

103D CONGRESS  
1ST SESSION

# S. 578

To protect the free exercise of religion.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11 (legislative day, MARCH 3), 1993

Mr. KENNEDY (for himself, Mr. HATCH, Mr. BENNETT, Mr. BOND, Mr. BRADLEY, Mr. BUMPERS, Mr. CAMPBELL, Mr. DANFORTH, Mr. DASCHLE, Mr. EXON, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HARKIN, Mr. HATFIELD, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. REID, Mr. RIEGLE, Mr. SPECTER, Mr. WELLSTONE, Mr. WOFFORD, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect the free exercise of religion.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Religious Freedom  
5 Restoration Act of 1993”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**  
7 **PURPOSES.**

8 (a) FINDINGS.—The Congress finds that—

1           (1) the framers of the Constitution, recognizing  
2 free exercise of religion as an unalienable right, se-  
3 cured its protection in the First Amendment to the  
4 Constitution;

5           (2) laws “neutral” toward religion may burden  
6 religious exercise as surely as laws intended to inter-  
7 fere with religious exercise;

8           (3) governments should not burden religious ex-  
9 ercise without compelling justification;

10           (4) in *Employment Division v. Smith*, 494 U.S.  
11 872 (1990) the Supreme Court virtually eliminated  
12 the requirement that the government justify burdens  
13 on religious exercise imposed by laws neutral toward  
14 religion; and

15           (5) the compelling interest test as set forth in  
16 prior Federal court rulings is a workable test for  
17 striking sensible balances between religious liberty  
18 and competing prior governmental interests.

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

20           (1) to restore the compelling interest test as set  
21 forth in *Sherbert v. Verner*, 374 U.S. 398 (1963)  
22 and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and  
23 to guarantee its application in all cases where free  
24 exercise of religion is burdened; and

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

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

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

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

11           (1) is in furtherance of a compelling govern-  
12      mental interest; and

13           (2) is the least restrictive means of furthering  
14      that compelling governmental interest.

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

22 **SEC. 4. ATTORNEYS FEES.**

23       (a) JUDICIAL PROCEEDINGS.—Section 722 of the Re-  
24      vised Statutes (42 U.S.C. 1988) is amended by inserting

1 “the Religious Freedom Restoration Act of 1993,” before  
2 “or title VI of the Civil Rights Act of 1964”.

3 (b) ADMINISTRATIVE PROCEEDINGS.—Section  
4 504(b)(1)(C) of title 5, United States Code, is amended—

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

6 (2) by striking the semicolon at the end of  
7 clause (iii) and inserting “, and”; and

8 (3) by inserting “(iv) the Religious Freedom  
9 Restoration Act of 1993;” after clause (iii).

10 **SEC. 5. DEFINITIONS.**

11 As used in this Act—

12 (1) the term “government” includes a branch,  
13 department, agency, instrumentality, and official (or  
14 other person acting under color of law) of the Unit-  
15 ed States, a State, or a subdivision of a State;

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

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

22 (4) the term “exercise of religion” means the  
23 exercise of religion under the First Amendment to  
24 the Constitution.

1 **SEC. 6. APPLICABILITY.**

2 (a) IN GENERAL.—This Act applies to all Federal  
3 and State law, and the implementation of that law, wheth-  
4 er statutory or otherwise, and whether adopted before or  
5 after the enactment of this Act.

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

10 (c) RELIGIOUS BELIEF UNAFFECTED.—Nothing in  
11 this Act shall be construed to authorize any government  
12 to burden any religious belief.

13 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

14 Nothing in this Act shall be construed to affect, inter-  
15 pret, or in any way address that portion of the First  
16 Amendment prohibiting laws respecting the establishment  
17 of religion (referred to in this section as the “Establish-  
18 ment Clause”). Granting government funding, benefits, or  
19 exemptions, to the extent permissible under the Establish-  
20 ment Clause, shall not constitute a violation of this Act.  
21 As used in this section, the term “granting”, used with  
22 respect to government funding, benefits, or exemptions,  
23 does not include the denial of government funding, bene-  
24 fits, or exemptions.

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