

118TH CONGRESS  
1ST SESSION

# S. 492

To prohibit the imposition of certain substantial burdens, relating to COVID–19 vaccine mandates, on religious exercise, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2023

Mr. RUBIO (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit the imposition of certain substantial burdens, relating to COVID–19 vaccine mandates, on religious exercise, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Conscience Objections  
5 to Negligent State COVID–19 Inoculation Edicts Need  
6 Constitutional Enforcement Act of 2023” or the “CON-  
7 SCIENCE Act of 2023”.

8       **SEC. 2. FINDINGS AND PURPOSE.**

9       (a) FINDINGS.—Congress finds the following:

1           (1) In response to the COVID–19 pandemic,  
2 State and local governments and private sector enti-  
3 ties have implemented unprecedented public health  
4 requirements, including requirements that their em-  
5 ployees, customers, and other persons receive a  
6 COVID–19 vaccine (referred to in this section as  
7 “COVID–19 vaccine mandates”), resulting in mil-  
8 lions of Americans being subject to such require-  
9 ments.

10           (2) Many COVID–19 vaccine mandates, due to  
11 their unprecedented magnitude and scope of applica-  
12 tion, and the unprecedented haste of and inattention  
13 to the religious exercise of persons subject to the  
14 mandates by the organizations implementing them,  
15 do not adequately protect the religious freedom of  
16 the persons subject to them.

17           (3) As a result, millions of Americans have ob-  
18 jected to COVID–19 vaccine mandates—more than  
19 for any other medical requirement for employment  
20 or for use of a public accommodation in recent his-  
21 tory—often at great personal cost, on the basis that  
22 receiving a COVID–19 vaccine would violate their  
23 sincerely held religious beliefs.

24           (4) COVID–19 vaccine mandates commonly  
25 threaten the rights of employees and other persons

1 to religious exercise by requiring persons subject to  
2 the mandates to—

3 (A) receive a COVID–19 vaccine (with re-  
4 spect to private entities, often under the color  
5 of law), in violation of their sincerely held reli-  
6 gious beliefs; or

7 (B) otherwise face substantial burdens  
8 such as the loss of employment, pay, or status  
9 within employment, the subjection to punitive  
10 personal public health measures, or any other  
11 loss caused by a failure to accommodate reli-  
12 gious exercise.

13 (5) With respect to COVID–19 vaccine man-  
14 dates implemented by the States and the District of  
15 Columbia, the rights of persons under the First  
16 Amendment to the Constitution of the United States  
17 who are subject to such requirements have been vio-  
18 lated in the following ways:

19 (A) COVID–19 vaccine mandates for State  
20 employees in the States of New York, Maine,  
21 and Rhode Island have allowed for medical ex-  
22 emptions from the COVID–19 vaccine, but have  
23 not allowed for religious exemptions.

24 (B) The Governor of New York has stated  
25 that—

1 (i) New York intentionally excluded  
2 religious exemptions from the COVID–19  
3 vaccination mandate; and

4 (ii) the Governor was unaware of any  
5 “organized religion” that seeks religious  
6 exemptions for the COVID–19 vaccine and  
7 those individuals who seek such an exemp-  
8 tion are not “listening to God and what  
9 God wants;”.

10 (C) New York has allowed COVID–19 vac-  
11 cinated workers with symptomatic, active  
12 COVID–19 infections to continue working in  
13 hospitals, but has not allowed religious objec-  
14 tors who do not have COVID–19 to work in  
15 hospitals.

16 (D) Maine removed the allowance for reli-  
17 gious exemptions for health care workers, effec-  
18 tive September 1, 2021, in a law requiring all  
19 health care workers to receive the COVID–19  
20 vaccine and influenza vaccine.

21 (E) Rhode Island omitted religious exemp-  
22 tions to COVID–19 vaccines.

23 (F) In Rhode Island, health care workers  
24 have been required to receive the COVID–19  
25 vaccine, and health care facilities are required

1 to deny entry to health care workers or pro-  
2 viders who are not fully vaccinated.

3 (6) With respect to COVID–19 vaccine man-  
4 dates implemented by private sector entities, United  
5 Airlines instituted an “absolute” policy requiring all  
6 employees to receive the COVID–19 vaccine, and  
7 those who submitted requests for religious exemp-  
8 tions were either automatically denied or placed on  
9 unpaid leave with no benefits.

10 (7) COVID–19 vaccine mandates that do not  
11 accommodate religious exercise have resulted in  
12 labor shortages that affect interstate and foreign  
13 commerce.

14 (8) According to a report by the Committee on  
15 Small Business and Entrepreneurship of the Senate,  
16 the Federal COVID–19 vaccine requirement put an  
17 estimated 44,900,000 Americans at risk of losing  
18 their jobs owing to their refusal to receive a  
19 COVID–19 vaccine. A substantial number of those  
20 refusals may be attributed to religious objections, as  
21 according to a survey by the Public Religion Re-  
22 search Institute, 10 percent of Americans believe  
23 that receiving a COVID–19 vaccine would conflict  
24 with their religious beliefs.

1           (9) In *Doe v. Mills*, 142 S. Ct. 17 (2021) and  
2           *Dr. A. v. Hochul*, 142 S. Ct. 552 (2021), the Su-  
3           preme Court denied the requests of employees re-  
4           questing religious exemptions to COVID–19 vaccine  
5           mandates, causing those employees to face irrep-  
6           arable harm.

7           (10) The Free Exercise Clause of the First  
8           Amendment to the Constitution protects rights of in-  
9           dividuals to live out their religious beliefs publicly  
10          through religious exercise.

11          (11) Congress has the power to enforce the  
12          right to free exercise of religion, through remedial  
13          measures under section 5 of the 14th Amendment to  
14          the Constitution.

15          (12) Laws that protect the free exercise of reli-  
16          gious beliefs are consistent with the founding prin-  
17          ciples of the United States and protections under the  
18          First Amendment to the Constitution.

19          (13) Congress has the power to regulate inter-  
20          state and foreign commerce under the Commerce  
21          Clause of section 8 of article I of the Constitution.

22          (b) PURPOSE.—The purpose of this Act is to preempt  
23          laws and disallow practices that discriminate against per-  
24          sons due to their religious exercise.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) COVERED PERSON.—The term “covered  
4 person” means a person raising a claim or defense  
5 under this Act.

6 (2) COVID–19 VACCINE MANDATE.—The term  
7 “COVID–19 vaccine mandate” means a mandate  
8 that an individual receive a COVID–19 vaccine.

9 (3) DEMONSTRATES.—The term “dem-  
10 onstrates” means meets the burdens of going for-  
11 ward with the evidence and of persuasion.

12 (4) FREE EXERCISE CLAUSE.—The term “Free  
13 Exercise Clause” means that portion of the First  
14 Amendment to the Constitution of the United States  
15 that proscribes laws prohibiting the free exercise of  
16 religion.

17 (5) GOVERNMENT.—The term “government”—

18 (A) means—

19 (i) a State, county, municipality, or  
20 other governmental entity created under  
21 the authority of a State;

22 (ii) any branch, department, agency,  
23 instrumentality, or official of an entity list-  
24 ed in clause (i); and

25 (iii) any other person acting under  
26 color of State law; and

1 (B) for the purpose of sections 5(b) and 6,  
2 includes—

3 (i) the United States;

4 (ii) any branch, department, agency,  
5 instrumentality, or official of the United  
6 States; and

7 (iii) any other person acting under  
8 color of Federal law.

9 (6) PROGRAM OR ACTIVITY.—The term “pro-  
10 gram or activity” means all of the operations of any  
11 entity as described in paragraph (1) or (2) of section  
12 606 of the Civil Rights Act of 1964 (42 U.S.C.  
13 2000d–4a), any part of which is extended Federal fi-  
14 nancial assistance.

15 (7) RELIGIOUS EXERCISE.—

16 (A) IN GENERAL.—The term “religious ex-  
17 ercise” includes any exercise of religion, wheth-  
18 er or not compelled by, or central to, a system  
19 of religious belief.

20 (B) RULE.—

21 (i) PERSON.—In the case of a person,  
22 refusing to receive a COVID–19 vaccine on  
23 the basis of a sincerely held religious belief  
24 shall be considered to be religious exercise  
25 of the person.



1                   (ii) ENTITY.—In the case of an entity,  
 2                   refusing on the basis of a sincerely held re-  
 3                   ligious belief to require that any employee,  
 4                   customer, or other person affiliated with  
 5                   the entity receive a COVID–19 vaccine  
 6                   mandate shall be considered to be religious  
 7                   exercise of the entity.

8 **SEC. 4. PROTECTION OF RELIGIOUS LIBERTY AND EXER-**  
 9                   **CISE BY EXEMPTIONS FOR THE COVID–19**  
 10                  **VACCINE.**

11           (a) SUBSTANTIAL BURDENS.—

12                   (1) GENERAL RULE.—No government shall im-  
 13                   pose or implement a COVID–19 vaccine mandate in  
 14                   a manner that imposes a substantial burden on the  
 15                   religious exercise of a person, including a religious  
 16                   assembly or institution, unless the government dem-  
 17                   onstrates that imposition of the burden on that per-  
 18                   son’s, assembly’s, or institution’s religious exercise—

19                           (A) is in furtherance of a compelling gov-  
 20                           ernmental interest; and

21                           (B) is the least restrictive means of fur-  
 22                           thering that compelling governmental interest.

23                   (2) SCOPE OF APPLICATION.—This subsection  
 24                   and subsection (b) apply in any case in which—

1 (A) the substantial burden is imposed by  
2 State law, even if the burden results from a  
3 rule of general applicability;

4 (B) the substantial burden is imposed in a  
5 program or activity that receives Federal finan-  
6 cial assistance, even if the burden results from  
7 a rule of general applicability;

8 (C) the substantial burden is imposed by  
9 an entity that operates a workplace and that is  
10 party to or conducts work in connection with a  
11 contract or contract-like instrument with any  
12 government, even if the burden results from a  
13 rule of general applicability;

14 (D) the substantial burden affects, or re-  
15 moval of that substantial burden would affect,  
16 commerce with foreign nations, among the sev-  
17 eral States, or with Indian Tribes, even if the  
18 burden results from a rule of general applica-  
19 bility; or

20 (E) the substantial burden is imposed in  
21 the implementation of a COVID–19 vaccine  
22 mandate, under which the government makes,  
23 or has in place formal or informal procedures or  
24 practices that permit the government to make,  
25 individualized assessments of COVID–19 vac-

1           cine exemptions, even if the burden results from  
2           a rule of general applicability.

3           (b) **DISCRIMINATION AND EXCLUSION.**—

4           (1) **EQUAL TERMS.**—No government shall im-  
5           pose or implement a COVID–19 vaccine mandate in  
6           a manner that treats a religious exercise (including  
7           a condition) on less than equal terms with a nonreli-  
8           gious exercise (including a condition).

9           (2) **NONDISCRIMINATION.**—No government  
10          shall impose or implement a COVID–19 vaccine  
11          mandate that imposes a substantial burden on any  
12          person for an exercise on the basis of religion, in-  
13          cluding a religious denomination.

14          (3) **EXCLUSIONS AND LIMITS.**—No government  
15          shall impose or implement a COVID–19 vaccine  
16          mandate that—

17                  (A) totally excludes religious exemptions;

18                  or

19                  (B) unreasonably limits religious exemp-  
20          tions.

21 **SEC. 5. JUDICIAL RELIEF.**

22          (a) **CAUSE OF ACTION.**—A covered person may assert  
23          an actual or threatened violation of this Act by a govern-  
24          ment as a claim or defense in a judicial or administrative  
25          proceeding and obtain compensatory damages, injunctive

1 relief, declaratory relief, or any other appropriate relief  
2 against the government involved. Standing to assert a  
3 claim or defense under this section shall be governed by  
4 the general rules of standing under article III of the Con-  
5 stitution.

6 (b) BURDEN OF PERSUASION.—If a covered person  
7 produces prima facie evidence to support a claim alleging  
8 a violation of the Free Exercise Clause or a violation of  
9 section 4, the government shall bear the burden of persua-  
10 sion on any element of the claim, except that the covered  
11 person shall bear the burden of persuasion on whether the  
12 law (including a regulation) or government practice that  
13 is challenged by the claim substantially burdens the cov-  
14 ered person’s exercise of religion.

15 (c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—  
16 Notwithstanding any other provision of law, an action  
17 under this section may be commenced, and relief may be  
18 granted, in a district court of the United States without  
19 regard to whether the covered person commencing the ac-  
20 tion has sought or exhausted available administrative rem-  
21 edies.

22 (d) FULL FAITH AND CREDIT.—Adjudication of a  
23 claim of a violation of section 4 in a non-Federal forum  
24 shall not be entitled to full faith and credit in a Federal

1 court unless the claimant had a full and fair adjudication  
2 of that claim in the non-Federal forum.

3 (e) ATTORNEYS' FEES.—Section 722(b) of the Re-  
4 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-  
5 ing “the CONSCIENCE Act of 2023,” after “the Reli-  
6 gious Land Use and Institutionalized Persons Act of  
7 2000,”.

8 (f) AUTHORITY OF UNITED STATES TO ENFORCE  
9 THIS ACT.—The United States may bring an action for  
10 injunctive or declaratory relief to enforce compliance with  
11 this Act. Nothing in this subsection shall be construed to  
12 deny, impair, or otherwise affect any right or authority  
13 of the Attorney General, the United States, or any agency,  
14 officer, or employee of the United States, acting under any  
15 law other than this subsection, to institute or intervene  
16 in any proceeding.

17 **SEC. 6. RULES OF CONSTRUCTION.**

18 (a) RELIGIOUS BELIEF UNAFFECTED.—Nothing in  
19 this Act shall be construed to authorize any government  
20 to burden any religious belief.

21 (b) RELIGIOUS EXERCISE NOT REGULATED.—Noth-  
22 ing in this Act shall create any basis—

23 (1) for restricting or burdening religious exer-  
24 cise; or

1           (2) for claims against a religious organization,  
2           including any religiously affiliated school or institu-  
3           tion of higher education, not acting under color of  
4           law.

5           (c) CLAIMS TO FUNDING UNAFFECTED.—Nothing in  
6 this Act shall create or preclude a right of any religious  
7 organization to receive funding or other assistance from  
8 a government, or of any person to receive government  
9 funding for a religious activity, but this Act may require  
10 a government to incur expenses in its own operations to  
11 avoid imposing a substantial burden on religious exercise.

12          (d) GOVERNMENTAL DISCRETION IN ALLEVIATING  
13 BURDENS ON RELIGIOUS EXERCISE.—A government may  
14 avoid the preemptive force of any provision of this Act by  
15 changing the policy or practice that results in a substan-  
16 tial burden on religious exercise, by retaining the policy  
17 or practice and exempting the substantially burdened reli-  
18 gious exercise, by providing exemptions from the policy or  
19 practice for applications that substantially burden reli-  
20 gious exercise, or by any other means that eliminates the  
21 substantial burden.

22          (e) EFFECT ON OTHER LAW.—With respect to a  
23 claim brought under this Act, proof that a substantial bur-  
24 den on a person’s religious exercise affects, or removal of  
25 that burden would affect, commerce with foreign nations,

1 among the several States, or with Indian Tribes, shall not  
2 establish any inference or presumption that any religious  
3 exercise is, or is not, subject to any law other than this  
4 Act.

5 (f) BROAD CONSTRUCTION.—This Act shall be con-  
6 strued in favor of a broad protection of religious exercise,  
7 to the maximum extent permitted by the terms of this Act  
8 and the Constitution.

9 (g) NO PREEMPTION OR REPEAL.—Nothing in this  
10 Act shall be construed to preempt State law, or repeal  
11 Federal law, that is equally as protective of religious exer-  
12 cise as, or more protective of religious exercise than, this  
13 Act.

14 (h) SEVERABILITY.—If any provision of this Act or  
15 an amendment made by this Act, or any application of  
16 such provision to any person or circumstance, is held to  
17 be unconstitutional, the remainder of this Act and the  
18 amendments made by this Act, and the application of the  
19 provision to any other person or circumstance shall not  
20 be affected.

21 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

22 Nothing in this Act shall be construed to affect, inter-  
23 pret, or in any way address that portion of the First  
24 Amendment to the Constitution prohibiting laws respect-  
25 ing an establishment of religion (referred to in this section

1 as the “Establishment Clause”). Granting government  
2 funding, benefits, or exemptions, to the extent permissible  
3 under the Establishment Clause, shall not constitute a vio-  
4 lation of this Act. In this section, the term “granting”,  
5 used with respect to government funding, benefits, or ex-  
6 emptions, does not include the denial of government fund-  
7 ing, benefits, or exemptions.

8 **SEC. 8. APPLICABILITY.**

9       This Act applies to any COVID–19 vaccine mandate,  
10 whether adopted before, on, or after the date of enactment  
11 of this Act.

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