

# The Free Exercise Clause under [RFRA]

*The Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4 (also known as [RFRA]), is a 1993 United States federal law that "ensures that interests in religious freedom are protected."*

*This law reinstated the Sherbert Test, which was set forth by Sherbert v. Verner, and Wisconsin v. Yoder, mandating that strict scrutiny be used when determining whether the Free Exercise Clause of the First Amendment to the United States Constitution, guaranteeing religious freedom, has been violated. In the Religious Freedom Restoration Act, Congress states in its findings that a religiously neutral law can burden a religion just as much as one that was intended to interfere with religion; therefore the Act states that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."*

*The law provided an exception if two conditions are both met. First, the burden must be necessary for the "furtherance of a compelling government interest." Under strict scrutiny, a government interest is compelling when it is more than routine and does more than simply improve government efficiency. A compelling interest relates directly with core constitutional issues. The second condition is that the rule must be the least restrictive way in which to further the government interest.*

## **Sherbert v. Verner, 374 U.S. 398, 405 (1963)**

It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. [Footnote 6] American

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Communications Assn. v. Douds, 339 U. S. 382, 339 U. S. 390; Wieman v. Updegraff, 344 U. S. 183, 344 U. S. 191-192; Hannegan v. Esquire, Inc., 327 U. S. 146, 327 U. S. 155-156. For example, in Flemming v. Nestor, 363 U. S. 603, 363 U. S. 611, the Court recognized with respect to Federal Social Security benefits that "[t]he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause."

MR. JUSTICE BLACK, whom MR. JUSTICE DOUGLAS joins, concurring

"First Amendment provides the only kind of security system that can preserve a free government -- one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us." Yates v. United States, 354 U. S. 298, 354 U. S. 344 (separate opinion).

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## **Wisconsin v. Yoder, 406 U.S. 205, 224 (1972)**

We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is

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"right," and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.