



Religious Freedom Restoration Act

KEY POINTS

Since 2015, **76 state RFRA**s have been proposed across the nation, each mirroring the federal Religious Freedom Restoration Act of 1993.

These protections prohibit the government from **burdening religious exercise** unless it meets a very high legal bar and is applied narrowly.

RFRA's protect **people of any and all faiths** whose sincere beliefs are in danger of being unnecessarily burdened by the government.

Family Research Council recommends and supports Religious Freedom Restoration Acts (RFRA)s. These laws prohibit the government from burdening religious exercise unless it meets a very high bar. These legal protections have become necessary to ensure that America's "first freedom"—the free exercise of religion—is sufficiently protected in every state.

Until 1990, courts had reviewed First Amendment free exercise claims under the "strict scrutiny" standard. Under this type of review, which is the most protective of constitutional rights, the government requirement must promote a "compelling governmental interest" and it must be narrowly tailored to advance that interest by the "least restrictive means" possible. However, in the 1990 case *Employment Division v. Smith*, the U.S. Supreme Court ruled that laws restricting religious freedom need only demonstrate a "legitimate interest" and neutral application of the law (i.e., the law does not single out religious individuals or entities). Thus, by applying the lowest possible level of legal scrutiny, the Court denied religious freedom the high level of protection that true constitutional rights deserve.

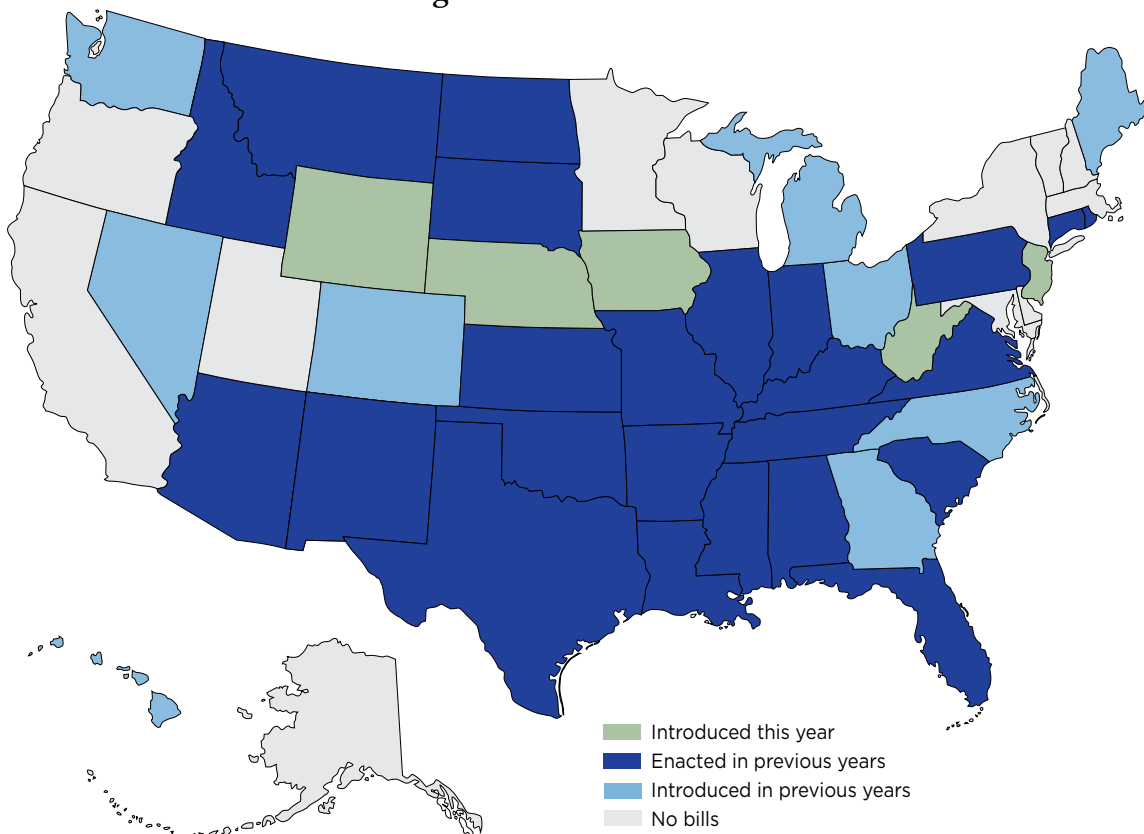
Congress responded to the Supreme Court's decision by passing the Religious Freedom Restoration Act of 1993, which required courts to use the strict scrutiny standard in religious liberty cases. However, in the 1997 case *City of Boerne v. Flores*, the Supreme Court ruled that Congress had no power to apply this standard to state and local legislation. This Court decision has made it vital for each state to pass its own RFRA.

By 2015, 21 states had passed RFRA legislation. Since then, 76 state RFRA's have been proposed across the nation, each requiring strict scrutiny to be applied to all laws and regulations that burden a person's free exercise of religion. (It is important to note that some states' high courts apply a similar "strict scrutiny" standard due to state court precedent; depending on dynamics specific to each state, it may or may not be advisable to statutorily strengthen that court precedent.)

2021 was a revolutionary year for RFRA's. Not a single RFRA was passed between 2016 and 2020, but in 2021, three states—Montana (S.B. 215), North Dakota (H.B. 1410), and South Dakota (S.B.124)—successfully enacted RFRA's. Additionally, Arkansas passed SJR 14, creating a referendum in which voters will decide whether to add RFRA to the state constitution. With the passage of these bills, the United States is more than halfway to attaining nationwide RFRA coverage at the state level.

Legislative Intent: RFRA's ensure that the free exercise of religion is given the high level of legal protection that true constitutional rights deserve. RFRA's protect people of any and all faiths whose sincere beliefs are in danger of being unnecessarily burdened by the government. RFRA's also winnow out those using religion as a pretext to escape the application of general laws. RFRA's text and history, along with our judicial system's

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established practices for analyzing religious claims, demonstrate that these laws advance conscience rights for all in the face of ever larger and more intrusive government.

RFRAs require the application of the strict scrutiny standard in all laws, regulations, or rules that restrict a citizen's exercise of religious freedom. They accomplish this by imposing a balancing test, which requires that a law, regulation, or rule cannot substantially burden a person's sincere free exercise of religion unless it (1) furthers a compelling government interest and (2) uses the least restrictive means possible. Strong RFRAs also create a private right of action for individuals whose religious freedom rights have been violated by a government official.

Key Provisions:

Requires the courts to use a balancing test in cases concerning religious freedom claims to ensure that a law, regulation, or rule:

1. Does not **substantially burden** a citizen's sincere exercise of religious freedom unless
2. The law furthers a **compelling government interest** and
3. Uses the **least restrictive means** of furthering that compelling government interest.