Senate Engrossed House Bill

religious services; essential services

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 181

HOUSE BILL 2507

AN ACT

AMENDING TITLE 41, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 11; RELATING TO CIVIL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, chapter 9, Arizona Revised Statutes, is amended by adding article 11, to read:

ARTICLE 11. RELIGION IS ESSENTIAL

41-1495. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:


2. "DISCRIMINATORY ACT" MEANS ANY DIRECT OR INDIRECT ACT OR PRACTICE THAT ADVERSELY AFFECTS A RELIGIOUS ORGANIZATION, INCLUDING EXCLUSION, RESTRICTION, SEGREGATION, LIMITATION, REFUSAL OR DENIAL.

3. "RELIGIOUS ORGANIZATION" MEANS:

(a) A HOUSE OF WORSHIP.
(b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, EDUCATIONAL INSTITUTION, MINISTRY, ORDER, SOCIETY OR SIMILAR ENTITY, REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF WORSHIP.
(c) AN OFFICER, OWNER, MINISTER, MANAGER, RELIGIOUS LEADER, CLERGYPERSON OR EMPLOYEE OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS PARAGRAPH.

4. "RELIGIOUS SERVICES" MEANS A MEETING OR ASSEMBLY OF TWO OR MORE PERSONS ORGANIZED BY A RELIGIOUS ORGANIZATION FOR THE PURPOSE OF WORSHIP, TRAINING, PROVIDING EDUCATIONAL SERVICES, CONDUCTING RELIGIOUS RITUALS OR OTHER ACTIVITIES THAT ARE DEEMED NECESSARY BY THE RELIGIOUS ORGANIZATION FOR THE EXERCISE OF RELIGION.

5. "STATE GOVERNMENT" MEANS:

(a) THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.
(b) ANY AGENCY OF THIS STATE OR OF A POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL, COURT OR PUBLIC INSTITUTION OF HIGHER EDUCATION.
(c) ANY PERSON ACTING IN AN OFFICIAL CAPACITY.

41-1495.01. Discriminatory action against religious organizations; prohibition

A. STATE GOVERNMENT OR ANY PRIVATE PERSON WHO SUES UNDER OR ATTEMPTS TO ENFORCE A LAW, RULE OR REGULATION THAT IS ADOPTED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY NOT TAKE ANY DISCRIMINATORY ACTION AGAINST A RELIGIOUS ORGANIZATION ON THE BASIS THAT THE ORGANIZATION:

1. IS RELIGIOUS.
2. OPERATES OR SEeks TO OPERATE DURING A STATE OF EMERGENCY.
3. ENGAGES IN THE EXERCISE OF RELIGION AS PROTECTED UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.
B. During a State of Emergency, religious services are declared essential services and are deemed necessary and vital to the health and welfare of the public.

C. State government shall allow a religious organization to continue to operate and engage in religious services during the state of emergency to the same or greater extent than state government allows other organizations or businesses that provide essential services that are necessary and vital to the health and welfare of the public to operate.

D. This section does not prohibit state government from requiring religious organizations to comply with neutral health, safety or occupancy requirements that are issued by the state government or the federal government and that apply to all organizations and businesses that provide essential services. State government may not enforce any health, safety or occupancy requirement that imposes a substantial burden on a religious service unless state government demonstrates that applying the burden to the religious service in that particular instance is essential to furthering a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

41-1495.02. Enforceability

A. A religious organization may assert a violation of this article as a claim against state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of state government, any private person or any other party. Notwithstanding any other law, an action under this article may be commenced and relief may be granted, in a court of this state without regard to whether the religious organization commencing the action has sought or exhausted administrative remedies.

B. A religious organization that successfully asserts a claim or defense under this article against state government may recover:

1. Declaratory relief.
2. Injunctive relief.
3. Compensatory damages.
4. Reasonable attorney fees and costs.
5. Any other appropriate relief.

C. A religious organization that successfully asserts a claim or defense under this article against a private person not acting in an official capacity may only recover declaratory relief and injunctive relief.

D. Sovereign and governmental immunities to suit and from liability are waived and abolished to the extent of liability established by this article, and a religious organization may sue state government, except state courts, for damages allowed by subsection B of this section.
41-1495.03. Rules of construction

A. THIS ARTICLE SHALL BE CONSTRUED IN FAVOR OF A BROAD PROTECTION
OF THE FREE EXERCISE OF RELIGION.

B. THE PROTECTION OF THE FREE EXERCISE OF RELIGION AFFORDED BY THIS
ARTICLE IS IN ADDITION TO THE PROTECTIONS PROVIDED UNDER FEDERAL LAW,
STATE LAW AND THE CONSTITUTIONS OF THE UNITED STATES AND ARIZONA. THIS
ARTICLE DOES NOT PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS EQUALLY
OR MORE PROTECTIVE OF THE FREE EXERCISE OF RELIGION. THIS ARTICLE DOES NOT
NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW PROTECTING THE
FREE EXERCISE OF RELIGION.

C. THIS ARTICLE APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES
AND THE IMPLEMENTATION OF THOSE LAWS AND ORDINANCES, WHETHER STATUTORY OR
OTHERWISE AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS
SECTION. STATE LAWS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION ARE
SUBJECT TO THIS ARTICLE UNLESS THE LAW EXPLICITLY EXCLUDES APPLICATION BY
REFERENCE TO THIS ARTICLE.

D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THE
PROVISION TO ANY PARTICULAR PERSON OR CIRCUMSTANCE IS HELD TO BE INVALID
UNDER LAW, THE REMAINDER OF THIS ARTICLE AND THE APPLICATION OF ITS
PROVISIONS TO ANY OTHER PERSON OR CIRCUMSTANCE MAY NOT BE AFFECTED.

41-1495.04. Applicability

THIS ARTICLE DOES NOT APPLY TO A CASE BASED ON CRIMINAL CONDUCT OR
TO A TORT ACTION BROUGHT BY A VICTIM OF SUCH CRIMINAL CONDUCT AGAINST A
RELIGIOUS ORGANIZATION OR AN EMPLOYEE OR VOLUNTEER OF A RELIGIOUS
ORGANIZATION, INCLUDING AN ACTION BROUGHT PURSUANT TO SECTION 12-514.

Sec. 2. Legislative findings

The Legislature finds:

1. Religion provides extensive benefits to our country both in
meeting the spiritual needs of our populace and also in supporting social
services, health care and economic activity.

2. Religion contributes $1.2 trillion annually to the nation's
economy and society. This includes charitable activities, health care,
educational services and millions of volunteer hours in programs that help
the poor, help individuals struggling with addiction or mental illness and
provide job training. "Congregations, businesses inspired by faith,
faith-based charities and institutions not only build communities and
families but also strengthen our economy in every town and city of the
country." Brian J. Grim & Melissa E. Grim, The Socio-economic Contribution
of Religion to American Society: An Empirical Analysis, 12 Interdisc. J.

3. "The Constitution forbids laws that prohibit the free exercise
of religion. That guarantee protects not just the right to be a religious
person, holding beliefs inwardly and secretly; it also protects the right
to act on those beliefs outwardly and publicly." Espinoza v. Montana Dep't
of Revenue, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring).
4. The United States Supreme Court has "long recognized the importance of protecting religious actions, not just religious status." Id. "[T]he First Amendment protects the 'freedom to act' as well as the 'freedom to believe.'" Id. (quoting Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)).


6. "What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct." Espinoza, 140 S. Ct. at 2277.

7. The government violates the Free Exercise Clause whenever it "conditions receipt of an important benefit upon conduct proscribed by a religious faith or...denies such benefit because of conduct mandated by a religious belief, thereby putting substantial pressure on an adherent to modify his behavior to violate his beliefs." Thomas v. Review Bd. of Ind. Employment Security Div., 450 U.S. 707, 717-18 (1981).

8. "The First Amendment does not allow our leaders to decide which rights to honor and which to ignore." Spell v. Edwards, 962 F.3d 175, 183 (5th Cir. 2020) (Ho, J., concurring).

9. "Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed.'" Id. At 181.


11. The government may not "devalue[] religious reasons for [congregating] by judging them to be of lesser import than nonreligious reasons." Church of the Lukumi Babalu Aye, 508 U.S. at 537.

12. The government may not permit "life-sustaining" operations to continue during a state of emergency without also permitting "soul-sustaining" operations such as religious services to continue, especially when the religious services "adhere to all the public health guidelines required of the other services." Roberts v. Neace, 958 F.3d 409, 414 (6th Cir. 2020).

13. Dr. Timothy P. Flanigan, Professor of Medicine at the Warren Alpert Medical School of Brown University, provided sworn testimony in federal court that religious services pose no greater threat to public health than other gatherings where CDC guidelines are followed. Flanigan Expert Decl., Calvary Chapel Dayton Valley v. Sisolak, No. 3:20-cv-00303, Dkt. 38-31 (D. Nev. June 6, 2020). Dr. Flanigan concluded:
(a) "There is no scientific or medical reason that a religious service that follows the guidelines issued by the CDC would pose a more significant risk of spreading SARS-CoV-2 than gatherings or interactions at other establishments or institutions." Id. ¶ 27.

(b) "[T]here is no scientific or medical reason that people could not follow the CDC guidance just as carefully in a religious setting as they could in a non-religious setting. In fact, my experience has been that individuals in religious settings are observant of the rules established by their houses of worship." Id. ¶ 32.

(c) "[S]o long as the CDC guidelines are followed, there is no scientific or medical reason to prohibit religious services but not prohibit other activities or gatherings, nor is there any scientific or medical reason to allow certain activities or gatherings while not allowing religious services." Id. ¶ 33.

(d) "[S]o long as the CDC guidelines are followed, there is no scientific or medical reason to limit the number of persons at a religious gathering while not imposing the same restrictions on shopping malls, big box stores, restaurants or bars, gyms or fitness centers, barbershops or hair salons, movie theaters, museums, water parks, offices, workplace meetings, gambling casinos, factories, supermarkets, farmer's markets, retail stores, demonstrations, or other places where individuals interact, gather, or share space." Id. ¶ 34.

APPROVED BY THE GOVERNOR APRIL 25, 2022.