

The Do No Harm Act

Frequently Asked Questions

The Do No Harm Act amends the Religious Freedom Restoration Act (RFRA).

What is RFRA?

RFRA was enacted in 1993 in response to the 1990 Supreme Court decision in *Employment Division v. Smith*. In that case, the Supreme Court ruled against two Native American men who were denied unemployment benefits because they were fired for using peyote—an illegal substance—during a religious ritual. The Supreme Court said that the denial of benefits was tied to the use of any illegal drugs and, therefore, the rule was neutral and applied generally. In other words, the law didn't target their religious practice and did not violate their religious freedom.

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.

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, RFRA has been misused to:

- deny employees insurance coverage for birth control and HIV prevention medication;
- allow employment discrimination by for-profit businesses and by taxpayer-funded organizations that take federal money to provide social services; and
- let taxpayer-funded foster care agencies turn away potential parents because they are the “wrong” religion or LGBTQ.

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 healthcare, thwart workplace protections, refuse to provide government-funded services, or evade child labor laws.

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. Migrants could still use RFRA to protect their right to get meals that comply with their religious diets from border officials. 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 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.

Does the Do No Harm Act favor some religious or nonreligious 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.

What kinds of harms would the Do No Harm Act protect against?

The Do No Harm Act ensures that RFRA, a law designed to protect religious freedom, isn't used to cause harm to other people. It bars RFRA from being used to carve out exemptions to laws that:

- bar discrimination and advance equal opportunity, including the Civil Rights Act of 1964, the Family and Medical Leave Act, the Violence Against Women Act, and the Americans with Disability Act;
- guarantee people's access to healthcare, including laws that bar discrimination against patients and require insurance coverage services like contraception and HIV prevention medication;

- provide employees with protections in the workplace, including laws that set minimum wage and or require employers to provide equal benefits;
- provide protections against child labor.

In addition, the Do No Harm Act prevents RFRA from being used to:

- refuse to provide government-funded services under a contract; and
- refuse to perform duties as a government employee.

Would the Do No Harm Act deny houses of worship autonomy over their own internal matters?

No. The Do No Harm Act would not require religious congregations to change how they define their own religious beliefs, how they are organized, who becomes a leader of the faith, or how they determine membership. The First Amendment to the U.S. Constitution guarantees that houses of worship have autonomy over their own internal matters, like faith, doctrine, and governance. For example, the Do No Harm Act would not require clergy members to perform or houses of worship to host marriage ceremonies they don't support. Nor would the Do No Harm Act require houses of worship to hire LGBTQ people or women to serve in ministerial roles.

Would the Do No Harm Act affect state laws?

No. The Do No Harm Act amends the federal RFRA. The federal RFRA applies to federal laws and policies (for example, Title VII of the Civil Rights Act, which bars employment discrimination, or the Affordable Care Act, which requires employers to provide insurance coverage for birth control or PrEP) and actions taken by the federal government. The federal RFRA does not apply to state laws, policies, or actions. So, the Do No Harm Act does not affect state law.

Do we need the Do No Harm Act after the Equality Act is enacted?

Yes. The Equality Act adds important civil rights protections currently missing in the law for LGBTQ people, women, and many other marginalized communities. And it would make clear that RFRA cannot be misused to create new religious exemptions to its underlying

civil rights laws. But we still need the Do No Harm Act to ensure that people cannot carve out harmful religious exemptions to a broader array of civil rights, healthcare, labor and other laws—laws that fall outside of the purview of the Equality Act. For example, the Equality Act would not fix the problems created by the *Hobby Lobby* case, which allowed employers to misuse RFRA to refuse to provide their employees with the Affordable Care Act's birth control benefit. The Do No Harm Act, however, would prevent this misuse.

How would the Do No Harm Act affect laws that allow doctors to refuse to provide patients with abortion care and other medical procedures?

The Do No Harm Act would not change the state and federal laws in place that address whether healthcare providers can invoke religious exemptions to refuse to provide medical procedures, including abortion care. All patients have the right to access essential healthcare services in a

timely and accessible manner. Medical standards of care should determine what healthcare a patient can and should receive, not a providers' personal beliefs. That is why the Do No Harm Act would prevent RFRA from being used to expand existing exemptions or create new ones.

Who supports the Do No Harm Act?

The Do No Harm Act has been endorsed by 100 civil rights, LGBTQ, reproductive rights, health, labor, and faith groups. That includes more than 30 organizations representing diverse faith traditions, such as the United Methodist Church General Board of Church & Society; T'ruah: The Rabbinic Call for Human Rights; United Church of Christ Justice & Witness Ministry; Uri L'Tzedek: Orthodox Social Justice; Presbyterian Church (U.S.A); American Baptist Home Mission Society; Circle Sanctuary; Disciples Center for Public Witness; Global Justice Institute, Metropolitan Community Churches; KARAMAH; and the National Council of Churches.