

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

1 State of Arkansas As Engrossed: S3/23/21 S4/22/21

2 93rd General Assembly

3 Regular Session, 2021

SJR 14

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5 By: Senator Rapert

6 By: Representative Gazaway

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SENATE JOINT RESOLUTION

9 AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE
10 THE "ARKANSAS RELIGIOUS FREEDOM AMENDMENT"; AND TO
11 PROVIDE THAT GOVERNMENT MAY NEVER BURDEN A PERSON'S
12 FREEDOM OF RELIGION EXCEPT IN THE RARE CIRCUMSTANCE
13 THAT THE GOVERNMENT DEMONSTRATES THAT APPLICATION OF
14 THE BURDEN TO THE PERSON IS IN FURTHERANCE OF A
15 COMPELLING GOVERNMENT INTEREST AND IS THE LEAST
16 RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING
17 GOVERNMENT INTEREST.

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Subtitle

21 AN AMENDMENT TO THE ARKANSAS CONSTITUTION
22 TO CREATE THE "ARKANSAS RELIGIOUS FREEDOM
23 AMENDMENT".

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

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

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1 SECTION 1. This amendment shall be known and may be cited as the
2 "Arkansas Religious Freedom Amendment".

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4 SECTION 2. (a) The General Assembly finds:

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

8 (2) The framers of the Arkansas Constitution of 1874, also
9 recognizing the free exercise of religion as an unalienable right, secured
10 the protection of religious freedom in Arkansas Constitution, Article 2, §
11 24;

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

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

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

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

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

36 (b) The purpose of this amendment is to:

1 (1) Guarantee that the freedom of religion is not burdened by
2 state and local law; and

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

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6 SECTION 3. As used in this amendment:

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

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

11 (3) "Government" means:

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

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

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

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

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

22 (A) Statute;

23 (B) Rule;

24 (C) Regulation;

25 (D) Ordinance;

26 (E) Administrative provision;

27 (F) Administrative ruling;

28 (G) Guideline; or

29 (H) Requirement.

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

34 (b) Government may burden a person's freedom of religion only if the
35 government demonstrates that application of the burden to the person:

36 (1) Is in furtherance of a compelling government interest; and

1 (2) Is the least restrictive means of furthering that compelling
2 government interest.

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

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

10 (1) Is statutory; or

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

13 (b) This amendment shall not be construed to:

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

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

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

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

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

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

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29 SECTION 7. EFFECTIVE DATE. This amendment shall be effective on and
30 after November 9, 2022.

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

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

