

107TH CONGRESS
2D SESSION

H. R. 4922

To restore first amendment protections of religion and speech.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2002

Mr. PAUL introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To restore first amendment protections of religion and
speech.

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 “First Amendment Res-
5 toration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The freedom to practice religion and to ex-
9 press religious thought is acknowledged to be one of
10 the fundamental and unalienable rights belonging to
11 all individuals.

1 (2) The Framers of the Constitution delib-
2 erately withheld, in the main body of that document,
3 any authority for the Federal Government to meddle
4 with the religious affairs or with the free speech of
5 the people. Then, as further and more specific pro-
6 tection for the people, they added the first amend-
7 ment, which includes the “establishment clause” and
8 the “freedom of speech clause” which are as follows:
9 “Congress shall make no law respecting an estab-
10 lishment of religion or prohibiting the free exercise
11 thereof; or abridging the freedom of speech . . .”.
12 It is of utmost importance to note that the first
13 amendment is not a grant of authority to the Fed-
14 eral Government. To the contrary, it is a specific re-
15 striction upon the exercise of power by the Federal
16 Government.

17 (3) For over 150 years, the Court held to this
18 historically correct position in interpreting the first
19 amendment. During this period, scant mention was
20 made to “The Separation of Church and State”.

21 (4) Then, beginning in 1947, and accelerating
22 through the 60’s, the Court abruptly reversed its po-
23 sition. This was done with no change in the law, ei-
24 ther by statute or by amendment to the Constitu-
25 tion. The Court invented the distorted meaning of

1 the first amendment utilizing the separation of
2 “church and state” in 1947 in *Everson v. Board of*
3 *Education* when it announced: The First Amend-
4 ment has erected a wall between church and state.
5 That wall must be kept high and impregnable. We
6 could not approve the slightest breach. (*Everson v.*
7 *Board of Education*; 330 U.S. 1, 18 [1947]). Over
8 the past five decades, rulings of the United States
9 Supreme Court have served to infringe upon the
10 rights of Americans to enjoy freedom of speech re-
11 lating to religious matters. Such infringements in-
12 clude the outlawing of prayer in schools and of the
13 display of the Ten Commandments in public places.
14 These rulings have not reflected a neutrality toward
15 religious denominations but a hostility toward reli-
16 gious thought. They have served to undermine the
17 foundation of not only our moral code but our sys-
18 tem of law and justice.

19 (5) In making this abrupt change, the Court ig-
20 nored all historical precedent established previously
21 by the Court, the wording of the First Amendment,
22 and the intent of its framers. The rulings are legally
23 irrational and without foundation. Although the
24 Court presumed to rely upon the First Amendment
25 for its authority for these rulings, a review of that

1 Amendment reveals that said rulings could not pos-
2 sibly have been based upon its original intent. Con-
3 sequently, it is incumbent upon this Congress to re-
4 view not only the rulings of the Court which are in
5 question but the wording and history of the First
6 Amendment to determine the intent of its framers.
7 This abrupt change is found in the following court
8 cases:

9 (A) “A verbal prayer offered in a school is
10 unconstitutional, even if that prayer is both vol-
11 untary and denominationally neutral.” (Engel
12 v. Vitale, 1962, Abington v. Schempp, 1963,
13 Commissioner of Education v. School Com-
14 mittee of Leyden, 1971.)

15 (B) “Freedoms of speech and press are
16 guaranteed to students and teachers unless the
17 topic is religious, at which time such speech be-
18 comes unconstitutional.” (Stein v. Oshinsky,
19 1965, Collins v. Chandler Unified School Dis-
20 trict, 1981, Bishop v. Aronov, 1991, Duran v.
21 Nitsche, 1991.)

22 (C) “It is unconstitutional for students to
23 see the Ten Commandments since they might
24 read, meditate upon, respect, or obey them.”
25 (Stone v. Graham, 1980, Ring v. Grand Forks

1 Public School District, 1980, Lanner v.
2 Wimmer, 1981.)

3 (D) “If a student prays over his lunch, it
4 is unconstitutional for him to pray aloud.”
5 (Reed v. Van Hoven, 1965.)

6 (E) “The Ten Commandments, despite the
7 fact that they are the basis of civil law and are
8 depicted in engraved stone in the United States
9 Supreme Court, may not be displayed at a pub-
10 lic courthouse.” (Harvey v. Cobb County.
11 1993.)

12 (F) “When a student addresses an assem-
13 bly of his peers, he effectively becomes a gov-
14 ernment representative; it is therefore unconsti-
15 tutional for that student to engage in prayer.”
16 (Harris v. Joint School District, 1994.)

17 (G) By interpreting the establishment
18 clause to preclude prayer and other religious
19 speech in any public place, the Supreme Court
20 necessarily violates the free speech clause of the
21 very same first amendment.

22 These rulings of the Court constitute de facto legis-
23 lation or Constitution-amending. This is a serious
24 violation of the doctrine of separation of powers, as
25 all legislative authority bestowed by the people

1 through the Constitution is bestowed upon the Con-
2 gress and the Congress alone.

3 (6) A fundamental maxim of law is, whenever
4 the intent of a statute or a constitution is in ques-
5 tion, to refer to the words of its framers to deter-
6 mine their intent and use this intent as the true in-
7 tent of the law.

8 (7) The intent of the First Amendment was and
9 is clear on these two points: The Federal Govern-
10 ment was prohibited from enacting any laws which
11 would favor one religious denomination over another
12 and the Federal Government has no power to forbid
13 or prohibit any mention of religion, the Ten Com-
14 mandments or reference to God in civic dialog.

15 (8) In its rulings to prohibit Americans from
16 saying prayers in school or from displaying the Ten
17 Commandments in public places, the Court has re-
18 lied heavily upon the metaphor, “Separation of
19 Church and State”. Note that this phrase is no-
20 where to be found in the First Amendment or any
21 other place in the Constitution.

22 (9) The metaphor, “Separation of Church and
23 State”, was extracted, out of context, from a letter
24 from Thomas Jefferson to the Danbury Baptists in
25 reply to a letter from them expressing concern that

1 the Federal Government might intrude in religious
2 matters by favoring one denomination over another.
3 Jefferson's reply was that the First Amendment
4 would preclude such intrusion.

5 (10) The Court, in its use of Separation of
6 Church and State, has given to this phrase a mean-
7 ing never intended by its author; it took it out of
8 context and inverted its meaning and intent. The
9 complete text of Jefferson's letter is found in Jeffer-
10 son, Writings, Vol. XVI, pp. 281–282, to the Dan-
11 bury Baptist Association on January 1, 1802.

12 (11) Justice William Rehnquist made an exten-
13 sive study of the history of the First Amendment. In
14 his dissent in *Wallace v. Jaffree* (472 U.S. 38, 48,
15 n. 30 [1984],) he stated: “There is simply no histor-
16 ical foundation for the proposition that the Framers
17 intended to build the ‘wall of separation’ that was
18 constitutionalized in *Everson*. . . . But the greatest
19 injury of the ‘wall’ notion is its mischievous diver-
20 sion of judges from the actual intentions of the
21 drafters of the Bill of Rights. . . . [N]o amount of
22 repetition of historical errors in judicial opinions can
23 make the errors true. The ‘wall of separation be-
24 tween church and state’ is a metaphor based on bad
25 history. . . . It should be frankly and explicitly

1 abandoned. . . . Our perception has been clouded
2 not by the Constitution but by the mists of an un-
3 necessary metaphor. “It would come as much of a
4 shock to those who drafted the Bill of Rights, as it
5 will to a large number of thoughtful Americans
6 today, to learn that the Constitution, as construed
7 by the majority, prohibits the Alabama Legislature
8 from endorsing prayer. George Washington himself,
9 at the request of the very Congress which passed the
10 Bill of Rights, proclaimed a day of public thanks-
11 giving and prayer, to be observed by acknowledging
12 with grateful hearts the many and signal favors of
13 Almighty God. History must judge whether it was
14 the Father of his Country in 1789, or a majority of
15 the Court today, which has strayed from the mean-
16 ing of the Establishment Clause.”

17 (12) As Justice Rehnquist states, the greatest
18 injury of the “wall” notion is its “mischievous diver-
19 sion of judges from the actual intentions of the
20 drafters of the Bill of Rights. . . . ” It is necessary
21 to review not only Jefferson’s intent in his use of
22 this “wall”, but his involvement or noninvolvement
23 in the drafting of the First Amendment, and the in-
24 tent of the framers of the First Amendment.

1 (13) Jefferson was neither the author of nor a
2 coauthor of the First Amendment. He cannot be
3 considered as a source of legal authority on this sub-
4 ject. The Court, if it had wished to rely upon Jeffer-
5 son to determine the true and original intent of the
6 First Amendment, could have served themselves and
7 the American people well by referring to Jefferson's
8 admonition to Judge William Johnson regarding the
9 determination of the original intent of a statute or
10 a constitution: "On every question of construction,
11 carry ourselves back to the time when the Constitu-
12 tion was adopted, recollect the spirit manifested in
13 the debates, and instead of trying what meaning
14 may be squeezed out of the text, or invented against
15 it, conform to the probable one in which it was
16 passed." (Thomas Jefferson, *Memoir, Correspondence, and Miscellanies, From the Papers of Thomas*
17 *Jefferson*, Thomas Jefferson Randolph, editor [Bos-
18 ton: Gray and Bowen, 1830, Vol. IV., p. 373,] to
19 Judge William Johnson on June 12, 1823).

21 (14) The principal authors of the First Amend-
22 ment, the record reveals, were Fisher Ames and El-
23 bridge Gerry of Massachusetts, not Thomas Jeffer-
24 son. Others who participated were John Vining of
25 Delaware, Daniel Carroll and Charles Carroll of

1 Maryland, Benjamin Huntington, Roger Sherman
2 and Oliver Ellsworth of Connecticut and William
3 Paterson of New Jersey and James Madison and
4 George Mason of Virginia. Thomas Jefferson is not
5 found in the record as having participated. (The De-
6 bates and Proceedings in the Congress of the United
7 States [Washington, D.C.; Gales and Seaton, 1834],
8 Vol. I, pp. 440–948, June 8–September 24, 1789.)

9 (15) George Mason, a member of the Constitu-
10 tional Convention and recognized as “The Father of
11 the Bill of Rights”, submitted this proposal for the
12 wording of the First Amendment: “All men have an
13 equal, natural and unalienable right to the free exer-
14 cise of religion, according to the dictates of con-
15 science; and that no particular sect or society of
16 Christians ought to be favored or established by law
17 in preference to others.” (Kate Mason Rowland, *The*
18 *Life of George Mason* [New York: G.P. Putnam’s
19 Sons, 1892,] Vol I, p. 244.)

20 (16) The Father of the Constitution, James
21 Madison, submitted the following wording for the
22 First Amendment: “The civil rights of none shall be
23 abridged on account of religious belief or worship,
24 nor shall any national religion be established.” (The
25 Debates and Proceedings in the Congress of the

1 United States [Washington, D.C.; Gales and Season,
2 1834,] Vol. I, p. 451, James Madison, June 8,
3 1789.)

4 (17) The true intent of the First Amendment is
5 reflected by the proposals submitted by Fisher
6 Ames, George Mason and James Madison and the
7 wording finally adopted.

8 (18) Justice Joseph Story, considered the Fa-
9 ther of American Jurisprudence, stated in his Com-
10 mentaries on the Constitution: “The real object of
11 the [First A]mendment was not to countenance,
12 much less to advance Mohometanism [sp], or Juda-
13 ism, or infidelity by prostrating Christianity; but to
14 exclude all rivalry among Christian sects and to pre-
15 vent any national ecclesiastical establishment which
16 should give to a hierarchy [a denominational council]
17 the exclusive patronage of the national government.
18 (Joseph Story, Commentaries on the Constitution of
19 the United States [Boston; Hilliard, Gray and Com-
20 pany, 1833], p. 728, par. 1871.)

21 (19) Proof that the intent of the framers of the
22 First Amendment did not intend for the Federal
23 Government to restrict the exercise of free speech in
24 religious matters in civic dialog is found in various
25 statements by George Washington, who was Presi-

1 dent when the Congress adopted the First Amend-
2 ment. The following is found in his “Farewell Ad-
3 dress”: “ . . . of all the dispositions and habits
4 which lead to political prosperity, religion and moral-
5 ity are indispensable supports. In vain would that
6 man claim the tribute of patriotism who should labor
7 to subvert these great pillars of human happiness.”
8 (George Washington, Address of George Wash-
9 ington, President of the United
10 States. . . . Preparatory to his Declination [Balti-
11 more: George and Henry S. Keatinge, 1796], pp.
12 22–23.

13 (20) James Wilson was a very active member of
14 the Convention and was later appointed by President
15 George Washington as an original Justice on the
16 United States Supreme Court where he coauthored
17 America’s first legal text on the Constitution. Wilson
18 never mentioned a “separation of church and state”.
19 To the contrary, he declared the correlation between
20 religion and civil laws: Far from being rivals or en-
21 emies, religion and law are twin sisters, friends, and
22 mutual assistants. (James Wilson, *The Works of*
23 James Wilson, Bird Wilson, editor. Philadelphia;
24 Bronson and Chauncey, 1804. Vol. I, pp. 104–106.)

1 (21) It was Fisher Ames of Massachusetts who
 2 provided, on the 20th of August, 1789, the final
 3 wording for the First Amendment as passed by the
 4 House of Representatives. Fisher Ames, who should
 5 be considered the foremost authority on the intent of
 6 the First Amendment, never spoke of a separation
 7 of church and state. (Fisher Ames, Works of Fisher
 8 Ames, Boston; T.B. Wait & Co. 1809, p. 134, 135.)

9 (22) Because the Court does not seem to be
 10 disposed to correct this egregious error, it is incum-
 11 bent upon the Congress of the United States to per-
 12 form its duty to support and defend the Constitution
 13 of the United States, by the use of its authority to
 14 apply checks and balances to other branches of the
 15 government, when usurpations and the exercise of
 16 excesses of power are evident. The Congress must,
 17 then, take the appropriate steps to correct egregious
 18 problem.

19 **SEC. 3. REMOVAL OF RELIGIOUS FREEDOM-RELATED**
 20 **CASES FROM FEDERAL DISTRICT COURT JU-**
 21 **RISDICTION.**

22 (a) IN GENERAL.—Chapter 85 of title 28, United
 23 States Code, is amended by adding at the end the fol-
 24 lowing new section:

1 **“§ 1369. Exclusion of jurisdiction over religious free-**
 2 **dom-related cases**

3 “(a) IN GENERAL.—The district courts of the United
 4 States, the District Court of Guam, the District Court of
 5 the Virgin Islands, and the District Court for the North-
 6 ern Mariana Islands shall not have jurisdiction to hear or
 7 determine any religious freedom-related case.

8 “(b) DEFINITION.—For purposes of this section, the
 9 term ‘religious freedom-related case’ means any action in
 10 which any requirement, prohibition, or other provision re-
 11 lating to religious freedom that is contained in a State
 12 or Federal statute is at issue.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 at the beginning of chapter 85 of title 28, United States
 15 Code, is amended by adding at the end the following new
 16 item:

“1369. Exclusion of jurisdiction over religious freedom-related cases.”.

17 **SEC. 4. REMOVAL OF RELIGIOUS FREEDOM-RELATED**
 18 **CASES FROM FEDERAL CLAIMS COURT JU-**
 19 **RISDICTION.**

20 (a) IN GENERAL.—Chapter 91 of title 28, United
 21 States Code, is amended by adding at the end the fol-
 22 lowing new section:

1 **“§ 1510. Removal of jurisdiction over religious free-**
2 **dom-related cases**

3 “(a) IN GENERAL.—The United States Court of Fed-
4 eral Claims shall not have jurisdiction to hear or deter-
5 mine any religious freedom-related case.

6 “(b) DEFINITION.—For purposes of this section, the
7 term ‘religious freedom-related case’ means any action in
8 which any requirement, prohibition, or other provision re-
9 lating to religious freedom that is contained in a State
10 or Federal statute is at issue.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 91 of title 28, United States
13 Code, is amended by adding at the end the following new
14 item:

“1510. Removal of jurisdiction over religious freedom-related cases.”.

15 **SEC. 5. EFFECTIVE DATE.**

16 The amendments made by this Act shall apply to
17 cases filed on or after the date of the enactment of this
18 Act.

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