



Testimony of Theresa Sidebotham, Telios Law PLLC
HB17-1013 Free Exercise of Religion
House State, Veterans, and Military Affairs Committee
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Chairman Foote, and Members of the Committee, thank you for the opportunity to speak today. My name is Theresa Sidebotham with Telios Law, and I represent religious organizations and advocate in cases involving religious liberty issues. Today I am speaking on behalf of the Christian Legal Society.

With the passage of the Colorado Freedom of Conscience Protection Act, which is under consideration today, Colorado would join 21 other states that have recognized the need for protection of religious freedom at the state and local level.¹ Nearly 60% of Americans believe that religious liberty is threatened in America, so this is a timely bill.

What would this bill do? It would let people live according to their deepest convictions. How does that play out in cases of conflict, such as whether a baker or photographer has to participate in a gay wedding? First, there just is no case about serving gays or anyone else in the course of ordinary life. It's always been about participating in the religious life cycle ceremony. If you let everyone follow their deepest convictions, the gay couple can still get their wedding. But the individual artist should be able to follow his or her deepest convictions and not participate—much like the fashion designers who did not participate in the Trump inauguration!

The Act, modeled in part on the federal Religious Freedom Restoration Act or RFRA, ensures protection for all Coloradans' religious liberty. Such a law is essential because of the lack of constitutional protection that currently exists. As the Act recognizes, in 1990, the Supreme Court greatly weakened the First Amendment's protection of religious liberty when it handed down *Employment Division v. Smith*. In 1993, Congress responded by restoring Americans' religious freedom when it enacted RFRA, with bipartisan and overwhelming support. But

¹ 21 States have a similar law; 10 additional states require strict scrutiny as a matter of state constitutional law.

RFRA only applies at the federal level, leaving Coloradans without key First Amendment protections. The Colorado Freedom of Conscience Protection Act bridges the gap in Colorado.

More specifically, here is what the Act will do:

The Act reinforces this State’s commitment to religious freedom.

Article II, section 4 of the Colorado Constitution provides, “The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed.” The Act gives teeth back to this promise, as well as to the U.S. Constitution’s First Amendment’s promise of religious freedom.

The Act ensures religious diversity in America, and puts minority faiths and unpopular beliefs on an equal footing with majority faiths.

This is the core strength of America—our pluralism and diversity without persecution, and an open marketplace of ideas. Without this protection, minority religions have to seek recognition and exemptions individually.

The Act gives citizens needed leverage in dealing with government officials.

By requiring government officials to justify their *unwillingness* to accommodate citizens’ religious exercise, the Act enhances government’s accountability.

These are just a few of the numerous benefits of the law. But perhaps more important is to emphasize what the Act will not do:

The Act does not predetermine the outcome of any case.

The Act will not give people of faith a “trump card” in Court. This point is often misunderstood. Instead, the Act implements a *sensible balancing* test—the compelling interest test the Act will require is the same test approved unanimously by the Supreme Court over eight years ago for the federal RFRA. At the federal level, the government continues to win its fair share of RFRA cases, and we can expect the same to be true here in Colorado under this law.

Enacting this law is essential to restore the First Amendment protections originally intended as an expression of our nation’s deepest values to the people of this State.

I am happy to answer any questions the Committee members may have.