

106TH CONGRESS
2D SESSION

H. R. 4862

To protect religious liberty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2000

Mr. CANADY of Florida (for himself, Mr. NADLER, and Mr. EDWARDS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect religious liberty, and for other purposes.

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 Land Use
5 and Institutionalized Persons Act of 2000”.

6 **SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXER-**
7 **CISE.**

8 (a) SUBSTANTIAL BURDENS.—

9 (1) GENERAL RULE.—No government shall im-
10 pose or implement a land use regulation in a manner
11 that imposes a substantial burden on the religious

1 exercise of a person, including a religious assembly
2 or institution, unless the government demonstrates
3 that imposition of the burden on that person, assem-
4 bly, or institution—

5 (A) is in furtherance of a compelling gov-
6 ernmental interest; and

7 (B) is the least restrictive means of fur-
8 thering that compelling governmental interest.

9 (2) SCOPE OF APPLICATION.—This subsection
10 applies in any case in which—

11 (A) the substantial burden is imposed in a
12 program or activity that receives Federal finan-
13 cial assistance, even if the burden results from
14 a rule of general applicability;

15 (B) the substantial burden affects, or re-
16 moval of that substantial burden would affect,
17 commerce with foreign nations, among the sev-
18 eral States, or with Indian tribes, even if the
19 burden results from a rule of general applica-
20 bility; or

21 (C) the substantial burden is imposed in
22 the implementation of a land use regulation or
23 system of land use regulations, under which a
24 government makes, or has in place formal or in-
25 formal procedures or practices that permit the

1 government to make, individualized assessments
2 of the proposed uses for the property involved.

3 (b) DISCRIMINATION AND EXCLUSION.—

4 (1) EQUAL TERMS.—No government shall im-
5 pose or implement a land use regulation in a manner
6 that treats a religious assembly or institution on less
7 than equal terms with a nonreligious assembly or in-
8 stitution.

9 (2) NONDISCRIMINATION.—No government
10 shall impose or implement a land use regulation that
11 discriminates against any assembly or institution on
12 the basis of religion or religious denomination.

13 (3) EXCLUSIONS AND LIMITS.—No government
14 shall impose or implement a land use regulation
15 that—

16 (A) totally excludes religious assemblies
17 from a jurisdiction; or

18 (B) unreasonably limits religious assem-
19 blies, institutions, or structures within a juris-
20 diction.

21 **SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITU-**
22 **TIONALIZED PERSONS.**

23 (a) GENERAL RULE.—No government shall impose a
24 substantial burden on the religious exercise of a person
25 residing in or confined to an institution, as defined in sec-

tion 2 of the Civil Rights of Institutionalized Persons Act
(42 U.S.C. 1997), even if the burden results from a rule
of general applicability, unless the government dem-
onstrates that imposition of the burden on that person—

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

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

(b) SCOPE OF APPLICATION.—This section applies in
any case in which—

(1) the substantial burden is imposed in a pro-
gram or activity that receives Federal financial as-
sistance; or

(2) the substantial burden affects, or removal of
that substantial burden would affect, commerce with
foreign nations, among the several States, or with
Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION.—A person may assert a viola-
tion of this Act as a claim or defense in a judicial pro-
ceeding and obtain appropriate relief against a govern-
ment. 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.

1 (b) BURDEN OF PERSUASION.—If a plaintiff pro-
2 duces prima facie evidence to support a claim alleging a
3 violation of the Free Exercise Clause or a violation of sec-
4 tion 2, the government shall bear the burden of persuasion
5 on any element of the claim, except that the plaintiff shall
6 bear the burden of persuasion on whether the law (includ-
7 ing a regulation) or government practice that is challenged
8 by the claim substantially burdens the plaintiff’s exercise
9 of religion.

10 (c) FULL FAITH AND CREDIT.—Adjudication of a
11 claim of a violation of section 2 in a non-Federal forum
12 shall not be entitled to full faith and credit in a Federal
13 court unless the claimant had a full and fair adjudication
14 of that claim in the non-Federal forum.

15 (d) ATTORNEYS’ FEES.—Section 722(b) of the Re-
16 vised Statutes (42 U.S.C. 1988(b)) is amended—

17 (1) by inserting “the Religious Land Use and
18 Institutionalized Persons Act of 2000,” after “Reli-
19 gious Freedom Restoration Act of 1993,”; and

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

22 (e) PRISONERS.—Nothing in this Act shall be con-
23 strued to amend or repeal the Prison Litigation Reform
24 Act of 1995 (including provisions of law amended by that
25 Act).

1 (f) **AUTHORITY OF UNITED STATES TO ENFORCE**
2 **THIS ACT.**—The United States may bring an action for
3 injunctive or declaratory relief to enforce compliance with
4 this Act. Nothing in this subsection shall be construed to
5 deny, impair, or otherwise affect any right or authority
6 of the Attorney General, the United States, or any agency,
7 officer, or employee of the United States, acting under any
8 law other than this subsection, to institute or intervene
9 in any proceeding.

10 (g) **LIMITATION.**—If the only jurisdictional basis for
11 applying a provision of this Act is a claim that a substan-
12 tial burden by a government on religious exercise affects,
13 or that removal of that substantial burden would affect,
14 commerce with foreign nations, among the several States,
15 or with Indian tribes, the provision shall not apply if the
16 government demonstrates that all substantial burdens on,
17 or the removal of all substantial burdens from, similar reli-
18 gious exercise throughout the Nation would not lead in
19 the aggregate to a substantial effect on commerce with
20 foreign nations, among the several States, or with Indian
21 tribes.

22 **SEC. 5. RULES OF CONSTRUCTION.**

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

1 (b) RELIGIOUS EXERCISE NOT REGULATED.—Noth-
2 ing in this Act shall create any basis for restricting or
3 burdening religious exercise or for claims against a reli-
4 gious organization, including any religiously affiliated
5 school or university, not acting under color of law.

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

13 (d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON
14 FUNDING UNAFFECTED.—Nothing in this Act shall—

15 (1) authorize a government to regulate or af-
16 fect, directly or indirectly, the activities or policies of
17 a person other than a government as a condition of
18 receiving funding or other assistance; or

19 (2) restrict any authority that may exist under
20 other law to so regulate or affect, except as provided
21 in this Act.

22 (e) GOVERNMENTAL DISCRETION IN ALLEVIATING
23 BURDENS ON RELIGIOUS EXERCISE.—A government may
24 avoid the preemptive force of any provision of this Act by
25 changing the policy or practice that results in a substan-

1 tial burden on religious exercise, by retaining the policy
2 or practice and exempting the substantially burdened reli-
3 gious exercise, by providing exemptions from the policy or
4 practice for applications that substantially burden reli-
5 gious exercise, or by any other means that eliminates the
6 substantial burden.

7 (f) EFFECT ON OTHER LAW.—With respect to a
8 claim brought under this Act, proof that a substantial bur-
9 den on a person’s religious exercise affects, or removal of
10 that burden would affect, commerce with foreign nations,
11 among the several States, or with Indian tribes, shall not
12 establish any inference or presumption that Congress in-
13 tends that any religious exercise is, or is not, subject to
14 any law other than this Act.

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

19 (h) NO PREEMPTION OR REPEAL.—Nothing in this
20 Act shall be construed to preempt State law, or repeal
21 Federal law, that is equally as protective of religious exer-
22 cise as, or more protective of religious exercise than, this
23 Act.

24 (i) SEVERABILITY.—If any provision of this Act or
25 of an amendment made by this Act, or any application

1 of such provision to any person or circumstance, is held
 2 to be unconstitutional, the remainder of this Act, the
 3 amendments made by this Act, and the application of the
 4 provision to any other person or circumstance shall not
 5 be affected.

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

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

18 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**
 19 **TION ACT.**

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

23 (1) in paragraph (1), by striking “a State, or
 24 a subdivision of a State” and inserting “or of a cov-
 25 ered entity”;

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

4 (3) in paragraph (4), by striking all after
5 “means” and inserting “religious exercise, as defined
6 in section 8 of the Religious Land Use and Institu-
7 tionalized Persons Act of 2000.”.

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

11 **SEC. 8. DEFINITIONS.**

12 In this Act:

13 (1) CLAIMANT.—The term “claimant” means a
14 person raising a claim or defense under this Act.

15 (2) DEMONSTRATES.—The term “dem-
16 onstrates” means meets the burdens of going for-
17 ward with the evidence and of persuasion.

18 (3) FREE EXERCISE CLAUSE.—The term “Free
19 Exercise Clause” means that portion of the first
20 amendment to the Constitution that proscribes laws
21 prohibiting the free exercise of religion.

22 (4) GOVERNMENT.—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, or official of an entity list-
6 ed in clause (i); and

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

9 (B) for the purposes of sections 4(b) and
10 5, includes the United States, a branch, depart-
11 ment, agency, instrumentality, or official of the
12 United States, and any other person acting
13 under color of Federal law.

14 (5) LAND USE REGULATION.—The term “land
15 use regulation” means a zoning or landmarking law,
16 or the application of such a law, that limits or re-
17 stricts a claimant’s use or development of land (in-
18 cluding a structure affixed to land), if the claimant
19 has an ownership, leasehold, easement, servitude, or
20 other property interest in the regulated land or a
21 contract or option to acquire such an interest.

22 (6) PROGRAM OR ACTIVITY.—The term “pro-
23 gram or activity” means all of the operations of any
24 entity described in paragraph (1) or (2) of section

1 606 of the Civil Rights Act of 1964 (42 U.S.C.
2 2000d–4a).

3 (7) RELIGIOUS EXERCISE.—

4 (A) IN GENERAL.—The term “religious ex-
5 ercise” includes any exercise of religion, wheth-
6 er or not compelled by, or central to, a system
7 of religious belief.

8 (B) RULE.—The use, building, or conver-
9 sion of real property for the purpose of religious
10 exercise shall be considered to be religious exer-
11 cise of the person or entity that uses or intends
12 to use the property for that purpose.

○