



PROTECTING RELIGIOUS FREEDOM: THE RELIGIOUS FREEDOM RESTORATION ACT



Introduction

Since its near-unanimous passage by Congress in 1993, the Religious Freedom Restoration Act (RFRA) has been the primary federal law protecting all Americans' religious freedom from overreach by the federal government. It restores protection that was intended to be provided by the First Amendment.

Why it matters

Congress has never enacted an exception or carve-out to RFRA and has wisely never passed a law that is not subject to RFRA's protections. We believe that must remain true if religious freedom is to be preserved. Should Congress carve out an exception to RFRA for one special interest, it will have to do so for many special interests. In that case, RFRA would become a toothless law, protecting no one's religious freedom.

ASK

For equal protection for all religious claims, keep the Religious Freedom Restoration Act unamended and without carve-outs or exceptions. No law should be exempt from RFRA's protection.

(over)



Background

Since a Supreme Court decision in 1990, the religious freedom clause in the Bill of Rights alone does not provide complete protection should the government step on religious conscience or practices. But RFRA reinstated the legal protection that the First Amendment used to provide citizens. Signed into law in 1993, it overlays all federal law, including statutes, regulations, policies, and guidance documents.

If a citizen's religious exercise would be substantially burdened by application of a particular law, the government must exempt the citizen from that law—unless the government can demonstrate a compelling governmental interest that cannot be achieved by a less restrictive alternative.

While RFRA sets a high bar before the government may violate a citizen's religious exercise or conscience, the courts nonetheless often rule in favor of the government. Basically, RFRA is a “sensible balancing test” that puts a sympathetic thumb on the scale in favor of religious freedom, but still allows the government to prevail if a judge finds the law to be the least restrictive means of achieving a compelling governmental interest. RFRA is a law that treats both religious citizens and the government fairly.



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