



HUMAN
RIGHTS
CAMPAIGN

RLPA

July 14, 1999

The Honorable William J. Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

via facsimile

Dear Mr. President,

It was with grave disappointment that I read the Statement of Administration Policy (SAP) on the Religious Liberty Protection Act (RLPA). You have been a strong, active advocate for the civil rights of all Americans – including the lesbian and gay Americans. Therefore, I was stunned that your statement on RLPA did not include strong and unequivocal support for the Nadler substitute amendment.

As you know, the Nadler amendment would have clearly and carefully protected civil rights laws from being undermined by RLPA. The few state and local laws providing protection from discrimination on the basis of sexual orientation have been extremely hard fought victories for the lesbian, gay and bisexual community. RLPA – without the Nadler amendment -- puts those few protections in grave danger. Your staff has indicated the final decision to support RLPA without such a safeguard was your own. I fail to see the logic of this decision.

Moreover, it is not just the lesbian and gay community that is put at risk by RLPA. Women, people with disabilities, and people of color stand to have their civil rights challenged. In fact, the NAACP Legal Defense Fund opposes the legislation if it does not include an amendment addressing the civil rights concerns.

I respectfully request, on an urgent basis, that you amend your Administration's position to specifically support the Nadler amendment and ask that it be distributed first thing in the morning.

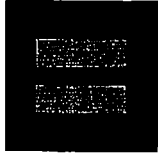
Sincerely,

Elizabeth Birch
Executive Director

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NUMBER OF PAGES: 10 (including cover)

FROM: Winnie Stachelberg

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**HUMAN
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The Human Rights Campaign supports religious liberty and strongly appreciates the support of people of faith for the concept of non-discrimination. We have grave concerns, however, about the impact of the Religious Liberty Protection Act (RLPA) on the lesbian, gay and bisexual community. Moreover, it is not just the gay community that is put at risk by RLPA. Women, people of color, and people with disabilities stand to have their civil rights challenged. In fact, the NAACP Legal Defense and Educational Fund opposes the legislation if it does not include language addressing the civil rights concerns.

The situation. The House of Representatives on July 15 approved the RLPA by 306-118, rejecting 234-190 an amendment proposed by Rep. Jerrold Nadler, D-N.Y. to ensure that religious rights would not become a license to practice discrimination. In late June, Sen. Orrin Hatch, R-Utah, held a Judiciary Committee hearing on the issue, but RLPA has not yet been introduced in the Senate. President Clinton has expressed strong support for RLPA and said he wants to work with lawmakers on "clarification of civil rights protections."

After RLPA passed the House, it was not sent to the Judiciary Committee and is being held at the desk.

The problem. As currently drafted, the Religious Liberty Protection Act is likely to undermine efforts to enforce prohibitions against discrimination on the basis of marital status, gender, disability and sexual orientation at the state and local level. RLPA would prohibit any state or local law from placing a "substantial burden" on a "person's religious exercise," even if the burden results from a rule of general applicability.

If challenged, the law in question can only survive if the government can show that the burden on the person's religious exercise is (1) in furtherance a compelling governmental interest; and that (2) the program or activity is the least restrictive means of furthering that compelling interest.

As passed by the House, RLPA lacks any language clarifying that the Act does not create a defense to the enforcement of state and local anti-discrimination laws. There is concern that this inadvertent shortcoming may allow an individual to defend his or her refusal to comply with civil rights laws, claiming that such laws would substantially burden his or her religious exercise rights.

A solution. Support an explicit provision to the legislation, stating clearly that RLPA does not provide a defense to non-compliance with state or local anti-discrimination laws. Rep. Nadler's amendment stated clearly that the RLPA does not provide a defense to non-compliance with state or local anti-discrimination laws.

WORKING FOR LESBIAN AND GAY EQUAL RIGHTS.

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The politics. In Texas, Governor George W. Bush recently signed into law a bill that protects state and local civil rights laws from being circumvented in the name of religious liberty. Specifically, the Texas law provides that, except for religious organizations, the state's religious liberty protection law does not establish or eliminate a defense to a civil rights prosecution under a state and local law.

Rep. Charles Canady, R-Fla., appearing on Saturday's edition of the C-SPAN television show "Washington Journal," revealed his view that the Religious Liberty Protection Act would threaten local civil rights laws that bar discrimination based on sexual orientation. RLPA, if passed by Congress in its current form, would threaten such non-discrimination laws in 11 states and 200 municipalities.

"I believe there are contexts in which this bill could result in a claimant who is defending against the application of a local gay rights ordinance, to raise a claim that would be successful because compliance with that ordinance was a violation of the free exercise of religion," Canady told "Washington Journal" host George Hager.

Additional background: An earlier version of RLPA which Clinton signed into law in 1993, the Religious Freedom Restoration Act, was struck down by the U.S. Supreme Court in 1997 for being overly broad and exceeding Congress' authority. Opinions differ as to how satisfied that court will be with the crafting of the new RLPA, which relies on Congress' control of interstate commerce; the Department of Justice believes the bill will pass muster. Again ironically, the high court's conservatives' recent sweeping decision in favor of state's rights may signal the court's unwillingness to let the federal RLPA undermine local authority.

Unsurprisingly, local governments oppose RLPA, including the National League of Cities, the U.S. Conference of Mayors and the National Association of Counties.

July 21, 1999

The State of Texas
House of Representatives



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TESTIMONY OF TEXAS STATE REPRESENTATIVE SCOTT HOCHBERG
SENATE JUDICIARY COMMITTEE - JUNE 23, 1999

Mr. Chairman and Members of the Committee,

I appreciate the opportunity to share some thoughts with you today.

Two weeks ago, Governor George W. Bush signed the Texas Religious Freedom Restoration Act (Texas RFRA) into law. I was privileged to work with Gov. Bush as the House author of this important bill. And I'm proud of the bill, because I believe it strengthens religious freedom in Texas without weakening other fundamental individual rights.

Long before I ever heard of the Smith case or the federal RFRA, I knew how hard it was for individuals to assert their first amendment religious freedoms against the bureaucracy. I've fought battles with our prison system over allowing Jewish prisoners to practice their faith. And I found I had to pass a law before I could be sure that judges would not repeat the incident that occurred in a Houston courtroom, where an Orthodox Jewish man was required to remove his skullcap, in direct conflict with his religious practice, before he could testify.

So when the American Jewish Committee and the Anti-Defamation League, on whose local boards I serve, put the state Religious Freedom Restoration Act on their legislative agendas, I was eager to become the lead sponsor. And I was certainly encouraged by the early and strong support of Gov. Bush, who announced just before the opening of our legislative session that Texas RFRA would be one of *his* legislative priorities as well.

Of course you know that no bill is a simple bill. Early on, I saw that the model RFRA language left open a possibility that the act could be used to get around Texas' civil rights laws. That concern was first raised to me by the AJC, and then later by the ADL, the two groups that had initially brought me the legislation, and two groups with long histories of defending civil rights internationally.

Clearly, the *intended* purpose of this bill was not to weaken civil rights laws. When Gov. Bush talked about the need for RFRA, he cited examples, including the skullcap situation, where RFRA could be used to help protect a person's religious practice from *government* interference. None of the examples were about giving *any individual* the right to deny

another person's equal protection rights.

The Texas Constitution is very clear about the primacy of civil rights. The third and fourth sections of our Bill of Rights guarantee equal protection under the law. The next three sections protect religion and guarantee freedom of worship. So, clearly, our framers saw these fundamental rights as being on the same plane.

I wanted to pass a strong RFRA in Texas, but not one that would rewrite Texas civil rights laws. So I added language clarifying that the act neither expanded nor reduced a person's civil rights under any other law. That language drew no objection initially.

But later, some RFRA coalition members argued that to completely move civil rights out from under RFRA might imply that even a religious organization could not use religion as a criteria in hiring - an exemption that is included in our state labor code as well as in federal law.

So coalition members helped craft language to apply RFRA to the special circumstances of religious organizations, while continuing to leave the task of balancing religious and equal protection rights to the courts. That language was unanimously adopted in a bipartisan amendment on the House floor, and remained intact in the bill as it was signed by Gov. Bush.

The RFRA coalition in Texas endorsed the civil rights language and strongly supported the bill, from the Texas Freedom Network on the left to the Liberty Legal Institute on the right. I must tell you, however, that one or two conservative groups in this very broad coalition objected and went so far as to ask Gov. Bush to veto the bill. He chose not to do so. Those particular groups said that they had hoped to use RFRA to do exactly what others had feared - to seek to override, in court, various civil rights laws that they had not been able to override legislatively.

I urge you to adopt a strong law to reinforce what we have done in Texas. But in so doing, I would also ask that you follow the wisdom of our governor and our legislature and include language to protect state civil rights laws.

I offer whatever assistance I can be to help develop and refine the language of this bill so that those goals are met.

This is too important a bill to be lost as a result of a fear of weakening civil rights. But likewise, national and state civil rights policies are too important to be weakened as an unintended by-product of a bill with the noble purpose of strengthening religious rights.

Thank you again for your consideration, your time and your hard work.



**HUMAN
RIGHTS
CAMPAIGN**

WHO DOES THE RELIGIOUS LIBERTY PROTECTION ACT (RLPA) PUT AT RISK?

WOMEN. "We understand the need to establish a higher standard to protect religious liberty in this country as a general matter. We believe, however, that **civil rights laws already meet this standard.** Thus, we urge you not to pass a bill that could throw into question the strength and validity of state and local civil rights across the country, including laws that prohibit discrimination on the basis of marital or family status. We **urge you to exclude civil rights laws from RLPA's coverage before the bill moves forward.**"

**Center for Women Policy Studies
Feminist Majority
National Organization for Women
Letter to the House of Representatives
July 8, 1999**

PEOPLE OF COLOR. "NAACP Legal Defense and Educational Fund litigates civil rights cases throughout the country on behalf of African Americans and other minorities in an effort to preserve equity, fairness and justice in education, employment, housing, health care, environment, criminal justice, and voting rights. RLPA poses a threat to this type of litigation as RLPA may be used in a manner to limit African Americans and other minorities' rights to seek protection under state and local antidiscrimination laws... **LDF asks that you oppose RLPA, which may be used as a mechanism to limit African Americans and other minorities from proceeding under the state and local laws that prohibit discrimination in a wide range of areas.**

**NAACP Legal Defense and Educational Fund, Inc.
Letter to Congressman John Conyers, Jr.
July 14, 1999**

STATE AND LOCAL GOVERNMENTS. "On behalf of the nation's governors, state legislators, and local elected officials, we are writing to express our strong opposition to H.R. 1691, the "Religious Liberty Protection Act of 1999". While we support the free exercise of religion, as guaranteed in the U.S. Constitution, we believe that H.R. 1691 goes far beyond what is necessary to protect religious freedom, and would fundamentally interfere with and preempt the traditional and historic rights and responsibilities of state and local governments. The bill would have serious effects, jeopardizing the laws we are charged with upholding and subjecting state and local governments to frivolous lawsuits."

**Council of State Governments
National Association of Counties
National League of Cities
United States Conference of Mayors
International City/County Management Association
Letter to the House of Representatives, July 13, 1999**

WORKING FOR LESBIAN AND GAY EQUAL RIGHTS.

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PEOPLE WITH DISABILITIES. "Our understanding is that, currently under federal law, individuals may not evade compliance with a neutral, generally applicable state or local civil rights law on the grounds that such compliance would burden their individual religious beliefs. Thus, for example, even if a large landlord or employer believed that mental retardation is a punishment from God, that landlord or employer could not refuse to comply with local or state anti-discrimination laws that protected people with disabilities by arguing that such compliance burdened their religious beliefs. We believe an amendment will be offered on the House floor which will sufficiently address our concerns, while still providing a religious defense to a small number of individuals. Under this amendment, a small landlord, a small business, and religious organizations may all raise a religiously-based defense. Other larger landlords and businesses, however, could not invoke this defense. We urge you to vote for this amendment on the House floor."

Consortium for Citizens with Disabilities

Letter to the House of Representatives

July 9, 1999.

PEOPLE LIVING WITH HIV/AIDS. "We understand the need to establish a high standard to protect religious liberty in this country as a general matter. However, we urge you to exclude civil rights laws from RLPA's coverage. Many state and local civil rights laws prohibit discrimination against people with HIV and AIDS, who continue to be feared and stigmatized, despite the progress we have made in correcting misperceptions about the epidemic and the people affected by it. Please do not support a bill that poses such a grave threat to the strength and validity of state and local civil rights laws across this country."

National Organizations Responding To AIDS (NORA)

Letter to the House of Representatives

July 8, 1999

RELIGIOUS MINORITIES. "The Religious Liberty Protection Act stands poised to discriminate against the very religious communities it was drafted to protect. Without an amendment to protect state and local civil rights laws, RLPA could be used by a religious landlord to refuse housing to someone of a different faith, arguing that renting to a person of a different faith would violate her or his religious beliefs and/or practices. While clearly not the intended effect of this legislation, this is a very real possibility without language clarifying this issue."

Equal Partners in Faith

July 15, 1999

LESBIANS AND GAY MEN. "We strongly believe in the principle of protecting the free exercise of one's personal religious beliefs that serve as the foundation for RLPA. Just as strongly, we believe that lesbian, gay and bisexual Americans should not face discrimination at work, at home or in their communities because of their sexual orientation. We urge you to support an amendment to RLPA ensuring that the legislation will not undermine the enforcement of state and local civil rights laws."

Human Rights Campaign

National Gay and Lesbian Task Force

Letter to the House of Representatives

July 9, 1999



**NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.**

Regional Office

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July 14, 1999

**Congressman John Conyers, Jr.
2426 Rayburn Office Building
Washington, D.C. 20515-2214**

Dear Congressman Conyers:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF"), urges you to oppose final passage of H.R. 1691, The Religious Liberty Protection Act of 1999 ("RLPA"). LDF litigates civil rights cases throughout the country on behalf of African Americans and other minorities in an effort to preserve equity, fairness and justice in education, employment, housing, health care, environment, criminal justice, and voting rights. RLPA poses a potential threat to this type of litigation as RLPA may be used in a manner to limit African Americans and other minorities' rights to seek protection from discrimination under state and local antidiscrimination laws.

Defendants in discrimination cases brought under state or local fair housing, employment, etc., laws may seek to avoid liability by claiming protection under RLPA. This would require individuals and groups proceeding under such state and local antidiscrimination laws to prove that the law they wish to utilize is a least restrictive means of furthering a compelling governmental interest. This requirement would significantly increase the litigation time and expense of pursuing even workaday antidiscrimination actions and as a result could hinder or preclude some plaintiffs from pursuing their claims.

Even if the courts ultimately rule, as they should, that the various state and local antidiscrimination statutes are least restrictive means to further compelling governmental interests, the uncertainty of whether statutes will withstand a RLPA defense may dissuade plaintiffs from seeking redress under antidiscrimination statutes. Of course, if any court were to determine that a particular antidiscrimination statute were not a least restrictive means of furthering a compelling governmental interest, a successful RLPA defense would completely bar a plaintiff from proceeding under that statute. In either event, RLPA will create an additional burden for plaintiffs attempting to vindicate their civil rights.

*Contributions are
deductible for U.S.
income tax purposes.*

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had for over 30 years a separate Board, Program, staff, and budget.

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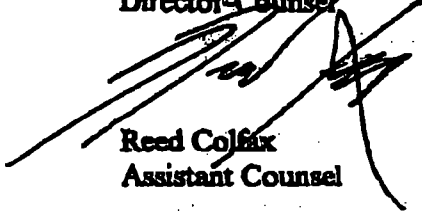
Los Angeles, CA 90015

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For these reasons, LDF asks that you oppose RLPA, which may be used as a mechanism to limit African Americans and other minorities from proceeding under the state and local laws that prohibit discrimination in a wide range of areas.

Sincerely,
Elaine R. Jones
Director-Counsel



Reed Colfax
Assistant Counsel

House Approves Measure on Religious Rights

By DAVID E. ROSENBAUM

WASHINGTON, July 15 — Divided mainly along party lines, the House of Representatives debated at length today whether religious liberty or civil rights should take precedence when the two principles come into conflict.

Religion, which the Republicans favored, came out on top.

At issue was an innocuous-sounding bill called the Religious Liberty Protection Act that would prohibit state and local governments from placing a "substantial burden" on a person's exercise of religion unless officials could demonstrate a compelling reason for doing so.

The sponsors said the measure was necessary to prevent, for instance, zoning ordinances that prohibit construction of churches in some neighborhoods and rules that bar students from wearing skullcaps in schoolrooms or sports fields.

They offered anecdotal evidence that such abuses were widespread. They held that without the legislation, Roman Catholic priests theoretically risked arrest for serving communion wine to minors and Orthodox Jews could be forced to allow autopsies, forbidden by their religion, after a family member died.

Organizations representing all major religions support the measure. But opponents worried that the law could be used as a defense by people accused of violating state or local antidiscrimination laws.

The underlying question, which was skirted by both sides in the debate, was whether landlords and employers in states and cities with laws forbidding discrimination against homosexuals could cite religious scruples and be free to refuse to rent to or hire gay men and lesbians.

The crucial test came on an amendment that would have specified that the protections of religious expression could not be used to justi-

fy violations of antidiscrimination laws. It was rejected, 234 to 190, with 204 Republicans and 30 Democrats voting against the amendment, and 15 Republicans, 174 Democrats and 1 independent voting for it.

The overall measure was then approved, 366 to 116.

"Americans should be free to practice their religion without interference from the heavy hand of government," said Representative Charles T. Canady, Republican of Florida, the floor manager of the bill.

Representative Jerrold Nadler, the Manhattan Democrat who sponsored the amendment exempting civil rights laws from its coverage, said he agreed with Mr. Canady's precept. But Mr. Nadler added, "The bill should be used as a shield protecting religious liberty but not as a sword against civil rights laws."

The problem with the Nadler exemption, Mr. Canady responded, was that "it would establish as a matter of Congressional policy that religious liberty would have second-class status."

The measure now goes to the Senate, where its prospects are unclear. The White House issued a statement saying President Clinton strongly supported the bill and hoped to work with Congress on "clarification of civil rights protections."

Federal law prohibits discrimination based on race, sex, age and disability, so the real, though mostly unstated, dispute was over whether the protection of religion could be used to sanction discrimination against homosexuals.

Both sides seemed reluctant to debate the matter directly. But at one point, Representative Dana Rohrabacher, Republican of California, avoiding the words "gay" or "homosexual," said that people with untraditional values "feel they can force their way into a Catholic parade" and keep the Boy Scouts from main-

taining "their moral standards."

"The ones with traditional values are under attack all the time," Mr. Rohrabacher said, "and we need to protect their rights as well."

Representative Robert Wexler, Democrat of Florida, responded to Mr. Rohrabacher, by saying, "They're trying to work. They're trying to rent an apartment."

Representative Patrick J. Kennedy, Democrat of Rhode Island, addressed the matter more squarely, saying, "Let's make no mistake about it, the right wing of the Republican Party wants to discriminate against homosexuals."

Mr. Canady replied, "The gentleman has misunderstood the purpose of this bill."

The issue of a Federal law protecting expression of religion arose from a 1990 Supreme Court ruling that religious beliefs did not excuse people who violated a legitimate state law. The case involved Indians arrested for smoking the outlawed drug peyote in a religious ceremony.

Religious groups pressed Congress for legislation to reverse the Court's decision. In 1993, a measure was enacted similar to the bill adopted today, but in 1997 the Supreme Court declared it unconstitutional on the ground that its restrictions were too broad.

That measure, the Religious Freedom Restoration Act, was based on the 14th Amendment's guarantee that all citizens' rights are equally protected. The bill passed today was rewritten so that the constitutional basis is the authority of Congress to regulate interstate commerce.

Some legal authorities think the changes may not be sufficient to satisfy the Supreme Court, especially in light of the Court's decisions this year expanding state sovereignty and limiting the ability of Congress to make Federal law binding on the states.



Justin Lane for The New York Times

Representative Charles T. Canady, manager of a religious protection measure, said religion should be free of government's "heavy hand."

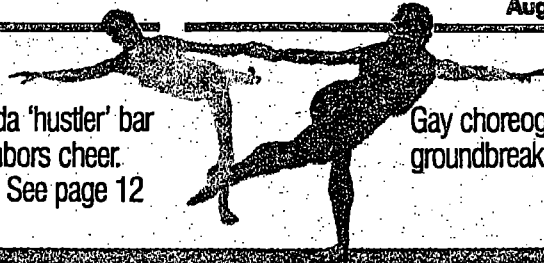
In the money

Black Pride raises three times more than last year.
See page 6



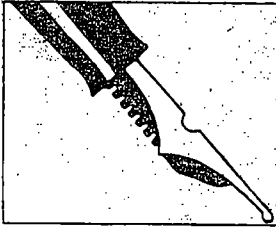
Bar bust

Police raid Florida 'hustler' bar while Gay neighbors cheer.
See page 12



Modern man

Gay choreographer Merce Cunningham's groundbreaking work spans four decades.
See page 31



The

SERVING THE NATION'S CAPITAL SINCE 1969

Washington Blade

Art - R.R.

Re PA



...to current issues that are being raised...
...Nadler of those who said the...
...the... could create a... problem.

Nadler's journey to fairness for all

New York representative battles conflict between constituencies

by Karl Wright

For the eight years he has been in Congress, U.S. Rep. Jerry Nadler (D-N.Y.) has been trying to pass a bill to defend the rights of people who worship without religious bias. He can be pegged as a moderate leader on any other issue, but when a bill finally reached the House floor last month with the promise that it was going to do just that — provide legal protection from religious liberties that many felt the U.S. Supreme Court had weakened with a controversial decision nine years ago — Nadler led the effort to pass it.

The reason, he Nadler couldn't be pegged as a national leader on a second issue, it would probably be gay civil rights.

And after weeks of grueling Senate hearings and legal maneuvering, this year Nadler became involved in the following agreement for religious liberty — the Religious Liberty Protection Act — had and quickly became the...
...invested in gay civil rights in recent years.

When Nadler entered Congress in 1992, religious liberty

Continued on page 16

Nadler recounts inner struggle over religion bill

'I was between a rock and a hard place, so I decided there had to be a way around this'

Continued from page 1

defenders were united in their outrage at a 1990 Supreme Court ruling which said that Native Americans could not use religious beliefs as a defense against prosecution for possessing and using an illegal substance, peyote. That session, Congress responded with a law that aimed to restore the supremacy of religious belief in such conflicts with government.

But the court struck the new law down in 1997, saying Congress had exceeded its constitutional authority.

Religious liberties supporters went back to the drawing board and came out with a new bill, the more limited Religious Liberty Protection Act. As a lifelong defender of minority religions — and representing west Manhattan and Brooklyn, home to what is considered one of the largest, most diverse Jewish communities on the globe — Nadler was the general to lead the charge for this bill. He helped draft it and signed on as the Democratic co-sponsor.

There were problems with the bill, however, and lots of them. In slow negotiations, supporters worked through each. They held together a mot-coalition of nearly 100 groups by returning to their mantra, established at the start in 1993: "No carve-outs." The new law would apply to all people in all religions in all cases.

Last summer, the bill seemed destined to. Then Kenneth Starr delivered his report recommending the impeachment of President Clinton, and the Religious Liberty bill, as well as many, many others, was put on hold.

That's when Gay civil rights advocates started hounding Nadler. The American Civil Liberties Union had been among the coalition supporting the bill, national Gay groups had studied the bill. Initially, decided it wasn't a

But recent lower court cases in which local civil rights laws were challenged by people asking for religious exemption caused them to re-evaluate the bill. They now told Nadler the bill would th a local and state civil rights laws prohibiting discrimination based on sexual orientation, marital status, and disability. Unless amended, they warned, the bill would allow conservative companies to cite the religious beliefs of their owners as an excuse for discriminating in hiring and employment.

"No one wanted to hear it, myself included," Nadler recalls. "We had worked very hard on this for seven or eight years. And all of a sudden somebody comes out of nowhere with a completely new objection? ... I didn't want to hear it, but you had to look at it."

The warnings came first from the ACLU's Chris Anders. Anders, joined by Gay and disability rights legal activist Chai Feldblum, began briefing members on the concerns. New York City Gay groups weren't far behind. Paula Ettelbrick, then legislative counsel for the Empire State Pride Agenda, and Rabbi Sharon Kleinbaum of Congregation Beth Simchat Torah, one of the largest Gay synagogues in the nation, began calling

Nadler and drumming up local opposition to the bill.

A staffer close to Nadler said he was receiving mail and calls from both supporters of the bill and those worried about the civil rights concerns throughout the winter and spring.

But things didn't truly heat up until May of this year, when Rep. Charles Canady (R-Fla.) prepared to re-introduce the legislation. Canady needed a Democratic co-sponsor, and Nadler was the obvious choice. But the lobbying had convinced Nadler to set his staff to researching the issue.

"I tried to convince myself they were wrong," he recalls with a sigh, "and I couldn't."

So, he took the dramatic step of refusing to put his name back on the bill he helped write, and the dominoes fell from there. One after another, Democrats on the Judiciary Committee withdrew support for the bill. Civil rights lobbyists say the real work was in convincing a handful of committee Democrats who had been avid supporters of the bill last session — Reps. Howard Berman of California, Steven Rothman of New Jersey, and Robert Wexler of Florida — not to get back on board. But they say that, for these members and others who hadn't been as involved, Nadler's withdrawn support was a major factor. Ultimately, all but one Democrat on the committee withdrew. (The only one who stayed on the legislation was Rep. Anthony Weiner (D-N.Y.), a first-year member from a strong Jewish district who hadn't been involved in the discussion previously.)

"I was between a rock and a hard



by Clint Stoltz

Chai Feldblum: "Every time I talked to the [Democratic] leadership, the fact that I could say 'Nadler thinks this is a problem' was helpful."

ment Nadler settled on spelled out who could use the new law as a defense against prosecution for violating a civil rights law. In housing cases, it said, only landlords with small property who live on the property they're renting, and only religious organizations could use the law. In employment, only companies with fewer than five employees and religious organizations hiring for certain key positions.

"It is not a carve-out," Nadler insists, arguing that the amendment calls for a balancing of interests rather than wholly putting civil rights above religious liberties. "It doesn't simply say this should not apply to civil rights legislation."



by Clint Stoltz

Warnings about the act's threat to Gay civil rights came first from the ACLU's Chris Anders. Other activists, including representatives of New York City Gay groups, followed.

place," Nadler explains, "so I decided there had to be a way around this."

For the next several weeks, Nadler became a go-between for civil rights lobbyists and the coalition supporting the bill. He wanted an amendment that eased his concerns about the civil rights but still protected the bill's underlying principle of "no carve-outs." The amend-

The coalition supporting the bill disagreed. Nadler was enraged, feeling he had worked to accommodate everyone's interests.

"Frankly, I had spent some time anguishing over which way I would go before we [wrote] the amendment," he says. "At that point, I said ... I can't support the bill without the amendment."

In mid-June, the Judiciary committee passed the bill without Nadler's amendment. It was a party-line vote, and civil rights lobbyists spent the next month using Nadler's name to convince other members, and particularly the Democratic leadership, to support the amendment and reject the bill without it.

"Every time I talked to the [Democratic] leadership," Feldblum says, "the fact that I could say 'Nadler thinks this is a problem' was helpful."

"They couldn't dismiss him," a staffer adds. "They couldn't say, 'Oh, Jerry Nadler, he's hostile to religious liberty.'"

Mark Plavin, associate director of the Religious Action Center of Reform Judaism, agreed, adding that the civil rights lobbyists have always been allies of religious liberty work as well.

"We've worked very closely with Congressman Nadler and find him to be as strong a supporter of religious liberty as there is in Congress," Plavin says. "These people are our friends, people we have worked with."

Still, the House rejected Nadler's amendment on July 15 in a 234 to 190 vote. The bill passed that same day, 306 to 118.

"I wasn't particularly surprised by the vote in favor of Jerry's amendment," Plavin says. "I was surprised by the number of [members] who then turned around and voted against the bill."

Now, the action has moved to the Senate, and all sides say the negotiations have "intensified" in anticipation of the Senate battle after the August recess. The lead sponsors of last year's Senate bill, Sens. Orrin Hatch (R-Utah) and Edward Kennedy (D-Mass.), have said they want a more bipartisan process than what unfolded in the House.

But Kennedy and other Judiciary Democrats have made it clear they will want the civil rights concerns solved before they can get on board. Everybody wants to find a compromise before the bill begins to move.

"If we can't do that I'm not sure what will happen," Plavin says. "I don't know quite how it plays out."

RLPA

TOM
ERIC L

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



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FYI

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