

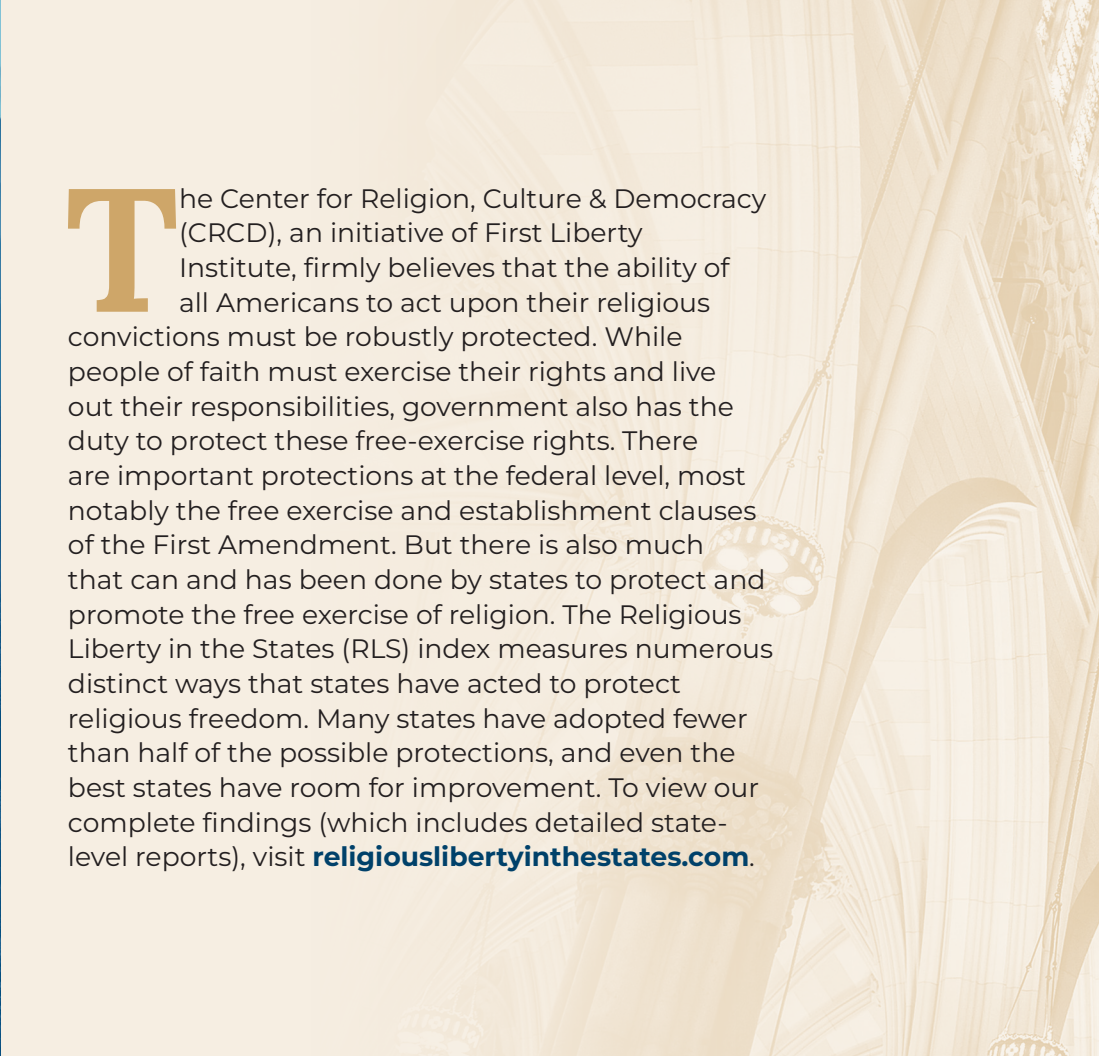

FIRST LIBERTY



CENTER FOR RELIGION,  
CULTURE & DEMOCRACY

# Securing Religious Liberty *in Your State*

A GUIDE FOR LAWMAKERS AND ADVOCATES



**T**he Center for Religion, Culture & Democracy (CRCD), an initiative of First Liberty Institute, firmly believes that the ability of all Americans to act upon their religious convictions must be robustly protected. While people of faith must exercise their rights and live out their responsibilities, government also has the duty to protect these free-exercise rights. There are important protections at the federal level, most notably the free exercise and establishment clauses of the First Amendment. But there is also much that can and has been done by states to protect and promote the free exercise of religion. The Religious Liberty in the States (RLS) index measures numerous distinct ways that states have acted to protect religious freedom. Many states have adopted fewer than half of the possible protections, and even the best states have room for improvement. To view our complete findings (which includes detailed state-level reports), visit [religiouslibertyinthestates.com](https://religiouslibertyinthestates.com).



## RECOMMENDED PROTECTIONS

The CRCD hopes that every state will adopt every religious liberty provision we measure. But it is unlikely that states will adopt every protection they lack in one legislative session. We encourage legislators, activists, and citizens hoping to better protect religious freedom in their states to advocate for one or more of the following protections absent in their state. In each case, we recommend legislation that has been adopted in at least one state as a model for legal protections for other states.

Some religious liberty protections are more important than others. We recognize that the environment for religious liberty, both in terms of legal safeguards and cultural practices, differs in every state. Each state lacks at least one of the following safeguards, so everyone will find something relevant here. These recommendations include the most significant protections as well as those that are most commonly missing.

RECOMMENDATION **ONE**

# Religious Freedom Restoration Acts

**AFTER THE UNITED STATES SUPREME COURT** limited the extent to which the First Amendment protects religious liberty in *Employment Division v. Smith* (1990), Congress enacted the Religious Freedom Restoration Act (RFRA) in 1993 to ensure that religious liberty is robustly protected. The act passed in the House without a dissenting vote, was approved 97 to 3 by the Senate, and was signed into law by President Bill Clinton. When the Supreme Court found the law to be unconstitutional as applied to states, many states passed RFRA modeled after the federal version. These statutes offer the broadest possible protection of religious liberty. Tennessee's RFRA (§4-1-407(b)-(d)) has language almost identical to that overwhelmingly passed by Congress. Its central language reads:

*(b) Except as provided in subsection (c), no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.*

*(c) No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:*

*(1) Essential to further a compelling governmental interest; and*

*(2) The least restrictive means of furthering that compelling governmental interest.*

RECOMMENDATION TWO

# Health-Care Provision: General Conscience Clause

**IN 1973, SHORTLY AFTER ROE V. WADE WAS DECIDED,** Congress passed the Church Amendment to ensure that medical professionals who serve in facilities receiving federal funding would not be penalized for refusing to perform abortions or sterilizations if they had religious or moral objections to doing so. These protections have been expanded by subsequent Congresses, but states may offer protections as well. A listing of these is available at the RLS website. Although all the health-care provision protections have value, if a state were to pass just one of them, we recommend a general conscience protection such as that adopted by the State of Washington (RCW 48.43.065):

*(1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.*

*(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.*

RECOMMENDATION **THREE**

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# For-Profit Business Nonparticipation

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**OVER THE PAST DECADE,** several wedding service providers who have religious objections to participating in same-sex wedding ceremonies have been subjected to ruinous lawsuits. These include First Liberty clients Aaron and Melissa Klein. To protect small-business owners such as the Kleins, we encourage states to adopt a protection similar to Mississippi's (§11-62-5(5)):

*The state government shall not take any discriminatory action against a person wholly or partially on the basis that the person has provided or declined to provide the following services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, celebration, or recognition of any marriage, based upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 11-62-3:*

- (a) Photography, poetry, videography, disc-jockey services, wedding planning, printing, publishing or similar marriage-related goods or services; or*
- (b) Floral arrangements, dress making, cake or pastry artisty, assembly-hall or other wedding-venue rentals, limousine or other car-service rentals, jewelry sales and services, or similar marriage-related services, accommodations, facilities or goods.*

RECOMMENDATION **FOUR**

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# Public Official Nonparticipation

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**SOMETIMES THE VERY NATURE OF PUBLIC SERVICE** requires individuals to do things to which some citizens have religious objections. For instance, a religious pacifist should not join the United States Marine Corps and then expect to be exempted from combat. But whenever possible, officials should be exempted from noncore aspects of their jobs to which they have religious or moral objections. Exemplary legislation in this regard is a 1994 federal statute that protects federal and state employees from being forced to participate in an execution “if such participation is contrary to the moral or religious convictions of the employee.”

Many states permit, but do not require, justices of the peace and judges to officiate at marriage ceremonies. Throughout the nation, several judges, including First Liberty client Diane Hensley, have faced formal complaints because they object to participating in same-sex ceremonies. State laws that permit public servants to decline to participate in ceremonies to which they have religious or moral objections offer important protection to public officials such as Judge Hensley. North Carolina’s protection (§51 5.5) reads, in part:

***Recusal of certain public officials.***

*(a) Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.*

*(b) Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the register of deeds and is in effect for at least six months from the time delivered to the register of deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The register of deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.*

RECOMMENDATION **FIVE**

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# Excused Absences for Religious Holidays

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**ALTHOUGH MOST SCHOOL DISTRICTS** no longer refer to “Christmas Break,” the reality is that virtually all school calendars are built around Christian holidays. “Winter Break” conveniently permits Christian children to celebrate Christmas, and schools seldom if ever hold classes on Sundays. But on occasion, school days fall on holy days for adherents to (usually) minority religions. Some states have passed laws requiring schools to provide a limited number of excused absences so that children may celebrate religious holidays. Because these statutes primarily benefit members of minority religions, it may be easier to build coalitions to pass such protections than the laws referenced above. A good example of such a statute may be found in California (EDC §48205(a)(7)):

*(a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:*

*[ . . ]*

*(7) For justifiable personal reasons, including, but not limited to, an attendance or appearance in court, attendance at a funeral service, observance of a holiday or ceremony of the pupil's religion, attendance at a religious retreat, attendance at an employment conference, or attendance at an educational conference on the legislative or judicial process offered by a nonprofit organization, when the pupil's absence is requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board of the school district.*

**R**eligious Liberty in the States considers dozens of distinct ways states protect religious liberty. Each protection has been adopted in at least one state. The RLS website provides links to every religious liberty provision measured. Since each state's religious liberty statutes are accessible through the site, it serves as a guide to those who want to advocate for protections their state lacks.

RLS project leaders, CRCDC staff, and First Liberty attorneys are eager to work with anyone pursuing state-level protections for what many American founders called "the sacred rights of conscience."

The CRCD is always interested in improving our Religious Liberty in the States report. Suggestions are always welcome. We are particularly interested in adding protections that have not previously been considered by RLS. Please send suggestions to the director of the RLS project, Mark David Hall (m.hall@crzd.net), or to the CRCD's director of research, Jordan Ballor (j.ballor@crzd.net).

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full report



[ReligiousLibertyInTheStates.com](https://www.ReligiousLibertyInTheStates.com)

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