IN THE SENATE OF THE UNITED STATES

JULY 16, 1999

Received

NOVEMBER 19, 1999

Read twice and referred to the Committee on the Judiciary

AN ACT

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,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Religious Liberty Protection Act of 1999”.

SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.

(a) GENERAL RULE.—Except as provided in subsection (b), a government shall not substantially burden a person’s religious exercise—

(1) in a program or activity, operated by a government, that receives Federal financial assistance; or

(2) in any case in which the substantial burden on the person’s religious exercise affects, or in which a removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability.

(b) EXCEPTION.—A government may substantially burden a person’s religious exercise if the government demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.
(c) Remedies of the United States.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this Act. However, nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or the United States or any agency, officer, or employee thereof under other law, including section 4(d) of this Act, to institute or intervene in any action or proceeding.

SEC. 3. ENFORCEMENT OF CONSTITUTIONAL RIGHTS.

(a) Procedure.—If a claimant produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of a provision of this Act enforcing that clause, the government shall bear the burden of persuasion on any element of the claim; however, the claimant shall bear the burden of persuasion on whether the challenged government practice, law, or regulation burdens or substantially burdens the claimant’s exercise of religion.

(b) Land Use Regulation.—

(1) Limitation on land use regulation.—

(A) Where, in applying or implementing any land use regulation or exemption, or system of land use regulations or exemptions, a govern-
ment has the authority to make individualized assessments of the proposed uses to which real property would be put, the government may not impose a substantial burden on a person’s religious exercise, unless the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

(B) No government shall impose or implement a land use regulation in a manner that does not treat religious assemblies or institutions on equal terms with nonreligious assemblies or institutions.

(C) No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(D) No government with zoning authority shall unreasonably exclude from the jurisdiction over which it has authority, or unreasonably limit within that jurisdiction, assemblies or institutions principally devoted to religious exercise.
(2) **FULL FAITH AND CREDIT.**—Adjudication of a claim of a violation of the Free Exercise Clause or this subsection in a non-Federal forum shall be entitled to full faith and credit in a Federal court only if the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(3) **NONPREEMPTION.**—Nothing in this subsection shall preempt State law that is equally or more protective of religious exercise.

**SEC. 4. JUDICIAL RELIEF.**

(a) **CAUSE OF ACTION.**—A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) **ATTORNEYS’ FEES.**—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by inserting “the Religious Liberty Protection Act of 1998,” after “Religious Freedom Restoration Act of 1993,”; and

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

(c) **PRISONERS.**—Any litigation under this Act in which the claimant is a prisoner shall be subject to the
Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(d) Authority of United States To Enforce This Act.—The United States may sue for injunctive or declaratory relief to enforce compliance with this Act.

SEC. 5. RULES OF CONSTRUCTION.

(a) Religious Belief Unaffected.—Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) Religious Exercise Not Regulated.—Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization, including any religiously affiliated school or university, not acting under color of law.

(c) Claims to Funding Unaffected.—Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.

(d) Other Authority To Impose Conditions on Funding Unaffected.—Nothing in this Act shall—
(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

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

(c) Governmental Discretion in Alleviating Burdens on Religious Exercise.—A government may avoid the preemptive force of any provision of this Act by changing the policy that results in the substantial burden on religious exercise, by retaining the policy and exempting the burdened religious exercise, by providing exemptions from the policy for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on Other Law.—In a claim under section 2(a)(2) of this Act, proof that a substantial burden on a person’s religious exercise, or removal of that burden, affects or would affect commerce, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any other law.

(g) Broad Construction.—This Act should be construed in favor of a broad protection of religious exercise,
to the maximum extent permitted by its terms and the
Constitution.

(h) SEVERABILITY.—If any provision of this Act or
of an amendment made by this Act, or any application
of such provision to any person or circumstance, is held
to be unconstitutional, the remainder of this Act, the
amendments made by this Act, and the application of the
provision to any other person or circumstance shall not
be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, inter-
pret, or in any way address that portion of the first
amendment to the Constitution prohibiting laws respect-
ing an establishment of religion (referred to in this section
as the “Establishment Clause”). Granting government
funding, benefits, or exemptions, to the extent permissible
under the Establishment Clause, shall not constitute a vi-o-
lation of this Act. As used in this section, the term “grant-
ing”, used with respect to government funding, benefits,
or exemptions, does not include the denial of government
funding, benefits, or exemptions.
SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS.—Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is amended—

(1) in paragraph (1), by striking “a State, or subdivision of a State” and inserting “a covered entity or a subdivision of such an entity”;

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

(3) in paragraph (4), by striking all after “means,” and inserting “any exercise of religion, whether or not compelled by, or central to, a system of religious belief, and includes (A) the use, building, or conversion of real property by a person or entity intending that property for religious exercise; and (B) any conduct protected as exercise of religion under the first amendment to the Constitution.”.

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

SEC. 8. DEFINITIONS.

As used in this Act—

(1) the term “religious exercise” means any exercise of religion, whether or not compelled by, or
central to, a system of religious belief, and includes (A) the use, building, or conversion of real property by a person or entity intending that property for religious exercise; and (B) any conduct protected as exercise of religion under the first amendment to the Constitution;

(2) the term “Free Exercise Clause” means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion and includes the application of that proscription under the 14th amendment to the Constitution;

(3) the term “land use regulation” means a law or decision by a government that limits or restricts a private person’s uses or development of land, or of structures affixed to land, where the law or decision applies to one or more particular parcels of land or to land within one or more designated geographical zones, and where the private person has an ownership, leasehold, easement, servitude, or other property interest in the regulated land, or a contract or option to acquire such an interest;

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

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

(6) the term “government”—

(A) means—

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

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

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

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


Attest: JEFF TRANDAHL,
Clerk.