



Atheists. Agnostics. Humanists. Americans.

The Do No Harm Act

[The Do No Harm Act](#) is designed to clarify the Religious Freedom Restoration Act (RFRA) and to restore RFRA to its original intent.

Background

When passed into law nearly three decades ago, RFRA was intended to protect religious freedom, especially for religious minorities. It was a response to the 1990 Supreme Court decision in *Employment Division v. Smith* that many saw as significantly reducing constitutional protections for religious freedom. RFRA was designed to reflect the state of the law prior to *Smith*: to provide heightened but not unlimited protections for religious exercise.

RFRA prohibits the federal government from “substantially burden[ing]” a person’s religious exercise unless doing so is the least restrictive means of furthering a compelling governmental interest. Thus, minimal burdens were not supposed to trigger RFRA protection and even substantial burdens on exercise of religion were permitted where necessary to achieve a compelling government interest (e.g. prohibiting discrimination). RFRA was supported by a broad coalition of organizations including people from many faiths and denominations, legal experts, and civil liberties advocates.

The Problem Now

Many organizations, including many that supported RFRA in 1993, agree that despite the law’s focused, straightforward intent, current legal interpretations of it push RFRA beyond its original intent and purpose, and those interpretations have harmed those who should be protected. Individuals and businesses have worked to distort RFRA into a blank check to discriminate or to impose their religious beliefs on others.

In 2014, the U.S. Supreme Court ruled in *Burwell v. Hobby Lobby Stores* that large, for profit, closely held corporations can use RFRA to trump the law that would otherwise require them to provide employees with insurance coverage for contraception. The Court held that the ACA’s birth control benefit substantially burdened business owners and that the law was not narrowly tailored because the government provided a religious accommodation to religious nonprofit organizations.

Then in 2017, the Trump administration, relying on an even more extreme interpretation of RFRA, issued new regulations that allow any employer—even for-profit corporations—to use religion to deny contraception insurance coverage to their employees and students.

The problems with RFRA extend beyond blocking people’s access to healthcare. On October 6, 2017, then-Attorney General Jeff Sessions released guidance titled “Federal Law Protections for Religious Liberty.” The guidance, which applies to all federal agencies, presented an extreme interpretation of RFRA that would be used throughout the federal government.

Federal agencies—relying on this guidance— cited RFRA in creating sweeping religious exemptions. HHS exempted government-funded foster care agencies in South Carolina from a federal regulation that bars discrimination. As a result, Miracle Hill Ministries, for example, could continue to take government funds to fund homes for children in state care due to abuse and neglect while refusing to work with potential parents who are not evangelical Protestants.



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In addition, the Department of Labor issued a directive and drafted implementing regulations that would expand an already problematic religious exemption to allow federal contractors to cite religious beliefs to discriminate in hiring, including on the basis of an individual's sexual orientation or gender identity. These examples show the damage that can be done by executive order and regulation in the absence of legislation that clarifies what RFRA does and does not allow.

The Do No Harm Act

[The Do No Harm Act](#) is designed to restore RFRA to its original intent. It would preserve the law's power to protect religious freedom and clarify that it may not be used to harm others.

Under the bill, people could still use RFRA to protect religious exercise, including the right to wear religious attire and observe religious holidays. RFRA, however, could not be used to bypass federal protections in ways that harm other people. These include barring RFRA from being used to:

- **Undermine non-discrimination laws:** HHS used RFRA to exempt federally funded foster care agencies in South Carolina from the religious nondiscrimination protections provided under 45 CFR § 75.300(c). A federal court in Michigan ruled in favor of a funeral home that fired a transgender employee, and held that the employer could use RFRA as a defense to a sex discrimination claim under Title VII, *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 201 F. Supp. 3d 837 (E.D. Mich. 2016), cert. granted on different question, No. 18-107 (U.S. Apr. 22, 2019)
- **Deny access to healthcare:** the Supreme Court held that RFRA exempts large, for-profit, closely held corporations from the law that would otherwise require them to provide employees insurance coverage for contraception, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)
- **Evade child welfare laws:** a witness successfully invoked RFRA to avoid testifying in a federal child labor case, *Perez v. Paragon Contractors Corp.*, No. 2:13CV00281-DS, 2014 WL 4628572 (D. Utah Sept. 11, 2014)
- **Ignore laws that protect workers' rights:** religiously affiliated institutions have argued that they may use the RFRA standard to justify paying women less because they are not heads of households, *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986)
- **Refuse to provide government-funded services under a contract:** religiously affiliated contractors and grantees want to use RFRA to refuse to provide or even refer beneficiaries for services required under those grants and contracts, Comments Submitted by U.S. Conference of Catholic Bishops, Nat'l Assoc. of Evangelicals et al., to Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children
- **Refuse to perform duties as a government employee:** legal advocacy organizations advised government employees that, under state RFRAs, government employees do not have to provide services equally to all who seek them, Memorandum from Alliance Defending Freedom to Virginia Clerks Responsible for Issuing Marriage Licenses



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The Do No Harm Act would maintain RFRA's important protections for the exercise of religion, while responding to the very real instances in which the RFRA standard has been misappropriated by courts and the Trump administration.

Broad Support

Numerous LGBTQ, civil rights, health, labor and faith groups have supported the Do No Harm Act, including the ACLU, AFL-CIO, Americans United for Separation of Church and State, The Center for American Progress, Human Rights Campaign, Interfaith Alliance, Lambda Legal, The Leadership Conference on Civil and Human Rights, NAACP, NARAL Pro-Choice America, National Center for Transgender Equality, National Council of Churches, National LGBTQ Task Force, National Partnership for Women and Families, National Women's Law Center, Planned Parenthood Federation of America, Presbyterian Church (U.S.A.), United Church of Christ, Justice and Witness Ministries, and The United Methodist Church — General Board of Church and Society.

Current Status

HR 1378 was introduced in the House of Representatives by Congressman Bobby Scott (D-VA) and has 136 cosponsors. For more information, please contact Scott MacConomy at the Secular Coalition for America at scott@secular.org

Member Organizations

American Atheists • American Ethical Union • American Humanist Association • Atheist Alliance of America • Black Nonbelievers, Inc. • Camp Quest • The Center for Inquiry and the Richard Dawkins Foundation for Reason & Science • The Clergy Project • Cultural and Secular Jewish Organization • Ex-Muslims of North America • Foundation Beyond Belief • The Freethought Society • Freedom From Religion Foundation • Hispanic American Freethinkers • Military Association of Atheists and Freethinkers • Recovering From Religion • Secular Student Alliance • Secular Woman • Society for Humanistic Judaism • Unitarian Universalist Humanists