

***What is and how did the Religious Freedom  
Restoration Act (RFRA) come into being?***

RFRA places religious tenets above the rule of law. The use of RFRA by the Congress, the Supreme Court and the White House threatens and is well on its way to destroying U.S. democracy.

***The beginning...***

The Employment Division, Department of Human Resources of Oregon vs. Smith, 494 U.S. 872 (1990), is a United States Supreme Court case that determined that the state could deny unemployment benefits to a person fired for violating a state prohibition on the use of peyote, on the job, even though the use of the drug was part of a religious ritual. The Court ruled although states have the power to accommodate otherwise illegal acts done in pursuit of religious beliefs, they are not required to do so.

***What happened next?***

Many religious people were outraged because they considered this ruling sharply curtailed the reach of the First Amendment's Free Exercise Clause. In response The Religious Freedom Restoration Act (RFRA) was enacted by the Congress with broad bipartisan support in 1993. It was signed into law by then President Clinton. RFRA prohibits any federal law that would substantially burden religious exercise without a compelling reason; henceforth new laws sought would have to be achieved through the least restrictive means.

***And then to make matters worse...***

A 2007 U.S. Department of Justice Office of Legal Counsel (OLC) Memorandum concluded that RFRA bestowed a particular religious organization with an exemption from a federal nondiscrimination law, on the grounds that compliance would violate the organization's free exercise of religion. This memo is also known as the "World Vision Church memo," named after the faith-based organization which receives millions in federal funds, and requires all US employees to sign its Christian Statement of Faith and/or The Apostles Creed to work there.

*What we did about it.*

When the memo first surfaced the Coalition for Religious Discrimination (CARD) wrote the OLC memo's guidance is not justified under applicable legal standards and threatens to tilt policy toward an unwarranted end that would damage civil rights and religious liberty. Further its overall analysis is weak and constitutionally suspect.

Although the OLC Memo ostensibly governs only the singular instance it analyzes, it has been used to claim broad, sweeping exemptions to civil rights law, rendering the OLC Memo a dangerous and unwise precedent for more widespread misuse of RFRA. In fact it has currently been used to deny health care benefits to women as demanded in the Affordable HealthCare Act.

*Clearly more work needs to be done to undo and stop the harm.*

ISHV public policy staff has been working for a decade to undo RFRA, than the OLC Memo and the wide damage it is doing to our democracy; damage that is spreading at a very rapid rate under past and current presidential administrations, Supreme Court rulings and Congressional lawmaking. RFRA places religious tenets above the rule of law. Make no mistake this law is being used to threaten and is well on its way to destroying U.S. democracy.