



FACT SHEET

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Do No Harm Act (H.R. 1378)

Background

In 1993, Congress passed the bipartisan *Religious Freedom Restoration Act* (RFRA) to prohibit the government from interfering with one's practice of religion unless (1) there is a compelling government interest and (2) the law is implemented in the least restrictive manner to further that interest.

Under this test, government may substantially burden religious exercise when it is necessary to achieve a compelling government interest, such as the enforcement of civil rights laws, as there is no alternative means to enforce nondiscrimination requirements.

At the time of its passage, RFRA was supported by a broad bipartisan coalition that represented diverse faith groups, legal experts, and civil liberty advocates. However, despite its clear intent to protect people from discrimination, RFRA has increasingly been misused to harm the rights of others. For instance, RFRA has been cited by employers claiming religious objections to recognizing worker protections under the *National Labor Relations Act*.

Two Supreme Court rulings have escalated the potential misapplication of RFRA. First, the Court's ruling in *Burwell v. Hobby Lobby Stores, Inc.* permitted corporations to rely on RFRA to deny certain preventive health care services to their employees. And last year, the Court's majority opinion in *Bostock v. Clayton County* called RFRA a "super statute" indicating that "it might supersede Title VII [of the 1964 Civil Rights Act]'s commands in appropriate cases."

The Trump Administration demonstrated the administrative misuse of RFRA to override anti-discrimination protections in federally funded programs. In one of the most egregious examples, the U.S. Department of Health and Human Services granted a request from the state of South Carolina to waive federal religious nondiscrimination requirements for federally funded child foster care agencies. One agency that received almost \$1 million last year has turned away families who are Catholic, Jewish, or LGBT, notwithstanding a federal prohibition on exactly this kind of discrimination.

RFRA was never intended to erode civil rights under the guise of religious freedom. RFRA does not change the First Amendment's Establishment Clause, which ensures that the government cannot grant religious exemptions that have a detrimental impact or elevate certain religious beliefs above the law.

About the *Do No Harm Act*

The *Do No Harm Act* restores the *Religious Freedom Restoration Act's* original purpose to provide protections for religious exercise while ensuring that RFRA is not used to erode civil rights under the guise of religious freedom.

The bill makes clear that RFRA would not apply in certain circumstances where a religious exemption could cause harm to others. Specifically, the bill limits the application of RFRA from being used against:

- Nondiscrimination laws;
- Employment laws governing wages and collective bargaining;
- Child labor and protection laws;
- Access to health care;
- Services provided through a government contract or grant; and
- Services by government officials.

These areas of the law protect important civil and legal rights and they are places where a religious exemption for one, results in harm to another. The *Do No Harm Act* restores protections for these areas under the law to ensure that RFRA can no longer be used to weaken civil rights and other protections. Additionally, the legislation clarifies that RFRA can only be used in litigation in which the government is a party.

The legislation is sponsored by Chairman Scott and joined by Congressman Steve Cohen (TN09), Congressman Jamie Raskin (MD-08), and Congresswoman Mary Gay Scanlon (PA-05) as co-leads.

Endorsing Organizations

Many of the organizations that supported the passage of RFRA in 1993 now support the *Do No Harm Act*. Today, the *Do No Harm Act* is supported by 96 civil rights, LGBTQ, civil liberty, faith, health and labor organizations:

Advocates for Youth, AFL-CIO, AFSCME, American Atheists, American Baptist Home Mission Societies, American Civil Liberties Union, American Federation of Teachers, American Humanist Association, American Psychological Association, Americans United for Separation of Church and State, Anti-Defamation League, Basic Rights Oregon, Bend the Arc Jewish Action, BiNet USA, Black Nonbelievers, Call To Action, Catholics for Choice, Center for American Progress, Center For Black Equity, Center for Inquiry, Center for Reproductive Rights, CenterLink: The Community of LGBT Centers, Circle Sanctuary, Congressional LGBTQ+ Equality Caucus, DignityUSA, Disciples Center for Public Witness, Disciples Justice Action Network, Equal Partners in Faith, Equality California, Equality Federation, Family Equality, Feminist Majority, FORGE, Inc., Freedom for All Americans, Freedom From Religion Foundation, Friends Committee on National Legislation, GLBTQ Legal Advocates & Defenders (GLAD), Global Justice Institute, Metropolitan Community Churches, GLSEN, Hindu American Foundation, Human Rights Campaign, Interfaith Alliance, Jewish Women International, KARAMAH, Lambda Legal, Leadership Conference on Civil and Human Rights, Legal Voice, LGBT Technology Partnership & Institute, Medical Students for Choice, Modern Military Association of America, Movement Advancement Project, Muslim Advocates, Muslims for Progressive Values, NAACP, NARAL Pro-Choice America, National Asian Pacific American Women's Forum (NAPAWF), National Association of Social Workers, National Black Justice Coalition, National Center for Lesbian Rights, National Center for Transgender Equality, National Council of Churches, National Council of Jewish Women, National Employment Law Project, National Employment Lawyers Association, National Gay & Lesbian Chamber of Commerce, National Health Law Program, National LGBTQ Task Force Action Fund, National Organization for Women (NOW), National Partnership for Women and Families, National Women's Health Network, National Women's Law Center, NEAT - National Equality Action Team, New Ways Ministry, NMAC, Nurses for Sexual & Reproductive Health, Out & Equal Workplace Advocates, PFLAG National, Physicians for

Reproductive Health, Planned Parenthood Federation of America, Presbyterian Church (U.S.A.), Pride at Work, Religious Coalition for Reproductive Choice, Reproductive Health Access Project, SAGE, Secular Coalition for America, Secular Policy Institute, Sexuality Information and Education Council of the U.S. (SIECUS), Society for Humanistic Judaism, T'ruah: The Rabbinic Call for Human Rights, The Trevor Project, Unitarian Universalist Association, United Church of Christ, Justice and Witness Ministries, United Methodist Church — General Board of Church and Society, Uri L'Tzedek: Orthodox Social Justice, Whitman-Walker Health, Women's Alliance for Theology, Ethics, and Ritual (WATER), and YATOM: The Jewish Foster & Adoption Network.