

# Coalition for the Free Exercise of Religion

200 Maryland Ave., NE • Washington, DC 20002 • (202) 544-4226 • (202) 544-2094 fax •  
bjcpa@bjcpa.org

May 27, 2003

Governor Theodore R. Kulongoski  
160 State Capitol  
900 Court Street  
Salem, Oregon 97301-4047

Dear Governor Kulongoski:

We write to urge you to support the Oregon Religious Freedom Act (H.B. 3586). By passing this law, Oregon will join the states of Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Massachusetts, Michigan, Minnesota, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Washington and Wisconsin in providing needed protection for the right to practice religion freely, a fundamental human right.

In the past decade, the U.S. Supreme Court dramatically reduced the protection afforded to the right to practice one's religion free from governmental interference. Whereas for many years the Supreme Court had interpreted the Free Exercise Clause of the U.S. Constitution to require the government to justify substantial burdens on religion with compelling interests implemented with the least restrictive means available, the Supreme Court's current interpretation of that Clause prohibits only the intentional targeting of religion for discriminatory treatment. *Employment Division v. Smith*, 494 U.S. 872 (1990).

Many states have filled at least part of the religious freedom vacuum by passing state Religious Freedom Restoration Acts ("State RFRAs"). These laws recognize that persons often are substantially burdened by laws and other governmental policies that do not target religion. Governmental rules sometimes are used to try to force religious objectors to take loyalty oaths as a precondition of their employment. Prosecuting attorneys have attempted to force clergy to divulge the contents of penitents' confessions. Zoning authorities have attempted to restrict churches' times of operation and the number of persons who may attend worship services, and zoning policies have effectively excluded certain minority faiths from particular residential areas and shut down the community ministries of houses of worship.

Mandatory autopsy laws have been used to force the autopsies of victims of automobile accidents, despite the fact that this action severely burdened the religious beliefs of the surviving family members. Prison officials sometimes try to use state laws prohibiting the consumption of alcoholic beverages in prison to

block the use of sacramental wine in Catholic services. While these governmental policies do not explicitly target religion for discriminatory treatment, they exact a painful price from people of faith.

The Oregon Supreme Court has also ruled that the Oregon Constitution provides religion no real protection against laws that are neutral and generally applicable. Indeed, this was established in the very same *Smith* case that went on to weaken the federal Free Exercise clause. 301 Or. 209 (1986). The Oregon high court has more recently affirmed this position, and shows no indication that it plans to strengthen protections for religious freedom. *Meltebeke v. Bureau of Labor and Industries*, 322 Or. 132, 903 P.2d 351 (1995) (“A law that is neutral towards religion . . . does not violate the guarantees of religious freedom in [Oregon Constitution] Article I, section 2 and 3.”)

Oregonians deserve better than being forced to choose between breaking the law and keeping their faith. Accordingly, H.B. 3586 employs a flexible, traditional balancing test that affords dignity to a basic human right. The legislation does not guarantee victory for a religious claim. Instead, it states that if a religious claimant demonstrates a substantial burden on sincere religious practice, then the government must show that the burden is an unavoidable consequence of its pursuit of a compelling governmental interest.

We also must emphasize that religious liberty is an inalienable right that should not be denied to any class of persons. We urge states not to deny the protections of a state RFRA to anyone. Religious liberty is diminished for all if it is denied for any. The standard incorporated into H.B. 3586 has been in operation at either the state or federal level for more than 40 years. We know from this history that it operates with reasonable effectiveness and without burdensome consequences to either the state or society at large.

The passage of H.B. 3586 is needed to ensure the vitality of our "first freedom." We urge you to protect religious freedom by passing this legislation. For any additional information, please contact Holly Hollman at the Baptist Joint Committee (202-544-4226) or Greg Hamilton at the Northwest Religious Liberty Association (360-816-1418).

Sincerely,

Greg W. Hamilton, President  
Northwest Religious Liberty Association  
(360) 816-1418

**ORGANIZATIONS AND INDIVIDUALS SUPPORTING A RELIGIOUS FREEDOM ACT  
IN OREGON**

American Jewish Committee  
Rev. J. Brent Walker, Executive Director,  
    Baptist Joint Committee on Public Affairs  
Christian Legal Society  
Council on Religious Freedom  
Council on Spiritual Practices  
Family Research Council  
Home School Legal Defense Association  
Interfaith Religious Liberty Foundation  
International Commission on Freedom of Conscience  
Liberty Counsel  
Professor Douglas Laycock  
    Alice McKean Young Regents Chair in Law  
    The University of Texas at Austin  
    (in his individual capacity)  
National Campaign for a Peace Tax Fund  
Northwest Religious Liberty Association  
North Pacific Union Conference of Seventh-day Adventists  
Pacific Union Conference of Seventh-day Adventists  
Presbyterian Church USA  
Rabbi David Saperstein, Director  
    Religious Action Center of Reform Judaism  
Seventh-day Adventist Church State Council  
Rabbi Sholom D. Lipskar, Chairman  
The Aleph Institute  
Marc Stern, Assistant Executive Director  
    American Jewish Congress