

SENATE JOINT RESOLUTION 11

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1998 Regular Session
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By: **Senators Miller, Bromwell, Colburn, Collins, Della, Dorman, Dyson,
Forehand, Green, Hogan, Hoffman, Hollinger, Kelley, McCabe,
Middlebrooks, Neall, Ruben, and Stone**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

SENATE JOINT RESOLUTION

1 A Senate Joint Resolution concerning

2 **Religious Freedom**

3 FOR the purpose of urging the Congress of the United States to enact and the
4 President of the United States to support and sign legislation which undoes the
5 untoward effects on religious freedom of the U.S. Supreme Court's decisions in
6 Employment Division v. Smith (1990) and City of Boerne v. Flores (1997); and
7 generally relating to religious freedom.

8 WHEREAS, The General Assembly of Maryland recognizes that the State of
9 Maryland was founded upon the principle of religious liberty, that the Constitution of
10 Maryland guarantees both the right of religious freedom and the equal protection of
11 that right, and that those precious guarantees predate and are independent from the
12 Free Exercise guarantee of the U.S. Constitution's First Amendment; and

13 WHEREAS, In its 1963 holding in Sherbert v. Verner, which interpreted the
14 Free Exercise Clause of the U.S. Constitution's First Amendment, the Supreme Court
15 of the United States struck a workable balance between religious liberty and
16 competing government interests by requiring that any government action which
17 substantially burdens religious liberty must be both essential to the furtherance of a
18 compelling government interest, and the least restrictive means of furthering that
19 interest; and

20 WHEREAS, In its 1990 decision in Employment Division v. Smith, the Supreme
21 Court undid the balance it had earlier established in Sherbert v. Verner, by holding
22 that laws of general applicability need only survive a rational-basis test, an easy
23 standard for government to meet, but one which provides little protection for religious
24 liberty; and

25 WHEREAS, In 1993, at the instance of a greatly alarmed, strongly united
26 American interfaith community and with the enthusiastic support of both the
27 President of the United States and the membership of the United States Congress,
28 the Congress enacted and the President signed the Religious Freedom Restoration
29 Act, designed to undo the untoward effects of Employment Division v. Smith by
30 reestablishing the Sherbert v. Verner standard of Free Exercise jurisprudence; and

1 WHEREAS, In 1997, with its decision in *City of Boerne v. Flores*, the Supreme
2 Court struck down the Religious Freedom Restoration Act because it exceeded
3 congressional powers under Section 5 of the U.S. Constitution's Fourteenth
4 Amendment; and

5 WHEREAS, The Maryland interfaith community and the leaders of Maryland's
6 religious denominations have conveyed their grave concern over the continuing
7 viability of *Employment Division v. Smith* and the consequent erosion of the U.S.
8 Constitution's Free Exercise guarantee; and

9 WHEREAS, While a decision of the Supreme Court cannot alter the meaning of
10 the Maryland Constitution, as it is interpreted by the Maryland Court of Appeals,
11 neither can Maryland, nor any state, alter the Supreme Court's interpretation of the
12 U.S. Constitution; now, therefore, be it

13 RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the
14 General Assembly of Maryland urges the Congress of the United States to enact and
15 the President of the United States to support and sign legislation that will undo the
16 untoward effects of *Employment Division v. Smith* and *City of Boerne v. Flores*, and
17 that will restore to its fullest capacity the religious-liberty guarantee of the U.S.
18 Constitution; and be it further

19 RESOLVED, That a copy of this Resolution be forwarded by the Department of
20 Legislative Services to President William Jefferson Clinton, The White House,
21 Washington, D.C. 20500; Members of the Maryland Congressional Delegation:
22 Senators Paul S. Sarbanes and Barbara A. Mikulski, Senate Office Building,
23 Washington, D.C. 20510; and Representatives Wayne T. Gilchrest, Robert L. Ehrlich,
24 Jr., Benjamin L. Cardin, Albert R. Wynn, Steny Hamilton Hoyer, Roscoe G. Bartlett,
25 Elijah E. Cummings, and Constance A. Morella, House Office Building, Washington,
26 D.C. 20515; the Secretary of the United States Senate, Senate Office Building,
27 Washington, D.C. 20510; and the Clerk of the United States House of
28 Representatives, House Office Building, Washington, D.C. 20515.