

By: Senator(s) White

To: Judiciary, Division B

SENATE BILL NO. 2854

1 AN ACT RELATING TO RELIGIOUS FREEDOM; TO PROVIDE THAT THE  
2 STATE OF MISSISSIPPI AND ITS POLITICAL SUBDIVISIONS SHALL NOT  
3 SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION, UNLESS IT  
4 DEMONSTRATES THAT THERE IS A COMPELLING GOVERNMENTAL INTEREST AND  
5 IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING  
6 GOVERNMENTAL INTEREST; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1. Short title.**

9 This act may be cited as the "Religious Freedom Restoration  
10 Act."

11 **SECTION 2. Definitions.**

12 In this act:

13 (a) "Demonstrates" means meets the burden of going  
14 forward with the evidence and of persuasion under the standard of  
15 clear and convincing evidence.

16 (b) "Exercise of religion" means an act or refusal to  
17 act that is substantially motivated by religious belief, whether  
18 or not the religious exercise is compulsory or central to a larger  
19 system of religious belief.

20 (c) "Government" includes a branch, department, agency,  
21 instrumentality and official (or other person acting under color  
22 of law) of the State of Mississippi or a political subdivision of  
23 the state.

24 (d) "Substantially burden" means to inhibit or curtail  
25 religiously motivated practices.

26 **SECTION 3. Findings and purposes.**

27 (1) The Legislature finds the following:

28           (a) The free exercise of religion is an inherent,  
29 fundamental and inalienable right secured by Section 18 of the  
30 Mississippi Constitution of 1890.

31           (b) Laws "neutral" toward religion, as well as laws  
32 intended to interfere with the exercise of religion, may burden  
33 the exercise of religion.

34           (c) Government should not substantially burden the  
35 exercise of religion without compelling justification.

36           (d) In *Employment Division v. Smith*, 494 U.S. 872  
37 (1990), the Supreme Court virtually eliminated the requirement  
38 under the First Amendment to the United States Constitution that  
39 government justify burdens on the exercise of religion imposed by  
40 laws neutral toward religion.

41           (e) In *City of Boerne v. P.F. Flores*, 65 LW 4612  
42 (1997), the Supreme Court held that an act passed by Congress to  
43 address the matter of burdens placed on the exercise of religion,  
44 infringed on the legislative powers reserved to the states under  
45 the Constitution of the United States.

46           (f) The compelling interest test, as set forth in  
47 *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Varner*,  
48 374 U.S. 398 (1963), is a workable test for striking sensible  
49 balances between religious liberty and competing governmental  
50 interest.

51           (2) The purposes of this act are as follows:

52           (a) To restore the compelling interest test as set  
53 forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v.*  
54 *Varner*, 374 U.S. 398 (1963), and to guarantee that a test of  
55 compelling governmental interest will be imposed on all state and  
56 local (including home rule unit) laws, ordinances, policies,  
57 procedures, practices and governmental actions in all cases in  
58 which the free exercise of religion is substantially burdened.

59           (b) To provide a claim or defense to persons whose  
60 exercise of religion is substantially burdened by government.

61           **SECTION 4. Free exercise of religion protected.**

62           Government shall not substantially burden a person's exercise  
63 of religion, even if the burden results from a rule of general  
64 applicability, unless it demonstrates that application of the  
65 burden to the person (a) is both essential to further compelling  
66 governmental interest; and (b) is the least restrictive means of  
67 furthering that compelling governmental interest.

68           **SECTION 5. Judicial relief.**

69           If a person's exercise of religion has been burdened in  
70 violation of this act, that person may assert that violation as a  
71 claim or defense in a judicial proceeding and may obtain  
72 appropriate relief against a government. A party who prevails in  
73 an action to enforce this act against a government is entitled to  
74 recover attorney's fees and costs incurred in maintaining the  
75 claim or defense.

76           **SECTION 6. Application of act.**

77           (1) This act applies to all state and local laws,  
78 ordinances, policies, procedures, practices and governmental  
79 actions and their implementation, whether statutory or otherwise  
80 and whether adopted before or after the effective date of this  
81 act.

82           (2) Nothing in this act shall be construed to authorize a  
83 government to burden any religious belief.

84           (3) Nothing in this act shall be construed to affect,  
85 interpret, or in any way address any of the following: (a) that  
86 portion of the First Amendment of the United States Constitution  
87 prohibiting laws respecting the establishment of religion, or (b)  
88 Section 18 of the Mississippi Constitution of 1890. Granting  
89 government funding, benefits or exemptions, to the extent  
90 permissible under the constitutional provisions described in items  
91 (a) and (b) of this subsection, does not constitute a violation of  
92 this act. In this subsection, "granting," used with respect to

93 government funding, benefits or exemptions, does not include the  
94 denial of government funding, benefits or exemptions.

95 (4) The corporate authorities of a municipality or other  
96 unit of local government may enact ordinances, standards, rules or  
97 regulations that protect the free exercise of religion in a manner  
98 or to an extent equal to or greater than the protection provided  
99 in this act. If an ordinance, standard, rule or regulation  
100 enacted under the authority of this section or under the authority  
101 of a unit of local government's home rule powers prohibits,  
102 restricts, narrows or burdens a person's exercise of religion or  
103 permits the prohibition, restriction, narrowing or burdening of a  
104 person's exercise of religion, that ordinance, standard, rule or  
105 regulation is void and unenforceable as to that person if it (a)  
106 is not in furtherance of a compelling governmental interest, and  
107 (b) is not the least restrictive means of furthering that  
108 governmental interest.

109 **SECTION 7.** This act shall take effect and be in force from  
110 and after July 1, 2004.