

## SB158: Religious Freedom Amendment

### What is it?

The Religious Freedom Amendment is a response to the significant loss of religious liberty protection over the last twenty years. When passed and ratified, it will restore, at the state and local level, the standard that has historically protected religious freedom. This standard, known as the “compelling interest test” requires the government to first prove it has a “compelling interest” before it can take action that restricts someone’s religious freedom. Compelling interests as defined by the courts include things such as the protection of life, liberty, property, and health of others. The government would also have to prove that it has no other method to protect those interests without restricting someone’s free exercise of religion.

### Why Do We Need It?

**History:** Prior to 1990, the Courts used the “compelling interest test” when deciding religious liberty claims. However, in a bad 1990 decision, *Employment Division of Oregon vs. Smith*, the U. S. Supreme Court threw out the “compelling interest test.” Three years later Congress almost unanimously reinstated this test, but in 1997 the Supreme Court ruled that Congress could not require states to use the test. Therefore, it has been left to each individual state to re-establish the “compelling interest test” for everything other than federal matters.

**Today:** After the federal government re-established this standard at the federal level, more than half of the state governments acted to re-establish the “compelling interest test.”

**Kentucky has NOT yet acted.** Recent efforts, such as the federal government attempting to force the Catholic Church and its associated Catholic groups to violate their beliefs regarding contraception and abortifacients, point out the need to clarify and strengthen this area of the law. It is the “compelling interest test” that has been cited in the February 2012 suit filed in federal court by Catholic groups and individuals to reverse the action taken by the current administration to violate their religious freedom. Regardless of what some in Washington may want to do, a Kentucky Constitution amended with SB 158 will protect religious freedom for Kentucky citizens at the state and local levels.

### What It Won't Do

The use of the “compelling interest test” for over 80 years and it’s re-establishment in more than half the states has not created new religious rights. This requirement has not negated other civil rights or resulted in an abundance of religious liberty cases. Rather, the restoration of our originally established religious freedom in this manner has given religious people and religious institutions protection from the often unintentional but real intrusion of government bureaucracy into this precious and unique freedom.

*The verbiage of SB158: “. . . nor shall any human authority burden a person’s or religious organization’s right to act or refuse to act in a manner motivated by a sincerely held religious belief except in support of a compelling governmental interest using the least restrictive means to further that interest. As used in this section, “burden” includes but is not limited to withholding of benefits, assessment of penalties, exclusion from programs, restriction of access to facilities, or other indirect methods of limiting or restricting the activities of a person or group.”*

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