

## **Freedom of worship is endangered**

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The burden to demonstrate that a religious practice interferes with the public good must rest with the government \_ not religious institutions. Religious institutions should not be compelled to spend millions of dollars in attorneys' fees in order to have their houses of worship built. Monies that could otherwise be spent on raising spirituality or providing charitable benefits should not go towards the constant assault by planning and zoning boards against houses of worship. This great nation was established on the principle and practice that religious freedom is the cornerstone of democracy. The right to free exercise of religion is so central to the American ideal of liberty that it was enshrined in the First Amendment to the Constitution.

BECAUSE OF THIS dedication to freedom of worship and the separation of church and state, religious faiths have flourished and thrived, uninhibited by unjustified governmental intrusion or regulation. The splendid diversity of religion in New Jersey testifies to the strength of that ideal. Unfortunately, based on various United States Supreme Court rulings, a state or local government could criminalize consumption of ritual wine in connection with a Catholic mass or the Jewish Sabbath. It could turn faithful Muslims and Jews into criminals by legislating against their established humanitarian dietary requirements regarding swift and painless animal slaughter. Schools could compel Muslims, Jews and Sikh children to choose between the religious requirement that they cover their heads and attending public school. And finally, municipalities are presently empowered to prevent the construction of houses of worship.

How could this happen? Prior to 1990, the Supreme Court forbade governments from burdening religion except in the most exceptional circumstances when the government could demonstrate a "compelling state interest." After 1990, the burden shifted and religious groups are now put in a defensive position. To remedy this situation, the Federal Religious Freedom Restoration Act (RFRA) was enacted by Congress and then struck down in 1997 by the Supreme Court. However, because this was a Supreme Court ruling based on issues of federalism, the state of New Jersey is free to embrace the intent of Jefferson and Madison and establish that, in the state of New Jersey, the government has the burden of proving that a religious practice violates a compelling government interest. The scales of justice must be used to address the issue of religious freedom.

Senate bill 321/2291, sponsored by state Sens. Robert Singer and Louis Bassano and backed by the Senate president, Donald DiFrancesco, would require New Jersey to adhere to the standard established in 1963 in *Sherbet v. Verner*, 374 U.S. 398 (1963), which required that a government must have a "compelling state interest" in prohibiting a religious practice. The "compelling state interest" standard was abandoned by the U.S. Supreme Court in *Employment Division v. Smith*, 110 S. Ct 1595 (1990). Senate bill 321/2291 insures that New Jersey will use the "compelling state interest" test. This law as written will apply to all state and local governmental entities.

OUR CONSTITUTION puts forth the basic principal that government should not interfere with religious practices. Certainly there should and must be limits, and the "compelling state interest" test provides more

than adequate limits when and if certain religious practices grossly interfere with public concerns. Civil rights should be considered a "compelling state interest." However, if there is any question as to whether Article V of the New Jersey Constitution creates a "compelling state interest" in protecting all previously enacted federal or state civil rights, then appropriate safeguards should be established in S. 321/2291.

However, the bill must not be amended to death. Previous proposals by Assemblyman Joel Weingarten were subject to amendments by the New Jersey League of Municipalities and other special interest groups that effectively gutted the bill. Senate President Donald DiFrancesco has indicated his support for a bill that does not create special exemptions for such narrow interests. In doing so, he and other supporters have indicated that constitutional principles must take precedence over narrow parochial concerns \_ a view clearly in line with the Jeffersonian concept of separation of church and state.

From 1963 to 1990 the United States and the state of New Jersey enjoyed a "compelling state interest" standard which protected our religious freedoms.

This standard did not disrupt our prisons nor promote massive unwarranted construction of houses of worship or otherwise interfere with the public good. S. 321/2291 restores that standard which protects our freedom from unwarranted government interference with religious practice. Such protection is treasured by all who value one of the cornerstones of our democracy \_ freedom of religion.

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