OPENING REMARKS FOR SENATE BILL 192

SENATOR MARK HUTCHISON

Wednesday, March 13, 2013

Senate Committee on Judiciary

- Good morning, Chair Segerblom and fellow Committee Members.

- I am Mark Hutchison representing Senate District No. 6 in Clark County.

- I, too, am here to present Senate Bill 192 for your consideration.

BACKGROUND

- As Senator Cegavske pointed out, the Religious Freedom Restoration Act was passed in 1993 by Congress.

- I think it might help the Committee to provide a little context for why such legislation was even necessary.

- In 1963, the United States Supreme Court decided *Sherbert v. Verner*.

- Adell Sherbert was a textile-mill operator and a member of the Seventh-day Adventist Church.

- Eventually, Ms. Sherbert's employer switched from a five-day work week to a six-day work week, requiring her to work on Saturdays.

- According to her faith, working on Saturdays was not permitted.

- So, Ms. Sherbert refused to work on Saturdays—and was fired.

- Unable to find other employment, she sought unemployment compensation and her claim was denied.

- She appealed the denial all the way up to the South Carolina Supreme Court, and then, having lost her appeals, she took the case to the U. S. Supreme Court.

- In that case, the U.S. Supreme Court established a test to determine if an individual's right to religious free exercise has been violated by the government.

- Specifically, the *Sherbert Test* required a court to determine:
  - Whether the person had a claim involving a sincere religious belief; and
  - Whether the government action was a substantial burden on the person's ability to act on that belief.

- If those two elements were established, then the government had the burden of proving:
  - That it was acting in furtherance of a "compelling state interest"; and
  - That is had pursued that interest in the least restrictive manner towards religion.

- The *Sherbert Test* was the law of the land until 1990, when the U. S. Supreme Court decided *Employment Division v. Smith*.

- In that case, the Court decided that the state could deny unemployment benefits to Native Americans fired for violating a state prohibition on the use of peyote, even though the use of the drug was part of a religious ritual.

- Under the Court's reasoning, a law that forbade Orthodox Jews from wearing yarmulkes (**ya-me-kas**) on government property would be unconstitutional, as it would be targeting religion.

- On the other hand, a law forbidding all people from wearing hats on state property would be constitutional—even though the law would require Orthodox Jews to violate either their religion or the law in order to walk on government property.

- In other words, if the law was "neutral" toward religion and "generally applicable" to all persons, the First Amendment would no longer apply, despite the very real burden the law placed on a religious minority.

- That is why Congress, almost unanimously, passed the Religious Freedom Restoration Act of 1993 to reinstate religious freedom protections to the *Sherbert Test,* by declaring that if a government action substantially burdens a person's religious freedom, that action has to be done in the least restrictive way and must be in furtherance of a "compelling governmental interest."

- But, the U.S. Supreme Court was not done with the *Sherbert Test*.

- In 1997, the Court heard *City of Boerne v. Flores,* a case about a Catholic church in Texas.

- The U.S. Supreme Court declared that the Religious Freedom Restoration Act was an unconstitutional exercise of congressional power, insofar as it applied to the states.

- Again, as Senator Cegavske so eloquently stated, the "Nevada Preservation of Religious Freedom Act," is simply meant to restore the state level protections gutted by the 1997 decision.

CONCLUSION

- That concludes my remarks this morning—thank you for your time.

- I'd be happy to field any questions from the Committee.

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