



UNDERSTANDING RELIGIOUS FREEDOM LAWS

“The original religious freedom bill was the Rolls Royce of religious freedom laws, but the replacement bill is still a Cadillac.”

Jerry Cox, President of Arkansas Family Council re: the Arkansas RFRA enacted April 2, 2015

The Rolls Royce of Religious Freedom Laws: The Rolls Royce is the make of the bills that the Indiana and Arkansas legislatures initially passed, and that Indiana Governor Mike Pence originally signed into law on March 26, 2015. These bills include the exact same legal balancing standard that is in the federal Religious Freedom Restoration Act (“RFRA”),¹ as well as the statutory laws of 21 states.² This standard does not predetermine the winners or losers of any particular dispute. It simply provides the test by which competing interests are measured. The Rolls Royce bill also provides exemplary clarity on the scope of their application.

- The Rolls Royce expressly defines “person” to include both individuals and legal entities.
- The Rolls Royce makes clear that the application of any law can prospectively burden free exercise rights, regardless of whether the government is a party to the dispute.

The Cadillac of Religious Freedom Laws: The Cadillac is the make of the bills that Congress and 20 states have legislatively enacted, including Arkansas on April 2, 2015. The Cadillac ensures that tribunals fairly balance government interests when they come into conflict with the religious convictions of the citizenry. The Cadillac, like the Rolls Royce, adopts the same legal balancing test that the U.S. Supreme Court has applied for over half a century. The primary difference between the Cadillac and the Rolls Royce is clarity. The Rolls Royce makes explicit what is implicit in the Cadillac, but the actual legal protection afforded by both bills is virtually the same.

- While the Cadillac does not provide an express definition of “person,” the U.S. Supreme Court has concluded that a “person” includes both individuals and legal entities.
- The Cadillac gives citizens a claim or defense in court when government action works to coerce conscience or substantially burden the exercise of deeply held religious beliefs.

The Lemon of Religious Freedom Laws: Indiana originally enacted a Rolls Royce religious freedom law, but it was amended on April 2, 2015. The result was a Lemon. Rather than ensuring that the same legal balancing test will be applied in every instance where government action substantially burdens religious freedom, Indiana’s new Lemon law now provides that, in certain situations, the government always wins.

- Instead of applying the appropriate balancing test to all instances where the exercise of deeply held religious beliefs conflicts with government interests, Indiana’s Lemon law withdraws statutory religious-freedom protection in certain instances.
- While RFRA laws are designed to refrain from picking winners and losers, Indiana’s Lemon law virtually guarantees that statutory religious-liberty protections will lose in certain circumstances.
- Indiana’s Lemon law deprives certain citizens of statutory protection to choose not to participate in expressive events or to communicate particular messages that conflict with their faith convictions.
- Indiana’s Lemon law eliminates religious interests from fair consideration when the source of the religious conflict involves issues of human sexuality like sexual orientation or gender identity—topics that directly implicate the core religious teachings of virtually every religion.

¹ In 1993, a near unanimous Congress and President Clinton enacted RFRA, which created a balancing standard that requires laws that burden religious exercise to (1) serve a compelling purpose, and (2) be the least restrictive means of achieving the law’s purpose.

² In addition to the 21 states that have adopted this legal balancing standard through their legislatures, seven state supreme courts employ this same legal balancing standard in interpreting their state constitutions.