



# Religious Freedom Restoration Act

## Brief Overview/History

The Religious Freedom Restoration Act (also known as **RFRA**)—Pub. L. No. 103-141, 107 Stat. 1488—is a federal statute aimed at preventing laws that substantially burden a person’s free exercise of religion. The bill was introduced by Congressman Chuck Schumer (D-NY) in 1993, passed unanimously by the U.S. House and a near unanimous U.S. Senate (with three dissenting votes) and signed into law by President Bill Clinton. The RFRA is applicable to all religions; however, it was initially conceived as a response to Native American tribes who were being burdened by the expansion of government projects on their “sacred” lands. The Act applies, “to all Federal law, and the implementation of that law, whether statutory or otherwise,” including any Federal statutory law adopted after the RFRA’s date of signing, “unless such law explicitly excludes such application.”

The RFRA reinstated what is referred to as the [Sherbert Test](#), which was set forth by [Sherbert v. Verner](#), and [Wisconsin v. Yoder](#), mandating that “*strict scrutiny*” be used when determining whether the Free Exercise Clause of the First Amendment, guaranteeing religious freedom, has been violated. In the course of deliberations, Congress concluded that a religiously neutral law can burden a religion just as much as one that was intended to interfere with religion. In that regard, the Act states that the, “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” The law provided an exception if two conditions are both met. First, the burden must be necessary for the, “furtherance of a compelling government interest.” Under the concept of strict scrutiny, a government interest is compelling when it is deemed to be more than merely routine and goes beyond simply improving government efficiency. A compelling interest pertains to core constitutional issues. Secondly, the rule must be the least restrictive way in which to further the government interest.

## Legal/Regulatory Precedence and Rule of Law

- A. The Sherbert Test consists of four criteria to determine if an individual’s right to religious free exercise has been violated by the government:
  1. **Criteria 1** – whether the person has a claim involving a sincere religious belief.
  2. **Criteria 2** – whether the government action is a substantial burden on the person’s ability to act on that belief.
  3. **If 1. and 2.** above can be established, then the government must prove the following
  4. **Criteria 3** – that the government is acting in furtherance of a “compelling state interest.”
  5. **Criteria 4** – that the government has pursued that interest in a manner deemed least restrictive or least burdensome to religion.
  
- B. In [Wisconsin v. Yoder \(1972\)](#), the U.S. Supreme Court found that Amish children could not be placed in compulsory education past the 8th and that parents had a fundamental right to freedom of religion.
  1. The ruling is cited as a basis for allowing parents’ rights to educate their children outside of traditional private or public school environments, such as with homeschooling.

- C. In [Lyng v. Northwest Indian Cemetery Protective Association](#) (1988), the U.S. Supreme Court ruled that the construction of a proposed road through sacred Native American grounds did not violate the First Amendment regardless of its effect on religious practice because it does not compel behavior contrary to religious belief.
- D. In [Employment Division v. Smith](#) (1990), the U.S. Supreme Court determined that the state could deny unemployment benefits to a person fired for violating a state prohibition on the use of peyote (a cactus-based hallucinogen) that was banned as a Schedule I substance.
  - 1. This ruling led to the development and subsequent passage of the Religious Freedom Restoration Act in 1993.
  - 2. The Smith decision outraged the public. Many groups came together, both liberal (American Civil Liberties Union) and conservative (Traditional Values Coalition), as well as other groups (Christian Legal Society, the American Jewish Congress, the Baptist Joint Committee for Religious Liberty, and the National Association of Evangelicals), who joined forces to support RFRA and reinstate the Sherbert Test.
- E. The RFRA was held unconstitutional as applied to the states in the [City of Boerne v. Flores](#) (1997) and not a proper exercise of Congress's enforcement power. In 2000, Congress crafted an alternative route and enacted the [Religious Land Use and Institutionalized Persons Act](#), in which it used the Spending Clause to require, for localities that receive federal funding, land use laws to accommodate religious freedom. This Act essentially legitimized the RFRA as if it had been constitutional.
- F. In [Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal](#), Congress confirmed the RFRA's applicability to federal law because it has broad authority to carve out exemptions from federal laws and regulations that it itself has authorized.
  - 1. The case involved the Federal Government's seizure of a sacramental tea, containing a Schedule I substance from a New Mexican branch of the Brazilian church União do Vegetal (UDV).
- G. The RFRA figured prominently in oral arguments in the case, [Burwell v. Hobby Lobby](#), heard by the Supreme Court on March 25, 2014. In a 5-4 decision, Justice Alito stated that the RFRA did not just restore the law as before *Smith*, but contains a new regulation that allows to opt out of federal law based on religious beliefs.
  - 1. The ruling stated that closely held corporations cannot be required to provide contraception coverage under Obamacare if they had religious objectives. The IRS defines a closely held corporation as one that has more than 50 percent of the value of its outstanding stock owned (directly or indirectly) by five or fewer individuals and is not a personal service corporation.

## Supportive Talking Points

- A. The federal government has a long history of protecting First Amendment liberties.
- B. There is a compelling interest for states to follow suit, especially in light of the rulings described in E. and F. above.
- C. In *Boerne v. Flores*, the U.S. Supreme Court indicated that bills similar to the RFRA might be constitutional if passed by individual states.

## Opposition Talking Points

- A. The RFRA was held unconstitutional as applied to the states in the [City of Boerne v. Flores](#) decision in 1997, which ruled that the RFRA is not a proper exercise of Congress's enforcement power.
  - 1. The Supreme Court, in an opinion by Justice Anthony Kennedy, held that it holds the sole power to define the substantive rights guaranteed by the Fourteenth Amendment—a definition to which Congress may not add and from which it may not subtract.
  - 2. The validity of the RFRA as applied to federal law was not at issue in this case.

- B. The group, American Atheists, opposed the RFRA because they complained it gave “special rights” to churches, mosques, synagogues, temples and other sectarian organizations.
  - 1. In *Boerne v. Flores*, Justice John Paul Stevens stated that the Act violated the principle of separation of church and state, by preferring religion over irreligion.
- C. According to the Supreme Court in *Boerne v. Flores* and the majority opinion by Justice Anthony Kennedy:
  - 1. The, “RFRA is not a proper exercise of Congress’ enforcement power because it contradicts vital principles necessary to maintain separation of powers and the federal state balance.”
  - 2. “It is difficult to maintain that such laws are based on animus or hostility to the burdened religious practices or that they indicate some widespread pattern of religious discrimination in this country.”
  - 3. “It is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behaviour.”
  - 4. “RFRA is a considerable congressional intrusion into the States’ traditional prerogatives and general authority to regulate for the health and welfare of their citizens, and is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion.”

## States with Enacted Legislative Initiatives/Authors, Sponsors

- A. In response to the *City of Boerne v. Flores* case, 19 states have passed their own State Religious Freedom Restoration Acts that apply to state governments and local municipalities.
- B. **Alabama**
  - 1. [Alabama Religious Freedom Amendment](#)
- C. **Arizona**
  - 1. [Arizona Religious Rights Bill](#)
  - 2. [See also.](#)
  - 3. [See also.](#)
- D. **Connecticut**
  - 1. [Religious Freedom Restoration Act](#)
- E. **Florida**
  - 1. [Religious Freedom Restoration Act of 1998](#)
- F. **Idaho**
  - 1. [Religious Freedom Act](#)
  - 2. [See also.](#)
- G. **Illinois**
  - 1. [Religious Freedom Restoration Act](#)
  - 2. [See also.](#)
  - 3. [See](#) (amends an earlier law and adds an allowance for same-sex civil unions)
- H. **Kansas**
  - 1. [Religious Freedom Act](#)
  - 2. [See also.](#)
- I. **Kentucky**
  - 1. [Religious Freedom Act](#)
  - 2. [See also.](#)
- J. **Louisiana**
  - 1. [Religious Freedom Act](#)
- K. **Mississippi**
  - 1. [Religious Freedom Restoration Act](#)

- L. Missouri
  - 1. [Religious Freedom Restoration Act](#)
- M. New Mexico
  - 1. [Religious Freedom Restoration Act](#)
- N. Oklahoma
  - 1. [Religious Freedom Act](#)
- O. Pennsylvania
  - 1. [Religious Freedom Protection Act](#)
- P. Rhode Island
  - 1. [Religious Freedom Amendment](#)
- Q. South Carolina
  - 1. [Religious Freedom Act](#)
- R. Tennessee
  - 1. [Religious Freedom Amendment](#)
- S. Texas
  - 1. [Religious Freedom Act](#)
- T. Virginia
  - 1. [Virginia Statute of Religious Freedom](#)

## Law and Policy Contacts / Additional Resources

- A. [Alliance Defending Freedom \(ADF\)](#)
  - 1. **Primary Contact:** Alan Sears, Esq., President, CEO
  - 2. **Mission:** An alliance-building legal organization that advocates for the right of people to freely live out their faith.
  - 3. [See also.](#)
  - 4. [See also.](#)
- B. [Liberty Counsel](#)
  - 1. **Primary Contact:** Mathew Staver, Esq., President, CEO
  - 2. **Mission:** An international nonprofit litigation, education and policy organization dedicated to advancing religious freedom, the sanctity of life and the family.
  - 3. [See also.](#)
  - 4. [See also.](#)
- C. [Pacific Justice Institute](#)
  - 1. **Primary Contact:** Brad Dacus, Esq., President
  - 2. **Mission:** A legal defense organization specializing in the defense of religious freedom, parental rights and other civil liberties.
  - 3. [See also.](#)
- D. [Wallbuilders](#)
  - 1. **Primary Contact:** David Barton
  - 2. **Mission:** An organization dedicated to presenting America's forgotten history and heroes, with an emphasis on the moral, religious and constitutional foundation of which America was built.
  - 3. [See also.](#)

E. [National Legal Foundation](#)

1. **Primary Contact:** Steven Fitschen, Esq., President
2. **Mission:** A Christian public interest law firm dedicated to the preservation of America's freedom and constitutional rights.
3. [See also.](#)

F. [American Center for Law and Justice](#)

1. **Primary Contact:** Jay Sekulow, Esq., President
2. **Mission:** To protect religious and constitutional freedoms by engaging in legal, legislative and cultural issues through advocacy, education and litigation.
3. [See also.](#)
4. [See also.](#)

## Federal Legislation/Resources

- A. The [Religious Freedom Restoration Act](#) passed in 1993.