

## **Do No Harm Act**

### **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*.

In recent decades, several court rulings have escalated the potential misapplication of RFRA. First, the Supreme 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. In 2020, the Supreme 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." In 2022, a District Court judge in Texas ruled that the *Affordable Care Act's* requirement that employers cover HIV-prevention medication, known as PrEP drugs, violates RFRA.

The Trump Administration also 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.

Read the Education and the Workforce Committee Democrats' report—[Religious Liberty? The History of Religious Liberty in Federal Policy from 1993 to 2022](#)—to learn more.

### **About the *Do No Harm Act***

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

The legislation is led by House Committee on Education and the Workforce Ranking Member Robert C. “Bobby” Scott (D-VA-03), Rep. Steve Cohen (TN-09), House Committee on Oversight and Accountability Ranking Member Jamie Raskin (MD-08), and House Subcommittee on the Constitution and Limited Government Ranking Member Mary Gay Scanlon (PA-05) in the House and Senator Cory Booker (D-NJ) in the Senate.

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.