S T A T E  O F  N E W  Y O R K

834

2009-2010 Regular Sessions

I N  S E N A T E

January 18, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the free exercise of religion

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

FREE EXERCISE OF RELIGION

SECTION 275. LEGISLATIVE FINDINGS AND STATEMENT OF INTENT.
276. FREE EXERCISE OF RELIGION PROTECTED.
277. DEFINITIONS.
278. APPLICABILITY.

S 275. LEGISLATIVE FINDINGS AND STATEMENT OF INTENT. 1. THE LEGISLATURE FINDS THAT:

(A) THE STATE CONSTITUTION RECOGNIZES THE FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP, WITHOUT DISCRIMINATION OR PREFERENCE, AS AN INHERENT AND FUNDAMENTAL RIGHT;

(B) LAWS "FACIALLY NEUTRAL" TOWARD RELIGION, AS WELL AS LAWS INTENDED TO INTERFERE WITH RELIGIOUS EXERCISE, MAY BURDEN RELIGIOUS EXERCISE AND PROFESSION;

(C) GOVERNMENTS SHOULD NOT SUBSTANTIALLY BURDEN RELIGIOUS EXERCISE WITHOUT COMPELLING JUSTIFICATION; AND

(D) THE COMPELLING INTEREST TEST, AS SET FORTH IN THE FEDERAL CASES OF WISCONSIN V. YODER, 406 US 205 (1972), AND SHERBERT V. VERNER, 374 US 398 (1963), IS A WORKABLE TEST FOR STRIKING SENSIBLE BALANCES BETWEEN RELIGIOUS LIBERTY AND COMPETING GOVERNMENTAL INTERESTS.

2. IT IS THE INTENT OF THE LEGISLATURE:

(A) TO GUARANTEE THAT A TEST OF COMPELLING STATE INTEREST WILL BE IMPOSED ON ALL STATE AND LOCAL LAWS AND ORDINANCES IN ALL CASES IN WHICH

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06311-01-9

FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP IS SUBSTANTIALLY BURDENED; AND

(B) TO PROVIDE A CLAIM OR DEFENSE TO PERSONS WHOSE RELIGIOUS PROFESSION AND WORSHIP IS SUBSTANTIALLY BURDENED BY GOVERNMENT.

S 276. FREE EXERCISE OF RELIGION PROTECTED. 1. GOVERNMENT SHALL NOT SUBSTANTIALLY BURDEN A PERSON'S EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP EVEN IF THE BURDEN RESULTS FROM A RULE OF GENERAL APPLICABILITY, EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION.

2. GOVERNMENT MAY SUBSTANTIALLY BURDEN A PERSON'S EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP ONLY IF IT DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON--

(A) IS IN FURTHERANCE OF A COMPELLING GOVERNMENTAL INTEREST; AND

(B) IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING GOVERNMENTAL INTEREST.

3. A PERSON WHOSE RELIGIOUS EXERCISE HAS BEEN BURDENED IN VIOLATION OF THIS SECTION MAY ASSERT THAT VIOLATION AS A CLAIM OR DEFENSE IN A JUDICIAL PROCEEDING AND OBTAIN APPROPRIATE RELIEF AGAINST A GOVERNMENT. A PARTY WHO PREVAILS IN ANY ACTION TO ENFORCE THIS ARTICLE AGAINST A GOVERNMENT SHALL RECOVER ATTORNEY'S FEES AND COSTS.

S 277. DEFINITIONS. AS USED IN THIS ARTICLE:

1. THE TERM "GOVERNMENT" INCLUDES A BRANCH, DEPARTMENT, AGENCY, INSTRUMENTALITY, AND OFFICIAL (OR OTHER PERSON ACTING UNDER COLOR OF LAW) OF THE STATE, OR A MUNICIPALITY OR SUBDIVISION OF THE STATE;

2. THE TERM "DEMONSTRATES" MEANS MEETS THE BURDENS OF GOING FORWARD WITH THE EVIDENCE AND OF PERSUASION; AND

3. THE TERM "EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP" MEANS THE PRACTICE OF RELIGION UNDER SECTION THREE OF ARTICLE I OF THE STATE CONSTITUTION.

S 278. APPLICABILITY. 1. THIS ARTICLE APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES AND THE IMPLEMENTATION OF SUCH LAWS AND ORDINANCES, WHETHER STATUTORY OR OTHERWISE, AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

2. STATE LAW ADOPTED AFTER THE EFFECTIVE DATE OF THIS ARTICLE SHALL BE SUBJECT TO THIS ARTICLE UNLESS SUCH LAW EXPLICITLY EXCLUDES SUCH APPLICATION BY REFERENCE TO THIS ARTICLE.

3. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE ANY GOVERNMENT TO BURDEN ANY RELIGIOUS BELIEF.

S 2. This act shall take effect immediately.