

THE DO NO HARM ACT

What You Need to Know

H.R. 1450 / S. 593

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, it could 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 harm others by:

- Denying employees and students insurance coverage for birth control
- Allowing organizations to discriminate in employment (including hiring, firing, and promotions) for jobs in government-funded programs
- Letting taxpayer-funded foster care agencies turn away potential parents because they are the "wrong" religion or LGBTQ

The Solution

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

- Undermining nondiscrimination laws
- Evading child labor laws
- Denying access to healthcare
- Thwarting workplace laws (such as fair wage and equal pay laws)
- Refusing to provide government-funded services under a contract
- Refusing to perform duties as a government employee

What You Should Ask for in Your Meeting

If the Senator / Representative is ALREADY a cosponsor

- Thank you for supporting this vital legislation.
- We hope you can help push this bill forward—to a hearing and passage.

If the Senator or Representative is NOT a cosponsor

- Please cosponsor this vital legislation.

Background Information

Do No Harm Act Details

- The bill was first introduced in 2016. It was reintroduced on February 28, 2019.
- Rep. Joe Kennedy III and Rep. Bobby Scott are the lead sponsors in the House (H.R. 1450), and Sen. Kamala Harris is the lead sponsor in the Senate (S. 593).
- There are nearly 200 cosponsors in the House and nearly 30 in the Senate.
- More than 80 organizations—including religious, secular, civil rights, labor, and healthcare groups—have endorsed the bill.

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 reflect the state of the law before the *Smith* decision: to provide heightened but not unlimited protections for religious exercise. The legal standard set out in RFRA is that 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.

RFRA was supported by a broad coalition of organizations including people from many faiths and denominations, legal experts, and civil liberties advocates. But increasing numbers 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.

Common Questions

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 compelling-interest test intact. 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.

What claims can still be brought under RFRA if the Do No Harm Act passes?

This bill prevents RFRA from being used in certain instances where we all agree it would cause harm to others. But RFRA can still be used in other cases. 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?

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 like wearing religious attire and observing religious holidays.

Does this bill favor some religious beliefs over others?

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

Is the Do No Harm Act responding to real attempts to use RFRA to cause harm?

Yes. The Do No Harm Act responds to real instances in which people have tried to misuse—sometimes successfully—the RFRA standard over the years. Currently, RFRA is being misused to deny employees insurance coverage for birth control, allow 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.

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.