

How the Religious Freedom Restoration Act Benefits All Americans

The Religious Freedom Restoration Act (“RFRA”) protects *all* Americans’ religious liberty. RFRA, not the First Amendment, is the primary federal safeguard of Americans’ religious liberty. In 1990, the Supreme Court greatly weakened the First Amendment’s protection of religious liberty. In 1993, Congress restored Americans’ religious freedom by enacting RFRA. More specifically, RFRA does the following:

- *Stands as a singular bipartisan achievement:* The Senate passed RFRA 97-3, with Senators Kennedy and Hatch as its leading co-sponsors. The House passed RFRA by unanimous voice vote. President Clinton signed RFRA into law on November 16, 1993.
- *Creates a level playing field for Americans of all faiths:* RFRA places “minority” faiths on an equal footing with every other faith. Without RFRA, every time Congress considered a new law, “minority” faiths would have to lobby for statutory exemptions to protect their religious freedom.
- *Implements a sensible balancing test:* RFRA does not mean that religion always wins. Indeed, post-RFRA the government still wins many cases. But RFRA provides a sensible balancing test for courts to use to weigh religious liberty against governmental interests. The Supreme Court unanimously approved the RFRA balancing test eight years ago in *Gonzales v. O Centro*.
- *Ensures governmental transparency and accountability:* RFRA requires government officials to justify any restrictions they impose on citizens’ religious liberty. RFRA *increases citizens’ leverage* in dealing with government officials and *incentivizes the government* to find ways to achieve its interests while respecting citizens’ religious liberty.
- *Promotes religious diversity and reinforces America’s commitment to pluralism:* With RFRA, Congress re-committed the Nation to its foundational principle that American citizens have the God-given right to live peaceably and undisturbed according to their religious beliefs.
- *Minimizes religious conflict.* Such conflict is unnecessary when everyone’s religious liberty is guaranteed.
- *Preserves 400 years of religious liberty:* RFRA ensures that America will continue to be a haven for those fleeing religious persecution.
- *Protects the inalienable right of religious liberty for all Americans:* Religious liberty is America’s most distinctive contribution to humankind. Religious liberty is a God-given right— a gift that would be squandered if RFRA were weakened.

The following religious and civil rights organizations formed the Coalition for the Free Exercise of Religion to secure RFRA's passage: Agudath Israel of America; American Association of Christian Schools; American Civil Liberties Union; American Conference on Religious Movements; American Humanist Association; American Jewish Committee; American Jewish Congress; American Muslim Council; Americans for Democratic Action; Americans for Religious Liberty; Americans United for Separation of Church and State; Anti-Defamation League; Association of Christian Schools International; Association on American Indian Affairs; Baptist Joint Committee on Public Affairs; B'nai B'rith; Central Conference of American Rabbis; Christian Church (Disciples of Christ); Christian College Coalition; Christian Legal Society; Christian Life Commission of the Southern Baptist Convention; Christian Science Committee on Publication; Church of the Brethren; Church of Jesus Christ of Latter-day Saints; Church of Scientology International; Coalitions for America; Concerned Women for America; Council of Jewish Federations; Council on Religious Freedom; Episcopal Church; Evangelical Lutheran Church in America; Federation of Reconstructionist Congregations and Havurot; First Liberty Institute; Friends Committee on National Legislation; General Conference of Seventh-day Adventists; Guru Gobind Singh Foundation; Hadassah, The Women's Zionist Organization of America, Inc.; Home School Legal Defense Association; House of Bishops of the Episcopal Church; International Institute for Religious Freedom; Japanese American Citizens League; Jesuit Social Ministries, National Office; Justice Fellowship; Mennonite Central Committee U.S.; NA'AMAT USA; National Association of Evangelicals; National Council of Churches; National Council of Jewish Women; National Drug Strategy Network; National Federation of Temple Sisterhoods; National Islamic Prison Foundation; National Jewish Commission on Law and Public Affairs; National Jewish Community Relations Advisory Council; National Sikh Center; Native American Church of North America; North American Council for Muslim Women; People for the American Way Action Fund; Presbyterian Church (USA), Social Justice and Peacemaking Unit; Rabbinical Council of America; Traditional Values Coalition; Union of American Hebrew Congregations; Union of Orthodox Jewish Congregations of America; Unitarian Universalist Association of Congregations; United Church of Christ, Office for Church in Society; United Methodist Church, Board of Church and Society; United Synagogue of Conservative Judaism.

Additional RFRA/Religious Liberty Resources:

Baptist Joint Committee for Religious Liberty, "*The Religious Freedom Restoration Act: 20 Years of Protecting Our First Freedom*," <http://bjcmobile.org/wp-content/uploads/2013/11/RFRA-Book-FINAL.pdf>

"*Restored or Endangered? The State of Free Exercise of Religion in America*," Newseum event, Nov. 7, 2013, observing RFRA's 20th Anniversary, with three excellent panel discussions of RFRA and religious liberty https://www.youtube.com/watch?v=M_84dFFH8g0

Faces of Free Exercise, 10 minute video featuring examples of RFRA protecting all Americans' religious liberty, produced by The Becket Fund for Religious Liberty, <http://www.youtube.com/watch?v=J3TbItCxWdk>

Department of Justice website for legislative history, reports, and debates http://www.justice.gov/jmd/ls/legislative_histories/pl103-141/pl103-141.html.

President William J. Clinton, *Remarks on Signing the Religious Freedom Restoration Act of 1993*, Nov. 16, 1993, available at <http://www.gpo.gov/fdsys/pkg/WCPD-1993-11-22/pdf/WCPD-1993-11-22-Pg2377.pdf>

Written Statement of Kim Colby, Submitted to Hearing on *Oversight of the Religious Freedom Restoration Act and Religious Land Use and Individualized Persons Act*, Before the Subcommittee on the Constitution and Civil Justice of the House Judiciary Committee, Feb. 13, 2015, <http://clsnet.org/document.doc?id=826>; also, *A Perpetual Haven: Why RFRA Matters*, <http://www.thepublicdiscourse.com/2014/06/13391/>

Douglas Laycock, *Sex, Atheism, and the Free Exercise of Religion*, 88 U. Det. Mercy L. Rev. 407 (2011); *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839 (2014)

Michael W. McConnell, *Why Protect Religious Freedom?*, 123 Yale L.J. 770 (2013)

Michael Stokes Paulsen, *Is Religious Freedom Irrational?*, 112 Mich. L. Rev. 1043 (2014)

John D. Inazu, *A Confident Pluralism*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2470788 (2014)

Thomas C. Berg, *Progressive Arguments for Religious Organizational Freedom: Reflections on the HHS Mandate*, 21 J. Contemp. Legal Issues 279 (2013)

Richard Garnett and Joshua Dunlap, *Taking Accommodation Seriously: Religious Freedom and the O Centro Case*, 2006 Cato Sup. Ct. Rev. 257 (2006)

Prepared by Kim Colby, Director, Christian Legal Society's Center for Law and Religious Freedom, kcolby@clsnet.org, (703) 894-1087