

105TH CONGRESS
2D SESSION

S. 2148

To protect religious liberty.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1998

Mr. HATCH (for himself and Mr. KENNEDY) introduced the following bill;
which was read twice and 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 1998”.

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—

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

1 (2) in or affecting commerce with foreign na-
2 tions, among the several States, or with the Indian
3 tribes;
4 even if the burden results from a rule of general applicabil-
5 ity.

6 (b) EXCEPTION.—A government may substantially
7 burden a person’s religious exercise if the government
8 demonstrates that application of the burden to the per-
9 son—

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

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

14 (c) FUNDING NOT AFFECTED.—Nothing in this sec-
15 tion shall be construed to authorize the United States to
16 deny or withhold Federal financial assistance as a remedy
17 for a violation of this Act.

18 (d) STATE POLICY NOT COMMANDEERED.—A gov-
19 ernment may eliminate the substantial burden on religious
20 exercise by changing the policy that results in the burden,
21 by retaining the policy and exempting the religious exer-
22 cise from that policy, or by any other means that elimi-
23 nates the burden.

24 (e) DEFINITIONS.—As used in this section—

1 (1) the term “government” means a branch, de-
 2 partment, agency, instrumentality, subdivision, or
 3 official of a State (or other person acting under
 4 color of State law);

5 (2) the term “program or activity” means a
 6 program or activity as defined in paragraph (1) or
 7 (2) of section 606 of the Civil Rights Act of 1964
 8 (42 U.S.C. 2000d–4a); and

9 (3) the term “demonstrates” means meets the
 10 burdens of going forward with the evidence and of
 11 persuasion.

12 **SEC. 3. ENFORCEMENT OF THE FREE EXERCISE CLAUSE.**

13 (a) **PROCEDURE.**—If a claimant produces prima facie
 14 evidence to support a claim of a violation of the Free Exer-
 15 cise Clause, the government shall bear the burden of per-
 16 suasion on all issues relating to the claim, except any issue
 17 as to the existence of the burden on religious exercise.

18 (b) **LAND USE REGULATION.**—

19 (1) **LIMITATION ON LAND USE REGULATION.**—
 20 No government shall impose a land use regulation
 21 that—

22 (A) substantially burdens religious exer-
 23 cise, unless the burden is the least restrictive
 24 means to prevent substantial and tangible harm

to neighboring properties or to the public health
or safety;

(B) denies religious assemblies a reasonable location in the jurisdiction; or

(C) excludes religious assemblies from areas in which nonreligious assemblies are permitted.

(2) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of 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.

(4) NONAPPLICATION OF OTHER PORTIONS OF THIS ACT.—Section 2 does not apply to land use regulation.

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

1 shall be governed by the general rules of standing under
2 article III of the Constitution.

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

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

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

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

14 (d) LIABILITY OF GOVERNMENTS.—

15 (1) LIABILITY OF STATES.—A State shall not
16 be immune under the 11th amendment to the Con-
17 stitution from a civil action, for a violation of the
18 Free Exercise Clause under section 3, including a
19 civil action for money damages.

20 (2) LIABILITY OF THE UNITED STATES.—The
21 United States shall not be immune from any civil ac-
22 tion, for a violation of the Free Exercise Clause
23 under section 3, including a civil action for money
24 damages.

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 regulation of reli-
7 gious exercise or for claims against a religious organiza-
8 tion, including any religiously affiliated school or univer-
9 sity, 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) EFFECT ON OTHER LAW.—Proof that a religious
2 exercise affects commerce for the purposes of this Act does
3 not give rise to any inference or presumption that the reli-
4 gious exercise is subject to any other law regulating com-
5 merce.

6 (f) SEVERABILITY.—If any provision of this Act or
7 of an amendment made by this Act, or any application
8 of such provision to any person or circumstance, is held
9 to be unconstitutional, the remainder of this Act, the
10 amendments made by this Act, and the application of the
11 provision to any other person or circumstance shall not
12 be affected.

13 **SEC. 6. 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 to the Constitution prohibiting laws respect-
17 ing an establishment of religion (referred to in this section
18 as the “Establishment Clause”). Granting government
19 funding, benefits, or exemptions, to the extent permissible
20 under the Establishment Clause, shall not constitute a vio-
21 lation of this Act. As used in this section, the term “grant-
22 ing”, used with respect to government funding, benefits,
23 or exemptions, does not include the denial of government
24 funding, benefits, or exemptions.

1 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**
 2 **TION ACT.**

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

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

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

12 (3) in paragraph (4), by striking all after
 13 “means,” and inserting “an act or refusal to act
 14 that is substantially motivated by a religious belief,
 15 whether or not the act or refusal is compulsory or
 16 central to a larger system of religious belief.”.

17 (b) CONFORMING AMENDMENT.—Section 6(a) of the
 18 Religious Freedom Restoration Act of 1993 (42 U.S.C.
 19 2000bb–3(a)) is amended by striking “and State”.

20 **SEC. 8. DEFINITIONS.**

21 As used in this Act—

22 (1) the term “religious exercise” means an act
 23 or refusal to act that is substantially motivated by
 24 a religious belief, whether or not the act or refusal
 25 is compulsory or central to a larger system of reli-
 26 gious belief;

1 (2) the term “Free Exercise Clause” means
2 that portion of the first amendment to the Constitu-
3 tion that proscribes laws prohibiting the free exercise
4 of religion and includes the application of that pro-
5 scription under the 14th amendment to the Con-
6 stitution; and

7 (3) except as otherwise provided in this Act, the
8 term “government” means a branch, department,
9 agency, instrumentality, subdivision, or official of a
10 State, or other person acting under color of State
11 law, or a branch, department, agency, instrumentality,
12 subdivision, or official of the United States, or
13 other person acting under color of Federal law.

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