



CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
April 28, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmembers Darryl Moore and Lori Droste

Subject: Travel Moratorium and Divestment from Indiana in Response to Recent
“Religious Freedom Restoration Act”

RECOMMENDATION:

Impose a moratorium on any publicly-funded all non-essential travel to Indiana and, if not repealed, urging the City Manager to refrain from entering into new contracts and consider discontinuing existing contracts with businesses headquartered in Indiana.

BACKGROUND:

The federal Religious Freedom Restoration Act (RFRA) was signed into law by President Clinton in 1993 and many other states have similar laws in effect. Indiana's RFRA differs substantially from any of its predecessors in a key way. Indiana's law features a section where a “person” (which under the law includes not only an individual but also any organization, partnership, LLC, corporation, company, firm, church, religious society, or other entity) whose “exercise of religion has been substantially burdened, or is likely to be substantially burdened” can use the law as “a claim or defense... ” regardless of whether the state or any other governmental entity is a party to the proceeding.

What this distinction means is that while all other RFRA's before it apply specifically to disputes between a person or entity and a government, Indiana's is the only law that explicitly applies to disputes between private citizens. This means that corporations could use the law to justify discrimination against individuals that might otherwise be protected under law.

Indiana's RFRA is much broader than other state and federal RFRA's, which means that private actors, such as employers, landlords, small business owners, or corporations, will likely begin acting in ways that violate generally applicable laws on the grounds that they have a religious justification for doing so. While there are many local jurisdictions that have non-discrimination laws in effect, this would put the onus on those being discriminated against to bring a lawsuit. Those living in jurisdictions that do not have such protections will likely have no recourse.

Besides expanding the scope of entities covered under its RFRA, Indiana's new law makes discrimination much easier for those claiming religious freedom protections. Section 5 of Indiana's law also provides religious protections "whether or not compelled by, or central to, a system of religious belief." This means that obscure elements of a religious practice could be used to invoke the law. Additionally, other RFRA's have provisions explicitly prohibiting the laws use to discriminate, Indiana's law does not.

The intent of Indiana's law also seems to differ dramatically from previous RFRA's in that previous iterations were intended to address relatively uncontroversial religious practices, such as allowing Muslim jail inmates to wear closely trimmed beards, or assuring that churches could feed homeless people in public parks. Indiana's law seems to be aimed at arming the anti-LGBT community with a new means of justifying discrimination. This seems to be riding the wave of the recent Supreme Court decision in *Burwell v. Hobby Lobby Stores, Inc.*, allowing closely-held for-profit corporations to be exempt from laws to which the corporation's owners have religious objections.

FINANCIAL IMPLICATIONS:

Unknown

CONTACT PERSON:

Councilmember Darryl Moore

District 2

510-981-7120