

# Do No Harm Act FAQs

The Do No Harm Act will help ensure that religious freedom is a shield to protect and not a sword to harm others, by clarifying the Religious Freedom Restoration Act.

## **What is the Religious Freedom Restoration Act and why did AU support it?**

The federal Religious Freedom Restoration Act (RFRA) was a response to a 1990 Supreme Court decision that weakened religious freedom protections, especially for religious minorities. RFRA, signed into law in 1993, was supported by a diverse coalition (including Americans United) because it was intended to restore those protections – namely, by requiring that the government prove it has a compelling reason for policies that place substantial burdens on someone’s religious practices.

We supported RFRA because we wanted to protect Native Americans whose traditional practices were all too often pushed aside by the government. We wanted to ensure that Sikhs and Muslims could serve in the military or be emergency responders and still grow beards or wear articles of their faith. We believed that people held in federal prisons should be able to keep religious texts and attend worship services.

Unfortunately, in the years since, RFRA has been misused in ways many its original backers would never have supported.

## **How is RFRA being misused?**

Many things have changed since RFRA’s enactment nearly 30 years ago and it is now being misused to harm others. RFRA is being manipulated to allow discrimination against LGBTQ people, women, religious minorities, nontheists and almost anyone else – all under the guise of religious freedom.

For example, RFRA is being cited as the rationale to deny employees and university students insurance coverage for birth control, allow government contractors and other taxpayer-funded organizations to discriminate in employment for jobs in government-funded programs, and let taxpayer-funded foster care agencies turn away potential parents because they are the “wrong” religion or LGBTQ, denying children in foster care the opportunity to find loving homes.

RFRA should never be used to exempt anyone from laws that protect other people’s basic civil rights.

## **How will the Do No Harm Act fix RFRA?**

The Do No Harm Act will preserve RFRA’s original intent to protect the free exercise of religion while clarifying that religious freedom cannot be used to harm others. It will amend RFRA to ensure that no one misuses it to undermine nondiscrimination laws, deny access to health care, thwart workplace protections, refuse to provide government-funded services, or evade child labor laws.

## **Do we need both the Do No Harm Act and the Equality Act?**

Yes. The Equality Act and the Do No Harm Act address different, although related, problems.

The Equality Act builds on our nation’s existing civil rights laws to expand comprehensive nondiscrimination protections in employment, housing, public accommodations, government services, health care, education and other areas of life for LGBTQ people, women, people of color, immigrants and religious minorities. Some of the existing civil rights laws amended by the Equality Act already include religious exemptions. For example, nonprofit religious employers have an accommodation under the federal law barring employment discrimination, allowing them to prefer people who share their faith when hiring. The Equality Act doesn’t

eliminate these existing religious exemptions, but it does ensure that RFRA cannot be used to create new exemptions that would allow discrimination against women and marginalized minorities.

The Do No Harm Act, on the other hand, does not create any new nondiscrimination protections but has a more comprehensive fix to RFRA – it prevents RFRA from being misused to get out of complying with a wide range of laws that protect people from harm. Under the Do No Harm Act, RFRA could not be used to undermine nondiscrimination protections, as well as deny access to health care, evade child labor laws, thwart laws that protect workers' rights, refuse to provide government-funded services under a contract or grant to people who need them, or allow government employees to refuse to perform their duties. For example, the Equality Act would not fix the problems created by *Hobby Lobby*, but the Do No Harm Act would, by preventing employers from misusing RFRA to refuse to provide their employees with the Affordable Care Act birth control benefit.

### **Who will RFRA help if the Do No Harm Act becomes law?**

RFRA can still be used to protect the free exercise of religion, especially for religious minorities, as long as those religious accommodations don't harm other people. For example, a Sikh airman could still use RFRA to challenge regulations that would otherwise bar him from serving with a beard, turban and unshorn hair. Or a Muslim officer could use RFRA to challenge regulations that would prohibit her from wearing hijab during her training and service. These are the cases that RFRA was originally intended to address.

### **Why not just repeal RFRA?**

RFRA still offers important protections for religious freedom. We want to ensure that people can still use RFRA to protect their religious practices against government interference when those practices don't cause harm.

### **Does the Do No Harm Act favor some religious or nonreligious beliefs over others?**

No. This bill makes no judgment on any religious or nonreligious beliefs and doesn't prevent people from holding any belief they want. The bill ensures that no one – whatever their religious belief – can use RFRA to harm others. It upholds the common adage: "my right to swing my fist ends where your nose begins."

### **Does the Do No Harm Act change or take away any religious exemptions already in federal law?**

No. The Do No Harm Act would not alter any religious exemption or accommodation that currently exists in federal laws and regulations. And, it doesn't prevent people from getting specific religious exemptions in federal laws and regulations in the future.

### **Does the Do No Harm Act change the legal standard that has applied to religious freedom for decades?**

No. The Do No Harm Act leaves intact RFRA's test that any burden placed on someone's religious practice must serve a compelling government interest (such as ensuring that people have access to critical health care, or protecting people from employment discrimination). The Do No Harm Act simply adds language to reflect important limits required by the First Amendment's Establishment Clause – that religious exemptions, even under RFRA, may not be provided if they harm others.