

106TH CONGRESS  
2D SESSION

# S. 2869

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## AN ACT

To protect religious liberty, and for other purposes.

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 Land Use  
5 and Institutionalized Persons Act of 2000”.

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

3 (a) **SUBSTANTIAL BURDENS.—**

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

11 (A) is in furtherance of a compelling gov-  
12 ernmental interest; and

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

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

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

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

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

8           (b) DISCRIMINATION AND EXCLUSION.—

9           (1) EQUAL TERMS.—No government shall im-  
10          pose or implement a land use regulation in a manner  
11          that treats a religious assembly or institution on less  
12          than equal terms with a nonreligious assembly or in-  
13          stitution.

14          (2) NONDISCRIMINATION.—No government  
15          shall impose or implement a land use regulation that  
16          discriminates against any assembly or institution on  
17          the basis of religion or religious denomination.

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

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

23                (B) unreasonably limits religious assem-  
24                blies, institutions, or structures within a juris-  
25                diction.

1 **SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITU-**  
2 **TIONALIZED PERSONS.**

3 (a) **GENERAL RULE.**—No government shall impose a  
4 substantial burden on the religious exercise of a person  
5 residing in or confined to an institution, as defined in sec-  
6 tion 2 of the Civil Rights of Institutionalized Persons Act  
7 (42 U.S.C. 1997), even if the burden results from a rule  
8 of general applicability, unless the government dem-  
9 onstrates that imposition of the burden on that person—

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

16 (1) the substantial burden is imposed in a pro-  
17 gram or activity that receives Federal financial as-  
18 sistance; or

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

23 **SEC. 4. JUDICIAL RELIEF.**

24 (a) **CAUSE OF ACTION.**—A person may assert a viola-  
25 tion of this Act as a claim or defense in a judicial pro-  
26 ceeding and obtain appropriate relief against a govern-

1 ment. Standing to assert a claim or defense under this  
2 section shall be governed by the general rules of standing  
3 under article III of the Constitution.

4 (b) BURDEN OF PERSUASION.—If a plaintiff pro-  
5 duces prima facie evidence to support a claim alleging a  
6 violation of the Free Exercise Clause or a violation of sec-  
7 tion 2, the government shall bear the burden of persuasion  
8 on any element of the claim, except that the plaintiff shall  
9 bear the burden of persuasion on whether the law (includ-  
10 ing a regulation) or government practice that is challenged  
11 by the claim substantially burdens the plaintiff’s exercise  
12 of religion.

13 (c) FULL FAITH AND CREDIT.—Adjudication of a  
14 claim of a violation of section 2 in a non-Federal forum  
15 shall not be entitled to full faith and credit in a Federal  
16 court unless the claimant had a full and fair adjudication  
17 of that claim in the non-Federal forum.

18 (d) ATTORNEYS’ FEES.—Section 722(b) of the Re-  
19 vised Statutes (42 U.S.C. 1988(b)) is amended—

20 (1) by inserting “the Religious Land Use and  
21 Institutionalized Persons Act of 2000,” after “Reli-  
22 gious Freedom Restoration Act of 1993,”; and

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

1       (e) PRISONERS.—Nothing in this Act shall be con-  
2       strued to amend or repeal the Prison Litigation Reform  
3       Act of 1995 (including provisions of law amended by that  
4       Act).

5       (f) AUTHORITY OF UNITED STATES TO ENFORCE  
6       THIS ACT.—The United States may bring an action for  
7       injunctive or declaratory relief to enforce compliance with  
8       this Act. Nothing in this subsection shall be construed to  
9       deny, impair, or otherwise affect any right or authority  
10      of the Attorney General, the United States, or any agency,  
11      officer, or employee of the United States, acting under any  
12      law other than this subsection, to institute or intervene  
13      in any proceeding.

14      (g) LIMITATION.—If the only jurisdictional basis for  
15      applying a provision of this Act is a claim that a substan-  
16      tial burden by a government on religious exercise affects,  
17      or that removal of that substantial burden would affect,  
18      commerce with foreign nations, among the several States,  
19      or with Indian tribes, the provision shall not apply if the  
20      government demonstrates that all substantial burdens on,  
21      or the removal of all substantial burdens from, similar reli-  
22      gious exercise throughout the Nation would not lead in  
23      the aggregate to a substantial effect on commerce with  
24      foreign nations, among the several States, or with Indian  
25      tribes.

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 restricting or  
7 burdening religious exercise or for claims against a reli-  
8 gious organization including any religiously affiliated  
9 school or university, 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 a government to incur expenses in its own operations to  
16 avoid imposing a substantial burden on religious exercise.

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

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

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

1           (e) GOVERNMENTAL DISCRETION IN ALLEVIATING  
2 BURDENS ON RELIGIOUS EXERCISE.—A government may  
3 avoid the preemptive force of any provision of this Act by  
4 changing the policy or practice that results in a substan-  
5 tial burden on religious exercise, by retaining the policy  
6 or practice and exempting the substantially burdened reli-  
7 gious exercise, by providing exemptions from the policy or  
8 practice for applications that substantially burden reli-  
9 gious exercise, or by any other means that eliminates the  
10 substantial burden.

11           (f) EFFECT ON OTHER LAW.—With respect to a  
12 claim brought under this Act, proof that a substantial bur-  
13 den on a person’s religious exercise affects, or removal of  
14 that burden would affect, commerce with foreign nations,  
15 among the several States, or with Indian tribes, shall not  
16 establish any inference or presumption that Congress in-  
17 tends that any religious exercise is, or is not, subject to  
18 any law other than this Act.

19           (g) BROAD CONSTRUCTION.—This Act shall be con-  
20 strued in favor of a broad protection of religious exercise,  
21 to the maximum extent permitted by the terms of this Act  
22 and the Constitution.

23           (h) NO PREEMPTION OR REPEAL.—Nothing in this  
24 Act shall be construed to preempt State law, or repeal  
25 Federal law, that is equally as protective of religious exer-

1 cise as, or more protective of religious exercise than, this  
2 Act.

3 (i) 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. In this section, the term “granting”,  
19 used with respect to government funding, benefits, or ex-  
20 emptions, does not include the denial of government fund-  
21 ing, 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 a subdivision of a State” and inserting “or of a cov-  
 8 ered 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 “religious exercise, as defined  
 14 in section 8 of the Religious Land Use and Institu-  
 15 tionalized Persons Act of 2000.”.

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

19 **SEC. 8. DEFINITIONS.**

20 In this Act:

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

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

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

5           (4) GOVERNMENT.—The term “government”—

6           (A) means—

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

10          (ii) any branch, department, agency,  
11          instrumentality, or official of an entity list-  
12          ed in clause (i); and

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

15          (B) for the purposes of sections 4(b) and  
16          5, includes the United States, a branch, depart-  
17          ment, agency, instrumentality, or official of the  
18          United States, and any other person acting  
19          under color of Federal law.

20          (5) LAND USE REGULATION.—The term “land  
21       use regulation” means a zoning or landmarking law,  
22       or the application of such a law, that limits or re-  
23       stricts a claimant’s use or development of land (in-  
24       cluding a structure affixed to land), if the claimant  
25       has an ownership, leasehold, easement, servitude, or

1 other property interest in the regulated land or a  
2 contract or option to acquire such an interest.

3 (6) PROGRAM OR ACTIVITY.—The term “pro-  
4 gram or activity” means all of the operations of any  
5 entity as described in paragraph (1) or (2) of section  
6 606 of the Civil Rights Act of 1964 (42 U.S.C.  
7 2000d–4a).

8 (7) RELIGIOUS EXERCISE.—

9 (A) IN GENERAL.—The term “religious ex-  
10 ercise” includes any exercise of religion, wheth-  
11 er or not compelled by, or central to, a system  
12 of religious belief.

13 (B) RULE.—The use, building, or conver-  
14 sion of real property for the purpose of religious  
15 exercise shall be considered to be religious exer-  
16 cise of the person or entity that uses or intends  
17 to use the property for that purpose.

Passed the Senate July 27, 2000.

Attest:

*Secretary.*

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