

The Do No Harm Act

HR 2725 & S 1206

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. Our nation promises everyone the freedom to believe as they want, but our laws cannot allow anyone to use their religious beliefs to 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.

What the Do No Harm Act Does

The Problem

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
- Permit 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
- Denying access to healthcare
- Evading child labor laws
- Thwarting laws that protect workers' rights (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 or Representative is ALREADY a cosponsor, say:

- Thank you for supporting this vital legislation.
- We hope you can help push this critical bill forward—we need to pass the bill to better protect people’s rights.

If the Senator or Representative is NOT a cosponsor, say:

- Please cosponsor this vital legislation.

Background Information

- On April 19, 2023 Reps. Bobby Scott (D-VA), Steve Cohen (D-TN), Jamie Raskin (D-MD), and Mary Gay Scanlon (D-PA), and Sen. Cory Booker (D-NJ) introduced the Do No Harm Act in the 118th Congress.
- The Do No Harm Act was first introduced in 2016 and has been reintroduced in every Congress since. In the last Congress, the bill had 206 co-sponsors in the House and 35 in the Senate.
- More than 100 organizations—including religious, religious freedom, civil rights, labor, reproductive rights and health, LGBTQ rights, and secular organizations—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: if a federal government action substantially burdens a person’s religious exercise, the federal 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, 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 like wearing religious attire and observing religious holidays.

Does this bill favor some religious beliefs over others?

No. The Do No Harm Act 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. In just the past few years, RFRA has been misused to deny employees insurance coverage for birth control and HIV prevention medication, 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.

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.