

DISAPPROVING THE ACTION OF THE DISTRICT OF COLUMBIA COUNCIL IN
APPROVING THE REPRODUCTIVE HEALTH NON-DISCRIMINATION
AMENDMENT ACT OF 2014

APRIL 30, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.J. Res. 43]

The Committee on Oversight and Government Reform, to whom
was referred the joint resolution (H.J. Res. 43) disapproving the ac-
tion of the District of Columbia Council in approving the Reproduc-
tive Health Non-Discrimination Amendment Act of 2014, having
considered the same, report favorably thereon without amendment
and recommend that the joint resolution do pass.

CONTENTS

	Page
Committee Statement and Views	2
Explanation of Amendments	4
Committee Consideration	4
Roll Call Votes	4
Application of Law to the Legislative Branch	6
Statement of Oversight Findings and Recommendations of the Committee	6
Statement of General Performance Goals and Objectives	6
Duplication of Federal Programs	6
Disclosure of Directed Rule Makings	6
Federal Advisory Committee Act	6
Unfunded Mandate Statement	6
Earmark Identification	7
Committee Estimate	7
Budget Authority and Congressional Budget Office Cost Estimate	7
Minority Views	8

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

House Joint Resolution 43 is a disapproval resolution of the District of Columbia's passage of the Reproductive Health Non-Discrimination Amendment Act of 2014 (RHNDA). RHNDA would restrict the ability of organizations within the District of Columbia to make employment decisions in line with their deeply held beliefs regarding reproductive health. These restrictions would apply to both religious and political organizations.

The "District of Columbia Home Rule Act" provides the District of Columbia with a system of self-governance and greater autonomy, while maintaining Congress' constitutionally-derived authority to oversee all matters relating to the nation's capital. The Home Rule Act provides for a 30 day congressional review period (60 day for any law related to the criminal code) for any law passed by the Council of the District of Columbia (the Council), during which, Congress has the ability to pass a Joint Resolution of Disapproval (JRD) to strike down any bill that the District passes. The JRD must be passed by both Chambers and transmitted to the President for his signature within the 30-day review period for the JRD to take effect and the District law to be invalidated before it becomes law.¹

On Tuesday, April 21, 2015, the House Committee on Oversight and Government Reform (the Committee) moved to favorably report H.J. Res. 43 to the House.

BACKGROUND AND NEED FOR LEGISLATION

On May 6, 2014, the Council of the District of Columbia introduced RHNDA during its Legislative Meeting.² The bill was subsequently noticed for a Public Hearing that was conducted on June 23, 2014 by the Committee on the Judiciary and Public Safety.³ The Committee marked up the bill on October 15, 2014 and voted the bill out of Committee.⁴

On December 2, 2014, D.C. Mayor Vincent Gray sent a letter to the District Council regarding legislation that would be coming before the Council.⁵ In the letter, the Mayor referred to a review conducted by the Office of the Attorney General of D.C. that raised concerns about RHNDA. The Mayor cited, "significant legal concerns" over the bill. Specifically, Mayor Gray wrote, "[a]ccording to the OAG, the bill raises serious concerns under the Constitution and under the Religious Freedom Restoration Act of 1993 (RFRA)." Mayor Gray warned the Council that "[r]eligious organizations, religiously-affiliated organizations, religiously-driven for-profit entities, and political organizations may have strong First Amendment and Religious Freedom Restoration Act grounds for challenging the law's application to them." The Mayor also cautioned the Council

¹ § 602(c), "District of Columbia Home Rule Act."

² Councilmembers introduce B20-0790, <http://lims.dccouncil.us/Download/31673/B20-0790-Introduction.pdf>.

³ Public Hearing on B20-0790, <http://lims.dccouncil.us/Download/31673/B20-0790-HearingRecord2.pdf>.

⁴ Four Councilmembers voted in favor with one absence and none voting against.

⁵ Letter from Mayor Gray to DC Council Chairman Mendelson, December 2, 2014, (10). <http://lims.dccouncil.us/Download/31673/B20-0790-Mayor-s-Letter-regarding-Legislative-Meeting1.pdf>.

that the bill could be read as only protecting one sex's reproductive health decisions and thus a violation of the Fifth Amendment.

The Council's vote on RHNDA was subsequently pushed back to December 17, 2014, and Councilmembers worked with the Office of the Attorney General on the concerns raised by the Mayor. Mayor Gray ultimately sent another letter to the Council on December 17, 2014, thanking the Council for their efforts to improve the bill while reiterating all of his concerns regarding the First and Fifth Amendments and RFRA.

On December 17, 2014, the Council voted on an amendment to RHNDA to address the Fifth Amendment concerns. The Council unanimously passed the amended version of RHNDA (12-0) that same day. The version of the bill passed by the Council contained no provisions or amendments that addressed the First Amendment and RFRA concerns of Mayor Gray and others.⁶

The Council chose to hold the bill until January 8, 2015, when it was transmitted to Mayor Muriel Bowser.⁷ Mayor Bowser signed the bill on January 23, 2015.⁸ The bill was transmitted to Congress for the 30 day congressional review period on March 6, 2015. The review period is expected to expire on May 2, 2015.

The language of RHNDA is vague and failed to state that it did not require employers to provide insurance coverage for contraception and other reproductive health decisions. The Council acknowledged this concern.⁹ In response, the Council developed emergency and temporary legislation to clarify this ambiguity.¹⁰

The emergency legislation was enacted on March 3, 2015,¹¹ and expires on June 24, 2015. The temporary legislation was signed by Mayor Bowser on April 11, 2015,¹² and is subject to a 30 day congressional review period. The temporary legislation signed on April 11, 2015 was transmitted to Congress on April 22, 2015 and is expected to become law on June 4, 2015. The temporary legislation would be law for 225 days from the date of becoming law. The emergency and temporary legislation make clear that RHNDA does not require employers "to provide insurance coverage related to a reproductive health decision."¹³

⁶Letter from Mayor Gray to DC Council Chairman Mendelson, December 17, 2014, (7). <http://lims.dccouncil.us/Download/31673/B20-0790-Mayor-s-Letter-regarding-Legislative-Meeting2.pdf>.

⁷Mayor Bowser defeated Mayor Gray in the Democratic primary for D.C. Mayor. Mayor Bowser went on to win the general election. Prior to becoming Mayor, she served as a Councilwoman and voted to approve RHNDA.

⁸D.C. Act 20-593, January 23, 2015. <http://lims.dccouncil.us/Download/31673/B20-0790-SignedAct.pdf>.

⁹At the public hearing on RHNDA, Councilmember David Grosso stated, "And what we're saying here in the District of Columbia is that [. . .] we believe that in the District of Columbia [. . .] you should include contraceptive coverage in your coverage for insurance [. . .] that all employers should do that." Public Hearing on B20-0790, June 23, 2014.

¹⁰The District of Columbia Home Rule Act allows the District to pass emergency legislation (as determined by §412(a)). This legislation is not subject to the 30 day review period (§602(c)(1)). This legislation is only effective for 90 days. Pursuant to §413 of the "Rules of Organization and Procedure for the Council of the District of Columbia," the Council may introduce Temporary Legislation that expires after 225 days.

¹¹D.C. Act 21-18, "Reproductive Health Non-Discrimination Clarification Emergency Amendment Act of 2015," March 26, 2015. <http://lims.dccouncil.us/Download/33471/B21-0102-SignedAct.pdf>.

¹²D.C. Act 21-48, "Reproductive Health Non-Discrimination Clarification Temporary Amendment Act of 2015," April 11, 2015. <http://lims.dccouncil.us/Download/33472/B21-0103-SignedAct.pdf>.

¹³D.C. Act 21-48, "Reproductive Health Non-Discrimination Clarification Temporary Amendment Act of 2015," April 11, 2015. <http://lims.dccouncil.us/Download/33472/B21-0103-SignedAct.pdf>.

Despite the emergency and temporary legislation that has been passed, there has been no permanent legislative fix offered at this point.

In its current form, RHNDA violates the First Amendment and the Religious Freedom and Restoration Act of 1993 (RFRA). Further, the language of the bill is sufficiently vague that it could be read to require employers within the District of Columbia to provide insurance coverage for reproductive health products with which the employers disagree.

As a result of these fundamental issues with RHNDA, the Committee decided to markup H.J. Res. 43 in disapproval of the Reproductive Health Non-Discrimination Amendment Act of 2014.

LEGISLATIVE HISTORY

On April 13, 2015, Rep. Diane Black (R-TN) introduced H.J. Res. 43, "Disapproving the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014." Rep. Mark Meadows (R-NC) and Rep. Bill Flores (R-TX) are original cosponsors. The bill was referred to the House Committee on Oversight and Government Reform.

On April 13, 2015 the Committee noticed a Full Committee Business Meeting to consider H.J. Res. 43 on April 16, 2015. On April 15, 2015, the Committee noticed that the Business Meeting was postponed to April 21, 2015.

On April 21, 2015, the Committee conducted a Full Committee Business Meeting to consider H.J. Res. 43.

Amendments were not in order during Full Committee consideration of the joint resolution under the provisions of the District of Columbia Home Rule Act. As a result, no amendments were considered in Committee. No amendments can be considered on the floor.

H.J. Res. 43 was reported favorably out of Committee on a recorded vote. The ayes were 20 and the nays were 16.

EXPLANATION OF AMENDMENTS

Amendments were not in order during Full Committee consideration of the joint resolution under the provisions of the District of Columbia Home Rule Act.

COMMITTEE CONSIDERATION

On April 21, 2015 the Committee met in open session and ordered reported favorably the joint resolution, H.J. Res. 43, by roll call vote, a quorum being present.

ROLL CALL VOTES

There was one recorded vote during consideration of H.J. Res. 43:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

RATIO 25-18

ROLL CALL

Vote on: Favorably Report H. J. Res. 43

Date: Tuesday, April 21, 2015

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>	X			MR. CUMMINGS (MD) <i>(Ranking)</i>		X	
MR. MICA (FL)	X			MRS. MALONEY (NY)		X	
MR. TURNER (OH)				MS. NORTON (DC)		X	
MR. DUNCAN (TN)	X			MR. CLAY (MO)			
MR. JORDAN (OH)	X			MR. LYNCH (MA)		X	
MR. WALBERG (MI)	X			MR. COOPER (TN)		X	
MR. AMASH (MI)	X			MR. CONNOLLY (VA)		X	
MR. GOSAR (AZ)	X			MR. CARTWRIGHT (PA)		X	
MR. DesJARLAIS (TN)				MS. DUCKWORTH (IL)		X	
MR. GOWDY (SC)	X			MS. KELLY (IL)		X	
MR. FARENTHOLD (TX)				MS. LAWRENCE (MI)		X	
MRS. LUMMIS (WY)	X			MR. LIEU (CA)		X	
MR. MASSIE (KY)	X			MRS. COLEMAN (NJ)		X	
MR. MEADOWS (NC)	X			MS. PLASKETT (VI)			
MR. DeSANTIS (FL)	X			MR. DeSAULNIER (CA)		X	
MR. MULVANEY (SC)	X			MR. BOYLE (PA)		X	
MR. BUCK (CO)	X			MR. WELCH (VT)		X	
MR. WALKER (NC)	X			MR. LUJAN GRISHAM (NM)		X	
MR. BLUM (IA)	X						
MR. HICE (GA)	X						
MR. RUSSELL (OK)	X						
MR. CARTER (GA)	X						
MR. GROTHMAN (WI)							
MR. HURD (TX)							
MR. PALMER (AL)	X						

Roll Call Totals: Ayes: 20 Nays: 16 Present:

Passed: X Failed: _____

Quorum to bring up bill = 15

Quorum to report bill = 22

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill disapproves the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the rules of the House of Representatives, the Committee’s performance goal or objective of this joint resolution is to disapprove the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this joint resolution establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this joint resolution does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the joint resolution does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This joint resolution does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

H.J. Res. 43—A joint resolution disapproving the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014

H.J. Res. 43 would repeal a recently enacted District of Columbia law. Under the District of Columbia Home Rule Act, the Congress has 30 days to disapprove laws enacted by the District of Columbia. CBO estimates that the new District of Columbia law—regarding reproductive health decisions—has no impact on the federal budget. Therefore, CBO estimates that enactment of H.J. Res. 43 would result in no cost to the federal government. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.J. Res. 43 would impose an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA), on the District of Columbia by disapproving and preempting a local law that prohibits employers from discriminating based on reproductive health decisions. Although the bill would limit the application of a local law, it would impose no duty that would result in additional spending or loss of revenues. The bill contains no private-sector mandate as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Jon Sperl (for state and local impact). This estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

MINORITY VIEWS

We strongly oppose H.J. Res. 43. The bill would sanction employment discrimination in the District of Columbia under the guise of religious liberty. The bill would permit employers to make employment decisions based on the private, constitutionally protected reproductive health decisions of employees, their spouses, and their dependents. The bill is also undemocratic. It would overturn the will of the 650,000 District residents as expressed in legislation passed by their elected legislature and signed by their elected mayor.

D.C. passed the Reproductive Health Non-Discrimination Amendment Act of 2014 (RHNDA) after learning that employers were making employment decisions based on reproductive health decisions. RHNDA ensures that employment decisions are based on merit, not reproductive health decisions. For example, RHNDA prohibits an employer from firing a woman because she had an abortion after being raped, demoting a man because his wife used birth control, paying an employee less because his or her teenage daughter became pregnant out of wedlock, or firing an employee for using fertility treatments.

RHNDA complies with the Free Exercise Clause of the U.S. Constitution because it is a neutral law of general applicability that is rationally related to a legitimate governmental interest. RHNDA applies to all employers (with some exceptions for religious organizations), does not target religion, and furthers the governmental interest of equal employment.

RHNDA also complies with the Religious Freedom Restoration Act because it furthers a compelling governmental interest in the least restrictive means possible. Courts have held that non-discrimination laws can be the least restrictive means to further a compelling governmental interest.

Religious liberty is protected under RHNDA by several exceptions to discrimination laws. The ministerial exception of the First Amendment permits religious employers to make employment decisions about ministers and ministerial employees without regard to employment discrimination laws. D.C.'s employment discrimination law, the Human Rights Act of 1977, permits a religious or political organization to make employment decisions based on religion and political persuasion "as is calculated by the organization to promote the religious or political principles for which it is established or maintained." Title VII of the Civil Rights Act of 1964 also permits religious organizations to make employment decisions based on religion.

The majority asserts that RHNDA requires employers to provide insurance coverage of reproductive health decisions, including contraception and abortion. Neither the text nor the legislative history of RHNDA supports that position. RHNDA does not mandate that

employers provide any type of insurance. RHNDA requires that employers treat employees making reproductive health decisions in the same manner as other employees for employment-related purposes. The legislative history on RHNDA is clear on whether insurance coverage is required. According to the D.C. Council committee report, RHNDA “is not about insurance coverage.”

Nevertheless, in order to eliminate any doubt that RHNDA could be construed to require insurance coverage, the D.C. Council and Mayor passed interim versions of RHNDA that expressly state that it “shall not be construed to require an employer to provide insurance coverage related to a reproductive health decision.” The Council and Mayor have committed to passing a new permanent version of RHNDA that says the same thing. However, under the time-consuming and complicated legislative procedures that Congress imposed on the District in the Home Rule Act of 1973, D.C. cannot quickly pass permanent legislation. Instead, it had to pass an emergency version of RHNDA, which lasts for up to 90 days, and a temporary version, which lasts for up to 225 days, each of which expressly state that insurance coverage of a reproductive health decision is not required. The Mayor and Council have committed to passing a permanent version as soon as possible.

Congress passed the Home Rule Act to give the D.C. government the same legislative authority as any city or state over non-federal matters (except for a small number of enumerated exceptions), and to “relieve Congress of the burden of legislating upon essentially local District matters.” Employment and reproductive law matters are unquestionably within the District’s legislative authority.

H.J. Res. 43 would authorize employment discrimination based on conduct unrelated to employees’ ability to fulfill their job responsibilities, and, contrary to the majority’s professed support for federalism and limited government, uses federal power to overturn a local law.

ELIJAH E. CUMMINGS.
ELEANOR HOLMES NORTON.
GERALD E. CONNOLLY.