CONGRESSIONAL RECORD — SENATE

S791

Last year, when the Supreme Court struck down part of the Religious Freedom Restoration Act in the case of City of Boerne versus Flores (117 S.Ct. 2157 (1997)—an Act that sought to reverse a threat to religious liberty of the Court's own making—we valued the free exercise of religion and vowed we would rebuild our coalition and craft a solution which appropriately defers to the Court's decision. Well, we have done so, and we are ready to move forward.

We introduce today legislation that uses the full extent of our powers to make government cognizant of and solicitous of the freedom of Americans to serve his or her concept of God. Where adjustment in general rules can possibly be made to accommodate this most basic liberty, it ought and must be done. As our government seeks to guarantee such freedoms, government should only in the rarest instances itself infringe on this most basic and foundational freedom.

We work together across party lines and with a coalition of truly remarkable breadth to fashion federal legislation to protect religious liberty that is consistent with the vision of the Framers of the First Amendment and the ruling of the current Supreme Court about Congress' power to legislate in this area.

The legislation that we introduce today will subject to strict scrutiny laws that substantially burden religious exercise in those areas within legitimate federal reach through either the commerce or the taxation branches. The Constitution allows the government to legislate in this area.

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Mr. President, I commend this important legislation to my colleagues for the support of all who value the free exercise of religion. Mr. President, I commend this important legislation to our colleagues in the Congress, and to all those who wish to keep the Framers' promise of religious freedom alive for all Americans of all faiths.

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"The RELIGIOUS LIBERTY PROTECTION ACT OF 1998"

Mr. HATCH. Mr. President, the first freedom guaranteed in the Bill of Rights is the freedom to believe and to worship. This promise of freedom of worship is, for many, this country's founding principle—the pilgrims' reason for braving thousands of miles of dark and dangerous seas, and countless other perilous challenges. The constitutional guarantee of the free exercise of religion for all has been a beacon to the world throughout our history.

In America, the ability of citizens to hold private Bible studies in their own homes or the freedom of synagogues and churches to locate near their members should not be left entirely to the whims of local zoning boards. Congregants of any faith should not be told by the government who they can and cannot house as religious leaders and teachers. No, not in America.

By Mr. HATCH (for himself and Mr. KENNEDY):

S. 2148. A bill to protect religious liberty; to the Committee on the Judici ary.

S. 2148

Be it enacted by the Senate and House of Representat ives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Religious Liberty Protection Act of 1998".
SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.

(a) GENERAL RULE.—Except as provided in subsection (b), a government shall not substantially burden a person's religious exercise—

(1) in a program or activity, operated by a government, that receives Federal financial assistance; or

(2) in or affecting commerce with foreign nations; among the several States, or with the Indian tribes;

even if the burden results from a rule of general applicability.

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

(1) is in furtherance of a compelling government interest; and

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

(c) FUNDING NOT AFFECTED.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this section.

(d) STATE POLICY NOT COMMANDEERED.—A government may eliminate the substantial burden that a religious exercise imposes, by changing the policy that results in the burden, by retaining the policy and exempting the religious exercise from that policy, or by any other means, consistent with the Constitution.

(e) DEFINITIONS.—As used in this section—

(1) the term "government" means a branch, department, agency, instrumentality, subdivision, or official of a State (or other person acting under color of State law);

(2) the term "program or activity" means a program or activity as defined in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4a); and

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

SEC. 3. ENFORCEMENT OF THE FREE EXERCISE CLAUSE.

(a) PROCEDURE.—If a claimant produces prima facie evidence to support a claim of a violation of this Act, the Free Exercise Clause, the Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.

(b) AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED.—Nothing in this Act shall—

(1) authorize a government to regulate or affect the activities or policies of a person other than a government as a condition of receiving funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.

(c) EFFECT ON OTHER LAW.—Proof that a religious exercise affects commerce for the purposes of this Act does not give rise to any inference or presumption that the religious exercise is subject to any other law regulating commerce.

(d) SUFFERABILITY.—If any provision of this Act or of an amendment made by this Act, or any application of such provision or any other person acting under color of law, is applicable to any person or circumstance, it shall be held unconstitutional, if the remainder of this Act, the amendments made by this Act, and the application of this Act to persons or other circumstances not affected.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION.—A person may assert a violation of this section in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) ATTORNEYS' FEES.—Section 722(b) of the Revised Statutes (42 U.S.C. 2000e-6(b)) is amended—


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

(c) PRISONERS.—Any litigation under this Act shall be governed by the Prison Litigation Reform Act, providing that government may not substantially burden a person's religious exercise, and applies that language to prisoners under other law to so regulate or affect, except as provided in this Act.

(d) SEVERABILITY.—If any provision of this Act or of an amendment made by this Act, or any application of such provision or any other person acting under color of law, is applicable to any person or circumstance, it shall be held unconstitutional, if the remainder of this Act, the amendments made by this Act, and the application of this Act to persons or other circumstances not affected.

SEC. 5. RULES OF CONSTRUCTION.

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

(b) RELIGIOUS EXERCISE NOT REGULATED.—Nothing in this Act shall create any basis for a claim or defense based on the activities or policies of a person other than a government as a condition of receiving funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.

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

(d) CONFORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking "and State".

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

(a) GENERAL RULE.—Except as provided in this Act, a State or subdivision of a State and its political subdivisions, or any other person acting under color of State law, or a branch, department, agency, instrumentality, subdivision, or official of the United States, or any other person acting under color of Federal law.

(b) CONFORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking "and State".

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Section 2(a)(2) applies the bill to religious exercise in or affecting commerce among the states, with foreign nations, or with Indian tribes. The phrase "commercial activity" is unqualified and includes the full constitutional limit of the commerce power, whatever that may be. The bill and its amendments provide, however, that the commerce power does not reach some religious activities, the bill does not reach them either. To the extent that the bill and its amendments affect religious exercise, they do not preempt protections of the bill, that is an unavoidable consequence of constitutional limitations on congressional authority. The bill does not create a federal threat of withholding all federal funds from a program or activity. The exclusive remedies are set out in §4.

Section 2(d) emphasizes that this bill does not require states to pursue any particular public policy or to abandon any policy, but that each State is free to choose its own means of eliminating substantial burdens on religious exercise.

Section 3(a)(2) contains definitions for purposes of §4.

The definition of "government," in §2(1), tracks RFRA, except that the United States and its agencies are excluded. The United States remains subject to the substantially identical provisions of RFRA and need not be included here.

Section 2(e)(2) incorporates part of the definition of "program or activity" from Title VI of the Civil Rights Act of 1964 - the part that describes programs and activities operated by governments. This definition ensures that federal regulation is confined to the program or activity that receives federal aid and does not extend to everything a state does. The constitutionality of the Title VI definition has not been seriously questioned. The "demonstrated" in §3(b)(3) is taken verbatim from RFRA.

Section 3. This section enforces the Free Exercise Clause as interpreted by the Supreme Court. Section 3(a) provides generally that if a complaining party produces prima facie evidence of a free exercise violation, the government then bears the burden of persuasion on all issues except burden on religious exercise.


Thus, if the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of motivation.

Section 3(b) provides that proof that a religious exercise need not be substantially burdened religious exercise, except where necessary to prevent substantial and tangible harm, may not deny religious assemblies a reasonable location somewhere within each jurisdiction, and that religious assemblies may not be excluded from areas where nonreligious assemblies are permitted.

Subsection 3(b)(2) guarantees a full and fair adjudication of claims under subsection (b). Procedural rules before land use authorities may vary widely; any procedure that permits full and fair adjudication of the facts is sufficiently adequate. The state court would have to find substantial and tangible harm, that jurisdictions may not deny religious assemblies a reasonable location somewhere within each jurisdiction, and that religious assemblies may not be excluded from areas where nonreligious assemblies are permitted.

Subsection 3(b)(3) provides that equally or more protective state law is not preempted. Subsection 3(b)(4) provides that §2 shall not apply to laws or standards lower than those of §3 control over the more general language of §2.

Section 4. This section provides remedies for violations. Sections 4(a) and (b) track RFRA, creating a cause of action for damages, injunctive relief, declaratory judgment, creating a defense to liability, and providing for attorneys' fees.

Section 4(c) subjects prisoner claims to the Prison Litigation Reform Act. This permits meritorious prisoner claims to proceed while effectively discouraging frivolous claims; prisoner claims generally dropped nearly a third in one year after the Prison Litigation Reform Act. Crawford-El v. Britton, 66 U.S.L.W. 4311, 4317 n.18 (May 4, 1996).

Section 4(d)(1) overrides the states' Eleventh Amendment immunity in cases in which the claimant claims a violation of the Free Exercise Clause, enforced under §3. Section 4(d)(2) overrides the states' Eleventh Amendment immunity of the United States in the same cases. This override of state immunity and waiver of federal immunity do not apply to statutory claims under §1983.

Section 5. This section states several rules of construction designed to clarify the meaning of "program or activity" provisions. Section 5(a) tracks RFRA, providing that nothing in the bill authorizes government to burden religious liberty. Section 5(b) provides that nothing in the bill creates any basis for regulating religion. Section 5(c) provides that nothing in the bill authorizes government to burden religious liberty by preventing government from acting under color of law. These two subsections serve the bill's central purpose of protecting religious liberty, and avoid any interpretive problems that would create any basis for regulating religion. Section 5(d) provides that nothing in the bill authorizes government to burden religious liberty by preventing government from acting under color of law. These two subsections serve the bill's central purpose of protecting religious liberty, and avoid any interpretive problems that would create any basis for regulating religion. Section 5(e) provides that nothing in the bill authorizes government to burden religious liberty by preventing government from acting under color of law. These two subsections serve the bill's central purpose of protecting religious liberty, and avoid any interpretive problems that would create any basis for regulating religion. Section 5(f) states that each provision and section of the bill is severable from every other provision and section.

Section 6. This section is taken verbatim from RFRA. It is language designed to state neutrality on all disputed issues under the Establishment Clause.

Section 7. This section amends RFRA to delete any application to the states and to leave RFRA applicable only to the federal government. Section 7(3) amends the definition of "religious exercise" in RFRA to clarify that religious exercise need not be necessary to a larger system of religious belief.

Section 8. This section defines important terms used throughout the Act.

Section 8(1) defines "religious exercise" to include both state and federal entities and persons acting under color of either state or federal law.

Section 8(2) defines "Free Exercise Clause" to include the First Amendment clause, which binds the United States, and also the incorporation of that clause into the Fourteenth Amendment, which binds the States.

Section 8(3) defines "government" to include both state and federal entities and persons acting under color of either state or federal law.

The free exercise enforcement provisions of §3 and the remedies provisions of §4 supplement RFRA, and these provisions are subject to the rules of construction in §5; each of these sections applies to both state and federal governments. This definition does not apply in §2, which has its own definition that reaches only state entities and persons acting under color of state law.

By Mr. REID (for himself and Mr. BRYAN):

S. 2149. A bill to transfer certain public lands in northeastern Nevada; to the Committee on Energy and Natural Resources.

The Northeastern Nevada Public Lands Transfer Act

Mr. President, the rural communities in northeastern Nevada, are growing. For example, in 1997, the City of White Pine was ranked as one of Nevada's fastest growing city. These communities are surrounded by Federal lands, with every little private land available for expansion and growth. In addition, because over 71 percent of the land in Elko County is in Federal ownership, these local governments do not have the resources to just go out and buy more land.