

102D CONGRESS
1ST SESSION

H. R. 2797

To protect the free exercise of religion.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1991

Mr. SOLARZ (for himself, Mr. AU COIN, Mr. ACKERMAN, Mr. BERMAN, Mr. BRYANT, Mr. CARDIN, Mr. COX of Illinois, Mr. DREIER of California, Mr. DEFAZIO, Mr. EDWARDS of California, Mr. FEIGHAN, Mr. FOGLIETTA, Mr. FROST, Mr. GEREN of Texas, Mr. HOCHBRUECKNER, Mr. HUGHES, Mr. JAMES, Mr. JEFFERSON, Mr. KOPETSKY, Mr. LAGOMARSINO, Mr. LEHMAN of Florida, Mr. LENT, Mr. MARKEY, Mr. MATSUI, Mr. MCMILLEN of Maryland, Mr. MOODY, Mr. MRAZEK, Mr. NEAL of North Carolina, Mr. OWENS of New York, Mr. OWENS of Utah, Mr. PRICE, Mr. SCHEUER, Mr. SCHIFF, Mr. SHAYS, Mr. SMITH of Texas, Mr. STALLINGS, Mr. STUDDS, Mr. TRAFICANT, Mr. TORRICELLI, Mr. TOWNS, Mr. YATES, and Mr. WOLPE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect the free exercise of religion.

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
5 Restoration Act of 1991".

1 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
2 **PURPOSES.**

3 (a) **FINDINGS.**—The Congress finds—

4 (1) the framers of the American Constitution,
5 recognizing free exercise of religion as an
6 unalienable right, secured its protection in the First
7 Amendment to the Constitution;

8 (2) laws “neutral” toward religion may burden
9 religious exercise as surely as laws intended to inter-
10 fere with religious exercise;

11 (3) governments should not burden religious ex-
12 ercise without compelling justification;

13 (4) in *Employment Division of Oregon v. Smith*
14 the Supreme Court virtually eliminated the require-
15 ment that the government justify burdens on reli-
16 gious exercise imposed by laws neutral toward reli-
17 gion; and

18 (5) the compelling interest test as set forth in
19 *Sherbert v. Verner* and *Wisconsin v. Yoder* is a
20 workable test for striking sensible balances between
21 religious liberty and competing governmental inter-
22 ests.

23 (b) **PURPOSES.**—The purposes of this Act—

24 (1) to restore the compelling interest test as set
25 forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*

1 and to guarantee its application in all cases where
2 free exercise of religion is burdened; and

3 (2) to provide a claim or defense to persons
4 whose religious exercise is burdened by government.

5 **SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.**

6 (a) **IN GENERAL.**—Government shall not burden a
7 person's exercise of religion even if the burden results
8 from a rule of general applicability, except as provided in
9 subsection (b).

10 (b) **EXCEPTION.**—Government may burden a per-
11 son's exercise of religion only if it demonstrates that appli-
12 cation of the burden to the person—

13 (1) is essential to further a compelling govern-
14 mental interest; and

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

17 (c) **JUDICIAL RELIEF.**—A person whose religious ex-
18 ercise has been burdened in violation of this section may
19 assert that violation as a claim or defense in a judicial
20 proceeding and obtain appropriate relief against a govern-
21 ment. Standing to assert a claim or defense under this
22 section shall be governed by the general rules of standing
23 under article III of the Constitution.

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 Restoration
5 Act of 1991,” before “or title VI of the Civil Rights Act
6 of 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 (2) by striking the semicolon at the end of
11 clause (iii) and inserting “; and”; and

12 (3) by inserting “(iv) the Religious Freedom
13 Restoration Act of 1991” after clause (iii).

14 **SEC. 5. DEFINITIONS.**

15 As used in this Act—

16 (1) the term “government” includes a branch,
17 department, agency, instrumentality, and official (or
18 other person acting under color of law) of the Unit-
19 ed States, a State, or a subdivision of a State;

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

24 (3) the term “demonstrates” means meets the
25 burdens of going forward with the evidence and of
26 persuasion.

1 **SEC. 6. APPLICABILITY.**

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

6 (b) **RULE OF CONSTRUCTION.**—Federal law adopted
7 after the date of the enactment of this Act is subject to
8 this Act unless such law explicitly excludes such applica-
9 tion by reference to this Act.

10 (c) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
11 this Act shall be construed to authorize any government
12 to burden any religious belief.

13 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

14 Nothing in this Act shall be construed to affect, inter-
15 pret, or in any way address that portion of the First
16 Amendment prohibiting laws respecting the establishment
17 of religion.