

The Do No Harm Act (S. ___/H.R. 3222)

Background:

- In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) in response to a controversial 1990 Supreme Court ruling in *Employment Division v. Smith* that undermined minority religious practice rights.
 - RFRA aimed to protect religious minorities by limiting the federal government’s ability to substantially burden religious exercise to narrow circumstances – when it furthers a compelling government interest and is the least restrictive means to achieve that interest.
 - The law originally drew wide support from across the political spectrum.
- Unfortunately, some individuals, organizations, and corporations have begun to use RFRA as a tool to impose their religious views on and justify actions and policies that harm vulnerable third parties. In recent years, RFRA has been invoked in litigation to:
 - Defend employment discrimination against LGBTQ individuals;
 - Defend denial of services to LGBTQ individuals;
 - Limit employee access to FDA-approved contraception through employer-sponsored health insurance; and
 - Attempt to avoid court testimony about alleged child labor and abuse.
- The Trump Administration has threatened to further use RFRA as a discriminatory sword that will harm underrepresented communities.
 - On October 6, 2017, Attorney General Sessions issued a government-wide memorandum in response to President Trump’s April 2017 “Religious Liberty” Executive Order that interprets the religious freedom protections of RFRA broadly, including for corporations.

Bill Summary:

- The Do No Harm Act would clarify that compliance with federal laws protecting civil rights and other important legal rights cannot be undercut by RFRA. Specifically, it would prevent RFRA from being used to obtain exemptions from federal laws including:
 - Protections against discrimination or the promotion of equal opportunity, such as those provided under the Civil Rights Act of 1964 and other law;
 - Labor laws covering wages, benefits, collective bargaining, and worker protections;
 - Protections against child abuse and exploitation;
 - Access to, information about, referrals for, provision of, or coverage of any healthcare item or service;
 - Goods or services to be provided to beneficiaries through government contracts, grants, and cooperative agreements; and
 - Public accommodations and the full and equal enjoyment of goods, services, benefits, facilities, privileges, and advantages provided by Government.
- The Act would also clarify that RFRA cannot be invoked in lawsuits solely between private parties.
- The Act does nothing to alter existing requirements and oversight for federal contractors beyond limiting their ability to invoke RFRA as a legal defense for discriminatory conduct, balancing RFRA’s original intent to protect religious liberty with federal anti-discrimination objectives.
- The Act does nothing to affect existing religious free exercise rights under the First Amendment.

Bill Supporters:

- The Do No Harm Act has broad support from LGBTQ, civil rights, women’s rights, and faith groups.
- The Act currently has 120 cosponsors in the House of Representatives as [H.R. 3222](#).