



THE DO NO HARM ACT

H.R. 1378 & S. 2752

Talking Points

The Do No Harm Act amends the Religious Freedom Restoration Act (RFRA) and restores it to its original intent. The bill will preserve RFRA's power to protect religious freedom while clarifying that it may not be used to harm others. RFRA should never be used to exempt anyone from laws that protect other people's basic civil rights, like nondiscrimination and healthcare laws.

Religious freedom is a shield that protects religion, not a sword to harm others or to discriminate. Our country was founded on the principle of religious freedom, a tradition and ideal that remains central to who we are today. Religious freedom means that everyone should be able to practice their religion or no religion at all, so long as they do not harm others.

The Do No Harm Act would ensure that people can still use RFRA to protect their religious practice, so long as it would not harm others. The Do No Harm Act will not repeal RFRA. For example, RFRA could still be used to permit an exception to allow Sikh and Muslim people to serve in the military and wear beards or other articles of their faith.

The Problem

RFRA currently is being misused to:

- Deny employees and students insurance coverage for birth control
- Allow government contractors and other taxpayer-funded organizations to discriminate in employment
- 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 a loving home

The Solution

The Do No Harm Act will amend RFRA to ensure that no one misuses it as a sword to:

- Undermine nondiscrimination laws
- Evade child labor laws
- Deny access to healthcare
- Thwart workplace protections (such as fair wage and equal pay laws)
- Refuse to provide government-funded services under a contract to people who need them
- Refuse to perform duties as a government employee

Common Questions

What is the Religious Freedom Restoration Act (RFRA)? RFRA was enacted in 1993 in response to the 1990 Supreme Court decision in *Employment Division v. Smith*, which undermined the rights of religious minorities.

RFRA was designed to restore religious freedom protections undermined by *Smith*, especially for religious minorities: providing heightened but not unlimited protections for religious exercise. RFRA was supported by a broad coalition of organizations including Americans United, people from many faiths and denominations, legal experts, and civil liberties advocates. But an increasing number of organizations, including many that supported RFRA in 1993, agree that RFRA needs to be fixed because bad-faith interpretations of the law are being used to harm others, particularly by allowing discrimination and denying access to healthcare.

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 RFRA's legal standard intact: if a government action substantially burdens a person's religious exercise, the government must show it is using the least restrictive way to further its compelling interest in taking that action. The bill simply adds language to reflect important limits required by the Establishment Clause—that religious exemptions, even under RFRA, may not be provided if they harm others. It upholds the common adage: "My right to swing my fist ends where your nose begins."

What claims can still be brought under RFRA if the Do No Harm Act becomes law? The Do No Harm Act prevents RFRA from being used in certain instances where its use would clearly cause harm to others. But RFRA can still be used in other cases. For example, people in federal prisons and immigration detention centers could still use RFRA to protect their right to attend worship services or keep religious texts. And Sikhs and Muslims could still use RFRA to get an exception to allow them to serve in the military while wearing beards or other articles of faith. These are the kinds of cases that RFRA was originally intended to address.

Why not just repeal RFRA? There are still important uses of RFRA. As explained above, we want to ensure that people could still use RFRA to protect their religious practices, such as wearing religious attire.

Does the Do No Harm Act favor some religious beliefs over others? No. The Do No Harm Act makes no judgment on any religious beliefs. People can continue to hold any belief they want, but what they cannot do is use RFRA to require others to bear the costs of those beliefs. The bill ensures that no one—whatever their religious belief—uses RFRA to harm others.

How is RFRA being misused? The Do No Harm Act responds to real instances in which people have tried to misuse—sometimes successfully—the RFRA standard over the years. For example:

- in *Hobby Lobby*, RFRA was misused to deny employees of for-profit corporations insurance coverage for birth control;
- a Department of Justice legal opinion misuses RFRA to permit organizations that provide government-funded services to discriminate in employment with government dollars; and
- the Department of Health and Human Services misused RFRA to exempt federally funded foster care agencies in South Carolina from federal regulations barring discrimination on the basis of religion, denying children in foster care the opportunity to find a loving home.

Does the Do No Harm Act change or take away any religious exemptions already in federal law? No. RFRA is used to carve out religious exemptions where they do not already exist. So religious exemptions and accommodations that already exist in federal laws and regulations won't be changed in any way by the Do No Harm Act. Nor would the bill prevent the government from creating new religious exemptions in federal laws and regulations in the future.