



RFRA: Frequently Asked Questions

Q. What is RFRA?

A. In 1993, a nearly unanimous Congress and President Clinton enacted the Religious Freedom Restoration Act (“RFRA”) in response to a U.S. Supreme Court decision (called *Employment Division v. Smith*) that weakened the decades-old protections for citizens to live and work according to their religious beliefs. RFRA is designed to protect religious freedom from government infringement by providing a sensible balancing test to weigh two very important interests: religious liberty and the rule of law. RFRA ensures that every American—regardless of belief system or political power—receives a fair hearing when government action seeks to force that person to violate his or her religious beliefs. RFRA enjoyed overwhelming bipartisan support from groups across the religious, legal, and political spectrums, and, since that time, 21 states have also adopted this legal balancing test through their own RFRA to apply to state and local government actions.¹

Q. How does RFRA work?

A. RFRA creates a simple balancing test to weigh a person’s deeply-held religious beliefs against the government’s interest in enforcing its law. Although some of the specific language may vary from state to state, there are three core factors of the RFRA balancing test:

1) *The application of a government law that substantially burdens religious exercise*

A person claiming that government action has “substantially burdened”² his or her religious exercise must show that the government’s action or law forces him or her to speak or act contrary to deeply-held religious beliefs, or to refrain from speaking or acting in a way that his or her faith requires.

If a person’s religious exercise is being burdened by government action, then the next two elements must be met for the law to be enforced in the circumstance presented.

¹ In addition to the 21 states that have adopted this legal balancing standard through their legislatures, seven state supreme court have employed this same legal balancing standard in interpreting their state constitutions.

² Alabama and Connecticut do not include “substantial” before “burden” in their state RFRA, but courts have interpreted “substantial burden” and “burden” synonymously.

2) *Compelling government interest in enforcing the law*

To enforce laws that burden religious exercise, it must be shown that the government has a “compelling government interest” in forcing the person to violate their conscience in that particular situation. In other words, the party defending the applicable law or government action must show that there is a very, very important reason for burdening the person’s religious liberty in that particular situation. For example, national security and public safety are often deemed by courts to be compelling government interests.

3) *Least restrictive means of achieving the compelling governmental interest*

Even if there is an incredibly important (compelling) reason to force a person to violate their religious convictions (*e.g.*, public safety), it must also be demonstrated that there is no other way to achieve the policy goal of the law at issue other than to force the person to violate their religious or moral beliefs.

If all of these factors are demonstrated—that there is a very, very important interest and that no other means exists to accomplish the policy goal—then the government interest at issue will generally override an individual or group’s claim to religious freedom. But if either or both of the 2nd and 3rd factors are not demonstrated, then it will generally be found that the religious beliefs at issue were unreasonably and impermissibly infringed upon.

In sum, RFRA is not a trump card, nor does it determine the outcome of any situation: each case is fact-specific. RFRA simply provides a sensible, proven balancing test to weigh important, competing interests and give religious freedom a fair hearing.

Q. Why do we need RFRA since we have the First Amendment?

A. In 1990, the U.S. Supreme Court in *Employment Division v. Smith* substantially weakened the protections courts had previously given to burdens on the free exercise of religion under the First Amendment. Rather than applying the same legal balancing test previously used—the same test used for burdens on free speech and free association—the U.S. Supreme Court concluded that laws and government actions do not burden people’s ability to live and work according to their beliefs unless the legislature specifically intended to target religious beliefs. This left many laws that burdened religious exercise functionally exempt from constitutional scrutiny. Thus, in the last 25 years, people of all faiths and political backgrounds have come together to enact RFRA and effectively reverse the *Smith* decision and *restore* the safeguards for religious freedom protections that were discarded. RFRA is desirable because it restores deference to the protections previously given to the free exercise of religion.

Q. Why do we need state RFRA if we already have a federal RFRA?

A. While federal RFRA originally applied to both federal and state and local government actions, in 1997, the U.S. Supreme Court determined in *City of Boerne v. Flores* that the federal RFRA did not apply to state or local governments. In an effort to protect citizens’ religious

freedom against state and local government burdens, 21 states have since adopted the legal balancing test employed in federal RFRA:

<u>STATE</u>	<u>YEAR</u>	<u>STATE</u>	<u>YEAR</u>
Alabama	1999	Louisiana	2010
Arizona	1999	Mississippi	2014
Arkansas	2015	Missouri	2003
Connecticut	1993	New Mexico	2000
Florida	1998	Oklahoma	2000
Idaho	2000	Pennsylvania	2002
Illinois	1998	Rhode Island	1993
Indiana	2015	South Carolina	1999
Kansas	2013	Tennessee	2009
Kentucky	2013	Texas	1999
		Virginia	2007

Q. Who does RFRA protect?

A. RFRA protects every person against government overreach, regardless of whether you are a Republican or Democrat, liberal or conservative, gay or straight. While RFRA is not designed to predict any given outcome, it gives every person a fair day in court if government action has infringed their freedom to believe and work according to those beliefs.

For example, because of RFRA's balancing test:

- Native American kindergartener Adriel Arocha's right to wear his hair long, as his religion required, was vindicated. He had been told by school administrators to cut the long hair or tuck it into his shirt.
- A Philadelphia outreach ministry was able to continue serving the homeless in a city park, as they had done for two decades, after the city banned its activity.
- The U.S. Supreme Court held that the government could not force Mennonite owners of a Pennsylvania wood furnishings manufacturing company to purchase and provide abortion-inducing drugs and devices that violated their sincerely held beliefs that all human life is sacred and deserving of protection.
- The City of Fort Lauderdale was prevented from prohibiting a gentleman from operating a program to feed the homeless.
- Lipan Apache religious leader Robert Soto's right to possess eagle feathers, which are central to his religion, was vindicated. He faced criminal charges for possessing the feathers, which the federal government had confiscated, but since returned.
- Orthodox Jewish prisoner Bruce Rich was able to receive kosher meals, a diet mandated by his faith, which the prison had initially denied him.
- Muslim prisoner Abdul Muhammad won the right to grow the ½ inch beard his faith required. The prison had refused to allow his beard, even though such beards were permitted for non-religious reasons.

- Two Christian evangelists, who were peacefully sharing their faith and handing out religious materials on a public sidewalk in San Antonio, were given a fair opportunity to build their case for the freedom to share their faith in court.
- Philemon Homes, a faith-based halfway house for prisoners, was allowed to continue offering its ministry after the local city council changed the city’s zoning law to try to shut Philemon Homes.
- Courts have found that interests in public safety can still be honored, while not simultaneously offending the religious beliefs of many Amish communities, by allowing the Amish to hang lanterns and reflective duct tape on their horse-drawn buggies, instead of the typically prescribed orange reflective triangles.

These are examples of times when the person’s religious beliefs won. There are also many examples of times when the government won. RFRA does not ensure that religious freedom wins; it merely ensures that it gets a fair shake. It places a check on government action.

Q. Does RFRA legalize discrimination?

A. No, RFRA does not legalize discrimination against anyone. It simply gives Americans a fair hearing when a government law is used against them *and* violates their core religious beliefs. RFRA neither provides a “license to discriminate,” nor does it even mention any class of persons. These laws provide a claim or defense to **everyone** when government action seeks to coerce conscience.

Q. Will RFRA Protect a Photographer, Baker, Florist, Minister, or Other Person Who Does Not Want to Participate in a Same-Sex Wedding?

A. While certain outcomes cannot be predicted under RFRA, RFRA ensures that, at a minimum, when government action is infringing on their religious beliefs, the religious beliefs at issue get a fair day in court. RFRA provides the test that has been used for decades when reviewing circumstances involving government burdens on citizens’ freedom to live and work faithfully. For example, if government action tries to force a photographer to participate in a same-sex marriage in violation of her religious beliefs, or a florist to create flowers for a same-sex commitment ceremony, or a Southern Baptist Church to rent their reception hall for a same-sex wedding, it would have to be demonstrated that the government has a compelling state interest to force that individual or entity to participate in the ceremony or event at issue. The interests of both sides would be fairly considered, after which the legal balancing test would be used to determine a proper result in that situation. Therefore, under RFRA, each conflict is examined to weigh the person’s freedom to follow their conscience, and whether the government has a compelling purpose for overriding that freedom in the circumstance presented, as well as whether there are any other reasonable means of achieving that purpose. In sum, RFRA does not determine court outcomes, but simply ensures that religious freedom gets a fair shake and that the government policy at issue is supported by the best possible reasons when attempting to force a person to violate her religious or moral beliefs.

Q. Will this law allow an employee to sue his private employer?

A. No. This law cannot be used to sue private employers. For example, Bank of America could not be vulnerable under this law if it reprimanded or fired an employee. The employee would be unable to raise a defense against Bank of America because there would be no state action involved. Protections might exist for the employee under other provisions of federal law, but not under RFRA. Indeed, in the 20+ years of RFRA's existence, at the federal level, and in the 21 states that now use RFRA's balancing test, no such claim has ever been raised against a private employer.

Q. Does RFRA detrimentally impact business in the state?

A. Quite the opposite. When the government burdens freedom and imposes restrictions on its citizens, it not only has a detrimental effect on the economy but also threatens the very system of freedom that makes the marketplace rich and diverse. When the government protects freedom, businesses and the economy flourish; when it limits citizens' freedoms, it undermines innovation and removes vital players from the marketplace, thereby limiting the choices and options available to Americans. Before America was an international economic powerhouse, it was a beacon of freedom.

Q. Does RFRA allow child abuse or domestic abuse in the name of religious exercise?

A. No. RFRA has never been successfully used in that way. First of all, child abuse and domestic abuse are crimes, and those who engage in such behavior will be prosecuted. Second, the government has a well-documented "compelling governmental interest" in ensuring that children are safe and protected, which will *always* supersede any religious teaching or belief that would try to allow such gruesome contact. Similarly, the same compelling interest exists in domestic violence cases. Notably, when a person has attempted to make a religious claim to defend such egregious behavior, courts have always summarily dismissed those defenses.