

# **FAMILY ISSUE FACT SHEET**

NO. 2021-06 (JANUARY 2021)

## **HB 2648 RELIGIOUS SERVICES; ESSENTIAL SERVICES**

### **EXECUTIVE SUMMARY**

The Religion is Essential Act ensures that churches and other religious organizations receive equal treatment during a public crisis, allowing them to remain open on the same terms as other businesses and services that are deemed essential. It further protects religious organizations against government discrimination based upon the organizations' religious identity or activities.

### **WHY HB 2648 IS NECESSARY**

The U.S. Supreme Court stepped in to affirm religious freedom after a number of states put restrictions on churches not levied on similar secular gatherings. The Court found California and New York violated the U.S. Constitution by discriminating against religious houses of worship. Justice Neil Gorsuch stated, "Government is not free to disregard the First Amendment in times of crisis."<sup>1</sup>

The Supreme Court has upheld the free exercise clause of the First Amendment many times writing, "The Constitution forbids laws that prohibit the free exercise of religion. That guarantee protects not just the right to *be* a religious person, holding beliefs inwardly and secretly; it also protects the right to *act* on those beliefs outwardly and publicly."<sup>2</sup> Also, "The Free Exercise Clause of the Constitution guarantees religious believers—at a bare minimum—equal treatment under the law."<sup>3</sup>

Religion provides extensive benefits to our country, not only in meeting the spiritual needs of our populace, but also supporting social services, health care, and economic activity. Religion contributes \$1.2 trillion annually to the nation's economy and society. This includes charitable activities, health care, educational services, and millions of volunteer hours in programs that help the poor, individuals struggling with addiction or mental illness, and even job training programs. "Congregations, businesses inspired by faith, faith-based charities and institutions not only build communities and families but also strengthen our economy in every town and city of the country."<sup>4</sup>

### **WHAT DOES THE BILL DO?**

HB 2648 establishes religious services as essential operations during a public emergency and allows them to operate on equal terms as other businesses or services declared essential. It permits the government to implement neutral health and safety requirements on all essential businesses and services unless the rules substantially burden the ability of a religious service to exercise its faith.

It generally prohibits the government from discrimination against a religious organization because of its religious identity or practices, thus codifying the recent U.S. Supreme Court decisions in *Trinity Lutheran Church of Columbia, Inc. v. Comer* and *Espinoza v. Montana Department of Revenue*.

The bill also creates a private right of action for violations of this Act, providing remedies to a religious organization that experiences government discrimination.

## TALKING POINTS

1. **Public officials have the authority to protect health and public safety, but the First Amendment – including the free exercise of religion – is never suspended.**
2. **At a minimum, the First Amendment requires government to treat religious organizations the same as comparable secular organizations.** When the government treats churches worse than casinos, gyms, and indoor malls in its COVID-19 response, it violates the Constitution.
3. **The government has a duty to uphold the First Amendment, and it should not be singling out churches with extra regulations.** Extraordinary times are no excuse for officials favoring the secular over the religious.
4. **Religious organizations provide essential services that are vital to the health and welfare of the public.** Not only in meeting the spiritual needs of our populace, but also supporting social services, health care, and economic activity.

## CONCLUSION

The Religion is Essential Act acknowledges religious organizations as essential services that are vital to the health and welfare of the public. It ensures that churches and other religious organizations receive equal treatment during a public crisis, allowing them to remain open on the same terms as other businesses and services that are deemed essential. It further protects religious organizations against government discrimination based upon the organizations' religious identity or activities.

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<sup>1</sup> *Roman Catholic Diocese of Brooklyn, New York v. Cuomo* (2020)

<sup>2</sup> *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring).

<sup>3</sup> *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

<sup>4</sup> "The Socio-economic Contribution of Religion to American Society: An Empirical Analysis," a 2016 study by Brian J. Grim.