

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

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

HJR 1024

4
5 By: Representative Gazaway
6 By: Senator Rapert

HOUSE JOINT RESOLUTION

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8
9 AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE
10 THE "ARKANSAS RELIGIOUS FREEDOM AMENDMENT"; AND TO
11 PROVIDE THAT GOVERNMENT MAY BURDEN A PERSON'S FREEDOM
12 OF RELIGION ONLY IF THE GOVERNMENT DEMONSTRATES THAT
13 APPLICATION OF THE BURDEN TO THE PERSON IS IN
14 FURTHERANCE OF A COMPELLING GOVERNMENT INTEREST AND
15 IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT
16 COMPELLING GOVERNMENT INTEREST.

Subtitle

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20 AN AMENDMENT TO THE ARKANSAS CONSTITUTION
21 TO CREATE THE "ARKANSAS RELIGIOUS FREEDOM
22 AMENDMENT".
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25 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-THIRD GENERAL
26 ASSEMBLY OF THE STATE OF ARKANSAS, AND BY THE SENATE, A MAJORITY OF ALL
27 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
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29 That the following is proposed as an amendment to the Constitution of
30 the State of Arkansas, and upon being submitted to the electors of the state
31 for approval or rejection at the next general election for Representatives
32 and Senators, if a majority of the electors voting thereon at the election
33 adopt the amendment, the amendment shall become a part of the Constitution of
34 the State of Arkansas, to wit:

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



1 "Arkansas Religious Freedom Amendment".

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

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

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

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

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

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

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

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

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

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

1 state and local law; and

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

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5 SECTION 3. As used in this amendment:

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

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

10 (3) "Government" means:

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

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

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

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

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

21 (A) Statute;

22 (B) Rule;

23 (C) Regulation;

24 (D) Ordinance;

25 (E) Administrative provision;

26 (F) Administrative ruling;

27 (G) Guideline; or

28 (H) Requirement.

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

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

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

36 (2) Is the least restrictive means of furthering that compelling

1 government interest.

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

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

9 (1) Is statutory; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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