



The Workplace Religious Freedom Act could erode more rights than it protects. While the bill may safeguard some employees, its broad language could compromise the rights of co-workers, patients, clients, and customers.

The Workplace Religious Freedom Act (WRFA), introduced by Senators John Kerry (D-MA) and Rick Santorum (R-PA) and now pending in Congress, strengthens employers' existing obligations to accommodate employees' religious beliefs and practices. Yet an increasing number of civil rights groups have come out strongly in opposition to this bill. WRFA's provisions enhance protections for the Sikh who wants to wear a turban, the Jew who wants to honor Yom Kippur, and the Christian who wants to take off Christmas Day. What could be so bad about that?

The problem is that parts of the bill are so vague and broad that WRFA may well also protect the pharmacist who refuses to dispense birth control, the worker who displays anti-gay scripture in his cubicle, the employee who refuses to cover up a Ku Klux Klan tattoo featuring a burning cross, claiming it is a religious symbol, and others who could claim — if WRFA were law — that their religious beliefs should trump other individuals' basic and civil rights.

Even though WRFA has some clearly defined, practical protections, its ill-defined and potentially far-reaching provisions could be used to protect almost any behavior related to a religious belief in the workplace. This is especially troublesome today, when the line is increasingly hazy between church and state. This is a time when Congress voted to intervene to stop Terri Schiavo's husband from turning off life support. This is a time when federal money was given to Louisiana to create "Christ-centered" theater skits. This is a time when President George W. Bush appointed W. David Hager, MD, to an FDA

committee that reviews the safety of drugs used in the practice of gynecology, including over-the-counter emergency contraception. Dr. Hager, you probably remember, has a record of using religion to inform his medical practice. The author of *As Jesus Cared for Women: Restoring Women Then and Now*, he allegedly has a history of refusing to prescribe contraceptives to unmarried women and suggesting that women with premenstrual syndrome seek solace from the Bible and prayer.

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Just how dangerous is WRFA?

First, some background. There is already a law that requires accommodation of religion in the workplace: Title VII of the 1964 Civil Rights Act requires an employer to “reasonably accommodate ... an employee’s ... religious observance or practice” so long as there is not “undue hardship on the conduct of the employer’s business.” Yet numerous advocates have noted that the courts’ current interpretation of Title VII does not give adequate protections to religion in the workplace. The American Civil Liberties Union found, for example, that nearly three-fourths of all of the religious accommodation claims rejected by federal courts in published opinions during the past 25 years have involved requests for scheduling changes to enable the observation of religious holidays and for wearing religious clothes or hairstyles.

WRFA, however, would change the current law to enhance protections for religion in the workplace for two specific and one far-reaching category of employee’s religious practices: wearing religious clothing, taking time off for religious holidays, and engaging in “other practices” that have a “temporary or tangential impact on the ability to perform job functions.” While the first two types of protected activity are important, the third is unacceptable because of its potential to protect a broad array of behaviors in the name of religion, but at the expense of individuals’ basic liberties and rights.

Under WRFA, an employer is obligated to accommodate religious beliefs unless doing so would involve a “significant difficulty or expense.” By contrast, under the current standard,

an employer need only accommodate religious beliefs when it would not involve more than a de minimis (next to nothing) cost. WRFA, thus, tips the scale (which currently favors the employer and the customers, patients, and co-workers impacted by the religious employee’s behavior) strongly in favor of accommodating the employee’s religious practice, whatever it may be, no matter whom it affects.

What types of harmful behaviors, in practical terms, could the current WRFA bill require an employer to accommodate? A pharmacist (asserting a religious belief) could refuse to fill birth control prescriptions — including emergency contraception — if they constitute a small and “tangential” percentage of prescriptions she fills. A police officer could refuse to protect abortion clinics (based on religious beliefs), because clinic defense is a relatively minor aspect of the job. An EMT worker could refuse to drive a woman from a hospital to an abortion clinic in an ambulance (based on her religious beliefs), because this type of assignment is only one among many.

Advocates of religious freedom who are also concerned about the far-reaching provisions of the bill hope to gain support for an alternative bill that leaves intact increased protection of religious practices such as observing high holy days and wearing religious garb, but eliminates protections for religious practices that sacrifice the basic and civil rights of others. Given the uncomfortable proximity of church to state these days, members of Congress and the advocacy community must make an extra effort to come together to agree upon a more carefully tailored and less open-ended bill to meet WRFA’s laudable goals. >