



Why Every State Needs a Religious Freedom Restoration Act

What is RFRA and How Did It Originate?

In response to a 1990 U.S. Supreme Court decision that weakened constitutional protections for religious freedom, a nearly unanimous, bipartisan Congress and President Bill Clinton enacted the federal Religious Freedom Restoration Act (“RFRA”) in 1993. RFRA reinstated the legal balancing test (often referred to as “strict scrutiny”) that was used for decades prior to 1990. The legal test requires that government action cannot force a person to violate her religious or moral beliefs unless (1) the government is furthering a compelling interest, and (2) there are no other reasonable means available to achieve that interest. Originally, RFRA applied at both the federal and state levels. However, in 1997, the Supreme Court ruled that federal RFRA did not apply to the states. Since then, 21 states have enacted their own RFRA laws to ensure that citizens are protected from state and local government action that burdens religious practice.¹

How does the RFRA Balancing Test Work?

RFRA does not provide a blank check for anyone to do anything in the name of religion. It only provides the test to be used in balancing government interests against citizens’ freedom to live and work according to their conscience. RFRA requires that if government action is going to substantially burden the exercise of religion, it has to have a compelling reason to do so, and that, even if it has such a reason, if the government can accomplish its goals in other ways—without violating the convictions of its citizens—it has to use those other means. RFRA restores balance and fairness when state action burdens free exercise.

Who has Supported RFRA?

Support for RFRA has crossed broad ideological and political spectrums. Senator Ted Kennedy and now Vice President Joe Biden introduced and voted for the federal RFRA in the Senate, along with 95 other Senators. Representative (now Senator) Chuck Schumer introduced and voted for it in the House. In fact, a unanimous House of Representatives, which included the entire Democratic caucus and Congresswoman Nancy Pelosi, voted for RFRA in 1993. When President Bill Clinton signed RFRA into law, he explained that “we all have a shared desire . . . to protect, perhaps, the most precious of all American liberties, religious freedom.” President Obama voted for the Illinois RFRA twice when he was a state senator. The diversity of groups that supported federal RFRA include the ACLU, Americans United for Separation of Church and State, National Association of Evangelicals, and the Traditional Values Coalition. Vice President Al Gore noted that these groups “usually don’t agree on very much, but [they] have come together to support religious freedom.”

Who does RFRA Protect?

Whether you are Democrat or Republican, liberal or conservative, gay or straight, RFRA is designed to protect your constitutional freedoms from government overreach. While RFRA does not determine the outcome of any given dispute between government action and religious freedom, it gives every person’s religious beliefs fair consideration if government action burdens their ability to live and work according to those beliefs.

¹ 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.