H. R. 4862

To protect religious liberty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2000

Mr. CANADY of Florida (for himself, Mr. NADLER, and Mr. EDWARDS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect religious liberty, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Religious Land Use
and Institutionalized Persons Act of 2000”.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXER-
CISE.

(a) SUBSTANTIAL BURDENS.—

(1) GENERAL RULE.—No government shall im-
pose or implement a land use regulation in a manner
that imposes a substantial burden on the religious
exercise of a person, including a religious assembly
or institution, unless the government demonstrates
that imposition of the burden on that person, assem-
bly, or institution—

(A) is in furtherance of a compelling govern-
mental interest; and

(B) is the least restrictive means of fur-
thering that compelling governmental interest.

(2) SCOPE OF APPLICATION.—This subsection
applies in any case in which—

(A) the substantial burden is imposed in a
program or activity that receives Federal finan-
cial assistance, even if the burden results from
a rule of general applicability;

(B) the substantial burden affects, or re-
moval of that substantial burden would affect,
commerce with foreign nations, among the sev-
eral States, or with Indian tribes, even if the
burden results from a rule of general applica-
bility; or

(C) the substantial burden is imposed in
the implementation of a land use regulation or
system of land use regulations, under which a
government makes, or has in place formal or in-
formal procedures or practices that permit the
government to make, individualized assessments of the proposed uses for the property involved.

(b) **DISCRIMINATION AND EXCLUSION.**—

(1) **EQUAL TERMS.**—No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) **NONDISCRIMINATION.**—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.

(3) **EXCLUSIONS AND LIMITS.**—No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

**SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.**

(a) **GENERAL RULE.**—No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in sec-
tion 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

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

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

(b) SCOPE OF APPLICATION.—This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

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.
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(b) Burden of Persuasion.—If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.

c) Full Faith and Credit.—Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

d) Attorneys’ Fees.—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by inserting “the Religious Land Use and Institutionalized Persons Act of 2000,” after “Religious Freedom Restoration Act of 1993,”; and

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

e) Prisoners.—Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).
(f) Authority of United States to Enforce This Act.—The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation.—If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

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 a government to incur expenses in its own operations to avoid imposing 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.

(e) 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 or practice that results in a substan-
tial burden on religious exercise, by retaining the policy
or practice and exempting the substantially burdened reli-
gious exercise, by providing exemptions from the policy or
practice for applications that substantially burden reli-
gious exercise, or by any other means that eliminates the
substantial burden.

(f) Effect on Other Law.—With respect to a
claim brought under this Act, proof that a substantial bur-
den on a person’s religious exercise affects, or removal of
that burden would affect, commerce with foreign nations,
among the several States, or with Indian tribes, shall not
establish any inference or presumption that Congress in-
tends that any religious exercise is, or is not, subject to
any law other than this Act.

(g) Broad Construction.—This Act shall be con-
strued in favor of a broad protection of religious exercise,
to the maximum extent permitted by the terms of this Act
and the Constitution.

(h) No Preemption or Repeal.—Nothing in this
Act shall be construed to preempt State law, or repeal
Federal law, that is equally as protective of religious exer-
cise as, or more protective of religious exercise than, this
Act.

(i) 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 vio-
lation of this Act. In this section, the term “granting”,
used with respect to government funding, benefits, or ex-
emptions, does not include the denial of government fund-
ing, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-
TION ACT.

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

(1) in paragraph (1), by striking “a State, or
a subdivision of a State” and inserting “or of a cov-
ered entity”;

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(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 “religious exercise, as defined
in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.”.

(b) CONFORMING AMENDMENT.—Section 6(a) of the
2000bb–3(a)) is amended by striking “and State”.

SEC. 8. DEFINITIONS.

In this Act:

(1) CLAIMANT.—The term “claimant” means a
person raising a claim or defense under this Act.

(2) DEMONSTRATES.—The term “dem-
onstrates” means meets the burdens of going for-
ward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE.—The term “Free
Exercise Clause” means that portion of the first
amendment to the Constitution that proscribes laws
prohibiting the free exercise of religion.

(4) GOVERNMENT.—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, 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 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION.—The term “land use regulation” means a zoning or land marking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY.—The term “program or activity” means all of the operations of any entity described in paragraph (1) or (2) of section

(7) RELIGIOUS EXERCISE.—

(A) IN GENERAL.—The term “religious exercise” includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) RULE.—The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.