



June 4, 2024

Senator Joe Manchin
306 Hart Senate Office Building
Washington, DC 20510
(202) 224-3954

Dear Senator Manchin:

We ask you to vote against cloture on S. 4381, the Right to Contraception Act. We strenuously oppose its carveout of the Religious Freedom Restoration Act (“RFRA”) in its section 5 (a)(3). As you know, RFRA is the primary federal safeguard of Americans’ religious freedom, and it protects *all* Americans’ religious freedom. Since its almost unanimous passage three decades ago, Congress has wisely never enacted a carveout to RFRA’s protections. That must remain true if religious freedom is to be preserved. Congress has not started down that carveout road for excellent reasons:

- Carveouts to RFRA are unnecessary to protect compelling governmental interests because, in applying RFRA, judges often rule in favor of the government if its interest is compelling. In other words, a carveout is only needed if the governmental interest is not a compelling interest, but rather one of bureaucratic expediency or convenience.
- Once it carves out an exception to RFRA for one special interest, Congress will have “crossed the line” and will be pressed to do so repeatedly for a multitude of special interests. Today’s carveout for one party’s interest will make inevitable tomorrow’s carveout for the other party’s interest. RFRA, enacted with near unanimous bipartisanship, will soon be riddled with holes and will provide scant protection for religious freedom. The best argument for preserving RFRA – that no carveout should be made because no carveout has ever been made – will be lost forever. Instead, any politically unpopular religious conviction of the day will be unprotected by statute (or, in most cases, by the First Amendment).

A brief reminder of why RFRA is vital to save: In 1990, the Supreme Court greatly weakened the First Amendment’s protection of religious freedom. In 1993, Congress restored Americans’ religious freedom by enacting RFRA. More specifically, RFRA does the following:

- *Creates a level playing field for Americans of all faiths:* RFRA places “minority” faiths on an equal footing with every other faith. Without RFRA, every time Congress considered a new law, “minority” faiths would have to lobby for statutory exemptions to protect their religious freedom.
- *Implements a sensible balancing test:* RFRA does not mean that religion always wins. Indeed, post-RFRA, the government still wins many cases. But RFRA provides a sensible

balancing test for courts to use to weigh religious freedom against governmental interests. The Supreme Court has unanimously approved the RFRA balancing test. *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418 (2006).

- *Ensures governmental transparency and accountability*: RFRA requires government officials to justify any restrictions they impose on citizens' religious freedom. RFRA *increases citizens' leverage* in dealing with government officials and *incentivizes the government* to find ways to achieve its interests while respecting citizens' religious freedom.

Therefore, regardless of your position on contraception, please drop the carveout of RFRA in section 5 (a)(3) in S. 4381.

Thank you for your support for religious freedom – for all Americans.

Sincerely,

CHRISTIAN LEGAL SOCIETY
David Nammo, Executive Director and CEO
Steven T. McFarland, Director
Center For Law & Religious Freedom