

106TH CONGRESS
1ST SESSION

H. R. 1691

To protect religious liberty.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1999

Mr. CANADY of Florida (for himself, Mr. EDWARDS, Mr. HYDE, Mr. WEINER, Mr. SENSENBRENNER, Mr. HUTCHINSON, Mr. GREEN of Texas, Mr. SMITH of Texas, Mr. ROGAN, Mr. PETERSON of Minnesota, and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect religious liberty.

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 Liberty Pro-
5 tection Act of 1999”.

6 **SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.**

7 (a) GENERAL RULE.—Except as provided in sub-
8 section (b), a government shall not substantially burden
9 a person’s religious exercise—

1 (1) in a program or activity, operated by a gov-
2 ernment, that receives Federal financial assistance;
3 or

4 (2) in any case in which the substantial burden
5 on the person's religious exercise affects, or in which
6 a removal of that substantial burden would affect,
7 commerce with foreign nations, among the several
8 States, or with Indian tribes;
9 even if the burden results from a rule of general applica-
10 bility.

11 (b) EXCEPTION.—A government may substantially
12 burden a person's religious exercise if the government
13 demonstrates that application of the burden to the
14 person—

15 (1) is in furtherance of a compelling govern-
16 mental interest; and

17 (2) is the least restrictive means of furthering
18 that compelling governmental interest.

19 (c) REMEDIES OF THE UNITED STATES.—Nothing in
20 this section shall be construed to authorize the United
21 States to deny or withhold Federal financial assistance as
22 a remedy for a violation of this Act. However, nothing in
23 this subsection shall be construed to deny, impair, or oth-
24 erwise affect any right or authority of the Attorney Gen-
25 eral or the United States or any agency, officer, or em-

1 ployee thereof under other law, including section 4(d) of
2 this Act, to institute or intervene in any action or pro-
3 ceeding.

4 **SEC. 3. ENFORCEMENT OF CONSTITUTIONAL RIGHTS.**

5 (a) PROCEDURE.—If a claimant produces prima facie
6 evidence to support a claim alleging a violation of the Free
7 Exercise Clause or a violation of a provision of this Act
8 enforcing that clause, the government shall bear the bur-
9 den of persuasion on any element of the claim; however,
10 the claimant shall bear the burden of persuasion on wheth-
11 er the challenged government practice, law, or regulation
12 burdens or substantially burdens the claimant’s exercise
13 of religion.

14 (b) LAND USE REGULATION.—

15 (1) LIMITATION ON LAND USE REGULATION.—

16 (A) Where, in applying or implementing
17 any land use regulation or exemption, or system
18 of land use regulations or exemptions, a govern-
19 ment has the authority to make individualized
20 assessments of the proposed uses to which real
21 property would be put, the government may not
22 impose a substantial burden on a person’s reli-
23 gious exercise, unless the government dem-
24 onstrates that application of the burden to the
25 person is in furtherance of a compelling govern-

1 mental interest and is the least restrictive
2 means of furthering that compelling govern-
3 mental interest.

4 (B) No government shall impose or imple-
5 ment a land use regulation in a manner that
6 does not treat religious assemblies or institu-
7 tions on equal terms with nonreligious assem-
8 blies or institutions.

9 (C) No government shall impose or imple-
10 ment a land use regulation that discriminates
11 against any assembly or institution on the basis
12 of religion or religious denomination.

13 (D) No government with zoning authority
14 shall unreasonably exclude from the jurisdiction
15 over which it has authority, or unreasonably
16 limit within that jurisdiction, assemblies or in-
17 stitutions principally devoted to religious exer-
18 cise.

19 (2) FULL FAITH AND CREDIT.—Adjudication of
20 a claim of a violation of the Free Exercise Clause or
21 this subsection in a non-Federal forum shall be enti-
22 tled to full faith and credit in a Federal court only
23 if the claimant had a full and fair adjudication of
24 that claim in the non-Federal forum.

1 (3) NONPREEMPTION.—Nothing in this sub-
2 section shall preempt State law that is equally or
3 more protective of religious exercise.

4 **SEC. 4. JUDICIAL RELIEF.**

5 (a) CAUSE OF ACTION.—A person may assert a viola-
6 tion of this Act as a claim or defense in a judicial pro-
7 ceeding and obtain appropriate relief against a govern-
8 ment. Standing to assert a claim or defense under this
9 section shall be governed by the general rules of standing
10 under article III of the Constitution.

11 (b) ATTORNEYS' FEES.—Section 722(b) of the Re-
12 vised Statutes (42 U.S.C. 1988(b)) is amended—

13 (1) by inserting “the Religious Liberty Protec-
14 tion Act of 1998,” after “Religious Freedom Res-
15 toration Act of 1993,”; and

16 (2) by striking the comma that follows a
17 comma.

18 (c) PRISONERS.—Any litigation under this Act in
19 which the claimant is a prisoner shall be subject to the
20 Prison Litigation Reform Act of 1995 (including provi-
21 sions of law amended by that Act).

22 (d) AUTHORITY OF UNITED STATES TO ENFORCE
23 THIS ACT.—The United States may sue for injunctive or
24 declaratory relief to enforce compliance with this Act.

1 **SEC. 5. RULES OF CONSTRUCTION.**

2 (a) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
3 this Act shall be construed to authorize any government
4 to burden any religious belief.

5 (b) **RELIGIOUS EXERCISE NOT REGULATED.**—Noth-
6 ing in this Act shall create any basis for restricting or
7 burdening religious exercise or for claims against a reli-
8 gious organization, including any religiously affiliated
9 school or university, not acting under color of law.

10 (c) **CLAIMS TO FUNDING UNAFFECTED.**—Nothing in
11 this Act shall create or preclude a right of any religious
12 organization to receive funding or other assistance from
13 a government, or of any person to receive government
14 funding for a religious activity, but this Act may require
15 government to incur expenses in its own operations to
16 avoid imposing a burden or a substantial burden on reli-
17 gious exercise.

18 (d) **OTHER AUTHORITY TO IMPOSE CONDITIONS ON**
19 **FUNDING UNAFFECTED.**—Nothing in this Act shall—

20 (1) authorize a government to regulate or af-
21 fect, directly or indirectly, the activities or policies of
22 a person other than a government as a condition of
23 receiving funding or other assistance; or

24 (2) restrict any authority that may exist under
25 other law to so regulate or affect, except as provided
26 in this Act.

1 (e) GOVERNMENTAL DISCRETION IN ALLEVIATING
2 BURDENS ON RELIGIOUS EXERCISE.—A government may
3 avoid the preemptive force of any provision of this Act by
4 changing the policy that results in the substantial burden
5 on religious exercise, by retaining the policy and exempt-
6 ing the burdened religious exercise, by providing exemp-
7 tions from the policy for applications that substantially
8 burden religious exercise, or by any other means that
9 eliminates the substantial burden.

10 (f) EFFECT ON OTHER LAW.—In a claim under sec-
11 tion 2(a)(2) of this Act, proof that a substantial burden
12 on a person’s religious exercise, or removal of that burden,
13 affects or would affect commerce, shall not establish any
14 inference or presumption that Congress intends that any
15 religious exercise is, or is not, subject to any other law.

16 (g) BROAD CONSTRUCTION.—This Act should be con-
17 strued in favor of a broad protection of religious exercise,
18 to the maximum extent permitted by its terms and the
19 Constitution.

20 (h) SEVERABILITY.—If any provision of this Act or
21 of an amendment made by this Act, or any application
22 of such provision to any person or circumstance, is held
23 to be unconstitutional, the remainder of this Act, the
24 amendments made by this Act, and the application of the

1 provision to any other person or circumstance shall not
2 be affected.

3 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

4 Nothing in this Act shall be construed to affect, inter-
5 pret, or in any way address that portion of the first
6 amendment to the Constitution prohibiting laws respect-
7 ing an establishment of religion (referred to in this section
8 as the “Establishment Clause”). Granting government
9 funding, benefits, or exemptions, to the extent permissible
10 under the Establishment Clause, shall not constitute a vio-
11 lation of this Act. As used in this section, the term “grant-
12 ing”, used with respect to government funding, benefits,
13 or exemptions, does not include the denial of government
14 funding, benefits, or exemptions.

15 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**
16 **TION ACT.**

17 (a) DEFINITIONS.—Section 5 of the Religious Free-
18 dom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is
19 amended—

20 (1) in paragraph (1), by striking “a State, or
21 subdivision of a State” and inserting “a covered en-
22 tity or a subdivision of such an entity”;

23 (2) in paragraph (2), by striking “term” and all
24 that follows through “includes” and inserting “term
25 ‘covered entity’ means”; and

1 (3) in paragraph (4), by striking all after
2 “means,” and inserting “conduct that constitutes
3 the exercise of religion under the first amendment to
4 the Constitution; however, such conduct need not be
5 compelled by, or central to, a system of religious be-
6 lief; the use, building, or converting of real property
7 for religious exercise shall itself be considered reli-
8 gious exercise of the person or entities that use or
9 intend to use the property for religious exercise.”.

10 (b) CONFORMING AMENDMENT.—Section 6(a) of the
11 Religious Freedom Restoration Act of 1993 (42 U.S.C.
12 2000bb–3(a)) is amended by striking “and State”.

13 **SEC. 8. DEFINITIONS.**

14 As used in this Act—

15 (1) the term “religious exercise” means conduct
16 that constitutes the exercise of religion under the
17 first amendment to the Constitution; however, such
18 conduct need not be compelled by, or central to, a
19 system of religious belief; the use, building, or con-
20 verting of real property for religious exercise shall
21 itself be considered religious exercise of the person
22 or entities that use or intend to use the property for
23 religious exercise;

24 (2) the term “Free Exercise Clause” means
25 that portion of the first amendment to the Constitu-

1 tion that proscribes laws prohibiting the free exercise
2 of religion and includes the application of that pro-
3 scription under the 14th amendment to the Con-
4 stitution;

5 (3) the term “land use regulation” means a law
6 or decision by a government that limits or restricts
7 a private person’s uses or development of land, or of
8 structures affixed to land, where the law or decision
9 applies to one or more particular parcels of land or
10 to land within one or more designated geographical
11 zones, and where the private person has an owner-
12 ship, leasehold, easement, servitude, or other prop-
13 erty interest in the regulated land, or a contract or
14 option to acquire such an interest;

15 (4) the term “program or activity” means a
16 program or activity as defined in paragraph (1) or
17 (2) of section 606 of the Civil Rights Act of 1964
18 (42 U.S.C. 2000d–4a);

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

22 (6) the term “government”—

23 (A) means—

1 (i) a State, county, municipality, or
2 other governmental entity created under
3 the authority of a State;

4 (ii) any branch, department, agency,
5 instrumentality, subdivision, or official of
6 an entity listed in clause (i); and

7 (iii) any other person acting under
8 color of State law; and

9 (B) for the purposes of sections 3(a) and
10 5, includes the United States, a branch, depart-
11 ment, agency, instrumentality or official of the
12 United States, and any person acting under
13 color of Federal law.

○