



North Carolina – Unclear State Protection for Religious Freedom

North Carolina’s Constitution seemingly provides strong protection for religion and faith. But a U.S. Supreme Court decision has left it unclear whether North Carolina courts will still provide that strong protection. That is why the Religious Freedom Restoration Act (RFRA) is needed in North Carolina.

Article I, Section 13 of the North Carolina Constitution provides that “[a]ll persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.” Before 1990, North Carolina courts long held that this constitutional provision gives the same protection for religious freedom that the First Amendment to the United States Constitution does. *See, e.g., In re Williams*, 269 N.C. 68, 78, 152 S.E.2d 317, 325 (1967) (“[T]he freedom protected by [Article I, Section 26] of the State Constitution is no more extensive than the freedom to exercise one’s religion, which is protected by the First Amendment to the Constitution of the United States”). Prior to 1990, that meant that religious freedom received very strong protection in North Carolina, precisely because the First Amendment received very strong protection.

But in 1990, that all changed. The United States Supreme Court significantly curtailed the religious-liberty protection available under the First Amendment by declaring that it does not guard against burdens on religion imposed by neutral and generally applicable laws. *See Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990). Thus, if the government enacts a law that applies to everyone, and the law doesn’t specifically target religion, the First Amendment offers no protection if the law happens to infringe on religious freedom.

Since 1990, North Carolina courts have not clarified whether they will continue to interpret their state religious protection coextensive with the First Amendment or whether they will adhere to the strong religious safeguards that existed in North Carolina, and across the nation, until 1990. *See State v. Carignan*, No. COA05–825, 178 N.C. App. 562, 631 S.E.2d 892, 2006 WL 1984426, *3 (N.C. Ct. App. July 18, 2006) (unpublished) (noting that although North Carolina “courts have held that the religious freedoms protected by this provision are co-extensive with those protected by federal law,” “[o]ur courts have not yet addressed whether the [federal] analysis in *Smith* should apply with respect to the North Carolina Constitution”).

This cloud of uncertainty demonstrates that the State of North Carolina has a pressing need to enact a state RFRA in order to ensure that the people’s religious freedom is protected from unreasonable forms of state overreach. Without it, the religious liberty of all North Carolinians is at risk.