd lengths to which the ACLU and others are willing to misconstrue the facts regarding the impact of RFRA. Such “sky is falling” arguments are baseless and totally without merit. One can only hope that the ACLU would return to its roots and support the Michigan RFRA, just as it supported the bipartisan federal RFRA in 1993.

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⁶ *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012)

⁷ *Big Hart Ministries Assn.Inc. v. City of Dallas*, 3:07-CV-0216-P, United States District Court, Northern District of Texas (2011).

Michigan House Bill 5958

MI Religious Freedom Restoration Act



A civil liberties briefing

QUICK FACTS

- Religious freedom is one of our country's fundamental values. That's why it's protected in the state and federal constitution. But that freedom does not give any of us the right to harm others.
- H.B. 5958 will allow people to take advantage and put their religious beliefs ahead on the common good.
- H.B. 5958 could allow individuals to decide that non-discrimination laws, child abuse laws, and domestic violence laws don't apply to them.
- H.B. 5958 opens up local governments to expensive lawsuits from those who claim they have a religious right to ignore any municipal laws.

Why the ACLU of Michigan Opposes H.B. 5958

The ACLU of Michigan firmly supports religious freedom, which is fundamental to personal liberty. We have the absolute right to believe whatever we want about God, faith, and religion, and we have a right to act on those beliefs, unless those actions harm others.

The ACLU has fought for decades to defend individual religious freedom. **We oppose H.B. 5958**—referred to as the Michigan Religious Freedom Restoration Act (RFRA)—because it allows individuals to use their religious beliefs as an excuse to harm others.

What H.B. 5958 Will Do

If passed, this bill would excuse any person from any state or local law that they claim "burdens" their exercise of religion. This includes beliefs that do not stem from any established religion. Thus, any individual religious belief can determine which state and local laws a person chooses to honor.

- The bill could be invoked to undermine local anti-discrimination laws that protect lesbian, gay, bisexual, and transgender people, allowing people or businesses to deny employment, housing, or services based on their religious views.

Other states with similar legislation have seen individuals and groups use religious freedom as a justification for all sorts of behavior, some of it criminal. Here are just a few examples:

- **Criminal Justice:** Police officers across the country have used religious freedom as an excuse to refuse orders they claimed offended their personal religious views. A police officer in Oklahoma asserted a religious objection to his community policing duties at a mosque, claiming a "moral dilemma."
- **Public Health:** Pharmacists in many states, including Arizona, Montana, and Wisconsin, have used religious freedom as a defense for refusing to dispense daily birth control.
- **Child Safety and Welfare:** A pastor who helped kidnap a child in Virginia from her legal guardian cited religious freedom as his legal defense. In New Mexico, a local religious leader cited the state RFRA when he appealed a conviction for sexually abusing two teenagers. A federal judge just held that the federal RFRA prevented the Department of Labor from fully investigating possible child labor law violations because the individual under investigation said that his religious beliefs forbade him from discussing those matters with the government.
- **Discrimination against gay and transgender people:** In Michigan, a school guidance counselor refused to help gay students because of the counselor's religious faith.
- **Municipal Burden:** The city of Dallas, Texas, is embroiled in an ongoing seven-year legal battle with a religious group that has used the Texas RFRA to claim that the city's health code and food safety standards burden their exercise of religion when serving food to the homeless.

By allowing someone who files a lawsuit to recoup damages, this bill could be an invitation for people to sue the government. The bill will increase congestion in Michigan courts and divert the already scarce resources of law enforcement agencies and governments at both the state and local level.

For more information, and to learn how you can help stop H.B. 5958, go to aclumich.org