AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

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September 7, 2017

Re: Oppose Attempts to Curtail Civil Rights in the District of Columbia

Dear Representative:

On behalf of Americans United for Separation of Church and State, we write to urge you to oppose the Palmer Amendment #192 to H.R. 3354, the Make America Secure and Prosperous Appropriations Act for Fiscal Year 2018. The amendment is an attempt to curtail civil rights in the District of Columbia by prohibiting any funds from being used to implement the District of Columbia's Reproductive Health Non-Discrimination Amendment Act of 2014 (RHNDAA). The RHNDAA, which the Council of the District of Columbia passed unanimously, expands civil rights and effectuates the will of the people of the District. It should not be nullified by Congress.

Founded in 1947, Americans United is a nonpartisan organization dedicated to advancing the constitutional principle of church-state separation as the only way to ensure freedom of religion, including the right to believe or not believe, for all Americans.

Religious freedom is about fairness. We don't treat people differently because their beliefs are different from ours. It's not fair for employers to use religion to discriminate against employees based on their health care choices. That's why RHNDAA is so important and this amendment should be rejected.

The Reproductive Health Non-Discrimination Amendment Act

The RHNDAA protects District employees and their dependents from discrimination based on their personal reproductive health care decisions. This bill strengthens existing protections against employment discrimination and ensures that employees and their families can make their own private health decisions, including whether, when, and how to start a family and what the size of their family should be, without fear of losing their jobs or facing retribution from their employers.

Our nation's laws have long protected the freedom of religion and belief, ensuring every person has the right to follow the dictates of his or her own conscience. Contrary to opponents' claims, the RHNDAA does not violate religious freedom protections.

Under the Free Exercise Clause of the First Amendment to the U.S. Constitution, religious beliefs do not excuse compliance with valid and neutral laws of general applicability.[1] Courts deem laws neutral unless they "target religious beliefs" or "if the object of [the] law is to infringe upon or restrict practices because of their religious motivation."[2] The RHNDAA does not single out religious beliefs or practices. Instead, the bill treats all employers the same.

The RHNDAA would also survive a challenge under the Religious Freedom Restoration Act (RFRA), which applies to the District. RFRA prohibits the government from "substantially burden[ing] a person's exercise of religion" unless the government can demonstrate that the burden is justified by a compelling government

[1] *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993); *Employment Division v. Smith*, 494 U.S. 872, 879 (1990).
[2] *Lukumi*, 508 U.S. at 533.

interest and is the least restrictive way to further that interest.[3] RFRA is not triggered when there is just "the slightest obstacle to religious exercise."[4] And, burdens are permissible when the government's interest is important, including combatting discrimination.[5]

The law does not compel any employer to endorse any actions that may be in conflict with their religious tenets. This act merely ensures that employees and their families face no employment consequences for their private health care decisions. Eradicating employment discrimination against women is a compelling government interest[6] and there is no less restrictive means of preventing discrimination.[7]

Furthermore, this law protects women who choose to exercise their constitutionally protected rights to make "personal choice[s] in matters of marriage and family life."[8] Business owners are absolutely entitled to their religious beliefs—but they cannot use their beliefs to justify discrimination against their employees. The RHNDAA makes sure that employees and their families can make their own private health decisions, based on their own consciences and in consultation with their own physicians, without fear of losing their job.

Finally, it's important to remember that the RHNDAA does not override existing protections for religious employers in hiring. The D.C. Human Rights Act already contains an exemption for employers "operated, supervised, or controlled by or in connection with a religious . . . organization" to give preference or limit employment to those of the same faith.[9] Moreover, as the Supreme Court held in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*,[10] the First Amendment protects religious institutions' right to make decisions about employees in ministerial positions—those who preach and teach the faith. The RHNDAA does not alter these already existing protections.

Conclusion

Religious freedom is a fundamental American value. So is the right to make decisions for yourself about your own health care. RHNDAA honors both. Accordingly, we urge you to reject the Palmer Amendment #192.

Thank you for your consideration of this important matter. If you should have any questions about this issue, please contact Maggie Garrett, (202) 898-2140, garrett@au.org, or Dena Sher, (202) 898-2137, sher@au.org.

Sincerely,

Maggie Garrett
Legislative Director

Dena Sher
Assistant Legislative Director

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[3] 42 U.S.C. § 2000bb-1(b).
[4] *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (interpreting the federal Religious Land Use and Institutionalized Persons Act, which is the same standard as the federal RFRA).
[5] *See, e.g.*, *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362, 1368-69 (9th Cir. 1986).
[6] *See, e.g.*, Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-2(a), 2000e(k) (prohibiting employment discrimination based on sex and explicitly preventing discrimination "based on pregnancy, childbirth, or related medical conditions"); *see also Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990) (rejecting a school's religious liberty claim to justify discriminating against women employees); *Fremont Christian Sch.*, 781 F.2d at 1364 (finding that there was "a strong compelling state interest in eradicating discrimination" and rejecting a school's religious liberty claim to justify discriminating against women employees).
[7] *E.g.*, *Dole*, 899 F.2d at 1398.
[8] *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974); *see also Lawrence v. Texas*, 539 U.S. 558 (2003); *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965).
[9] D.C. Code § 2–1401.03(b).
[10] 132 S. Ct. 694 (2012).