In the wake of the U.S. Supreme Court’s 1990 decision in Employment Division v. Smith, which cut back long-standing constitutional protections for religious liberty, a highly diverse coalition of elected officials, scholars, and advocacy groups united to restore broader protections for religious freedom. This legislation, the Religious Freedom Restoration Act (RFRA), put two qualifications on the government’s ability to impose on religious freedom. First the government had to demonstrate a “compelling interest” that their actions were necessary. Second they had to prove that there was no satisfactory substitute for achieving their goal without impacting religious liberty.

When it was passed by the U.S. Congress in 1993, the Religious Freedom Restoration Act (RFRA) “was supported by one of the broadest coalitions in recent political history,” with 66 religious and civil liberties groups, “including Christians, Jews, Muslims, Sikhs, Humanists, and secular civil liberties organizations.”1 RFRA was introduced in the U.S. House of Representatives by then-Representative Charles Schumer and it attracted no less than 170 co-sponsors from both political parties. The U.S. Senate's companion bill was jointly presented by Senators Orrin Hatch (R-UT) and Edward Kennedy (D-MA). In his signing remarks, President Bill Clinton noted “what a broad coalition of Americans came together to make this bill a reality,” and that “many of the people in the coalition worked together across ideological and religious lines.”2 President Clinton praised “the shared desire . . . to protect perhaps the most precious of all American liberties, religious freedom,” and he even joked that “the power of God is such that even in legislative process miracles can happen.”3

During congressional hearings prior to RFRA’s passage, testimony from diverse civil rights and religious groups underscored RFRA’s importance:

- The American Jewish Congress offered testimony that “[a]ll religious minorities must be alarmed when the courts are stripped of the power to require government to accommodate those religious practices, to use Justice Scalia’s phrase, ‘not widely engaged in.’ [RFRA] returns that power to the courts and, with it, ensures that government does not arbitrarily interfere with religious freedom;”4
- The President of the ACLU testified that “members of minority religious groups, should not have to depend on accidents of political process to protect their fundamental freedoms,” and that without the passage of RFRA, religious liberty would be “[g]ravely [t]hreatened;”5 and
- Elder Dallin H. Oaks from the Church of Jesus Christ of Latter-day Saints (LDS Church) testified that “political power or impact must not be the measure of which religious practices can be forbidden by law. The Bill of Rights protects principles, not constituencies.”6
- Similarly, the Senate Report accompanying RFRA stated: “State and local legislative bodies cannot be relied upon to craft exceptions from laws of general application to protect the ability of the religious minorities to practice their faiths, an explicit fundamental constitutional right.”7

In the years since its passage, RFRA has proven true to its promise. It has succeeded in providing critical protections for religious freedom, most especially for religious minorities. This is as it should be. Protection for religious freedom, even when religious practices conflict with otherwise applicable law, is an important part of our nation’s history.8 Such protections help religious groups, including minority faiths, to thrive. Without such protections, the Amish could be forced to give up their way of life, Jehovah’s Witnesses could be forced to bear arms, Seventh-day Adventists and Jews could face a choice between their livelihood and keeping the Sabbath.9 10 11 Commitment to the principle that religious liberty is fundamental to freedom and to human dignity, and that protecting the religious rights of others—even the rights of those with whom we may disagree—ultimately leads to greater protections for all of our rights.
The Religious Land Use and Institutionalized Persons Act

As originally passed in 1993, RFRA applied to all three levels of government—federal, state, and local. After the U.S. Supreme Court’s 1997 ruling in City of Boerne v. Flores, RFRA applied only to the federal government, not to state or local governments. This left religious Americans vulnerable to state and local laws that restricted their ability to practice their faith.

From 1997 to 2000, the U.S. Congress investigated state- and local-level burdens on religious freedom. Congress amassed evidence in 9 congressional hearings that took place over the course of 3 years. Congress determined it was necessary to pass another law “to address ‘those areas of law where the congressional record of religious discrimination and discretionary burden was the strongest’: laws governing institutionalized persons (i.e., prisoners and persons in mental institutions) and land use laws.” The Religious Land Use and Institutionalized Persons Act (RLUIPA), like RFRA, was enacted with overwhelming bipartisan support. In 2000, RLUIPA passed both the U.S. House and Senate by unanimous consent and was signed into law by President Bill Clinton.

In RLUIPA’s congressional hearings focused on religious land use, both statistical and anecdotal evidence demonstrated widespread resistance to churches in the zoning context. For example, Congress observed in a House Committee report that “an Orthodox Jewish rabbi was threatened with criminal prosecution for leading morning and evening prayers in a converted garage in one of Miami’s single-family residential areas” and that the “Eleventh Circuit held that, in this post-Smith world, the city’s interest in an exception-free zoning plan outweighed the rabbi’s interest in providing the services.”

In the penal setting, the U.S. Congress also observed “that ‘frivolous or arbitrary’ barriers impeded institutionalized persons’ religious exercise.” A joint statement of Senators Hatch and Kennedy noted that “[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways.” For example, Congress received testimony observing that in Michigan, prison officials refused to provide matzo, the unleavened bread required to be eaten by Jews on Passover, “essentially forcing all Jewish inmates to violate their sacred religious practices.” The prison’s action was made even more arbitrary by the fact that a “Jewish organization had offered to donate and ship matzo to meet the prisoners’ needs during Passover, but the officials had refused even the donated matzo.” Congress also noted a case where prison personnel deliberately intercepted confessional communications of prisoners, and noted that such interference with religious practice could continue absent the protections of a strict scrutiny test.

In the years since its passage, RLUIPA (like its sister statute RFRA) has succeeded in providing critical protections for religious freedom, including for religious minorities. The U.S. Supreme Court’s 2015 decision in Holt v. Hobbs is an excellent example. There, the Supreme Court used RLUIPA to protect a Muslim prison inmate who sought to grow a religiously-mandated half-inch beard. In a series of appellate court victories, RLUIPA has protected Jewish prison inmates seeking access to kosher meals, for example, in Florida and Texas. Other courts have relied upon RLUIPA to protect prison inmates engaging in diverse religious practices, including a Native American who could not cut his hair, a Santeria practitioner who needed access to consecrated religious items, and a Muslim who sought a halal diet. RLUIPA’s land use provisions have allowed houses of worship across the nation to escape discriminatory or substantially burdensome land use restrictions. For example, RLUIPA has protected a Muslim congregation in New Jersey after a municipality labeled the congregation’s proposed mosque a “public nuisance”; a church in California when a city attempted to seize its land to build a Costco; and a Sikh gurudwara, or temple, when a local government repeatedly
gave contradictory reasons for denying its land use applications.\textsuperscript{26}

One of RLUIPA's most successful provisions is its Equal Terms requirement. This provision, which has no textual parallel in RFRA, requires governments to treat religious assemblies on equal terms with non-religious assemblies. This provision has protected a rabbi who held minyans, or prayer meetings, in his home; an evangelical church prohibited from operating in a district where private clubs were allowed; and a synagogue prohibited from locating in a district where clubs and lodges were allowed.\textsuperscript{27}

\textbf{State Religious Freedom Restoration Acts}

In the wake of City of Boerne v. Flores, where the U.S. Supreme Court held that RFRA applies only to the federal government, many states around the country responded by passing state Religious Freedom Restoration Acts (state RFRAs), a trend that continues today. These state RFRAs are generally modeled after the federal RFRA, with minor variations in some states. Successfully enacted state RFRAs protect people from state and local laws that restrict their religious liberty. Currently, 21 states have enacted a state RFRA: Alabama, Arizona, Arkansas, Connecticut, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

\textit{SOURCES}

[1] Douglas Laycock & Oliver S. Thomas, Interpreting the Religious Freedom Restoration Act, 73 Tex. L. Rev. 209, 210, 244 (1994); see also id. at 201 n.9 (“The Coalition for the Free Exercise of Religion included: 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 Public Affairs; 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. . . . The American Bar Association did not formally join the Coalition, but repeatedly endorsed the bill.”; American Bar Association, Statement of Support for the Religious Freedom Restoration Act of 1993 (Mar. 11, 1993).


[3] Id.


[5] Id. at 64, 80.


[10] Conscientious objection to military service is protected by statues, the first of which was enacted during the Civil War. See Kevin Seamus Hasson, The Right to Be Wrong 51-52 (2005). During World War II, Jehovah’s Witnesses faced mob violence for their religiously motivated refusal to bear arms and to salute the flag. Their struggles against general laws regulating speech have been responsible for a number of key First Amendment decisions. See generally Shawn Francis Peters, Judging Jehovah’s Witnesses: Religious Persecution and the Dawn of the Rights Revolution (2000).


[18] Id.


[20] Id. at 10; see also Yehuda M. Braunstein, Will Jewish Prisoners Be Boerne Again? Legislative Responses to City of Boerne v. Flores, 66 Fordham L. Rev. 2333, 2358 (1998).


[23] See Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005); Davila v. Gladden, No. 13-10739, 2015 WL 1273664 (11th Cir. Jan. 9, 2015); Abdulhaseeb v. Calbone, 600 F.3d 1301, 1318 (10th Cir. 2010).


[26] Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter, 456 F.3d 978 (9th Cir. 2006).

[27] Konikov v. Orange Cnty., Fla., 410 F.3d 1317 (11th Cir. 2005); Elijah Grp., Inc. v. City of Leon Valley, Tex., 643 F.3d 419, 420 (5th Cir. 2011); Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).