

106TH CONGRESS  
1ST SESSION

# H. R. 1691

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IN THE SENATE OF THE UNITED STATES

JULY 16, 1999

Received

NOVEMBER 19, 1999

Read twice and referred to the Committee on the Judiciary

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Religious Liberty Pro-  
3 tection Act of 1999”.

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

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

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

11 (2) in any case in which the substantial burden  
12 on the person’s religious exercise affects, or in which  
13 a removal of that substantial burden would affect,  
14 commerce with foreign nations, among the several  
15 States, or with Indian tribes,  
16 even if the burden results from a rule of general applica-  
17 bility.

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

22 (1) is in furtherance of a compelling govern-  
23 mental interest; and

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

1       (c) **REMEDIES OF THE UNITED STATES.**—Nothing in  
2 this section shall be construed to authorize the United  
3 States to deny or withhold Federal financial assistance as  
4 a remedy for a violation of this Act. However, nothing in  
5 this subsection shall be construed to deny, impair, or oth-  
6 erwise affect any right or authority of the Attorney Gen-  
7 eral or the United States or any agency, officer, or em-  
8 ployee thereof under other law, including section 4(d) of  
9 this Act, to institute or intervene in any action or pro-  
10 ceeding.

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

12       (a) **PROCEDURE.**—If a claimant produces prima facie  
13 evidence to support a claim alleging a violation of the Free  
14 Exercise Clause or a violation of a provision of this Act  
15 enforcing that clause, the government shall bear the bur-  
16 den of persuasion on any element of the claim; however,  
17 the claimant shall bear the burden of persuasion on wheth-  
18 er the challenged government practice, law, or regulation  
19 burdens or substantially burdens the claimant's exercise  
20 of religion.

21       (b) **LAND USE REGULATION.**—

22               (1) **LIMITATION ON LAND USE REGULATION.**—

23                       (A) Where, in applying or implementing  
24 any land use regulation or exemption, or system  
25 of land use regulations or exemptions, a govern-

1           ment has the authority to make individualized  
2           assessments of the proposed uses to which real  
3           property would be put, the government may not  
4           impose a substantial burden on a person's reli-  
5           gious exercise, unless the government dem-  
6           onstrates that application of the burden to the  
7           person is in furtherance of a compelling govern-  
8           mental interest and is the least restrictive  
9           means of furthering that compelling govern-  
10          mental interest.

11           (B) No government shall impose or imple-  
12          ment a land use regulation in a manner that  
13          does not treat religious assemblies or institu-  
14          tions on equal terms with nonreligious assem-  
15          blies or institutions.

16           (C) No government shall impose or imple-  
17          ment a land use regulation that discriminates  
18          against any assembly or institution on the basis  
19          of religion or religious denomination.

20           (D) No government with zoning authority  
21          shall unreasonably exclude from the jurisdiction  
22          over which it has authority, or unreasonably  
23          limit within that jurisdiction, assemblies or in-  
24          stitutions principally devoted to religious exer-  
25          cise.

1           (2) **FULL FAITH AND CREDIT.**—Adjudication of  
2 a claim of a violation of the Free Exercise Clause or  
3 this subsection in a non-Federal forum shall be enti-  
4 tled to full faith and credit in a Federal court only  
5 if the claimant had a full and fair adjudication of  
6 that claim in the non-Federal forum.

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

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

11           (a) **CAUSE OF ACTION.**—A person may assert a viola-  
12 tion of this Act as a claim or defense in a judicial pro-  
13 ceeding and obtain appropriate relief against a govern-  
14 ment. Standing to assert a claim or defense under this  
15 section shall be governed by the general rules of standing  
16 under article III of the Constitution.

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

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

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

24           (c) **PRISONERS.**—Any litigation under this Act in  
25 which the claimant is a prisoner shall be subject to the

1 Prison Litigation Reform Act of 1995 (including provi-  
2 sions of law amended by that Act).

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

6 **SEC. 5. RULES OF CONSTRUCTION.**

7 (a) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in  
8 this Act shall be construed to authorize any government  
9 to burden any religious belief.

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

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

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

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

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

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

17          (f) EFFECT ON OTHER LAW.—In a claim under sec-  
18          tion 2(a)(2) of this Act, proof that a substantial burden  
19          on a person's religious exercise, or removal of that burden,  
20          affects or would affect commerce, shall not establish any  
21          inference or presumption that Congress intends that any  
22          religious exercise is, or is not, subject to any other law.

23          (g) BROAD CONSTRUCTION.—This Act should be con-  
24          strued in favor of a broad protection of religious exercise,

1 to the maximum extent permitted by its terms and the  
2 Constitution.

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

10 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

11 Nothing in this Act shall be construed to affect, inter-  
12 pret, or in any way address that portion of the first  
13 amendment to the Constitution prohibiting laws respect-  
14 ing an establishment of religion (referred to in this section  
15 as the “Establishment Clause”). Granting government  
16 funding, benefits, or exemptions, to the extent permissible  
17 under the Establishment Clause, shall not constitute a vio-  
18 lation of this Act. As used in this section, the term “grant-  
19 ing”, used with respect to government funding, benefits,  
20 or exemptions, does not include the denial of government  
21 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 “any exercise of religion,  
14 whether or not compelled by, or central to, a system  
15 of religious belief, and includes (A) the use, building,  
16 or conversion of real property by a person or entity  
17 intending that property for religious exercise; and  
18 (B) any conduct protected as exercise of religion  
19 under the first amendment to the Constitution.”.

20 (b) **CONFORMING AMENDMENT.**—Section 6(a) of the  
21 Religious Freedom Restoration Act of 1993 (42 U.S.C.  
22 2000bb–3(a)) is amended by striking “and State”.

23 **SEC. 8. DEFINITIONS.**

24 As used in this Act—

25 (1) the term “religious exercise” means any ex-  
26 ercise of religion, whether or not compelled by, or

1 central to, a system of religious belief, and includes  
2 (A) the use, building, or conversion of real property  
3 by a person or entity intending that property for re-  
4 ligious exercise; and (B) any conduct protected as  
5 exercise of religion under the first amendment to the  
6 Constitution;

7 (2) the term "Free Exercise Clause" means  
8 that portion of the first amendment to the Constitu-  
9 tion that proscribes laws prohibiting the free exercise  
10 of religion and includes the application of that pro-  
11 scription under the 14th amendment to the Con-  
12 stitution;

13 (3) the term "land use regulation" means a law  
14 or decision by a government that limits or restricts  
15 a private person's uses or development of land, or of  
16 structures affixed to land, where the law or decision  
17 applies to one or more particular parcels of land or  
18 to land within one or more designated geographical  
19 zones, and where the private person has an owner-  
20 ship, leasehold, easement, servitude, or other prop-  
21 erty interest in the regulated land, or a contract or  
22 option to acquire such an interest;

23 (4) the term "program or activity" means a  
24 program or activity as defined in paragraph (1) or

1 (2) of section 606 of the Civil Rights Act of 1964  
2 (42 U.S.C. 2000d-4a);

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

6 (6) the term “government”—

7 (A) means—

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

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

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

16 (B) for the purposes of sections 3(a) and  
17 5, includes the United States, a branch, depart-  
18 ment, agency, instrumentality or official of the  
19 United States, and any person acting under  
20 color of Federal law.

Passed the House of Representatives July 15, 1999.

Attest:

JEFF TRANDAHL,

*Clerk.*