CHRISTIAN LEGAL SOCIETY

FACT SHEET:
Religious Freedom Restoration Act
42 U.S.C. 2000bb-1, et seq.

By Kim Colby, Senior Counsel

Key points about the Religious Freedom Restoration Act ("RFRA"):

- Biggest threat to religious liberty is not legislation targeting religion specifically, but general legislation that applies to everyone and simply disregards the frequent need for exemptions for religious persons and institutions to practice their faith.

- Before 1990, the courts applied "strict scrutiny" to laws or policies that unintentionally infringed a person's religious practices, even if the law applied to everyone and was not aimed at the religious practice itself. If a general law substantially burdened a religious practice, the government had the burden of showing it had a compelling interest unachievable by a less restrictive means.

- In 1990, in *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court removed substantial protection of religious liberty. In a decision by Justice Scalia, the Court said that if a law is neutral and generally applicable to everyone, then the religious person or institution has to comply with it even if it burdens a religious practice.

- Instead of showing a compelling interest, after *Smith*, the government only has to have a plausible reason for a law that has the effect of burdening some religious practice. A religious person must go along with a law unless the person can show that the government is not applying the policy to others or adopted the policy to target the religious conduct.

- The Court in *Smith* said that the legislature, not the courts, should be making the decision as to what religious practices receive exemptions, or accommodations from laws and other government policies. It is perfectly permissible for the Congress to enact an accommodation for religious practices.

kcolby@clsnet.org (703) 894-1087 www.clsnet.org

- Legislative accommodations or exemptions protect religious practices that align with what the political majority views as "good" religion. If religious practices are no longer seen as "good" or "valuable," accommodations become difficult to obtain, particularly for minority religious practices. But, of course, that is when religious liberty protection is most essential.

- Immediate and fierce reaction to the *Smith* decision from across the political spectrum triggered a coalition of over 70 groups led by Christian Legal Society, American Jewish Congress, Baptist Joint Committee, National Council of Churches, and others to press for passage of the Religious Freedom Restoration Act ("RFRA").

- RFRA passed in 1993 with a unanimous vote in the House and a 97-3 vote in the Senate.

- RFRA restores "strict scrutiny" to governmental action that burdens a person's religious exercise even if the law applies generally to other persons.

- President Clinton signed RFRA into law.

- In 1997, in *Boerne v. Flores,* 521 U.S. 507 (1997), the Supreme Court ruled that RFRA could not be applied to the States.

- RFRA remains in full force as applied to actions by the federal government, as the Supreme Court recognized in 2006 in *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal,* 546 U.S. 418 (2006).

- No legislative attempt has been made to limit RFRA's application until this Congress when two carve-outs have been proposed.

- H.R. 3655 "Bereaved Consumer's Bill of Rights Act of 2009," Sec. 3 (c) (2).

- Substance Abuse and Mental Health Services Administration (SAMHSA) re-authorization.