

102D CONGRESS
1ST SESSION

H. R. 4040

To protect religious freedom.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 26, 1991

Mr. SMITH of New Jersey (for himself, Mr. HYDE, Mr. MOLLOHAN, Mr. VOLKMER, Mrs. VUCANOVICH, Mr. DORNAN of California, Mr. HUNTER, Mr. HOLLOWAY, Mr. BOEHNER, Mr. EMERSON, Mr. DELAY, Mr. INHOFE, Mr. DANNEMEYER, Mr. BUNNING, Mr. HANCOCK, and Mr. WALKER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect religious freedom.

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 Freedom Act
5 of 1991”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
7 **PURPOSES.**

8 (a) FINDINGS.—The Congress finds—

9 (1) the Framers of the American Constitution,
10 recognizing the practice of religion as an unalienable

1 right, secured its protection in the First Amendment
2 to the Constitution;

3 (2) laws “neutral” toward religion may burden
4 religious practice as surely as laws intended to inter-
5 fere with religious practice;

6 (3) Government should not burden conduct mo-
7 tivated by religious belief without compelling jus-
8 tification;

9 (4) the compelling interest test, as set forth in
10 *Sherbert v. Verner* and *Wisconsin v. Yoder*, is a
11 workable test for striking sensible balances between
12 religious liberty and competing governmental inter-
13 ests; and

14 (5) there is need for a statutory remedy afford-
15 ing protection for individuals and organizations from
16 unwarranted governmental burdens on their own re-
17 ligious practices and activities, while not providing a
18 statutory basis for challenges to governmental treat-
19 ment of individuals or organizations by others;

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to codify the compelling interest test as set
22 forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*;
23 and

24 (2) to provide a claim or defense for persons
25 whose religious practice is burdened by Government.

1 **SEC. 3. PRACTICE OF RELIGION PROTECTED.**

2 (a) **IN GENERAL.**—Government shall not burden the
3 practice of religion by any person even if the burden re-
4 sults from a rule of general applicability, except as pro-
5 vided in subsection (b).

6 (b) **EXCEPTION.**—Government may burden the prac-
7 tice of religion by any person only if it demonstrates that
8 application of the burden to the person—

9 (1) is essential to further a compelling govern-
10 mental interest; and

11 (2) is the least restrictive means of furthering
12 that compelling governmental interest.

13 (c) **JUDICIAL RELIEF.**—(1) A person whose religious
14 practice has been burdened in violation of this Act may
15 assert a claim or defense in a judicial proceeding and ob-
16 tain appropriate relief against a government in any court
17 of competent jurisdiction.

18 (2) Nothing in this Act shall be construed to author-
19 ize a cause of action by any person to challenge—

20 (A) the tax status of any other person;

21 (B) the use or disposition of Government funds
22 or property derived from or obtained with tax reve-
23 nues; or

24 (C) any limitation or restriction on abortion, on
25 access to abortion services or on abortion funding.

1 **SEC. 4. ATTORNEYS FEES.**

2 (a) **JUDICIAL PROCEEDINGS.**—Section 722 of the Re-
3 vised Statutes of the United States (42 U.S.C. 1988) is
4 amended by inserting “the Religious Freedom Act of
5 1991,” before “or title VI of the Civil Rights Act of
6 1964”.

7 (b) **ADMINISTRATIVE PROCEEDINGS.**—Section
8 504(b)(1)(C) of title 5, United States Code, is amended—

9 (1) by striking “and” at the end of clause (ii);

10 and

11 (2) by inserting “, and (iv) the Religious Free-
12 dom Act of 1991” before the semicolon at the end.

13 **SEC. 5. DEFINITIONS.**

14 As used in this Act—

15 (1) the term “Government” includes a branch,
16 department, agency, instrumentality, and officer of
17 the United States, a State, or a subdivision of a
18 State;

19 (2) the term “State” includes the District of
20 Columbia, the Commonwealth of Puerto Rico, and
21 each territory and possession of the United States;

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

1 (4) the term “person” includes both natural
2 persons and organizations, association, corporations,
3 or other entities.

4 **SEC. 6. APPLICABILITY.**

5 (a) **IN GENERAL.**—This Act applies to all Federal
6 and State law, and the implementation of that law, wheth-
7 er statutory or otherwise, and whether adopted before or
8 after the enactment of this Act.

9 (b) **RULE OF CONSTRUCTION.**—Federal law adopted
10 after the date of enactment of this Act is subject to this
11 Act unless such law explicitly by reference to this Act ex-
12 clude such application.

13 (c) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
14 this Act shall be construed to authorize any Government
15 to burden any religious belief.

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