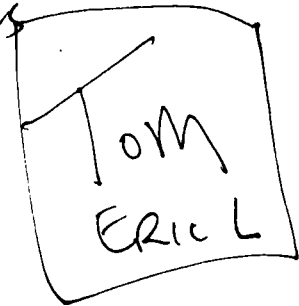


PHOTOCOPY
PRESERVATION

RELIGIOUS LIBERTIES -
CIVIL RIGHTS ~~CONCERNS~~ CONCERNS



September 8, 1999

Senator Orrin Hatch
Chairman
Senate Judiciary Committee
131 Russell Senate Office Building
Washington DC, 20510

Senator Patrick Leahy
Ranking Minority Member
Senate Judiciary Committee
433 Russell Senate Office Building
Washington DC, 20510

Dear Chairman Hatch and Senator Leahy:

The undersigned civil rights organizations write to express our concerns about unintended yet potentially harmful effects that the proposed Religious Liberty Protection Act ("RLPA") as currently drafted may have on the enforcement of the nation's civil rights laws.

We understand that a hearing has been scheduled for later this week to address important constitutional questions raised by RLPA. We commend your efforts to identify a constitutional basis that will best ensure the long-term viability of a federal statute protecting the important right of free exercise of religion. However, we also believe that the Judiciary Committee should closely examine the intersection of RLPA with state and local laws prohibiting discrimination in order to avert potentially significant interference with the continued availability of civil rights statutes to victims of discrimination.

We each recognize the need to ensure appropriate safeguards against governmental burdens on the free exercise of religious beliefs. We support their development and implementation. Further, we are sensitive to the fact that such protections are especially important to preserve the exercise of beliefs by adherents of minority religions who are in a position, like many of the groups we represent, of having limited ability to influence the political process. We therefore support the laudable principles that RLPA seeks to achieve. We believe, however, that RLPA can accomplish its goal of protecting religious free exercise without threatening continued enforcement of civil rights laws.

We are aware of testimony which the Judiciary Committee has heard previously from witnesses expressing their general concerns that RLPA may have an adverse effect on anti-discrimination protections. Since that hearing, however, the broad range of groups represented here have extensively analyzed the specific effect RLPA may have on the anti-discrimination statutes protecting our constituents. Accordingly, an additional hearing before the Committee is necessary to permit the entire civil rights community to present a clear and complete description of the precise harms that RLPA may cause to enforcement of civil rights laws.

As currently drafted, RLPA could be used in civil rights cases to attempt to defeat the right of an individual or group to be free from discrimination on the basis of gender, disability, ethnicity, race or some other statutorily protected category. For example, a landlord or an employer could seek to avoid liability for discrimination by claiming protection under RLPA. In each case in which RLPA is invoked as a defense, the plaintiff could overcome that defense only by showing that the particular

civil rights statute in question furthers a compelling governmental interest, and is the least restrictive means to achieve that compelling interest. In essence then, a civil rights case in which RLPA is invoked may necessarily involve not just the facts about the particular parties' experiences, but also a defense of the goals and means of the civil rights statute sought to be enforced. Under this scenario, the plaintiff who seeks to invoke civil rights protection could suddenly be faced with defending the underlying statute in order to have his or her rights vindicated.

Even where civil rights plaintiffs could successfully prove that the applicable anti-discrimination statute meets RLPA's strict scrutiny standard, the substantial litigation burdens associated with presenting such proof could likely deter victims of discrimination from pursuing their rights. The necessity of litigating the issues concerning the civil rights statute itself, in addition to proving the underlying discrimination at issue, could increase the time and costs associated with each individual case, and may have a substantial effect on the ability of victims of discrimination to obtain counsel in civil rights cases and to prosecute such cases successfully.

The full extent to which legitimate claims of discrimination may be thwarted by the defense created by RLPA should be evaluated by the Judiciary Committee. We believe that a hearing before the Judiciary Committee is an important and necessary step in that evaluation.

We appreciate your continued support of the legal protections for the communities we represent and urge you to give ample consideration to the possibility that RLPA would frustrate some of the protections that together we have fought to establish and maintain. We look forward to working with you as RLPA proceeds through the regular Committee process.

Sincerely,

Marcia Greenberger, Co-President,
NATIONAL WOMEN'S LAW CENTER

Antonia Hernandez, Director and General Counsel,
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Rebecca Isaacs, Political Director,
NATIONAL GAY AND LESBIAN TASK FORCE

Elaine Jones, Director-Counsel,
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Laura Murphy, Director, Washington National Office,
AMERICAN CIVIL LIBERTIES UNION

Hilary Shelton, Director, Washington Bureau,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

**Shanna Smith, Executive Director,
NATIONAL FAIR HOUSING ALLIANCE**

**Pat Wright, Disability Rights Education and Defense Fund, Inc., Co-Chair,
Curtis Decker, National Association of Protection and Advocacy Systems, Co-Chair,
Robert Herman, Paralyzed Veterans of America, Co-Chair,
Mark Richert, American Foundation for the Blind, Co-Chair,
CONSORTIUM FOR CITIZENS WITH DISABILITIES RIGHTS TASK FORCE**

**Daniel Zingale, Executive Director,
AIDS ACTION**

**Elizabeth Birch, Executive Director,
HUMAN RIGHTS CAMPAIGN**

cc: Senate Judiciary Committee Members



HUMAN
RIGHTS
CAMPAIGN

919 18th Street NW
Washington, DC 20006
web <http://www.hrc.org>
phone 202 628 4160
fax 202 347 5323

FAX TRANSMISSION

DATE: September 14, 1999

TO: David Beier (456-6231)
Harold Creel (523-4224)
Monica Dixon (456-7044)
Maria Echeveste (456-6218)
Bob Hattoy (208-1821)
Fred Hochberg (205-6802)
Ron Klain (456-7044)
Joe Lockhart (456-6423)
Sylvia Matthews (395-3888)
John Podesta (456-2883)
Bruce Reed (456-5542)
Marsha Scott (456-5558)
Richard Socarides (456-6218)
Tracy Thornton (456-2604)
Sandra Thurman (456-2438)
Karen Tramontano (456-1907)

Mary Beth Cahill (456-6218)
Todd Dickinson (703-305-8664)
Philip DuFour (456-6298)
Patricia Ewing (456-2685)
Nancy Hernreich (456-6703)
Elaine Kaplan (653-5161)
Ann Lewis (456-1213)
Sean Maloney (456-2215)
Minyon Moore (456-2983)
Julian Potter (456-9054)
Paul Richard (663-7101)
Donna Shalala (690-7203)
Doug Sosnik (456-2530)
Kevin Thurm (690-7755)
Barry Toiv (456-6210)
Jesse White (884-7693)

FROM: Winnie Stachelberg

PAGES (Including Cover): 4

MESSAGE:

FYI

CONFIDENTIALITY NOTICE

This facsimile is intended only for use by the addressee/s named above and may contain legally privileged and/or confidential information from the Human Rights Campaign. If you are not an intended recipient, do not disclose, copy, distribute, or take any action in reliance on the document/s hereby transmitted. Instead, please notify us at the above listed telephone number immediately in order to arrange for the return of this facsimile to us at no cost to you.

If you have any problem with this transmission, please call (202) 628-4160 for HRC's main switchboard.