



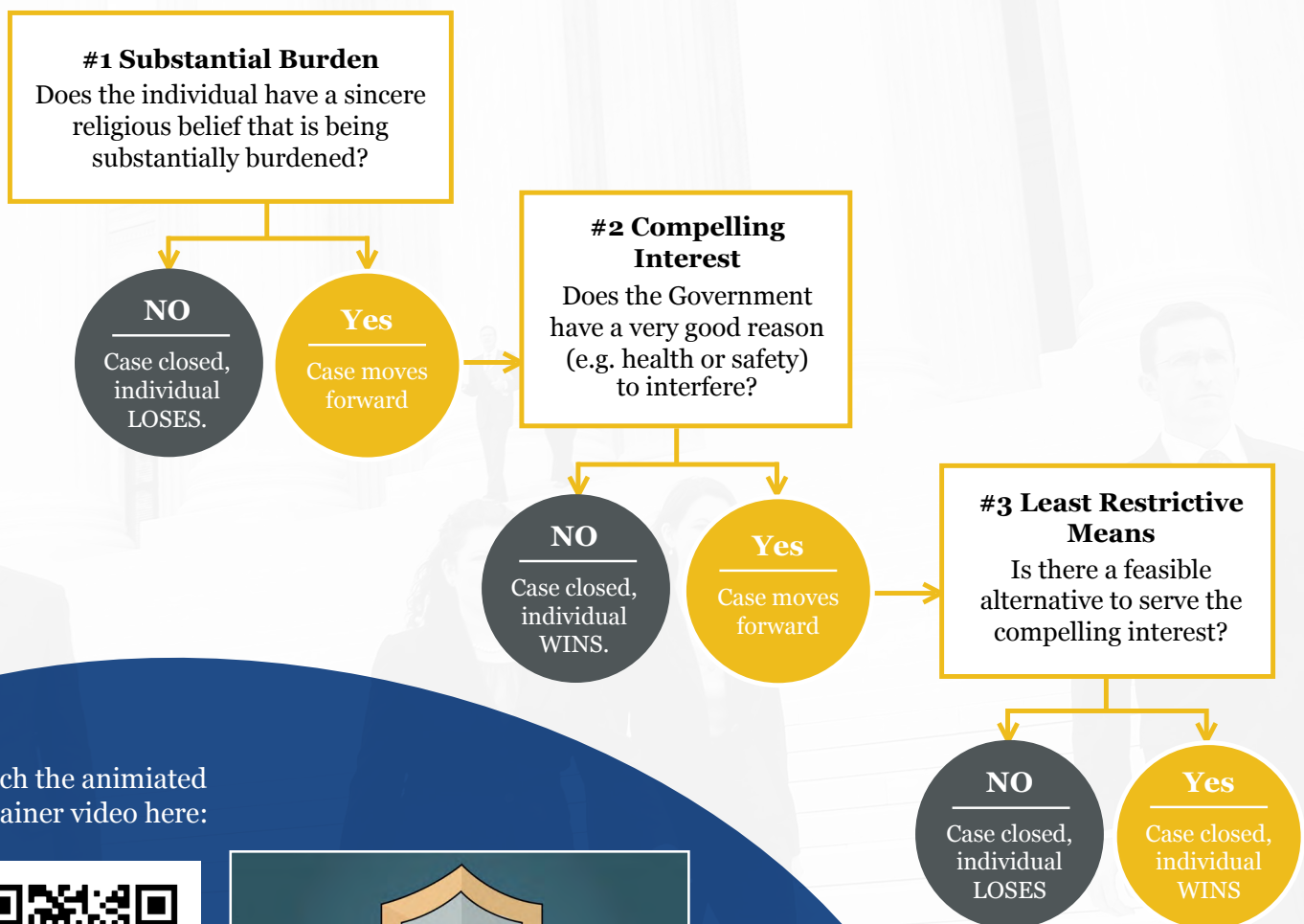
BECKET
Religious Liberty for All

Religious Freedom Restoration Act (“RFRA”)

RFRA is a Balancing Test

RFRA is a federal civil rights law—particularly critical for religious minorities and disfavored faith groups—that applies across all federal statutes, regulations, and other laws. RFRA is not an automatic win for a religious person. It does not predetermine winners and losers. It simply promises religious people a day in court when government regulation has burdened their faith.

RFRA is a balancing test: the government cannot substantially burden the exercise of religious belief unless the government can prove that the burden serves a compelling government interest that is accomplished by the least restrictive means. The analysis looks like this:



Watch the animated explainer video here:





RFRA's Bipartisan History

RFRA was passed in 1993 after the Supreme Court dramatically cut back long-standing constitutional protections for religious liberty in *Employment Division v. Smith*. The Court upheld a decision by Oregon state to deny unemployment benefits to Native Americans who were fired for using peyote in their religious ceremonies because the law did not intentionally target a religious practice.

A highly diverse coalition of elected officials, scholars, and advocacy groups united to restore broader protections for religious freedom. The result was the passage of RFRA in 1993 with the support of “one of the broadest coalitions in recent political history,” including 66 religious and civil liberties groups, “including Christians, Jews, Muslims, Sikhs, Humanists, and secular civil liberties organizations.”¹

RFRA's passage had bipartisan leadership in the Senate, sponsored by Senator Ted Kennedy and Senator Orrin Hatch. In the House, it was spearheaded by then-Representative Chuck Schumer. It passed Congress with nearly unanimous support and was signed into law by President Clinton in 1993. In his signing remarks, President Bill Clinton noted “what a broad coalition of Americans came together to make this bill a reality,” and that “many of the people in the coalition worked together across ideological and religious lines.”²

RFRA Primarily Benefits Minorities

Critics of RFRA think that it opens the floodgates to a host of novel claims, transforming “religious freedom” from a shield for protecting religious minorities into a sword for imposing Christian values in the areas of abortion, contraception, and gay rights.

But that prediction is unsupported. A comprehensive empirical study of religious freedom cases from 2012 to 2017 reveals that religious minorities are significantly overrepresented in religious freedom cases; meanwhile, Christians are significantly underrepresented.³

RFRA Applies to All Federal Statutes

Under RFRA's rule of construction, Congress ensured that RFRA applies across all federal law. It cannot be waived except by express citation: “(b) Rule of construction -- Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.” 42 U.S.C. § 2000bb-3(b).

Congress has never waived any federal statute from RFRA's civil rights protections. Waiving RFRA would be unnecessary because RFRA itself already implements a balancing test that allows the government to override a religious claim where there is a compelling government interest. The only reason to keep RFRA from applying to proposed legislation is to allow the government to override religion where it has an *uncompelling* reason to do so.

Because RFRA is a balancing test, it does not automatically give a pass to religious claims, including where those claims intersect with questions surrounding the LGBTQ community. Many states, like Connecticut and Illinois, have had state-level RFAs on the books since the 1990s, and LGBTQ advocates hail them as some of the best states for LGBTQ individuals.

¹ Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 Tex. L. Rev. 209, 210, 244 (1994).

² Statement by President Clinton on Signing the Religious Freedom Restoration Act of 1993 (Nov. 16, 1993).

³ Luke W. Goodrich & Rachel N. Busick, *Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases*, 48 Seton Hall L. Rev. 353 (2018) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067053).