Religious Freedom Restoration Act ("RFRA")

**RFRA is a Balancing Test**

RFRA is a critical federal civil rights law, particularly for religious minorities and disfavored faith groups, that applies across all federal statutes, regulations, and other law. RFRA does not predetermine winners and losers, it simply promises religious claimants a day in court.

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:

<table>
<thead>
<tr>
<th>#1 Substantial Burden</th>
<th>#2 Compelling Interest</th>
<th>#3 Least Restrictive Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the individual have a sincere belief that is being substantially burdened?</td>
<td>Does the Government have a very good reason (e.g. health or safety) to interfere?</td>
<td>Is there a reasonable alternative to serve the public interest?</td>
</tr>
<tr>
<td><strong>NO</strong></td>
<td><strong>NO</strong></td>
<td><strong>NO</strong></td>
</tr>
<tr>
<td>Case closed, individual LOSES.</td>
<td>Case closed, individual LOSES</td>
<td>Case closed, individual LOSES</td>
</tr>
<tr>
<td><strong>Yes</strong></td>
<td><strong>Yes</strong></td>
<td><strong>Yes</strong></td>
</tr>
<tr>
<td>Case moves forward</td>
<td>Case moves forward</td>
<td>Case moves forward</td>
</tr>
</tbody>
</table>

**RFRA’s Bipartisan History**

In the wake of the U.S. Supreme Court’s 1990 decision in *Employment Division v. Smith*, 494 U.S. 872, which cut back long-standing constitutional protections for religious liberty, 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,” with 66 religious and civil liberties groups, “including Christians, Jews, Muslims, Sikhs, Humanists, and secular civil liberties organizations.”

RFRA was sponsored by Senator Ted Kennedy, Senator Orrin Hatch, and then-Representative Chuck Schumer, passed by an overwhelming bipartisan majority of Congress, and 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.”

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RFRA Primarily Benefits Minorities

Critics of *Burwell v. Hobby Lobby* predicted that the decision would open 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 recent comprehensive empirical study of religious freedom cases post-*Hobby Lobby* reveals that religious minorities remain significantly overrepresented in religious freedom cases; Christians remain significantly underrepresented.3

No Good Reason to Repeal RFRA

Under RFRA’s rule of construction, Congress ensured that RFRA cannot be repealed 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 exempted any statute from RFRA’s civil rights protections. Repeals of RFRA are 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.

Common Myths

**MYTH:** RFRA was created to discriminate based on sexual orientation.

**REALITY:** RFRA was enacted in 1993 to protect religious minorities. RFRA was originally created after Oregon state denied unemployment benefits to Native American counselors who were fired for using peyote in their religious ceremonies.

**MYTH:** RFRA is just a trump card for religious people to use in court.

**REALITY:** No side gets an automatic win. The interests of all sides get weighed. All RFRA does is level the playing field in court for people of deeply held religious convictions. Sometimes they win and sometimes they lose.

**MYTH:** RFRA spells disaster for LGBT rights.

**REALITY:** RFRA is a balancing test and doesn’t automatically give a pass to the religious. Also, states like Connecticut and Illinois have had state-level RFRAs on the books since the 1990s, and LGBT advocates still hail them as some of the best states for LGBT individuals.

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For more information, please visit: www.becketlaw.org/research-central/rfra-info-central/