

Frequently Asked Questions:

1. Don't we already have religious freedom in Kentucky under the First Amendment?

Because of 1990 and 1997 U.S. Supreme Court decisions the free exercise clause is only being given its "compelling interest test" protection in cases where the FEDERAL government may be encroaching on religious freedom. The U.S. Supreme Court has stated that it is up to each individual STATE to re-establish the "compelling interest test." Therefore any state or local government regulation is not covered in Kentucky since we have not yet acted.

2. Have any other states done this? Yes. Over half of the states have moved to re-establish the "compelling interest test."

3. Will the Religious Freedom Amendment favor one group over another? No. It will protect people of all denominations and faiths and their sincerely held beliefs. When it comes to religious freedom, the law makes no distinction.

4. Would the Religious Freedom Amendment allow protection for harmful or illegal behavior?

No. First, because a person would have to demonstrate that they have a sincerely held religious belief. Secondly, because religious liberty cannot negate another person's civil rights. And thirdly, because the government would have a compelling interest to protect other citizens from the harmful behavior.

5. Would the Religious Freedom Amendment result in frivolous suits? No. Nearly 80 years of history using this test has proven that it is reliable and effective.

6. Why should this be a constitutional amendment? Religious Freedom is one of America's fundamental rights – it's in the First Amendment. Similarly, our State Constitution is where the language establishing fundamental rights for the Commonwealth is located. It is here where it was first established and now needs to be reinstated and clarified.

7. Is the Religious Freedom Amendment giving new freedoms to religious people or groups?

No. Since 1938 the U.S. Supreme Court had decided religious freedom claims using the "compelling interest test." The government had to prove it had both a "compelling interest" and that it was using the "least restrictive means" to protect that interest in order to restrict or burden someone's religious freedom. This meant the government could not take away someone's religious freedom unless they could prove both things. For example, the Amish have been allowed to educate their children in Amish schools because, although the government had a compelling interest to see that children be educated, the "least restrictive means" did not require students to be in public schools. Therefore, the Amish could educate their children in Amish schools. The same has been true for home schooling.

8. To what degree is religious freedom protected currently? In Kentucky, a citizen must first prove two things: 1) they have a sincerely held religious belief and 2) that belief has been burdened (denied or restricted). All the state or local government has to prove is that they didn't establish the regulation or policy to INTENTIONALLY restrict or target a religion. However, many laws UNINTENTIONALLY restrict religious freedom. For example, the state could pass a law stating, "Hats may not be worn by state employees at work." This would deny an Orthodox Jewish man the freedom to wear a yarmulke or an observant Mennonite woman to wear a head-covering, even though it would cause them to violate a sincerely held religious belief.

9. How would the Religious Freedom Amendment change things? A citizen would still need to prove they have a sincerely held religious belief that has been burdened; however, the long established and effectively used "compelling interest test" would be restored so that the government would have to prove that it has a compelling interest and there is no less religiously restrictive means to protect that interest. Otherwise the citizen's religious freedom could not be restricted.

"All men should enjoy the fullest toleration in the exercise of religion according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion any man disturb the peace, the happiness, or safety of society."

– James Madison, Father of the Constitution