

Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

State of Arkansas
93rd General Assembly
Regular Session, 2021

HJR 1024

By: Representative Gazaway
By: Senator Rapert

HOUSE JOINT RESOLUTION

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE THE "ARKANSAS RELIGIOUS FREEDOM AMENDMENT"; AND TO PROVIDE THAT GOVERNMENT MAY BURDEN A PERSON'S FREEDOM OF RELIGION ONLY IF THE GOVERNMENT DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON IS IN FURTHERANCE OF A COMPELLING GOVERNMENT INTEREST AND IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING GOVERNMENT INTEREST.

Subtitle

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE THE "ARKANSAS RELIGIOUS FREEDOM AMENDMENT".

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-THIRD GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

That the following is proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at the election adopt the amendment, the amendment shall become a part of the Constitution of the State of Arkansas, to wit:

SECTION 1. This amendment shall be known and may be cited as the



"Arkansas Religious Freedom Amendment".SECTION 2. (a) The General Assembly finds:

(1) The framers of the United States Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the United States Constitution;

(2) The framers of the Arkansas Constitution of 1874, also recognizing the free exercise of religion as an unalienable right, secured the protection of religious freedom in Arkansas Constitution, Article 2, § 24;

(3) Federal and state laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(4) Governments should not burden religious exercise without compelling justification;

(5) In Employment Division v. Smith, 494 U.S. 872 (1990), the United States Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion;

(6) The compelling interest test as set forth in prior court rulings is a workable test for striking sensible balances between religious liberty and competing government interests in areas ranging from public education (pedagogical interests and religious rights, including recognizing regulations necessary to alleviate interference with the educational process versus rights of religious freedom), national defense (conscriptioin and conscientious objection, including the need to raise an army versus rights to object to individual participation), and other areas of important mutual concern; and

(7) The United States Congress passed the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, to establish the compelling interest test set forth in prior federal court rulings, but in City of Boerne v. Flores, 117 S.Ct. 2157 (1997), the United States Supreme Court held the act unconstitutional, stating that the right to regulate was retained by the states.

(b) The purpose of this amendment is to:

(1) Guarantee that the freedom of religion is not burdened by

state and local law; and

(2) Provide a claim or defense to persons whose religious freedom is burdened by government.

SECTION 3. As used in this amendment:

(1) "Demonstrates" means meeting the burden of going forward with the evidence and of persuasion;

(2) "Freedom of religion" means the free exercise of religion under Arkansas Constitution, Article 2, § 24;

(3) "Government" means:

(A) A branch, department, agency, or instrumentality of the State of Arkansas;

(B) A political subdivision of the state, including without limitation a county, municipality, township, or other unit of local government;

(C) An official acting on behalf of government; and

(D) A person acting under the color of law of the State of Arkansas; and

(4) "Rule" means a statement of Arkansas law, including without limitation a:

(A) Statute;

(B) Rule;

(C) Regulation;

(D) Ordinance;

(E) Administrative provision;

(F) Administrative ruling;

(G) Guideline; or

(H) Requirement.

SECTION 4. (a) Except as provided in subsection (b) of this section, government shall not burden a person's freedom of religion even if the burden results from a rule of general applicability.

(b) Government may burden a person's freedom of religion only 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

government interest.

(c) A person whose religious freedom has been burdened in violation of this section may assert that violation as a claim or defense in a judicial, administrative, or other appropriate proceeding and obtain appropriate relief against a government.

SECTION 5. (a) This amendment applies to each rule of government and its implementation, regardless of whether the rule:

(1) Is statutory; or

(2) Was adopted prior to or after the effective date of this amendment.

(b) This amendment shall not be construed to:

(1) Authorize a government to burden a religious belief; or

(2) Affect, interpret, or in any way address:

(A) The portions of the United States Constitution, First Amendment, permitting the free exercise of religion or prohibiting laws respecting the establishment of religion; or

(B) Article 2, § 24 of this constitution regarding religious liberty.

SECTION 6. (a) This amendment shall be liberally construed to effectuate its remedial and deterrent purposes.

(b) If any provision of this amendment or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this amendment.

SECTION 7. EFFECTIVE DATE. This amendment shall be effective on and after November 9, 2023.

SECTION 8. BALLOT TITLE AND POPULAR NAME. When this proposed amendment is submitted to the electors of this state on the general election ballot:

(1) The title of this joint resolution shall be the ballot title; and

(2) The popular name shall be "A Constitutional Amendment

Creating the 'Arkansas Religious Freedom Amendment' And Providing That Government May Burden a Person's Freedom Of Religion Only if the Government Demonstrates that Application of the Burden to the Person is in Furtherance of a Compelling Government Interest and is the Least Restrictive Means of Furthering that Compelling Government Interest".