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The Religious Freedom Restoration Act: A Primer

The Religious Freedom Restoration Act of 1993 (RFRA) establishes rights beyond those protections afforded by the Constitution’s free exercise clause by creating a heightened standard of review for government actions that substantially burden a person’s exercise of religion. This In Focus provides an overview of the statute, including its origins, how it operates, and how the Supreme Court has interpreted the law since its passage.

Background

The First Amendment provides that the government “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” According to the Supreme Court, the clause protects individuals’ right to exercise their religion of choice and prohibits government regulations that target religious beliefs. The free exercise clause protects not only religious beliefs but acts involved with religious practice. Under the clause, the government may not compel religious belief, punish religious expression, or impose regulations that favor one religion over another.

The Supreme Court’s interpretation of whether the clause requires religious accommodation to neutral, generally applicable laws (as opposed to laws that specifically target a religious practice) has changed over time. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the government denied a claimant unemployment compensation benefits for failure to accept available work because she had declined to work on Saturdays for religious reasons. The Court reasoned, based on the facts of the case, that if a generally applicable law imposes a religious burden on an individual, that person could seek an exemption from the law unless the government could show that the burden was justified by a compelling government interest—a high standard to meet.

The Court, however, departed from this framework in *Employment Division v. Smith*, 494 U.S. 872 (1990), when it held that the free exercise clause does not exempt individuals from compliance with generally applicable laws and does not require the government to show a compelling interest in applying such laws to a particular individual. In *Smith*, two members of the Native American Church were denied unemployment benefits after they were fired for ingesting peyote as part of a religious ceremony. The Court held that religious exemptions from generally applicable laws should come from the legislative process. Nonetheless, even after *Smith*, Supreme Court precedent still requires the application of the compelling interest test in free exercise cases involving government action that intentionally (rather than incidentally) burdens religious exercise and in cases involving religious exemptions in programs that allow for individualized assessments.

In 1993, Congress enacted RFRA in direct response to *Smith*. In its statutory findings, Congress expressed its disagreement with the *Smith* decision by concluding that *Sherbert*’s compelling interest test is more workable for “striking sensible balances between religious liberty and competing prior governmental interests.” In its original form, RFRA applied to all government action at the federal, state, and local levels. Congress justified applying the law to the states by relying on Section 5 of the Fourteenth Amendment, which grants “Congress the power to enforce, by appropriate legislation, the provisions of” the Fourteenth Amendment, which, among other things, has been interpreted to require state compliance with the First Amendment. Congress has since amended RFRA so that it applies only to federal entities.

RFRA

RFRA imposes a heightened standard of review for government actions—including rules of general applicability—that “substantially burden” a person’s religious exercise. The statute does not define the term *substantial burden*, but the phrase appears to have originated from free exercise case law, which holds that such burdens exist when an individual is required to choose between following his or her religious beliefs and receiving a governmental benefit or when an individual must act contrary to his or her religious beliefs to avoid facing legal penalties. Importantly, this case law suggests that when evaluating an individual’s free exercise claim, courts should defer to parties’ assertions about their sincerely held religious beliefs. Once a party has established a substantial burden, the action is valid only if the government shows that the burden is (1) in furtherance of a compelling governmental interest and (2) the least restrictive means of furthering that interest. This standard is high, but not impossible, for the government to meet.

To enforce its provisions, RFRA creates a private cause of action for persons whose religious exercise has been substantially burdened, allowing them to “assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.”

City of Boerne v. Flores

The scope of RFRA changed as a result of *City of Boerne v. Flores*, 521 U.S. 507 (1997), where the Court held that RFRA’s application to states and local governments was beyond Congress’s power under Section 5 of the Fourteenth Amendment. The Section 5 power, according to the Court, is “remedial,” allowing Congress to act only in instances where there is evidence of a pattern of conduct that violates the Fourteenth Amendment. The Court determined that because Congress had not established a widespread pattern of religious discrimination, RFRA could not be justified as

a remedial measure designed to prevent unconstitutional conduct. Instead, the Court viewed RFRA as an attempt to substantively change the meaning of the free exercise clause, which was outside of Congress's power over the states. As a result of the Court's decision, RFRA no longer applies to states or localities but continues to constrain federal government action. Many states, however, have passed their own versions of RFRA that apply to state and local laws of general applicability.

RLUIPA

In 2000, in the wake of the *City of Boerne* decision, Congress, relying on its commerce and spending clause powers, passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA institutes a compelling interest test that mirrors the RFRA test for specific types of state actions. Under RLUIPA, state and local governments may not implement land use regulations in a way that imposes a substantial burden on the religious exercise of a person or religious institution unless the government can demonstrate that the regulation is in furtherance of a compelling government interest and is the least restrictive means of furthering that government interest. The statute defines *land use regulation* as a "zoning or landmarking law" that limits the use or development of land.

Also under RLUIPA, any state or local government accepting federal financial assistance is prohibited from imposing substantial burdens on the religious exercise of individuals who are confined to an "institution." Under the statute, institutions include jails, prisons, correctional facilities, institutions for individuals who are mentally ill or disabled, pretrial detention facilities, and institutions for juveniles held awaiting trial or needing care or treatment.

Supreme Court Interpretation of RFRA and RLUIPA

The Supreme Court has had several occasions to interpret RFRA and RLUIPA. In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), the Court emphasized that RFRA's test is satisfied only if the government demonstrates a compelling interest in the specific application of the law to the particular claimant whose religious rights are burdened rather than a compelling interest in the uniform application of the law. The Court concluded as such in holding that the government had failed to demonstrate a compelling interest in applying the Controlled Substances Act to bar a church using a tea that contained hallucinogens regulated under that statute during religious services.

The Court has also considered who can be "persons" under the statute and what constitutes a "substantial burden" on exercising religion. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), observing that a corporation "is simply a form of organization used by human beings to achieve desired ends," the Court first held that the term *person* within RFRA applies to closely held for-profit corporations and that RFRA's protections extend to the religious practices of those who own and control for-profit corporations. The Court then applied the statutory compelling interest test to conclude that a government

requirement that these corporate entities provide, through their health insurers, cost-free contraceptives to their employees substantially burdened the owners' exercise of religion and was not the least restrictive means of achieving the government's interest in mandating such coverage. Deferring to plaintiffs' views that the government's mandate had the effect of facilitating the commission of an immoral act in violation of their sincere religious beliefs, the Court invalidated the challenged law as it applied to the owners because of the availability of other alternatives for the government to achieve its interests.

A year later in *Holt v. Hobbs*, 574 U.S. 352 (2015), the Supreme Court applied RLUIPA to hold that a policy prohibiting prisoners from growing half-inch beards substantially burdened a Muslim inmate's sincerely held religious beliefs. The Court determined that the state failed to demonstrate how its prohibition furthered its stated compelling interest in preventing prisoners from hiding contraband or disguising their identities. Moreover, the Court held that the state failed to prove that other alternative policies would not sufficiently serve its security interests.

Considerations for Congress

The meaning of RFRA, RLUIPA, and the free exercise clause continue to be litigated, including before the Supreme Court. Among those issues being explored are what constitutes a significant burden or compelling interest under RFRA and what remedies are available to those who prove a RFRA violation in court. The Supreme Court has also signaled its interest in revisiting its *Smith* decision and the constitutional standard for reviewing generally applicable laws, which may have wide-ranging implications for the future of free exercise rights.

Against the backdrop of this litigation, as RFRA and RLUIPA themselves demonstrate, Congress is authorized to take certain responses to the continuing development of religious liberty jurisprudence. Legislatively, RFRA expresses Congress's intent to "provide very broad protection for religious liberty." Within RFRA, Congress included a "Rule of Construction" that states that all prospective federal action is subject to RFRA's provisions "unless such law explicitly excludes such application by reference to this chapter." This provision allows RFRA to be displaced in certain contexts. For example, the Equality Act (H.R. 5), passed by the House in the 116th Congress, would explicitly waive RFRA's application to that statute by providing that RFRA "shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title." In the alternative, to avoid litigation over RFRA's scope, Congress can always confirm RFRA's application in newly enacted legislation. For example, the Preventing Animal Cruelty and Torture Act (P.L. 116-72) includes a provision that states, "This section shall be enforced in a manner that is consistent with section 3 of the Religious Freedom Restoration Act of 1993."

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