

Union Calendar No. 43

103D CONGRESS
1ST SESSION

H. R. 1308

[Report No. 103-88]

A BILL

To protect the free exercise of religion.

MAY 11, 1993

Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. SCHUMER (for himself, Mr. COX, Mr. NADLER, Mrs. MALONEY, Mr. GILMAN, Mr. MORAN, Mr. LEWIS of Georgia, Ms. WOOLSEY, Mr. WASHINGTON, Mr. COOPER, Mr. ACKERMAN, Mr. CARDIN, Mr. YATES, Mrs. MEEK, Mr. KOPETSKI, Mr. RAMSTAD, Mr. DEUTSCH, Mr. PRICE of North Carolina, Mr. SWIFT, Ms. SHEPHERD, Mr. TOWNS, Mrs. MORELLA, Mr. CRAPO, Mr. FRANK of Massachusetts, Mr. BERMAN, Mr. EDWARDS of California, Ms. BYRNE, Ms. PELOSI, Mr. SUNDQUIST, Mr. BRYANT, Mr. HUTCHINSON, Mrs. UNSOELD, Ms. MOLINARI, Mr. HALL of Ohio, Ms. SLAUGHTER, Mr. HASTINGS, Mr. GUTIERREZ, Mr. WELDON, Mr. GORDON, Mr. SPRATT, Mr. SAWYER, Mr. ANDREWS of New Jersey, Mr. RUSH, Mr. LEHMAN, Mr. GLICKMAN, Mr. GONZALEZ, Mr. JOHNSTON of Florida, Mrs. JOHNSON of Connecticut, Mr. MATSUI, Mr. OWENS, Mr. MARTINEZ, Mr. McDERMOTT, Mr. PORTER, Mr. JEFFERSON, Ms. ESHOO, Mr. HERGER, Mr. SAXTON, Mr. SMITH of Texas, Mr. McHALE, Mr. SANDERS, Ms. WATERS, Mr. WYNN, Mr. THORNTON, Mr. NEAL of North Carolina, Mr. WYDEN, Ms. MARGOLIES-MEZVINSKY, Mr. LANTOS, Mr. REYNOLDS, Mr. LEVY, Mr. STUDDS, Mr. LINDER, Mr. BLACKWELL, Mr. MINETA, Mr. PAYNE of New Jersey, Ms. MCKINNEY, Mr. TORRICELLI, Mr. KNOLLENBERG, Mr. SERRANO, Mr. SABO, Mr. BARRETT of Wisconsin, Mr. MACHTLEY, Mr. SISISKY, Mr. TORRES, Mr. DELLUMS, Mr. DEFazio, Mr. WAXMAN, Mr. STARK, Mr. SHAYS, Mr. SCOTT, Mr. FROST, Mr. LEVIN, Mr. FILNER, Mr. PETE GEREN of Texas, Mr. STRICKLAND, Mr. FINGERHUT, Mr. HOCHBRUECKNER, Mr. GEJDENSON, Mr. FRANKS of Connecticut, Mr. GOODLATTE, Mr. HOUGHTON, Mr. LIGHTFOOT, Mr. SCHIFF, Mr. TALENT, Mr. BEILENSEN, Mrs. LOWEY, Mr. HANSEN, Ms. DELAURO, Mr. MFUME, Mr. HOYER, Ms. NORTON, Mr. ORTON, Mr. GUNDERSON, Mr. WILLIAMS, Mr. HAMBURG, Mr. KLEIN, Mr. DICKS, Mr. STUMP, Mr. EVANS, Mr. SKAGGS, Mr. STOKES, Mrs. COLLINS of Illinois, Ms. VELÁZQUEZ, Mr. VENTO, Mr. GENE

1 unalienable right, secured its protection in the First
2 Amendment to the Constitution;

3 (2) laws “neutral” toward religion may burden
4 religious exercise as surely as laws intended to
5 interfere with religious exercise;

6 (3) governments should not burden religious ex-
7 ercise without compelling justification;

8 (4) in *Employment Division of Oregon v. Smith*
9 the Supreme Court virtually eliminated the require-
10 ment that the government justify burdens on reli-
11 gious exercise imposed by laws neutral toward
12 religion; and

13 (5) the compelling interest test as set forth in
14 *Sherbert v. Verner* and *Wisconsin v. Yoder* is a
15 workable test for striking sensible balances between
16 religious liberty and competing governmental inter-
17 ests.

18 (b) PURPOSES.—The purposes of this Act are—

19 (1) to restore the compelling interest test as set
20 forth in Federal court cases before *Employment Di-*
21 *vision of Oregon v. Smith* and to guarantee its appli-
22 cation in all cases where free exercise of religion is
23 burdened; and

24 (2) to provide a claim or defense to persons
25 whose religious exercise is burdened by government.

1 **SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.**

2 (a) IN GENERAL.—Government shall not burden a
3 person’s exercise of religion even if the burden results
4 from a rule of general applicability, except as provided in
5 subsection (b).

6 (b) EXCEPTION.—Government may burden a per-
7 son’s exercise of religion only if it demonstrates that appli-
8 cation of the burden to the person—

9 (1) furthers a compelling governmental interest;
10 and

11 (2) is the least restrictive means of furthering
12 that compelling governmental interest.

13 (c) JUDICIAL RELIEF.—A person whose religious ex-
14 ercise has been burdened in violation of this section may
15 assert that violation as a claim or defense in a judicial
16 proceeding and obtain appropriate relief against a govern-
17 ment. Standing to assert a claim or defense under this
18 section shall be governed by the general rules of standing
19 under article III of the Constitution.

20 **SEC. 4. ATTORNEYS FEES.**

21 (a) JUDICIAL PROCEEDINGS.—Section 722 of the Re-
22 vised Statutes of the United States (42 U.S.C. 1988) is
23 amended by inserting “the Religious Freedom Restoration
24 Act of 1993,” before “or title VI of the Civil Rights Act
25 of 1964”.

1 (b) ADMINISTRATIVE PROCEEDINGS.—Section
2 504(b)(1)(C) of title 5, United States Code, is amended—

3 (1) by striking “and” at the end of clause (ii);

4 (2) by striking the semicolon at the end of
5 clause (iii) and inserting “; and”; and

6 (3) by inserting “(iv) the Religious Freedom
7 Restoration Act of 1993” after clause (iii).

8 **SEC. 5. DEFINITIONS.**

9 As used in this Act—

10 (1) the term “government” includes a branch,
11 department, agency, instrumentality, and official (or
12 other person acting under color of law) of the
13 United States, a State, or a subdivision of a State;

14 (2) the term “State” includes the District of
15 Columbia, the Commonwealth of Puerto Rico, and
16 each territory and possession of the United States;

17 (3) the term “demonstrates” means meets the
18 burdens of going forward with the evidence and of
19 persuasion; and

20 (4) the term “exercise of religion” means exer-
21 cise of religion under the first article of amendment
22 to the Constitution of the United States.

23 **SEC. 6. APPLICABILITY.**

24 (a) IN GENERAL.—This Act applies to all Federal
25 and State law, and the implementation of that law,

1 whether statutory or otherwise, and whether adopted be-
2 fore or after the enactment of this Act.

3 (b) **RULE OF CONSTRUCTION.**—Federal statutory law
4 adopted after the date of the enactment of this Act is sub-
5 ject to this Act unless such law explicitly excludes such
6 application by reference to this Act.

7 (c) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
8 this Act shall be construed to authorize any government
9 to burden any religious belief.

10 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

11 (a) **IN GENERAL.**—Nothing in this Act shall be con-
12 strued to affect, interpret, or in any way address that por-
13 tion of the First Amendment prohibiting laws respecting
14 the establishment of religion. Granting government fund-
15 ing, benefits, or exemptions, to the extent permissible
16 under the Establishment Clause of the First Amendment,
17 shall not constitute a violation of this Act.

18 (b) **DEFINITION.**—As used in this section, the term
19 “granting government funding, benefits, or exemptions”
20 does not include a denial of government funding, benefits,
21 or exemptions.