

# A Victory for Religious Freedom

**A**s U.S. president Bill Clinton signed the Religious Freedom Restoration Act (RFRA) in the idyllic setting of the White House rose garden on November 16, 1993, he mused that "the power of God is such that even in the legislative process miracles can happen." The President meant, of course, that he was signing into law the most important piece of religious legislation since the Bill of Rights. And this through an almost unthinkable coalescence of interest groups.

Seventh-day Adventists played a key role in efforts to pass the new legislation. With appropriate guidance and coordination from religious liberty personnel at the conference, union, division, and GC levels, Adventists across the breadth of the nation pressured their legislative representatives with phone calls, faxes, letters, and personal visits on the issue. And Dr. Gary Ross, as the Adventist Church's liaison with the U.S. legislature, lobbied congressional staff people and members in countless visits and carried various assignments as a member of the coalition formed by 68 organizations to promote RFRA.

Because of the significance of this recent action to Adventists and Christians in general, the Review asked Dr. Ross to explain the importance of the law for our readers and the lessons the Adventist Church learned in the process.—  
Editors.

**W**hat does RFRA accomplish? Think of the bill as Congress' response (and now the response of the nation as a whole) to the U.S. Supreme Court's "peyote ruling," *Oregon v. Smith*, of April 1990. That harmful ruling had made religiously motivated actions, such as the ritualistic use of a prohibited drug, give way to laws of general applicability without any showing by government that a dire, significant, compelling need existed for such a surrender. Under that ruling's brief dispensation, religious practices succumbed frequently and automatically to laws that incidentally burdened them. Government successfully invoked *Smith* more than 50 times to curb religious practices, thus reducing liberty to just the "luxury" that Justice Antonin Scalia had felt "our nation could not afford."

By Gary M. Ross, an associate director of the General Conference Public Affairs and Religious Liberty Department who serves as liaison to the U.S. Congress.

Pushed by a hostile public, federal legislators drafted, debated, and eventually passed the RFRA remedy: a reinstatement of the "compelling interest" test that federal judges must use in determining when, if ever, a governmental action can permissibly restrict the exercise of religion. Long in vogue prior to 1990, that judicial standard is rarely met by government, which means that religious practice generally prevails. One thinks immediately of the Wisconsin Amish in the 1970s—their

demand on religious grounds for exemption from the compulsory school attendance law, and government's failure to demonstrate compelling reasons for denying that exemption. But in many less-publicized cases religious practice had similarly triumphed over contrary laws when weighed against a high level of proof. Of course, religious practice did not *always* prevail, and it will not always do so now—despite the radical improvement of the situation.

## What did Adventists in the

United States do to promote this legislation? As they analyzed the *Smith* decision and concluded that *anyone's* religious behavior stood to suffer if laws applying across the board could prevail without being shown to embody an interest of the highest order, church leaders and laypeople acted out their Christian citizenship in ways that made them "seen, felt, and heard" in the halls of the U.S. Congress.

Notwithstanding this unprecedented venture into the public arena by Adventists (and numerous other citizens, as well), RFRA's victory came hard, testing the very perseverance of its backers. The U.S. Catholic Bishops and the National Right to Life Committee first obstructed RFRA by claiming that it related to the intense American debate over abortion, and, specifically, that it created a fallback to be used by pro-choice advocates after the expected demise of *Roe v. Wade*, the permissive 1973 Supreme Court ruling on abortion. Many of these critics "recanted" and came to champion RFRA. By then, however, a second challenge loomed, the claim of various state attorneys general that RFRA went straight to law-and-order concerns of the country by facilitating too many demands from inmates of the federal prison system (or, conversely, by obstructing government's ability to silence such demands and forestall the breakdown certain to result). These sentiments resulted in a proposed amendment exempting prison cases from any reinstatement of a judicial standard. On October 27 the Senate narrowly rejected this amendment, then overwhelmingly passed the unamended RFRA.



President Bill Clinton (center) signs the landmark Religious Freedom Restoration Act as Vice President Al Gore and members of Congress look on.

## What have we learned from the protracted battle?

While the push for RFRA remains fresh in our minds, let us note the lessons that it has taught us. I list them here in no particular order of importance.

1. Despite their alleged finality, findings of the judicial branch of the federal government may not represent the final word. When justifiable under the Fourteenth Amendment of 1868, statutory reversals of such findings constitute a possible response to adverse legal situations. The tactic per se was rarely questioned in the RFRA battle. Probably, however, this tactic should be used sparingly.

2. Under the American system the free exercise of religion is not, and never will be, absolutely protected. Adventists quickly realized that the issue at hand was not *whose* rights should forever escape the reach of government, but rather *how* jurists should balance one's alleged rights against the needs of government. The premise was always this: where government establishes a convincingly compelling need, it can override a legitimate right. One may lament this result, but no basis remains for objecting.

3. Religious liberty issues can be divisive, but they need not be. Due in large part to the relational skills of the Baptist joint committee that chaired the RFRA coalition, enormous civility accompanied the legislative effort. The coalition itself spanned the political spectrum from liberal to conservative because its member organizations laid aside deep differences to augment everyone's religious liberty.

4. Because legislative undertakings do not occur in a vacuum, their inherent merit may not put them over. We have seen how major concerns of the moment, like abortion and law and order, can imperil proposed bills by distorting them and, at the very least, delaying their enactment. Seemingly, the sheer secularity of our era made staff people in Congress dubious about laws involving religion, if not exasperatingly indifferent.

5. A myth we put to rest was the widespread belief that *liberal* always means "secular." People for the American Way, the liberal organization that monitors and battles the Christian Coalition in state and local elections, became a mainstay of the RFRA coalition. The American Civil Liberties Union, whose liberal agenda we easily write off as irreligious, functioned indispensably in the RFRA coalition. Senator Edward M. Kennedy, for some the model of traditional liberalism, championed our bill.

6. The Catholic Church is not synonymous with the abridgement of religious liberty. Pope John Paul II's New Year's pronouncements belie any such notion. The campaign for RFRA does likewise. Momentarily the American bishops faulted the bill. Then, seeing the fallacy of their premise that *Roe* was unraveling, they climbed on the bandwagon and practically took credit for the bill. At the press conference following the signing ceremony, a representative of the bishops called for a nationwide "recommitment to

religious liberty." (In regard to the *establishment* of religion, rather than its free exercise, Catholic positions remain troublesome, of course.)

7. The secular media constitute an enigma of our story. At newsworthy junctures they did not catch on. When RFRA did receive attention, distortions of the bill's very essence occurred. Journalists portrayed it, for example, as a "victory for Native American freedoms," overlooking RFRA's silence on peyote and on the use of it in Indian worship, and missing the abstract judicial standard that the bill reactivated. How to elicit accurate reporting by the media—that question will persist in future legislative endeavors.

8. As victory approached, new issues arose to ensure the ongoing nature of religious liberty advocacy. A coalition formed on behalf of the Native Americans who seek results-oriented legislation, that is, a bill that specifies and guarantees their sacred practices. Another coalition formed to revise Title VII of the Civil Rights Act of 1964 (the requirement that employers, except in cases of undue hardship, reasonably accommodate the religious practices of their employees) by adding language that defines the exception and makes it difficult to claim. Meanwhile, because RFRA triggers the compelling interest test only where religion is "substantially" burdened, the potential for mischief is considerable enough to warrant a fair amount of vigilance on that aspect alone.

9. Seventh-day Adventist citizens of the United States can be mobilized to work relentlessly on legislative causes felt to be compatible with the mission and well-being of the church. To all who responded, a hearty thanks. The various union directors of Public Affairs and Religious Liberty in the North American Division, to whom enormous gratitude is also due, possess and must maintain and even sharpen the ability to identify and nurture hundreds of articulate civic-minded members who at a moment's notice can contact their elected representatives.

10. General Conference and North American Division religious liberty personnel can work together in crises such as the one wrought by *Smith*. In no known instance during the RFRA battle did structural or organizational matters inhibit the work to be done. Rather, a remarkable demonstration of team play became the order of the day.

Let these various lessons not only complete the record of an important episode but also enlighten us for yet unwaged battles. As I have indicated, the exhilarating job of religious liberty advocacy is not finished.

## CHURCH CALENDAR

- Dec. 11 Health and Temperance Day
- Dec. 18 World Stewardship Day
- Dec. 18 Thirteenth Sabbath Offering for the Africa-Indian Ocean Division
- Dec. 31 Ingathering campaign ends