February 20, 2025

The Honorable Mike Johnson
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable John Thune
Republican Leader
United States Senate
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Democratic Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Charles Schumer
Democratic Leader
United States Senate
Washington, D.C. 20515

Dear Speaker Johnson, Leader Thune, Leader Jeffries, and Leader Schumer,

We write to ask that you continue to protect one of the most important religious freedom statutes in the nation's history, the Religious Freedom Restoration Act of 1993 (RFRA), from any proposed waiver.

Three decades ago, a remarkable and diverse coalition found common ground to protect religious liberty for all. The result was RFRA—a bill that passed with overwhelming and virtually unprecedented support in Congress. Many of us or our organizations were part of that original coalition. For three decades now, we have seen and experienced first-hand how crucial a statute RFRA is to protecting religious freedom.

Thirty years after RFRA's passage we are still a diverse group of religious organizations, parachurch organizations, religious leaders, legal scholars, and advocates. We disagree on many important religious and political issues. But we remain united in this fact: RFRA is a critical civil rights statute that must remain above partisan politics.

We ask that you continue to protect this landmark statute by ensuring that no legislative proposal in the 119th Congress passed out of committee or on the House or Senate floor waives RFRA's application to any federal law. Regrettably, these waivers have appeared in bills sponsored by members of both political parties. No RFRA waiver has ever been signed into law.

RFRA was passed with strong bipartisan support

As you know, RFRA was passed in 1993 with overwhelming bipartisan support (97-3 in the Senate, unanimous consent in the House) in response to the Supreme Court's decision in *Employment Division v. Smith*—a decision which dramatically cut back long-standing constitutional protections for religious exercise. The Court ruling upheld the denial of state unemployment benefits to members of a Native American church fired from their jobs for using peyote in religious ceremonies. The majority reasoned that laws that were neutral and generally applicable did not generally offend the Free Exercise Clause of the First Amendment.

In the wake of *Smith*, Congress responded swiftly by introducing RFRA. Its lead Senate sponsors were Senators Ted Kennedy and Orrin Hatch. The House likewise had strong bipartisan support for the bill under the lead sponsor, then-Representative Chuck Schumer. A remarkably diverse coalition rallied behind federal lawmakers to rebuild robust protections for free exercise. The proposal was endorsed by over sixty groups representing scholars, lawmakers, advocates, Christians, Sikhs, Jews, Muslims, Humanists, and secular

civil liberties organizations.[1] It passed Congress with nearly unanimous support and was signed by President Clinton on November 16, 1993.

RFRA is a balancing test that requires sufficient justification for burdens on free exercise

Nothing in RFRA predetermines whether the religious claimant will win. It is, simply put, a balancing test that promises individuals a day in court when the federal government has substantially burdened their ability to practice their faith. It rightly places the burden of proof on those wielding government power to show why maintaining the burden on this religious person or group is in furtherance of a compelling government interest and could not be avoided. It applies to all federal statutes—including later-enacted statutes—and can only be waived by Congress with an explicit citation.

Courts are well-equipped to adjudicate questions of sincerity, burden, and the government's compelling interest. Empirical evidence from multiple studies shows that the federal government wins RFRA claims as often as it loses them.[2] Over the last eight years, federal agencies have also repeatedly recognized their obligation to consider RFRA's application in their rulemaking. It is religious views that are unpopular with federal bureaucrats that need RFRA's protection the most.

There are several reasons why no waiver to RFRA must ever pass. First, waivers are unnecessary because a balancing test is written into the very law itself. Where the government has a compelling government interest, that interest will justify the government's burden on religious exercise after the government has proven its case.

Second, because waivers are unnecessary, any single waiver would immediately reduce the potency that Congress intended RFRA to have in the first place. RFRA's protections are meaningful precisely because the statute applies without exception—even, as courts have held, to sensitive areas of the federal government like our nation's military.

Third, any single waiver increases the likelihood that more waivers will be passed in the future, reducing RFRA's protections over time. A diluted RFRA ultimately means diluted religious freedom protections for all of us. A strong, universal RFRA simply requires the federal government to justify its actions with good reasons where religious exercise has been restricted. RFRA is, at its core, common sense protection for the little guy. Nothing is more fundamentally American than that.

RFRA is not a replacement for clear religious freedom protections where there is an identifiable conflict

It should also be noted that, while RFRA is a critical protection that should not be amended, its existence does not absolve Congress from its responsibility to include clear protections for religious exercise where proposed legislation creates an identified free exercise conflict. In such cases, Members must recall their oath to defend the Constitution and negotiate legislation that is respectful of core constitutional protections for religious freedom. And, while RFRA's balancing test may ultimately provide protection, Congress should not pass legislation that generates needless church-state conflict. Religious entanglement and the high cost of litigation are burdens to all parties involved—especially for small or minority faith groups. Such costs can be especially expensive to the federal government if it loses.

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1 Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 Tex. L. Rev. 209, 210, 244 (1994).

2 Luke W. Goodrich & Rachel N. Busick, *Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases*, 48 Seton Hall L. Rev. 353 (2018). See also Stephanie H. Barclay & Mark Rienzi, *Constitutional Anomalies or As-Applied Challenges? A Defense of Religious Exemptions*, 59 B.C. L. Rev. 1595, 1639 (2018).

We support RFRA and oppose any waiver of the statute's application to federal law. We urge you to avoid or strike RFRA waiver language from any bill text that is under consideration before your respective chambers.

Respectfully,

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