

SOUTH CAROLINA PUBLIC PROCEEDINGS FIRST AMENDMENT PROTECTION ACT

An Act to authorize and direct the Attorney General of the State of South Carolina to defend the rights of any citizen while participating in any action of any board, commission, council, or other instrumentality of the State of South Carolina to free exercise of speech and religion under the First Amendment of the Constitution of the United States and Article I, Section 2 of the Constitution of the State of South Carolina.

SECTION 1. The legislature of the State of South Carolina finds that:

1. The People of South Carolina, and those several states comprising the United States of America, created the federal government to be their agent for certain enumerated purposes, and nothing more.
2. The First Amendment to the United States Constitution provides that the federal government shall make no law infringing on the right of the people to freedom of speech and free exercise of religion.
3. Article I, Section 2, of the Constitution of the State of South Carolina provides that the General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech.
4. The Tenth Amendment to the United States Constitution defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves.
5. The Eleventh Amendment to the United States Constitution recognizes the sovereign immunity of the State of South Carolina in regard to the limits of the judicial power of the United States.
5. The State of South Carolina recognizes its fundamental and primary responsibility for the protection of the liberties of its citizens as enumerated in the First Amendment to the United States Constitution and in Article I, Section 2, of the Constitution of the State of South Carolina.
6. The right of the citizens of the State of South Carolina to the free exercise of speech and of religion is not abrogated during such times as they may participate in the acts of public boards, commissions, councils, and other instrumentalities of the State of South Carolina, and those rights are endangered when said instrumentality is not afforded a legal defense by the State of South Carolina to claims that said participation violates the First Amendment of the United States Constitution or Article I, Section 2, of the Constitution of the State of South Carolina.

SECTION 2. NEW LAW

A new section of law to be codified in the South Carolina Statutes as Section ____ of Title ____, unless there is created a duplication in numbering, reads as follows:

- A. No locality, municipality, county, or other instrumentality of the State of South Carolina has the power to violate the First Amendment of the United States Constitution or Article I, Section 2 of the Constitution of South Carolina at any time, including during the course of its proceedings.
- B. Any restriction on the free exercise of speech or religion during the course of any proceeding of any locality, municipality, county, or other instrumentality of the State of South Carolina is a direct infringement on liberties protected by the First Amendment of the United States Constitution and Article I, Section 2 of the Constitution of the State of South Carolina and implicates a fundamental and paramount interest of the State of South Carolina.
- C. Any action of any locality, municipality, county, or other instrumentality of the State of South Carolina which is alleged to modify rights held under the First Amendment of the United States Constitution or Article I, Section 2 of the Constitution of the State of South Carolina is hereby deemed to be adopted by the Legislature of the State of South Carolina as an action of its own for purposes of its right to sovereign immunity under the Eleventh Amendment of the Constitution of the United States. The Attorney General of the State of South Carolina is authorized and directed to review such action as provided herein, determine its Constitutionality and, if found by the Attorney General to be Constitutional, to defend such action from any and all judicial challenges in any state or federal court.
- D. Any person who alleges that any action of any locality, municipality, county, or other instrumentality of the State of South Carolina has the effect of restricting rights held under the First Amendment to the United States Constitution or Article I, Section 2 of the Constitution of the State of South Carolina during the course of any during any proceeding of

that body shall provide the Attorney General of the State of South Carolina with notice of the alleged constitutional infirmity. The Attorney General of the State of South Carolina shall issue a written opinion within thirty days of submission of such complaint stating whether the action complained of violates the First Amendment of the United States Constitution or Article I, Section 2 of the Constitution of the State of South Carolina.

E. If the Attorney General of the State of South Carolina determines that the action complained of is inconsistent with and violates the First Amendment to the United States Constitution or Article I, Section 2 of the Constitution of the State of South Carolina, the Attorney General shall not defend said action in response to challenge in state or federal court.

F. If the Attorney General of the State of South Carolina determines that the action complained of is consistent with and does not violate the First Amendment to the United States Constitution or Article I, Section 2 of the Constitution of the State of South Carolina, the Attorney General's written opinion shall be deemed to specifically authorize the locality, municipality or county to enforce the challenged action on the ground that the State of South Carolina shall have specifically authorized the challenged action, and the Attorney General shall defend said action from any legal action filed against it in any and all state and federal courts.

G. The Legislature of the State of South Carolina declares that any order of any federal court contrary to the determination of the Attorney General of the State of South Carolina under this Act, as reviewed and affirmed or rejected by the Supreme Court of South Carolina, is hereby declared to be invalid in this state, shall not be recognized by this state, is specifically rejected by this state, and shall be considered null and void and of no effect in this state.

H. It shall be the duty of the legislature of this State to adopt and enact any and all measures as may be necessary to prevent the enforcement within the limits of this State of any action of the Federal government contrary to the determination of the Attorney General of the State of South Carolina under this Act.

I. Any official, agent, or employee of the United States government or any employee of a corporation providing services to the United States government that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this act shall be guilty of a felony and upon conviction must be punished by a fine not exceeding five thousand dollars (\$5,000.00), or a term of imprisonment not exceeding five (5) years, or both.

J. Any public officer or employee of the State of South Carolina that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this act shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding two (2) years or by a fine not exceeding One Thousand Dollars (\$1,000.00) or both such fine and imprisonment.

K. Any aggrieved party shall also have a private action against any person violating the provisions of this Act, and shall be entitled to the recovery of reasonable attorney fees incurred in prosecution of said action.

SECTION 3. This act takes effect upon approval by the Governor.