

## Union Calendar No. 125

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1691

[Report No. 106-219]

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

JULY 1, 1999

Additional sponsors: Mr. BENTSEN, Mr. SPRATT, Mr. HEFLEY, Mr. BACHUS, Mr. HALL of Texas, Mr. MCKEON, Mr. TAYLOR of North Carolina, Mr. ENGLISH, Mr. COOK, Mr. STUMP, Mr. TAYLOR of Mississippi, Mrs. EMERSON, Mrs. MORELLA, Mr. WOLF, Mr. KING, Mr. DICKEY, Mr. NORWOOD, Mr. HASTINGS of Washington, Mr. RILEY, Mr. SHOWS, Mr. WELLER, Mr. BLUNT, Mr. GREEN of Wisconsin, Mr. CAMP, Mr. WHITFIELD, Mr. BARRETT of Nebraska, Mr. COBURN, Mr. HALL of Ohio, and Mr. WALDEN of Oregon

JULY 1, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 5, 1999]

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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 a*  
9 *person’s religious exercise—*

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

12            (2) *in any case in which the substantial burden*  
13 *on the person’s religious exercise affects, or in which*  
14 *a removal of that substantial burden would affect,*  
15 *commerce with foreign nations, among the several*  
16 *States, or with Indian tribes;*

17 *even if the burden results from a rule of general applica-*  
18 *bility.*

19        (b) *EXCEPTION.—A government may substantially*  
20 *burden a person’s religious exercise if the government dem-*  
21 *onstrates that application of the burden to the 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 States  
3 to deny or withhold Federal financial assistance as a rem-  
4 edy for a violation of this Act. However, nothing in this  
5 subsection shall be construed to deny, impair, or otherwise  
6 affect any right or authority of the Attorney General or the  
7 United States or any agency, officer, or employee thereof  
8 under other law, including section 4(d) of this Act, to insti-  
9 tute or intervene in any action or proceeding.

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

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

20           (b) *LAND USE REGULATION.*—

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

22                           (A) Where, in applying or implementing  
23 any land use regulation or exemption, or system  
24 of land use regulations or exemptions, a govern-  
25 ment has the authority to make individualized

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

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

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

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

1           (2) *FULL FAITH AND CREDIT.*—*Adjudication of a*  
2 *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 government.*  
14 *Standing to assert a claim or defense under this section*  
15 *shall be governed by the general rules of standing under*  
16 *article III of the Constitution.*

17           (b) *ATTORNEYS' FEES.*—*Section 722(b) of the Revised*  
18 *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 Restora-*  
21 *tion Act of 1993,”; and*

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

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

1 *on Litigation Reform Act of 1995 (including provisions of*  
2 *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 to*  
9 *burden any religious belief.*

10 (b) *RELIGIOUS EXERCISE NOT REGULATED.—Nothing*  
11 *in this Act shall create any basis for restricting or bur-*  
12 *dening religious exercise or for claims against a religious*  
13 *organization, including any religiously affiliated school or*  
14 *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 a*  
18 *government, or of any person to receive government funding*  
19 *for a religious activity, but this Act may require govern-*  
20 *ment to incur expenses in its own operations to avoid im-*  
21 *posing a burden or a substantial burden on religious exer-*  
22 *cise.*

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

1           (1) *authorize a government to regulate or affect,*  
2           *directly or indirectly, the activities or policies of a*  
3           *person other than a government as a condition of re-*  
4           *ceiving 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 exempting*  
13          *the burdened religious exercise, by providing exemptions*  
14          *from the policy for applications that substantially burden*  
15          *religious exercise, or by any other means that eliminates*  
16          *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 on*  
19          *a person’s religious exercise, or removal of that burden, af-*  
20          *fects or would affect commerce, shall not establish any infer-*  
21          *ence or presumption that Congress intends that any reli-*  
22          *gious 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 Con-*  
2 *stitution.*

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

9 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

10 *Nothing in this Act shall be construed to affect, inter-*  
11 *pret, or in any way address that portion of the first amend-*  
12 *ment to the Constitution prohibiting laws respecting an es-*  
13 *tablishment of religion (referred to in this section as the*  
14 *“Establishment Clause”). Granting government funding,*  
15 *benefits, or exemptions, to the extent permissible under the*  
16 *Establishment Clause, shall not constitute a violation of this*  
17 *Act. As used in this section, the term “granting”, used with*  
18 *respect to government funding, benefits, or exemptions, does*  
19 *not include the denial of government funding, benefits, or*  
20 *exemptions.*

21 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**  
22 **TION ACT.**

23 *(a) DEFINITIONS.—Section 5 of the Religious Freedom*  
24 *Restoration Act of 1993 (42 U.S.C. 2000bb–2) is*  
25 *amended—*



1           (1) in paragraph (1), by striking “a State, or  
2           subdivision of a State” and inserting “a covered enti-  
3           ty or a subdivision of such an entity”;

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

7           (3) in paragraph (4), by striking all after  
8           “means,” and inserting “any exercise of religion,  
9           whether or not compelled by, or central to, a system  
10          of religious belief, and includes (A) the use, building,  
11          or conversion of real property by a person or entity  
12          intending that property for religious exercise; and (B)  
13          any conduct protected as exercise of religion under the  
14          first amendment to the Constitution.”.

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

18 **SEC. 8. DEFINITIONS.**

19          As used in this Act—

20               (1) the term “religious exercise” means any exer-  
21               cise of religion, whether or not compelled by, or cen-  
22               tral to, a system of religious belief, and includes (A)  
23               the use, building, or conversion of real property by a  
24               person or entity intending that property for religious  
25               exercise; and (B) any conduct protected as exercise of

1 *religion under the first amendment to the Constitu-*  
2 *tion;*

3 (2) *the term “Free Exercise Clause” means that*  
4 *portion of the first amendment to the Constitution*  
5 *that proscribes laws prohibiting the free exercise of re-*  
6 *ligion and includes the application of that proscrip-*  
7 *tion under the 14th amendment to the Constitution;*

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

18 (4) *the term “program or activity” means a pro-*  
19 *gram or activity as defined in paragraph (1) or (2)*  
20 *of section 606 of the Civil Rights Act of 1964 (42*  
21 *U.S.C. 2000d–4a);*

22 (5) *the term “demonstrates” means meets the*  
23 *burdens of going forward with the evidence and of*  
24 *persuasion; and*

25 (6) *the term “government”—*

1 (A) means—

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

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

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

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

Union Calendar No. 125

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

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