

106TH CONGRESS  
1ST SESSION

# H. R. 1691

To protect religious liberty.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1999

Mr. CANADY of Florida (for himself, Mr. EDWARDS, Mr. HYDE, Mr. WEINER, Mr. SENSENBRENNER, Mr. HUTCHINSON, Mr. GREEN of Texas, Mr. SMITH of Texas, Mr. ROGAN, Mr. PETERSON of Minnesota, and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 1999”.

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—

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

4           (2) in any case in which the substantial burden  
5           on the person's religious exercise affects, or in which  
6           a removal of that substantial burden would affect,  
7           commerce with foreign nations, among the several  
8           States, or with Indian tribes;  
9           even if the burden results from a rule of general applica-  
10          bility.

11          (b) EXCEPTION.—A government may substantially  
12          burden a person's religious exercise if the government  
13          demonstrates that application of the burden to the  
14          person—

15                (1) is in furtherance of a compelling govern-  
16                mental interest; and

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

19          (c) REMEDIES OF THE UNITED STATES.—Nothing in  
20          this section shall be construed to authorize the United  
21          States to deny or withhold Federal financial assistance as  
22          a remedy for a violation of this Act. However, nothing in  
23          this subsection shall be construed to deny, impair, or oth-  
24          erwise affect any right or authority of the Attorney Gen-  
25          eral or the United States or any agency, officer, or em-

1 ployee thereof under other law, including section 4(d) of  
2 this Act, to institute or intervene in any action or pro-  
3 ceeding.

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

5 (a) PROCEDURE.—If a claimant produces prima facie  
6 evidence to support a claim alleging a violation of the Free  
7 Exercise Clause or a violation of a provision of this Act  
8 enforcing that clause, the government shall bear the bur-  
9 den of persuasion on any element of the claim; however,  
10 the claimant shall bear the burden of persuasion on wheth-  
11 er the challenged government practice, law, or regulation  
12 burdens or substantially burdens the claimant’s exercise  
13 of religion.

14 (b) LAND USE REGULATION.—

15 (1) LIMITATION ON LAND USE REGULATION.—

16 (A) Where, in applying or implementing  
17 any land use regulation or exemption, or system  
18 of land use regulations or exemptions, a govern-  
19 ment has the authority to make individualized  
20 assessments of the proposed uses to which real  
21 property would be put, the government may not  
22 impose a substantial burden on a person’s reli-  
23 gious exercise, unless the government dem-  
24 onstrates that application of the burden to the  
25 person is in furtherance of a compelling govern-

1           mental interest and is the least restrictive  
2           means of furthering that compelling govern-  
3           mental interest.

4           (B) No government shall impose or imple-  
5           ment a land use regulation in a manner that  
6           does not treat religious assemblies or institu-  
7           tions on equal terms with nonreligious assem-  
8           blies or institutions.

9           (C) No government shall impose or imple-  
10          ment a land use regulation that discriminates  
11          against any assembly or institution on the basis  
12          of religion or religious denomination.

13          (D) No government with zoning authority  
14          shall unreasonably exclude from the jurisdiction  
15          over which it has authority, or unreasonably  
16          limit within that jurisdiction, assemblies or in-  
17          stitutions principally devoted to religious exer-  
18          cise.

19          (2) FULL FAITH AND CREDIT.—Adjudication of  
20          a claim of a violation of the Free Exercise Clause or  
21          this subsection in a non-Federal forum shall be enti-  
22          tled to full faith and credit in a Federal court only  
23          if the claimant had a full and fair adjudication of  
24          that claim in the non-Federal forum.

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

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

5           (a) CAUSE OF ACTION.—A person may assert a viola-  
6           tion of this Act as a claim or defense in a judicial pro-  
7           ceeding and obtain appropriate relief against a govern-  
8           ment. Standing to assert a claim or defense under this  
9           section shall be governed by the general rules of standing  
10          under article III of the Constitution.

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

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

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

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

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

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 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) 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 that results in the substantial burden  
5 on religious exercise, by retaining the policy and exempt-  
6 ing the burdened religious exercise, by providing exemp-  
7 tions from the policy for applications that substantially  
8 burden religious exercise, or by any other means that  
9 eliminates the substantial burden.

10           (f) EFFECT ON OTHER LAW.—In a claim under sec-  
11 tion 2(a)(2) of this Act, proof that a substantial burden  
12 on a person’s religious exercise, or removal of that burden,  
13 affects or would affect commerce, shall not establish any  
14 inference or presumption that Congress intends that any  
15 religious exercise is, or is not, subject to any other law.

16           (g) BROAD CONSTRUCTION.—This Act should be con-  
17 strued in favor of a broad protection of religious exercise,  
18 to the maximum extent permitted by its terms and the  
19 Constitution.

20           (h) SEVERABILITY.—If any provision of this Act or  
21 of an amendment made by this Act, or any application  
22 of such provision to any person or circumstance, is held  
23 to be unconstitutional, the remainder of this Act, the  
24 amendments made by this Act, and the application of the

1 provision to any other person or circumstance shall not  
2 be affected.

3 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

4 Nothing in this Act shall be construed to affect, inter-  
5 pret, or in any way address that portion of the first  
6 amendment to the Constitution prohibiting laws respect-  
7 ing an establishment of religion (referred to in this section  
8 as the “Establishment Clause”). Granting government  
9 funding, benefits, or exemptions, to the extent permissible  
10 under the Establishment Clause, shall not constitute a vio-  
11 lation of this Act. As used in this section, the term “grant-  
12 ing”, used with respect to government funding, benefits,  
13 or exemptions, does not include the denial of government  
14 funding, benefits, or exemptions.

15 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**  
16 **TION ACT.**

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

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

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



1           (3) in paragraph (4), by striking all after  
2           “means,” and inserting “conduct that constitutes  
3           the exercise of religion under the first amendment to  
4           the Constitution; however, such conduct need not be  
5           compelled by, or central to, a system of religious be-  
6           lief; the use, building, or converting of real property  
7           for religious exercise shall itself be considered reli-  
8           gious exercise of the person or entities that use or  
9           intend to use the property for religious exercise.”.

10          (b) CONFORMING AMENDMENT.—Section 6(a) of the  
11 Religious Freedom Restoration Act of 1993 (42 U.S.C.  
12 2000bb–3(a)) is amended by striking “and State”.

13 **SEC. 8. DEFINITIONS.**

14          As used in this Act—

15           (1) the term “religious exercise” means conduct  
16           that constitutes the exercise of religion under the  
17           first amendment to the Constitution; however, such  
18           conduct need not be compelled by, or central to, a  
19           system of religious belief; the use, building, or con-  
20           verting of real property for religious exercise shall  
21           itself be considered religious exercise of the person  
22           or entities that use or intend to use the property for  
23           religious exercise;

24           (2) the term “Free Exercise Clause” means  
25           that portion of the first amendment to the Constitu-

1       tion that proscribes laws prohibiting the free exercise  
2       of religion and includes the application of that pro-  
3       scription under the 14th amendment to the Con-  
4       stitution;

5               (3) the term “land use regulation” means a law  
6       or decision by a government that limits or restricts  
7       a private person’s uses or development of land, or of  
8       structures affixed to land, where the law or decision  
9       applies to one or more particular parcels of land or  
10      to land within one or more designated geographical  
11      zones, and where the private person has an owner-  
12      ship, leasehold, easement, servitude, or other prop-  
13      erty interest in the regulated land, or a contract or  
14      option to acquire such an interest;

15              (4) the term “program or activity” means a  
16      program or activity as defined in paragraph (1) or  
17      (2) of section 606 of the Civil Rights Act of 1964  
18      (42 U.S.C. 2000d–4a);

19              (5) the term “demonstrates” means meets the  
20      burdens of going forward with the evidence and of  
21      persuasion; and

22              (6) the term “government”—

23                      (A) means—

1 (i) a State, county, municipality, or  
2 other governmental entity created under  
3 the authority of a State;

4 (ii) any branch, department, agency,  
5 instrumentality, subdivision, or official of  
6 an entity listed in clause (i); and

7 (iii) any other person acting under  
8 color of State law; and

9 (B) for the purposes of sections 3(a) and  
10 5, includes the United States, a branch, depart-  
11 ment, agency, instrumentality or official of the  
12 United States, and any person acting under  
13 color of Federal law.

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