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Religious Freedom vs. Equal Opportunity: Who Wins at Work?

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1 INTRODUCTION

From the 1990's through to the present, there has been a renewed energy and public discourse concerning religious conservatism in the United States. To be sure, religious sentiment, if not fervor, persists as a defining attribute of American society.

There is a time-worn tension between the proponents of religious freedom and the objectors of religious overreach. Both camps jealously guard against the erosion of their respective spheres of protection and influence both in the public domain and in private affairs. The origins, causes, and scope of this tug-of-war is beyond the scope of this presentation, but it is safe to state that the rise of the 24-hour news cycle; the expansion and easy access of the dissemination of information and opinion through the internet; lingering and seemingly intractable life-issues such as abortion, euthanasia, the death penalty, and rights to health care; as well as the emergence of issues such as gay marriage and LGBT rights, all have contributed to the modern sense of tension between the rights of religious adherents and the demands of an increasingly global and diverse society.

The passage of the Patient Protection and Affordable Care Act in 2010, with its mandate for cost-free contraception coverage for employees, and the *Obergefell* decision finding a constitutional right to same-sex marriage, served only to heighten the tension. It is not surprising, then, that the United States Supreme Court's 2014 decision in *Burwell v. Hobby Lobby Stores, Inc.*, garnered so much attention. On its surface, the case involved many of the most highly debated issues in the public discourse: the scope of corporate power, religious freedoms, national healthcare, contraception, and abortion. The newfound attention on religious freedom brought forth a groundswell of legislative activity within the states to create their own specific versions of the federal Religious Freedom Restoration Act of 1993 ("RFRA").

Prior to 2010, only 14 states had enacted RFRA legislation. But within the next five years, six more states would enact RFRA statutes. Moreover, similar laws were debated in 15 additional states in the 2015 legislative session alone. While some statues passed more or less under the

radar, by 2015, religious freedom bills passing through state legislatures were receiving tremendous local and national attention: most notably in Indiana and Arkansas.

It is interesting to note that employment and employment protection statutes in the traditional sense were not directly implicated nor affected by *Hobby Lobby*. As such, there is an open question as to whether the attention brought on by the decision, as well as the Indiana and Arkansas RFRA enactment controversies, will have any impact on the existing rights of employees.

1.1 Free Exercise Law Prior to RFRA

In order to understand the possible implications of state religious freedom statutes on employees and employers, it is necessary first to understand the advent of the federal statute on which they are based: the Religious Freedom Restoration Act of 1993.

By 1990, the Supreme Court's jurisprudence on *First Amendment* issues related to facially neutral laws of general applicability and the free exercise of religion. The jurisprudence had falleninto a regular, reasonably well-entrenched pattern. The guiding principles were laid down in *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and *Sherbert v. Verner*, 374 U.S. 398 (1963). A neutral law of general applicability that was claimed to violate the free exercise of religion was subject to a balancing test. The government action was reviewed as to whether it presented a substantial burden on the exercise of religion and, if so, the court reviewed the law with strict scrutiny.

Strict scrutiny review meant that the government had to articulate a compelling governmental interest in the need for the law, and also show that the law had been narrowly tailored to that need. In 1990, however, the Supreme Court decided *Employment Div. Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), and the methodology changed.

Issues of religious freedom met face to face with the American war on drugs and the concurrent societal pressure for invigorated applications of criminal justice. In *Smith*, two employees (drug counselors, no less) were terminated from their jobs on account of their use of peyote. Oregon law had outlawed the possession and use of a variety of drugs and other

controlled substances, including peyote. *Id.* at 874, citing Ore. Rev. Stat. § 475.992(4). Accordingly, when the fired employees applied for unemployment benefits, the state unemployment office denied their claims based on their illegal misconduct. The employees, however, were members of the Native American Church and asserted that their use of peyote was part of a religious ceremony and, therefore, the ban was an unconstitutional violation of their *First Amendment* rights. The Oregon Supreme Court agreed.

Justice Scalia, writing for the majority in *Smith*, rejected the Oregon Supreme Court's conclusion. Not only did the majority hold that denying unemployment benefits under the facts of *Smith* did not violate the *First Amendment* rights of the employees, but, in doing so, also jettisoned the long-standing method of review laid down in *Yoder* and *Sherbert.* The *Smith* court found intolerable the prospect of putting every law, including laws of general applicability and neutral on their face, through the balancing test and the demanding inquiry of strict scrutiny. To continue that test, the court held, "would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind." *Smith*, 494 U.S. at 888. Therefore, it held "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *Id.*

1.2 THE (FEDERAL) RFRA STATUTE

1.2.1 Congressional Findings and Purpose

Congress responded to the *Smith* decision with the Religious Freedom Restoration Act of 1993. 42 U.S.C. §2000bb. Its findings were a direct condemnation of *Smith* and Congress did not equivocate on its purpose.

Congress made an explicit finding that even laws of "neutral" application can burden the free exercise of religion just as much as laws intended to interfere with religious exercise, and that the government should not substantially burden religion without a compelling justification. 42 U.S.C. §§2000bb(a)(2)-(3). Additionally, Congress found that the compelling interest test previously used by the courts was a "workable test for striking sensible balances between religious liberty and competing prior governmental interests," and that *Smith* had "virtually

eliminated the requirement that government justify burdens on religious exercise imposed by laws neutral toward religion." 42 U.S.C. §§2000bb(a)(4)-(5).

Thus, the purpose of the statute was to restore the compelling interest test, as reflected by the Supreme Court decisions in *Yoder* and *Sherbert,* in all cases in which the free exercise of religion is substantially burdened. 42 U.S.C. §2000bb(b)(1)(emphasis added). The act also provided "a claim or defense to persons whose religious exercise is substantially burdened by government." 42 U.S.C. §2000bb(b)(2).

1.2.2 Free Exercise of Religion Protected

Having made these direct findings, Congress laid down a general rule that government "shall not" substantially burden a person's exercise of religion even if the burden results from a rule of general applicability…" 42 U.S.C. §2000bb-1(a). Congress made the law as broadly applicable as it possibly could: "This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act." 42 U.S.C. §2000bb-3. By its terms, RFRA effectively serves as an amendment to every piece of federal legislation. See *Hankins v. Lyght*, 441 F.3d 96, 103-04 (2nd Cir. 2006).

The rule is not absolute, however, as Congress provided for an exception to its application upon a specific showing by the government of a compelling governmental interest, and upon a showing that the challenged burden was the least restrictive means of achieving that purpose.

> **(b) Exception.** Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--
> **(1)** is in furtherance of a compelling governmental interest; and
> **(2)** is the least restrictive means of furthering that compelling governmental interest.

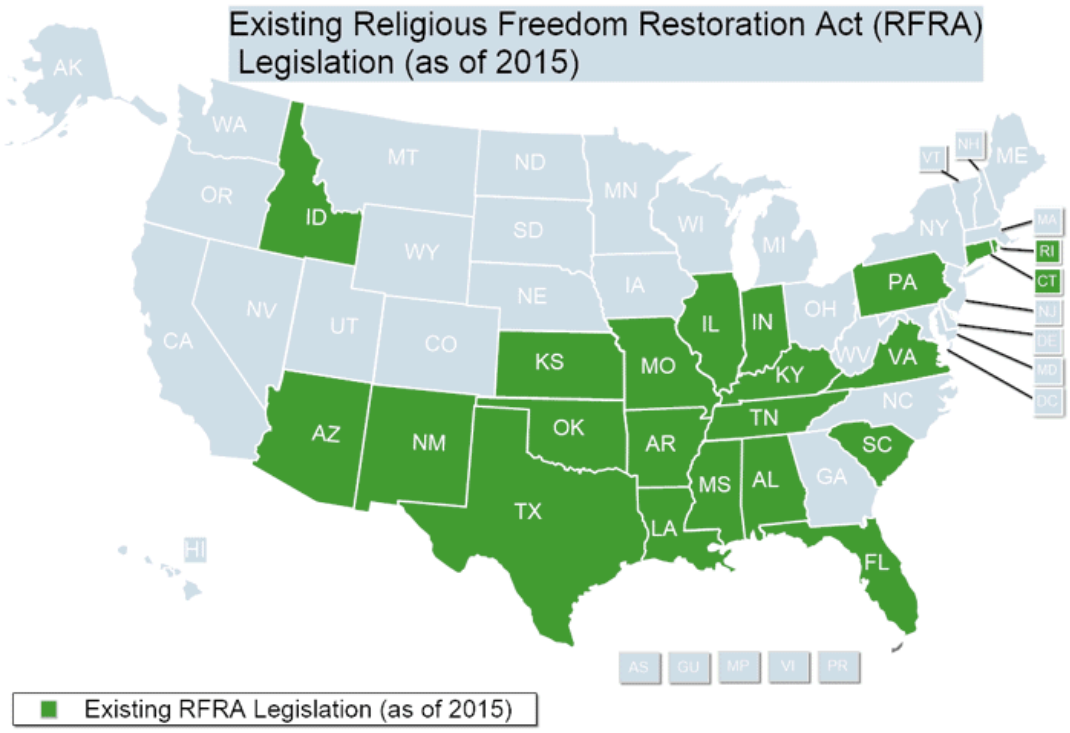
42 U.S.C. §2000bb-1(b)(emphasis added). As would later become important to the holding in *Hobby Lobby*, notably, the statute did not define "person." As well, in keeping with the long-standing practice in American jurisprudence that the courts are not to determine what is or is not a tenant of any particular faith tradition, the term "religious exercise" was expressly defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000bb-2(4).

2 STATE STATUTES "RESTORING" RELIGIOUS FREEDOM

Following the enactment of the federal RFRA, there was a slow stream of mirroring statutes at the state level. In 1997, the Supreme Court in *City of Boerne v. Flores,* 521 U.S. 507 (1997), held that RFRA was an unconstitutional exercise of power as it applied to states and local governments. That decision, while motivating, accelerated the pace of state implementations only marginally. It was not until the mainlining of social issues into other legislation, principally gay marriage statutes and expansions of anti-discrimination statutes and ordinances to cover homosexuality, that the push for state-level RFRA has seen a dramatic increase.

As noted above, in 2010 only 14 states had RFRA statutes. By 2014, prior to the 2015 legislative session, that number had grown to 19 states. But, during the 2015 sessions alone another 16 state legislatures had RFRA legislation proposed and under consideration. In all, at present, 21 states have enacted some form of a religious freedom protection statute and most of those track the justifications and protections articulated by the federal statute.

A survey of both the enacted statutes of the 21 states and the bills still pending in other state legislatures is attached as **Appendix A**.



Source: National Conference of State Legislatures;
http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx#RFRA

2.1 RFRA 2.0

What remains to be seen is whether or to what extent the state legislatures will adjust to the decision in *Hobby Lobby* and either enact state statutes mirroring the federal RFRA or further push the envelope in the direction of protecting corporate liberties and/or the corporate exercise of religious freedom.

In 2015, two states, Indiana and Arkansas, attempted to enact enhanced versions of religious freedom statutes. Both met with considerable resistance. Building off of the *Hobby Lobby* holding, Indiana's statute, as originally enacted, expressly provided for the protection of corporations in the exercise of religion, both for-profit and nonprofit. Ind. Senate Enrolled Act 101 §7. It also expressly allowed the act to be used in private lawsuits. Ind. Senate Enrolled Act 101 §9. But that interest only went so far, as the statute also directly barred its use by employees in suing their employers. Ind. Senate Enrolled Act 101 §11.

Had this piece of legislation come up for vote even just 10 years ago, it is unlikely that it would have met much resistance. Coming as it did, however, at a high-water mark in the national debate over gay marriage and civil rights for LGBT interests, the legislation became infamous nationally.

Under significant public pressure, Indiana voted (in what can be considered in legislative terms as "instantly") to amend its RFRA statute. The Act now makes clear that it does not authorize a corporation to refuse employment on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, or gender identity and that the statute cannot be used in a civil lawsuit as a defense to claims of employment discrimination. Indiana Code §34-13-9-0.7. Even so, Indiana continues to attempt tinker with the religious freedom bill, introducing two other amending bills, and continues to battle with significant economic backlash from its actions.

At the same time as the Indiana statute controversy was making national headlines, the Arkansas legislature was forced to amend its new and improved RFRA bill when Governor Asa Hutchinson made clear he would veto it unless it was amended and the new provisions removed so that it would mirror the federal RFRA. The legislature hastily amended the bill and passed a statute that the governor then signed the same week. A similar bill in Maine received intense local scrutiny and met a quick and hasty demise, being killed in committee only one month after it was introduced.

Just recently, on February 20, 2016, the Georgia legislature passed a religious freedom bill, House Bill 757. The state Senate, however, added other religious freedom bills, such as the Pastor Protection Act, allowing religious leaders to refuse to perform same-sex marriages, and the First Amendment Defense Act, which allows tax-funded, faith-based organizations to deny services to gays and lesbians, to House Bill 757. The business community, similar to that in Indiana, voiced serious concerns over the bill and it now is back in the General Assembly for further consideration.

3 HEALTH CARE CONSCIENCE ACTS

This newfound potential for visiting, or re-visiting, religious freedom in the workplace may also breathe new life into other state legislation similar in purpose to the RFRAs. For example, particularly in the area of health care, many states have passed some form of legislation designed to protect an undefined zone of moral conscience for health care providers. Illinois, Idaho, Mississippi, Washington, and others have (and have had for many years) existing legislation designed to ensure that medical personnel are free to act in accord with their personal consciences by refusing to participate in providing certain health care services and to protect them from discrimination in employment for making such choices.

Many of these state statutes appear to have their origins in the political battles over abortion rights and in the wake of the Supreme Court's decision in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Yet, by their language, these statutes are not confined to participation in abortions or other reproductive health care services but permit, generally, a medical provider to refuse to perform "any health care service" that the person believes violates his/her "conscience." As well, this focus on personal moral conscience, rather than religion, has the potential to broaden their scope even further.

Some states require the employee to provide advance written notice of the objection, most do not. Some states require the employer to reasonably accommodate the moral objection, unless it can demonstrate an undue hardship; most, however, appear to make the employee's choice absolute, except in a life-threatening emergency for the patient. Further, most of the statutes make explicit the protection of the employee against any form of discrimination (privileges, licensing, hiring, discipline, termination, etc.) for a conscientious refusal to participate in any form of health care service.

4 CONCLUSION

There have been few reported cases involving either the state RFRA statutes or the health care conscience acts and their direct impact on the employment relationship between employees and employers. But, given the typically broad language of such statutes and the special place religious sentiment and conviction have in both American law and culture, it is not difficult to imagine the myriad ways in which the desire to find a space for religious conviction in the workplace and while still protecting equal employment opportunities for all people could come into conflict.

Time will tell whether a new found public zeal for pressing religious freedoms and the exercise of corporate religion freedom will impact the policies of equal opportunity in the workplace. Strictly speaking, one will probably never be able to declare a winner in the religious freedom struggle. Since each case depends on its peculiar and unique facts, the best one can state is that the devil is in the details.

5 APPENDIX A- SURVEY OF STATE RFRA STATUTES

State: ALABAMA

Cite: Ala. Const. Art. I, § 3.01

Coverage: Government actors (any unit or official of the state or any political subdivision of a state, municipality or other local government)

General Rule: "Government shall not burden a person's freedom of religion even if the burden results from a rule of general applicability."

Exceptions: "Government may burden a person's freedom of religion only if it demonstrates that application of the burden to the person:

(1) Is in furtherance of a compelling governmental interest; and

(2) Is the least restrictive means of furthering that compelling government interest."

Private right of action: Yes.

Potential relief: "appropriate relief"

N.B.: Applies to all governmental rules and implementations thereof. The constitutional amendment "shall be liberally construed to effectuate its remedial and deterrent purposes."

No employment cases reported under this statute to date.

State: ARIZONA

Cite: A.R.S. § 41-1493.01

Coverage: Government actors

General Rule: "Except as provided [below], government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."

Exceptions: "Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

1. In furtherance of a compelling governmental interest.

2. The least restrictive means of furthering that compelling governmental interest."

Private right of action: Yes

Potential relief: "appropriate relief" and "attorney fees and costs"

N.B.: Use of "the term substantially burden is intended solely to ensure that this article is not triggered by trivial, technical or de minimis infractions."

No employment cases reported under this statute to date.

State: CONNECTICUT

Cite: C.G.S.A. § 52-571b

Coverage: State and political subdivisions of the state

General Rule: "The state or any political subdivision of the state shall not burden a person's exercise of religion under section 3 of article first of the Constitution of the state even if the burden results from a rule of general applicability, . . ."

Exceptions: "The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest."

Private right of action: Yes

Potential relief: "appropriate relief"

N.B.: No employment cases reported under this statute to date.

State: FLORIDA

Cite: Fla. Stat. §761.01, et seq. (enacted 1998)

Coverage: Government actors

General Rule: government shall not substantially burden a person's exercise of religion, even if a rule of general applicability, except if the government demonstrates application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Use in Private Suits: Unclear: no for employees, may be possible for employers. Statute may be asserted as claim or defense "in a judicial proceeding", but attorneys' fee section implies government must be a party. Separate section makes clear employees cannot use against private employers.

Potential relief: "appropriate relief"; attorneys' fees to "prevailing plaintiff…to be paid by the government" (§761.04)

N.B.: §761.05 – "Nothing in this act shall create any rights by an employee against an employer if the employer is not a governmental agency.

N.B.: No definition of "person."

N.B.: "Exercise of religion" – any act or refusal substantially motivated by religious belief, *whether or not compulsory or central to a larger system of religious belief*. (761.02(3))

State: IDAHO

Cite: 73-401, et seq. (enacted 2000)

Coverage: Government actors

General Rule: government shall not substantially burden a person's exercise of religion, even if a rule of general applicability, except if the government demonstrates application:

(1) is "**essential to further**" a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Use in Private Suits: No

Potential relief: "appropriate relief against a government"; attorneys' fees for prevailing party.

N.B.: "Substantial burden" defined: "inhibit or curtail religiously motivated practices." (73-401(5)); intended solely to ensure statute is not triggered by "trivial, technical or de minimus infractions". (73-402(5))

N.B.: "Exercise of religion" – any act or refusal substantially motivated by religious belief, *whether or not compulsory or central to a larger system of religious belief*. (73-401(2))

N.B.: No definition of "person."

State: ILLINOIS

Cite: 775 ILCS 35/1, et seq. (enacted 1998)

Coverage: Government actors

Standard: government may not substantially burden a person's exercise of religion, even if a rule of general applicability, except if the government demonstrates application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Use in private suits: No.

Potential relief: may assert as claim or defense and obtain "appropriate relief against a government"; attorneys' fees for prevailing party.

N.B.: "Exercise of religion" – any act or refusal substantially motivated by religious belief, *whether or not compulsory or central to a larger system of religious belief*. (775 ILCS 35/5)

N.B.: No definition of "person."

State: INDIANA

Cite: IC 34-13-9, et seq. (enacted 2015)

Coverage: Government actors

Standard: government may not substantially burden a person's exercise of religion, even if a rule of general applicability, except if the government demonstrates application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Use in private suits: Yes (for employers); may assert the violation or impending violation of this statue as claim or defense "regardless of whether the…governmental entity is a party to the proceeding." (34-13-9-9). Not available for employees of private employers; the chapter "shall not" created a "private cause of action against any private employer…" (34-13-9-11).

Potential relief: "shall allow a defense against any party and shall grant appropriate relief against the governmental entity. Declaratory, injunctive relief, attorneys' fees and compensatory damages available as relief if prevailing against a governmental entity.

N.B.: Statute does not authorize private employers to refuse employment and *does not establish a defense to a civil action* for refusal to offer or provide employment on the basis of race, color, religion, ancestry, national origin, disability, sex, sexual orientation, gender identity, or U.S. military service. (34-13-9-0.7)

N.B.: Defines "person": in addition to individuals and religious societies, churches, explicitly includes partnerships, LLCs, corporations, unincorporated associations that:

A. may sue and be sued; AND

B. exercises practices that are compelled or limited by a system of religious belief held by:

i) an individual; or

ii) the individuals;

who have control and substantial ownership of the entity, regardless of whether the entity is organized and operated for profit or nonprofit purposes.

State: KANSAS

Cite: Kan. Stat. §60-5301, et seq.

Coverage: Government actors

General Rule: A neutral rule may not place a "substantial burden" on religion *unless* it is

(1) in furtherance of a compelling governmental interest; and

(2) the least restrictive means of furthering that compelling governmental interest.

However, "only those interests of the highest order and not otherwise served can overbalance the fundamental right to the exercise of religion preserved by this act."

Potential relief: injunctive, declaratory, damages, costs and fees

N.B.: Any person making a fraudulent claim may be enjoined from filing further claims

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State: KENTUCKY

Cite: Ky. Rev. Stat. §446.350

Coverage: Government actors

General Rule: No substantial burden on action motivated by sincere religious belief unless

"the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest."

N.B.: "Burden" is defined to include "indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities."

Published decision: Miller v. Davis, No. 15-44-DLB, 2015 U.S. Dist. LEXIS 105822 (E.D. Ky. Aug. 12, 2015)

A county clerk argued that the directive to issue marriage license to same-sex couples substantially burdened her religious freedom without serving a compelling state interest, as required by state law. The court disagreed:

"Davis is simply being asked to signify that couples meet the legal requirements to marry. The State is not asking her to condone same-sex unions on moral or religious grounds, nor is it restricting her from engaging in a variety of religious activities. Davis remains free to practice her Apostolic Christian beliefs. She may continue to attend church twice a week, participate in Bible Study and minister to female inmates at the Rowan County Jail. She is even free to believe that marriage is a union between one man and one woman, as many Americans do. However, her religious convictions cannot excuse her from performing the duties that she took an oath to perform as Rowan County Clerk. The Court therefore concludes that Davis is unlikely to suffer a violation of her free exercise rights under Kentucky Constitution § 5." Id. at *40-41.

State: LOUISIANA

Cite: La. Rev. Stat. §13:5231, et seq.

Coverage: Government actors

General Rule: No substantial burden on exercise of religion, even from a neutral rule, unless it is both:

(1) In furtherance of a compelling governmental interest.

(2) The least restrictive means of furthering that compelling governmental interest.

N.B.: Follows the standard developed by the Supreme Court in Sherbert v. Verner, 374 U.S. 398 (1963), requiring a compelling government interest applied in the least restrictive manner to justify the burden. Explicitly rejects the standard set out in Employment Division v. Smith, 494 U.S. 872 (1990), requiring only a rational basis and not the least restrictive means.

State: MISSISSIPPI

Cite: Miss. Code §11-61-1

Coverage: Government actors

"Nothing in this section shall create any rights by an employee against an employer if the employer is not the government."

Government is defined to include "any branch, department, agency, instrumentality or political subdivision of the State of Mississippi and any official or other person acting under color of law of the State of Mississippi."

General Rule: No substantial burden on the exercise of religion, even from a neutral rule, unless it is:

(1) In furtherance of a compelling governmental interest; and

(2) The least restrictive means of furthering that interest.

N.B. Rejects standard in Employment Division v. Smith, 494 U.S. 872 (1990), and adopts the compelling interest test set forth in Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972).

State: MISSOURI

Cite: R.S.MO. § 1.302-.307 (2003)

Coverage: State governmental authority.

General Rule: The state shall not restrict a person's free exercise of religion.

Exceptions: The state may restrict a person's free exercise of religion when: [a] the restriction is in the form of a rule of general applicability and does not discriminate against religion, or among religions, and [b] the governmental authority demonstrates that application of the restriction to the person is essential to further a compelling governmental interest and is not unduly restrictive considering the "relevant circumstances."

"Relevant circumstances" may include legitimate penological interests needed to protect the safety and security of incarcerated persons and correctional facilities, but shall not include reasonable requests by incarcerated individuals for the opportunity to pray, reasonable access to clergy, use of religious materials that are not violent or profane, and reasonable dietary requests.

In addition, nothing in section 1.302 - .307 shall be construed as allowing any person to cause physical injury to another person, to possess a weapon otherwise prohibited by law, to fail to provide monetary support for a child or to fail to provide health care for a child suffering from a life-threatening condition.

Private right of action: Yes, pursuant to R.S.MO § 191.724 (2012).

Potential relief: Any appropriate relief, including recovery of damages and the payment of reasonable attorney's fees, costs, and expenses.

No employment cases reported under this statute to date.

State: NEW MEXICO

Cite: N.M. STAT. §§28-22-1 TO -5 (2000)

Coverage: The state or any of its political subdivisions, institutions, departments, agencies, commissions, committees, boards, councils, bureaus or authorities.

General Rule: The state shall not restrict a person's free exercise of religion.

Exceptions: The state may restrict a person's free exercise of religion when: [a] the restriction is in the form of a rule of general applicability and does not directly discriminate against religion or among religions, and [b] the application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

Private right of action: Yes

Potential relief: Injunctive or declaratory relief, as well as damages pursuant to the state Tort Claims Act [41-4-1 NMSA 1978] and reasonable costs and attorney fees.

No employment cases reported under this statute to date.

State: OKLAHOMA

Cite: 51 OKL.ST.ANN. § 251-258 (2000)

Coverage: Any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the state.

General Rule: No governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

Exceptions: No governmental entity shall substantially burden a person's free exercise of religion unless it demonstrates that the application of the burden to the person is:

1. Essential to further a compelling governmental interest; and
2. The least restrictive means of furthering that compelling governmental interest.

With respect to state correctional institutions, its regulation of an inmate's free exercise of religion must be considered in furtherance of a compelling state interest so long as the facility demonstrates that the religious activity:

1. Is presumptively dangerous to the health or safety of the inmate; or
2. Poses a direct threat to the health, safety, or security of other prisoners, correctional staff, or the public.

Private right of action: Yes.

Potential relief: Declaratory relief or monetary damages, including reasonable costs and attorney fees.

Moreover, any person found by a court of competent jurisdiction to have abused the protection of this act by filing a frivolous or fraudulent claim may be assessed the court costs of the governmental entity and may be enjoined from filing further claims under this act without leave of court.

No employment cases reported under this statute to date.

State: PENNSYLVANIA

Cite: 71 P.S. § 2403

Coverage: "A Commonwealth agency or a [political subdivision, municipal authority or any other local government instrumentality authorized by law, or a public official thereof, acting under the color of State law]. The term shall not include the courts of this Commonwealth or a grand jury . . ."

General Rule: "Except as provided in subsection (b), an agency shall not substantially burden a person's free exercise of religion, including any burden which results from a rule of general applicability."

Exceptions: "An agency may substantially burden a person's free exercise of religion if the agency proves, by a preponderance of the evidence, that the burden is all of the following:

(1) In furtherance of a compelling interest of the agency.

(2) The least restrictive means of furthering the compelling interest."

Private right of action: Yes, but section 2405(b) requires 30 days' advance written notice to the agency, "by certified mail, return receipt requested, informing the agency of all of the following:

(1) The person's free exercise of religion has been or is about to be substantially burdened by an exercise of the agency's governmental authority.

(2) A description of the act or refusal to act which has burdened or will burden the person's free exercise of religion.

(3) The manner in which the exercise of the governmental authority burdens the person's free exercise of religion."

Subsection 2405(c) provides an exception: "A person may bring an action in court without providing the notice required by subsection (b) if any of the following occur:

(1) The exercise of governmental authority which threatens to substantially burden the person's free exercise of religion is imminent.

(2) The person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide notice.

(3) The provision of the notice would delay an action to the extent that the action would be dismissed as untimely.

(4) The claim or defense is asserted as a counterclaim in a pending proceeding."

Claims must be brought in the Commonwealth Court against a state agency and the Court of Common Pleas for a non-state agency, and require proof by "clear and convincing evidence."

Potential relief: [1] "[A] court may award the person such declaratory or injunctive relief as may be appropriate. [2] No court shall award monetary damages for a violation of this act. [3] Unless the court finds that the actions of the agency were dilatory, obdurate or vexatious, no court shall award attorney fees for a violation of this act."

N.B.: In *Deveaux v. City of Philadelphia*, 75 Pa. D. & C. 4th, 2005 WL 1869666 (July 14, 2005), the City was enjoined from terminating the plaintiff, a firefighter who refused to shave his beard due to his Muslim faith. The City argued that his beard violated policy that prohibited facial hair for firefighters because the hair reduced the efficiency of life-saving respirators worn by firefighters. Applying the Pennsylvania R.F.R.A., the court held that the City had failed to show a compelling justification of safety where studies were "ambiguous" as to whether facial hair had any significant impact on the protection provided by the masks.

State: RHODE ISLAND

Cite: R.I. Gen. Laws §42-80.1-1, et seq.

Coverage: Government actors

General Rule: "A governmental authority may restrict a person's free exercise of religion only if:

(1) The restriction is in the form of a rule of general applicability, and does not intentionally discriminate against religion, or among religions; and

(2) The governmental authority proves that application of the restriction to the person is essential to further a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest."

Private right of action: Yes

Potential relief: injunctive, declaratory, and damages.

State: SOUTH CAROLINA

Cite: S.C. Code §1-32-10, et seq.

Coverage: Government actors

General Rule: "The State may not substantially burden a person's exercise of religion, *even if* the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

(1) in furtherance of a compelling state interest; and

(2) the least restrictive means of furthering that compelling state interest."

Private right of action: Yes

Potential relief: attorney's fees and costs.

Right of defense: Yes, against the government.

Potential relief: attorney's fees and costs.

N.B.: Restores the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened.

State: TENNESSEE

Cite: Tenn. Code §4-1-407

Coverage: Government actors

General Rule: "No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

(1) Essential to further a compelling governmental interest; and

(2) The least restrictive means of furthering that compelling governmental interest."

Private right of action: Yes

Potential relief: declaratory relief, monetary damages, reasonable costs, and attorney's fees.

Right of defense: Yes, against the government.

Potential relief: declaratory relief, monetary damages, reasonable costs, and attorney's fees.

N.B. Any person found by a court with jurisdiction over the action to have abused the protections of this section by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this section without leave of court.

State: TEXAS

Cite: Tex. Civ. Prac. & Rem. Code §110.001, et seq.

Coverage: Government and private actors

General Rule: "Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that interest."

Private right of action: Yes, against the government.

Potential relief: declaratory, injunctive, compensatory damages (both pecuniary and nonpecuniary), reasonable attorney's fees, court costs, and other reasonable expenses.

Right of defense: Yes, against both the government and private individuals.

Potential Relief: Same, but *only* against the government.

N.B. In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Add'l Note: A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested, unless the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.

6 APPENDIX B – SURVEY OF PENDING STATE RFRA BILLS

State: COLORADO

Cite: HB 1171 [2015]

Type: Creates a new state Religious Freedom Restoration Act

Language: [1] Specifies that no state action may burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to a person's exercise of religion is essential to further a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest; [2] provides a claim or defense to a person whose exercise of religion is burdened by state action; and [3] specifies that nothing in the bill creates any rights by an employee against an employer unless the employer is a government employer.

Private right of action: Yes

Potential relief: Includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees**.**

Current status: Failed on March 9, 2015, when House Committee on State, Veterans, & Military Affairs postponed indefinitely consideration of the bill.

State: HAWAII

Cite: HB No. 1160

Status: Introduced January 23, 2015; no activity since February 2, 2015.

Coverage: Government actors

Purpose: "…ensure that strict scrutiny is applied in all cases where state action burdens the exercise of religion and to provide a claim or defense to a person whose exercise of religion is burdened by state action."

Standard: government may not substantially burden a person's exercise of religion, even if a rule of general applicability, except if the government demonstrates application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Use in private suits: Yes. A person whose exercise of religion is burdened or is likely to be burdened "may assert a violation…regardless of whether the State or a county is a party to the proceeding."

Potential relief: "appropriate relief, including injunctive relief, declaratory relief, compensatory damages, costs, and attorney fees against the acting State or county."

N.B.: "Compelling governmental interest" – "a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion."

State: MAINE

Cite: SB No. 485

Coverage: Very similar to Federal statute.

Status: Dead. Introduced April 13, 2015; Majority Committee report, "ought not to pass"; Senate and House adopted Majority Committee Report, May 6, 2015.

State: OKLAHOMA

Cite: SB 440

Type: Repeals existing statute and replaces it with the new language below.

Law Impacted: **51 OKL.ST.ANN. § 251-258 (2000)**

New Language:

[1] A new section of law to be codified in the Oklahoma Statutes as Section 1850.1 of Title 25, unless there is duplication in numbering, which shall read as follows:

As used in this act:

"Religious entity" means an organization, regardless of its not-for-profit or for-profit status, and regardless of whether its activities are deemed wholly or aptly religious, that is:

[i] A religious corporation, association, educational institution or society,

[ii] An entity operated, supervised or controlled by, or connected with, a religious corporation, association, educational institution or society, or

[iii] A privately-held business operating consistently with its sincerely held religious beliefs, with regard to any activity described in this act and amendments thereto; and

[iv] "Governmental entity" means the executive, legislative, and judicial branches and any and all agencies, boards, commissions, departments, districts, authorities or other entities, subdivisions or part whatsoever of state and local government, as well as any person acting under color of law.

[2] A new section of law to be codified in the Oklahoma Statutes as Section 1850.2 of Title 25, unless there is created a duplication in numbering, reads as follows:

"Notwithstanding any other provision of law, no individual or religious entity shall be required by any governmental entity to do any of the following, if it would be contrary to the sincerely held religious beliefs of the individual or religious entity regarding sex, gender or sexual orientation:

[i] Provide any services, accommodations, advantages, facilities, goods or privileges;

[ii] Provide counseling, adoption, foster care, and other social services;

[iii] Provide employment or employment benefits, related to, or related to the celebration of, any marriage, domestic partnership, civil union or similar arrangement;

[iv] Solemnize any marriage, domestic partnership, civil union or similar arrangement; or,

[5] Treat any marriage, domestic partnership, civil union or similar arrangement as valid."

[3] A new section of law to be codified in the Oklahoma Statutes as Section 1850.3 of Title 25, unless there is created a duplication in numbering, reads as follows:

"Notwithstanding any other provision of law, no refusal by an individual or religious entity to engage in any activity described in Section 3 of this act, and amendments thereto, shall result in:

[i] A civil claim or cause of action under state or local law based upon such refusal; or

[ii] An action by any governmental entity to penalize, withhold benefits from, discriminate against or otherwise disadvantage any protected individual or religious entity, under any state or local law.

[iii] Any individual or religious entity named in or subject to a civil action, an administrative action or any action by a governmental entity may immediately assert the protections provided in Section 3 of this act, and amendments thereto, or this section, as a defense by moving to dismiss such action. If the motion to dismiss is filed in an action before an administrative tribunal, within fifteen (15) days after filing such motion any party to the action may elect to transfer jurisdiction of the action to a district court with proper venue. Within sixty (60) days after the transfer of jurisdiction, the district court shall decide whether the claimed protection applies. The district court shall not permit any additional discovery or fact-finding prior to making its decision.

[iv] If a governmental entity, or any person asserts a claim or cause of action, or takes any adverse action against an individual or religious entity in violation of subsection A of this section, the individual or religious entity shall be entitled, upon request, to recover all reasonable attorney fees, costs and damages such individual or religious entity incurred as a result of the violation.

[v] If an individual employed by a governmental entity or other non-religious entity invokes any of the protections provided in Section 3 of this act, and amendments thereto, as a basis for declining to provide a lawful service that is otherwise consistent with the entity's duties or policies, the individual's employer, in directing the performance of such service, shall otherwise ensure that the requested service is provided, if it can be done without undue hardship to the employer.

[4] A new section of law to be codified in the Oklahoma Statutes as Section 1850.4 of Title 25, unless there is created a duplication in numbering, reads as follows:

[i] If any word, phrase, clause or provision of this act, and any amendments thereto, or the application of any such word, phrase, clause or provision to any person or circumstance is held invalid, the remaining provisions shall be given effect without the invalid portion and to this end the provisions of Sections 1 through 4 of this act, and amendments thereto, are severable.

[ii] Nothing in Sections 1 through 4 of this act, and amendments thereto, shall be construed to allow any individual or entity acting under color of state law to perform any marriage prohibited by state law including, but not limited to, laws relating to plural marriage, incest, consanguinity and marriageable age.

[iii] Nothing in Sections 1 through 4 of this act, and amendments thereto, shall be construed to authorize any governmental discrimination or penalty against any individual or religious entity based upon its performance, facilitation or support of any celebrations of same-gender unions or relationships.

[iv] The provisions of Sections 1 through 4 of this act, and amendments thereto, shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by their terms and by the constitution of this state and the United States of America.

Current Status: Referred to Senate Judiciary Committee on February 3, 2015. **PENDING**.

Cite: **SB 610** provides that the current OK RFRA law (51 O.S. 2011, Sections 251 through 258) shall be recodified as Sections 1905 through 1912 of Title 25 of the Oklahoma Statutes, unless there is created a duplication in numbering.

Current Status: Referred to Senate Judiciary Committee on February 3, 2015. **PENDING**.

Cite: **SB 723** amends the current law in several respects. First, it adds to the definition of "Free Exercise" by inserting "practice" and "observance," and further explains that "Free Exercise" "includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief."

Moreover, SB 723 would amend the definition of "Substantial Burden" as follows: "Substantially burden" means to ~~inhibit or curtail religiously motivated practice~~ directly or indirectly constrain, inhibit, curtail or deny the exercise of religion by any person or compel any action contrary to a person's exercise of religion and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or excluding from governmental programs or access to governmental facilities."

Further, it adds a new section C which provides that: "A person whose exercise of religion has been substantially burdened or is likely to be substantially burdened in violation of this act may assert such violation or impending violation as a claim or defense in a judicial proceeding, regardless of whether the state or a political subdivision is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against

the state or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive or declaratory relief, compensatory damages, and attorney fees and costs."

Current Status: Referred to Senate Judiciary Committee on February 3, 2015. **PENDING**.

Cite: **HB 1377** amends 51 O.S. 2011, Section 252 to add the following definition:

"6. 'Person' means a natural or juridical person or any unincorporated nonprofit or for-profit association."

Current Status: Recommended for passage by House Judicial and Civil Procedure Committee on February 25, 2015. Pending a full House presentment and vote.

State: SOUTH CAROLINA

Cite: SB 127

Type: Statutory amendment

Law Impacted: Chapter 32, Title 1 of the 1976 code, relating to the South Carolina Religious Freedom Act.

Added Language: Amendment adds section 1-32-41, which prohibits restrictions on the free exercise of speech or religion during the course of any locality, municipality, county, or other state instrumentality proceeding in violation of the first amendment of the United States or Article I, Section 2 of the Constitution of South Carolina.

Current Status: Referred to Committee on Judiciary on January 13, 2015. **PENDING**.

State: TEXAS

Cite: HJR 55

Type: Constitutional Amendment

Law Impacted: Article I, Section 6 of Texas Constitution

Added Language: The state or a county, municipality, or other political subdivision of the state, including a department, agency, or instrumentality of the state or of a political subdivision of the state, may not burden in any way a person's free exercise of religion unless the burden is:

(1) necessary to further a compelling governmental interest; and
(2) the least restrictive means of furthering that interest.

Current Status: Referred to Committee on March 3, 2015

State: TEXAS

Cite: HJR 125

Type: Constitutional Amendment

Law Impacted: Article I, Section 6 of Texas Constitution

Added Language: Same as HJR 55

Current Status: Referred to Committee on March 23, 2015

State: TEXAS

Cite: SJR 10

Type: Constitutional Amendment

Law Impacted: Article I, Section 6 of Texas Constitution

Added Language: Government may not burden an individual ’s or religious organization ’s freedom of religion or right to act or refuse to act in a manner motivated by a sincerely held religious belief unless the government proves that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. For purposes of this subsection, the term "burden" includes indirect burdens such as withholding benefits, assessing penalties, and denying access to facilities or programs.

Current Status: Referred to Committee on February 2, 2015

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7 APPENDIX C – SURVEY OF HEALTH CARE CONSCIENCE CLAUSES

State: CALIFORNIA

Cite: Cal Bus & Prof Code § 733

Right to Medication: Yes. "A licentiate shall not obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient."

Penalty for Violation: Yes. "A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency."

Right to Object: Yes, on ethical, moral, or religious grounds.

N.B. If the licentiate objects, they must inform the employer and the employer must establish protocols to ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order.

State: FLORIDA

Cite: Fla. Stat. § 381.0051

Right to Medication: Limited, against the government. "No medical agency or institution of this state or unit of local government shall interfere with the right of any patient or physician to use medically acceptable contraceptive procedures, supplies, or information or to restrict the physician-patient relationship."

Penalty for Violation: N/A.

Right to Object: Yes, on religious grounds.

State: GEORGIA

Cite: Ga. Code Ann. § 16-12-142

Right to Medication: No.

Penalty for Violation: No, for physicians refusing to perform an abortion.

No, for pharmacists refusing to prescribe emergency contraception "*provided, however*, that the pharmacist shall make all reasonable efforts to locate another pharmacist who is willing to fill such prescription or shall immediately return the prescription to the prescription holder."

Right to Object: Yes, on moral or religious grounds, if the objection is in writing.

N.B. "Nothing in this subsection shall be construed to authorize a pharmacist to refuse to fill a prescription for birth control medication, including any process, device, or method to prevent pregnancy and including any drug or device approved by the federal Food and Drug Administration for such purpose."

But see Ga. Comp. R. & Regs. R. § 480-5-.03:

"It shall not be considered unprofessional conduct for any pharmacist to refuse to fill any prescription based on his/her professional judgment or ethical or moral beliefs."

State: IDAHO

Cite: Idaho Code §18-611; Freedom of conscience for health care professionals

Protections:

Employees:

- No health care professional shall be required to provide any health care service that violates his/her conscience.
- No civil or criminal liability for declining to provide any health care service, except in life-threatening emergencies; if emergency, must provide health care only until other health care professional capable of treating patient is found.
- With advance, written notice, conscience right must be accommodated by employer.

Employer:

- Must reasonably accommodate conscience rights of employees, upon advance written notice; may not require reasons for conscience position.
- May not discriminate against employee based on his/her declining to provide any health care service that violates his/her conscience; unless shows accommodation is an undue hardship.
- No civil or criminal liability for declining to provide any health care service, except in life-threatening emergencies; if emergency, must provide health care only until other health care professional capable of treating patient is found.

Exception:

- Act does not allows employee or employer to refuse to provide health care service because of patient's race, color, religion, sex, age, disability or national origin.

N.B.: Act specifies not intended to impact broader protections of Idaho Code 18-612, entitled "Refusal to perform abortions—Physicians and hospitals not liable."

N.B.: Title 18 is part of Idaho's penal code. Chapter 6, by its title, is devoted to Abortion and Contraceptives. By its language, however, §18-611 is much broader in implication.

State: ILLINOIS

Cite: 745 ILCS §70/1 et seq. Health Care Right of Conscience Act

Purpose: Establish the right of medical personnel, facilities and persons receiving medical care to be free to act in accord with their conscience and to be free from any form of discrimination due to acts in accord with their conscience.

Protections:

Employees:

- No civil or criminal liability for any health care professional to decline to provide any health care service which is contrary to his/her conscience.
- Protection from discrimination in any manner because of conscientious refusal to participate in any way any form of health care service contrary to his/her conscience; including hiring, licensing, promotion, transfer, privileges, etc.
- Employers may not deny admission to any applicant or impose any burdens in terms or conditions of employment because of applicant/employee's refusal to participate in any form of service contrary to his/her conscience.

Employer:

- Facilities are protected from discrimination in any manner because of conscientious refusal to participate in any way any form of health care service
- May not discriminate against applicants or employee based on his/her declining to provide any health care service that violates his/her conscience.

- No civil or criminal liability for declining to provide any health care service, except in life-threatening emergencies; if emergency, must provide health care only until other health care professional capable of treating patient is found.

Exception:

- Does not excuse those who have entered into contracts to provide such services, or if person/facility has accepted federal or state funds specifically for providing such services.

Remedies: Any person or facility injured by prohibited action can commence suit and recover treble actual damages, including pain and suffering (including facilities), attorneys' fees and costs; in no case will recovery be less than $2,500, plus fees and costs, for each violation; remedies are cumulative to any other remedies afforded by law.

N.B.: §70/14 provides that this act supersedes all of the acts that are inconsistent with it.

N.B.: More specific protections that Illinois Religious Freedom Restoration Act and therefore RFRA does not apply in circumstances covered by HCRCA. . *Morr-Fitz, Inc. v. Quinn*, 2012 IL App. (4th) 110398, 976 N.E.2d 1160 (Ill.App.Ct. 4th 2012).

N.B.: enforcement of administrative rule requiring pharmacies to dispense Plan B contraceptives held to violate HCRCA. *Morr-Fitz, Inc. v. Quinn*, 2012 IL App. (4th) 110398, 976 N.E.2d 1160 (Ill.App.Ct. 4th 2012).

N.B.: act also protects health care payers against discrimination for refusal to cover or pay for services that the organization deems violate its conscience.

State: MISSISSIPPI

Cite: Mississippi Code Ann. § 41-41-215; 41-107-1 *et seq.*

Right to Medication: No

Penalty for Violation: No

No liability for declining to participate in a health-care service that violates a health care provider's conscience. § 41-107-5

Further, it is unlawful for anyone "to discriminate against any health-care provider in any manner based on his or her declining to participate in a health-care service that violates his or her conscience." § 41-107-5

Right to Object: Yes

A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. § 41-41-215.

No health-care provider shall be required to participate in a health-care service that violates his or her conscience. § 41-107-5

Unpublished decision: Britton v. Univ. of Miss. Med. Ctr., No. 3:11-CV-483-DPJ-FKB, 2012 U.S. Dist. LEXIS 75168, at *1 (S.D. Miss. May 31, 2012). Plaintiff, a registered nurse, asserted that her state employer and individual supervisors retaliated against her for refusing to perform services including abortion, contraception, and sterilization that violated her religious beliefs. The Court construed the Mississippi Conscience Act to create a private right of action within the framework of state tort law, so as to give rise to a claim against the state for the acts of its employees but not to abrogate sovereign immunity for the individual defendants.

State: TENNESSEE

Cite: Tenn. Code Ann. § 68-34-104

Right to Medication: Yes. "All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each and every person desirous of the same regardless of sex, race, age, income, number of children, marital status, citizenship or motive."

Penalty for Violation: No. The government provides for an alternative to private care.

Right to Object: Yes, on religious or conscientious grounds.

N.B. "To the extent that family planning funds are available, each public health agency of this state and each of its political subdivisions shall provide contraceptive procedures, supplies, and information, including voluntary sterilization procedures for male or female persons eligible for free medical service as determined by rules and regulations promulgated by the commissioner. The same service shall be available to all others who are unable to obtain the service privately, at a cost to be determined by rules and regulations promulgated by the commissioner."

State: WASHINGTON

Cite: RCW48.43.065(2)(a)

Right to Medication: Yes, Wash. Admin. Code § 246-869-010 requires pharmacists to dispense all drugs.

Penalty for Violation: No.

Right to Object: Yes.

No health care provider may be required "to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion."

N.B. "No person may be discriminated against in employment or professional privileges because of such objection."

Published decision:

Stormans, Inc. v. Wiesman, 794 F.3d 1064 (9th Cir. 2015): state laws' requirement that pharmacies timely deliver all prescription medications, regardless of the pharmacy owner's religious objection, did not violate the federal Free Exercise Clause. Notably, the laws permitted accommodation of individual pharmacists' objections.

Petition for certiorari filed January 2016.
