

February 28, 2025

The Honorable Joseline Pena-Melnyk
Chair
Health and Government Operations
Committee
Maryland House of Delegates
240 Taylor House Office Building
Annapolis, Maryland 21401

The Honorable Bonnie Cullison
Vice Chair
Health and Government Operations
Committee
Maryland House of Delegates
240 Taylor House Office Building
Annapolis, Maryland 21401

Re: Oppose HB 1019—This Bill Would Allow Discrimination

Dear Chair Pena-Melnyk and Vice Chair Cullison:

On behalf of the Maryland members and supporters of Americans United for Separation of Church and State, I write to express our opposition HB 1019, which would create a “religious freedom restoration act.”

Freedom of religion is a fundamental American value that protects everyone’s right to practice the religion of their choice or no religion at all—so long as they don’t harm others. But this bill is dangerously broad and would allow the use of religion to discriminate against and harm others. Accordingly, the Committee should oppose efforts to pass a state RFRA.

HB 1019 Would Allow Discrimination and Harm and Is Overly Broad

RFRA’s Allow Discrimination and Harm

Congress enacted the federal Religious Freedom Restoration Act (RFRA)¹ in 1993 with the goal of protecting religious liberty, especially for religious minorities. At the time of its passage, a broad coalition of progressive and conservative groups supported the law. But since then, RFRA and its state counterparts have been misconstrued and exploited in ways its original proponents never would have supported.

Many have attempted to use RFRA to deny rights to or harm others. For example, we have seen efforts to use the federal or state RFRA’s to ignore laws barring

¹ 42 U.S.C. § 2000bb et. seq.

discrimination in employment;² deny health insurance coverage for critical, even lifesaving, medication;³ avoid ethics investigations;⁴ obstruct criminal investigations;⁵ shield religious organizations from bankruptcy laws;⁶ avoid licensing requirements;⁷ and resist lawsuits over sexual abuse by clergy members.⁸ Maryland should not adopt a bill that would similarly invite the use of religion to discriminate and harm others.

The Reach of This Bill Is Vast and Wide-ranging

HB 1019 would create a potential religious exemption to every state and local law. It could introduce uncertainty into and invite abuse of all of Maryland's laws, and it opens the door to costly lawsuits. Justice Scalia warned that applying the test in the federal RFRA could be used to trump "manslaughter and child neglect laws," "drug laws," "traffic laws," "minimum wage laws," "child labor laws," "animal cruelty laws," "environmental protection laws," and "nondiscrimination laws."⁹ HB 1019 would apply

² *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, 70 F. 4th 914 (5th Cir. 2023). (holding that for-profit company can use RFRA to ignore Title VII and discriminate against employees and applicants); Memorandum for the General Counsel, Office of Justice Programs, from John P. Elwood, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act* (June 29, 2007), <http://www.usdog.gov/fbc/effect-rfra.pdf> (establishing a policy that allows religious organizations to use RFRA to ignore the laws barring hiring discrimination).

³ *Braidwood Mgmt. v. Becerra*, 666 F.Supp.3d 613 (N.D. Tex. Mar. 30, 2023), *rev'd in part on other grounds*, 104 F.4th 930 (5th Cir. 2024), *cert. granted*, 2025 WL 65913 (2025) (holding that a requirement to cover HIV prevention medication violated plaintiffs' religious beliefs under RFRA); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding that a large, for-profit corporation could use RFRA to deny its employees insurance coverage for contraception).

⁴ *Doe v. La. Psychiatric Med. Ass'n*, 102 F.3d 549 (5th Cir. 1996) (using federal RFRA to challenge an ethics investigation by the Louisiana Psychiatric Medical Association).

⁵ *In re Grand Jury Empaneling of the Special Grand Jury*, 171 F.3d 826 (3rd Cir. 1999) (claiming that RFRA prohibits government from compelling grand jury witness to testify against rabbi); *United States v. Town of Colo. City*, No. 3:12-CV-8123-HRH, 2014 WL 5465104 (D. Ariz. Oct. 28, 2014) (arguing that RFRA prohibited U.S. Department of Justice from compelling witness testimony in civil-rights lawsuit against city); *Perez v. Paragon Contractors, Corp.*, No. 2:13CV00281-DS, 2014 WL 4628572 (D. Utah Sept. 11, 2014) (holding that RFRA prohibited court from compelling witness testimony in child-labor case).

⁶ *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir. 2015) (arguing that RFRA should shield Archdiocese from bankruptcy laws that would make more funds available to pay victims of sexual abuse).

⁷ *Youngblood v. Fla. Dep't of Health*, 224 Fed.Appx. 909 (11th Cir. 2007) (claiming health inspection of school operated by church violated Florida RFRA); *McGlade v. State*, 982 So.2d 736 (Fla. Dist. Ct. App. 2008) (claiming that law requiring midwifery license burdened religious exercise).

⁸ *Doe No. 2 v. Norwich Roman Catholic Diocesan Corp.*, No. HHDX07CV125036425S, 2013 WL 3871430 (Conn. Super. Ct. July 8, 2013) (arguing that Connecticut RFRA precludes claims against Church for negligent supervision and retention of alleged abuser); *Givens v. St. Adalbert Church*, No. HHDCV126032459S, 2013 WL 4420776 (Conn. Super. Ct. July 25, 2013) (same); *Noll v. Hartford Roman Catholic Diocesan Corp.*, No. HHDX04CV024034702S, 2008 WL 4853361 (Conn. Super. Ct. Oct. 20, 2008) (same).

⁹ *Employment Division v. Smith*, 494 U.S. 872, 889 (1990).

the same test, subjecting a broad set of crucial state and local laws to religious exemptions.

In addition, HB 1019 is written in such a way that it could allow a person to assert a claim or defense under RFRA even if the government is not a party to the proceeding. This would allow the law to be used in litigation between private parties, expanding the reach of this law beyond what is allowed by the federal RFRA. Allowing the use of RFRA in cases with private parties invites several problems. Most important, it would vastly increase the number of cases that could be brought under RFRA. In addition, it requires private parties to defend a law as a compelling government interest when that role is clearly more suited for the government.

Conclusion

Religious freedom is a fundamental right, but it does not give anyone the right to harm others. HB 1019 would give people a license to misuse religion to discriminate and could be used to trump nearly any state or local law. For these reasons, Americans United urges you to oppose HB 1019. Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nikolas Nartowicz", with a stylized flourish at the end.

Nikolas Nartowicz
Lead Policy Counsel