Section 4(e) makes explicit that the bill does not "amend or repeal the Prison Litigation Reform Act." The PLRA is fully available to deal with frivolous prisoner claims. This section is based on §4(e) of H.R. 1691.

Section 4(f) expressly authorizes the United States to sue for injunctive or declaratory relief to enforce the Act. The United States' authority under the Act is substantially the same as §§5(g) and H.R. 1691.

Section 5(g) states that if a claimant proves an effect on commerce in a particular case, the courts may infer that all similar effects will, in the aggregate, substantially affect commerce. This section gives the government an opportunity to rebut that inference. Government may show that even in the aggregate, there is no substantial effect on commerce. Such an opportunity to rebut the usual inference is not constitutionally required, but is provided to create an extra margin of constitutionality in potentially difficult cases. This section had no equivalent in H.R. 1691.

Section 5. This section states several rules of construction designed to clarify the meaning of all the other provisions. Section 5(a) provides that nothing in the Act authorizes government to burden religious belief, which tracks RFRA. Section 5(b) provides that nothing in the Act creates any basis for restricting or burdening religious exercise or for claiming a religious organization not acting under color of law. These two subsections serve the Act's central purpose of protecting religious liberty, and avoid any unintended consequence of reducing religious liberty. They are substantially identical to §§5(a) and 5(b) of H.R. 1691.

Section 5(c) and 5(d) have been carefully negotiated to keep this Act neutral on all disputed issues that generated litigation under RFRA. The definition of "government" in §8(4)(A) includes the state and local entities previously covered by RFRA. "Government" does not include the United States and its agencies, because the United States remains subject to RFRA. But a further definition in §8(4)(B) does include the United States and its agencies for the purposes of §§4(b) and 5. This section is substantially the same as §8(5) of H.R. 1691.

Section 5(e) emphasizes what would be true in any event—that this bill does not require governments to pursue any particular public policy or to abandon any policy, and that each government is free to choose its own means of eliminating substantial burdens on religious exercise. The bill preempts laws that unnecessarily burden the exercise of religion, but it does not require the states to enact or enforce a federal regulatory program. This section closely tracks §5(e) of H.R. 1691.

Section 5(f) provides that proof of an effect on commerce under §2(a)(2)(B) does not establish any inference or presumption that Congress meant to regulate religious exercise under any other law. Proof of an effect on commerce shows Congressional power to regulate, but says nothing about Congressional intent under other legislation. This section is substantially the same as §5(f) of H.R. 1691.

Section 5(g) states that the Act should be broadly construed to protect religious exercise to the maximum extent permitted by its terms and the Constitution. Section 5(i) provides that each provision of the Act is severable from every other provision. These sections are substantially identical to §§5(k) and 5(h) of H.R. 1691.

Section 6. This section is taken from RFRA.

It was carefully negotiated to ensure that the Act is neutral on all disputed issues under the Establishment Clause. It is more general than §§5(c) and 5(d), which were negotiated in light of this bill's reliance on the Spending Clause. This section is substantially identical to §1(a) of H.R. 1691.

Section 7. Section 7 amends the Religious Freedom Restoration Act. Sections 7(a)(1) and (2) of RFRA are incorporated into the Supreme Court's decision in City of Boerne v. Flores, 521 U.S. 507 (1997), eliminating all references to the states and leaving RFRA applicable to all federal government. Section 7(a)(3) clarifies the meaning of "religious exercise," conforming the RFRA of this Act to the RFRA of RFRA. These sections are substantially the same as §7 of H.R. 1691, but the incorporated definition of religious exercise has been changed in 18.

Section 8. This section defines important terms used in the Act. Section 8(i) defines "claimant" to mean a person raising either a claim or a defense under the Act. This section had no equivalent in H.R. 1691.

The definition of "demonstrates" in §8(2) is taken verbatim from RFRA. It includes both the burden of going forward and the burden of persuasion. This section is identical to §8(2) of H.R. 1691.

Section 8(3) defines "Free Exercise Clause" to mean the First Amendment's ban on laws prohibiting the free exercise of religion. This section is substantially the same as §8(2) of H.R. 1691.

The definition of "government" in §8(4)(A) includes the state and local entities previously covered by RFRA. "Government" does not include the United States and its agencies, because the United States remains subject to RFRA. But a further definition in §8(4)(B) does include the United States and its agencies for the purposes of §§4(b) and 5. This section is substantially the same as §§8(2) and 8(3) of H.R. 1691.

Section 8(5) defines "land use regulation" to include only zoning and landmarking laws that limit the use or development of land or structures, and only if the claimant has a property interest in the affected land or a right to acquire such an interest. Pair housing laws are not land use regulation, and this bill does not apply to fair housing laws. This section is based on §8(3) of H.R. 1691.

Section 8(6) incorporates the relevant parts of the definition of program or activity from Title VI of the Civil Rights Act of 1964. This definition of "programs or activities that receive federal aid" is confined to the program or activity that receives federal aid, and does not extend to everything a government does. This section is substantially the same as §8(4) of H.R. 1691.

Section 8(7) clarifies the meaning of "religious exercise." The section does not attempt a global definition; it relies on the meaning of religious exercise in existing case law, subject to clarification of two important issues that generated litigation under RFRA. First, religious exercise includes any exercise of religion, and need not be compelled or central to the claimant's religious belief system. This is consistent with RFRA's legislative history, but much unnecessary litigation resulted from the failure to receive this clarification in statutory text. This definition does not change the rule that in sincere religious claims are not religious exercise at all, and thus are not protected. Nor does it change the rule that an individual's religious belief or practice need not be shared by other adherents of a larger faith to which the claimant belongs.

Second, the use, building, or conversion of real property for religious purposes is religious exercise of the person or entity that owns and controls the property and for which it was built. It is only the use, building, or conversion for religious purposes that is protected, and not other uses or portions of the same property. Thus, if a commercial enterprise builds a chapel in one wing of the building, the chapel is protected if the owner is sincere about its religious purposes, but the commercial enterprise is not protected. Similarly if religious services are conducted once a week in a building otherwise devoted to secular commerce, the religious services may be protected, but the commercial activity is not. Both of these parts of this definition are based on §8(1) of H.R. 1691.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

HON. HENRY J. HYDE
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 21, 2000

Mr. HYDE. Mr. Speaker, tomorrow the President of the United States will sign into law the Religious Land Use and Institutionalized Persons Act, S. 2869. I would like to submit for the RECORD a document prepared by the Christian Legal Society describing zoning conflicts between churches which have come to light since subcommittee hearings on the subject.

RECENT LAND-USE CASES

"In the last 10 years, zoning conflicts between churches and cities have become a leading church-state issue. Disputes have arisen over church soup kitchens or homeless shelters in suburbs, expansion of church facilities, parking squabbles on Sunday, breaches of noise ordinances or disagreements on what kind of meetings the zoning permits. Growing churches that seek new land to relocate often cannot win zoning approvals in the face of public protest over traffic." Joyce Howard Price, Portland church ordered to limit attendance, Washington Times, February 16, 2000.

MONTGOMERY COUNTY, MD—8/7/00

A couple in Montgomery County, Maryland, challenged in federal court a zoning ordinance that allowed a Roman Catholic girls' school to build on its property without obtaining a special permit. In August 1999, a U.S. District Judge ruled that the ordinance violated the Establishment Clause, but on appeal a three-Judge panel of the 4th U.S. Circuit Court of Appeals reversed the district court by a 2-1 vote, concluding in August 2000 that "[t]he authorized, and sometimes mandatory, accommodation of religion (by the government) is a necessary aspect of the Establishment Clause jurisprudence because, without it, the government would find itself effectively and unconstitutionally promoting the absence of religion over its practice." The dissenting Judge differentiated between regulations that influence or alter programming and regulations that affect physical facilities.


PALOS HEIGHTS, IL—4/9/00

On June 30, 2000, Chicago Public Radio's Jason DeRosa reported that the Al Salam Mosque Foundation encountered opposition from the city council of Palos Heights, Illinois, when Muslims tried to buy a building in a predominantly white neighborhood to convert it into a mosque. Although the city council attempted to block the $2.1 million sale by arguing that the city needed the building for...
CONGRESSIONAL RECORD — Extensions of Remarks E1656

VACAVILLE, CA—6/24/2000

A Seventh-day Adventist church in Vacaville, Calif., recently decided to locate a studio and administrative offices for a radio ministry in a mobile home on church property. The actual broadcast would come from an existing tower in the nearby hills, not from the mobile home. The permit has been denied on the grounds that the radio ministry is not a traditional storefront ministry. In other words, the county was given discretion to determine what constitutes a legitimate ministry of a church, as opposed to the nontraditional storefront ministry. The regulations were based on whether the church was an accessory use to an Adventist church property, or if it was a non-traditional storefront ministry. The courts have upheld this decision, and the church is planning to appeal the case.

Sources: Telephone Interview with Alan J. Reinaich, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists, July 7, 2000.

SAN FRANCISCO, CA—5/14/2000

El Cajon Seventh-day Adventist Church has for years ministered to the homeless population in downtown San Diego. Such social welfare is an integral part of Seventh-day Adventist Church teachings. The church tried to relocate to a suburban area, but faced opposition from suburban neighbors, who feared that the church would bring more people into their neighborhood. The church's zoning permit was amended with the following stipulation: the new facility cannot be used to "feed, clothe, or house individuals." This vague language of this amendment, "(individuals) rather than "homeless individuals"") raises questions about the status of more innocuous church activities that involve "feeding," such as church potlucks. The Pacific Union of Seventh-day Adventists is interested in challenging the language of the amendment.

Sources: Telephone Interview with Alan J. Reinaich, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists, July 7, 2000.

The Haven Shores Community Church, a member of the Reformed Church in America, claims as its mission to "worship and glorify God by reaching out and serving the community." The church aspires toward this goal by offering contemporary forms of worship and educational and counseling programs for youth and adults. The church believes that a non-traditional storefront ministry is necessary to provide the exposure and character it needs to minister to people. The Pacific Union of SDA believes that the city is not legally justified in its assessment, and is in the process of appealing to the city manager. Sources: Telephone Interview with Alan J. Reinaich, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists, July 7, 2000. Pacific Union Conference of Seventh-day Adventists, Department of Public Affairs and Religious Liberty, Church Newsflash: A Busy Week with Land Use Problems, The Religious Liberty Newsflash and Legislative Alerts, May 14, 2000.

GRAND HAVEN, MI—3/12/2000

The Haven Shores Community Church, a member of the Reformed Church in America, claims as its mission to "worship and glorify God by reaching out and serving the community." The church aspires toward this goal by offering contemporary forms of worship and educational and counseling programs for youth and adults. The church believes that a non-traditional storefront ministry is necessary to provide the exposure and character it needs to minister to people. The Pacific Union of SDA believes that the city is not legally justified in its assessment, and is in the process of appealing to the city manager. Sources: Telephone Interview with Alan J. Reinaich, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists, July 7, 2000. Pacific Union Conference of Seventh-day Adventists, Department of Public Affairs and Religious Liberty, Church Newsflash: A Busy Week with Land Use Problems, The Religious Liberty Newsflash and Legislative Alerts, May 14, 2000.


Belmont, Massachusetts, a new Latter-day Saints ( Mormon ) Temple has caused a great deal of controversy. The white, 69,000 sq. ft. building sits atop a hill, overlooking an upscale neighborhood of single-family homes. Nearby residents want the Temple demolished. In May 1999, a three-judge panel of the federal court in Boston rejected the residents' challenge to the LDS Temple. The lawsuit challenged the constitutionality of a zoning ordinance that prevents any church activities from taking place in the neighborhood. The church's zoning permit was amended with the following stipulation: the new facility cannot be used to "feed, clothe, or house individuals." This vague language of the amendment, "(individuals) rather than "homeless individuals"") raises questions about the status of more innocuous church activities that involve "feeding," such as church potlucks. The Pacific Union of Seventh-day Adventists is interested in challenging the language of the amendment.

Sources: Telephone Interview with Alan J. Reinaich, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists, July 7, 2000.

GRAND HAVEN, MI—3/12/2000

At a lunch sponsored by the San Marcos Seventh-day Adventist Church, approximately 30 non-Adventist pastors from the local community were informed that the city is trying to obtain heavy fees from the Adventist church as a condition of granting the church a conditional use permit to build a new building on city property. The fees are based on what the city would obtain in tax revenue if the property were used to build single-family homes instead of a church (one acre of church property is equivalent to four Equivalent Dwelling Units). The fees imposed on the church amount to $133,000 up front and $5,000 per year, even though the congregation consists of only 75 people. This situation does not bode well for the 30 non-Adventist pastors, some of whom will be applying for building project permits in the future. The only mention of churches in the Community Development Ordinances is located in a traffic-impact table. Nowhere in the city ordinances does it say that a church must be assessed in the way the city has chosen to assess this particular church. The Pacific Union of SDA believes that the city is not legally justified in its assessment, and is in the process of appealing to the city manager.

weekday traffic do not add revenues, and do not pay taxes, some shopkeepers support changes in zoning laws to prevent landlords from renting to churches in downtown areas, but they do not try to ban any new churches that might hinder their economic revitalization plans. The lawyer retained by Apex churches notes that city officials are offering to brokers the fact that they can turn indigents into people who contribute economically to society.


JACKSONVILLE, OR—9/7/2000

The City of Jacksonville granted First Presbyterian Church a permit to build a sanctuary and an education building on a ten acre site only if the church met certain conditions. The church would be required to close its buildings on Saturdays and during certain weekday hours, would be forbidden to hold weddings or funerals on Saturdays, and could not serve alcohol on the premises. The City Council met to review the proposal after being warned that the wedding and funeral ban could potentially be unconstitutional. The result of the meeting was not a rejection or acceptance of the proposal, but rather delay of action on the proposal. The local Community reacted strongly to the denial. While First Presbyterian pastor and elder declared his appeal to the Land Use Board of Appeals, other clergy and state politicians called for legislation to protect religious organizations from intrusion by zoning boards.


LOS ANGELES, CA—2/25/2000

Orthodox Jews must walk to services on the Sabbath because their religion does not permit them to use cars. Etz Chaim—a congregation of elderly and disabled Orthodox Jews in the Hancock Park area of Los Angeles who have trouble walking distances as short as half a mile. The members of Etz Chaim sought a conditional use permit to establish a synagogue in Hancock Park, an area zoned for single-family dwellings, because their disabilities prevent them from walking to a nearby synagogue. The City of Los Angeles zoning ordinance permitted churches both in this and other areas, in the past and present. The Refuge Pinellas, Inn v. The City of St. Petersburg, 755 So.2d 119 (Fla. Cir. Ct. Dec. 21, 1999). In February of 2000, the district court of appeals denied certiorari to the City.


GROVES CITY, TX—2/9/2000

Orthodox Jews must walk to services on the Sabbath because their religion does not permit them to use cars. Etz Chaim—a congregation of elderly and disabled Orthodox Jews in the Hancock Park area of Los Angeles who have trouble walking distances as short as half a mile. The members of Etz Chaim sought a conditional use permit to establish a synagogue in Hancock Park, an area zoned for single-family dwellings, because their disabilities prevent them from walking to a nearby synagogue. The pastor was first denied a permit to open a boarding house for the homeless and drug-addicted in the city's business district. He was denied another permit to open a church with counseling and boarding, and was finally denied a permit to open a regular church. In February of 2000, Pastor Herbert filed suit claiming that the city's required operating permit for churches is unconstitutional. He wants the city to strike down the permit ordinance and pay him attorney fees.


EVANSTON, IL—2/3/2000

An Evanston zoning code permits the Vineyard Christian Fellowship’s building to be used for “cultural events” such as concerts, a feeding program for the poor and homeless, a crisis hotline, and Christian-per-
of religion. The trial court found that although Pepper's rights to practice and exercise her religion and to use and enjoy her property for religious purposes are protected by the Ohio and U.S. Constitutions, these rights are not absolute and may be reasonably regulated. The Court found that the FCO are not constitutionally entitled to police power. The appellate court similarly upheld the "minimal requirements" imposed on churches by the FCO.


YOUNGSTOWN, OHIO—6/30/99

Beatitude House is a nonprofit corporation operated by Ursuline nuns who run job training and transitional housing programs for homeless and abused women. When Beatitude House tried to turn an old convent into transitional housing for four homeless women, the Youngstown zoning board denied the permit. The nuns appealed on the grounds that the proposed use of the former convent is an accessory use, but the appellate court held in favor of the zoning board and stated that the Zoning Ordinance does not unconstitutionally suppress the "appellants' free exercise of religion.

The CRIMINAL RECORD OF THE REGIME OF

SADDAM HUSSEIN

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 21, 2000

Mr. PORTER. Mr. Speaker, on Tuesday, September 19, 2000, the Congressional Human Rights Caucus (CHRC) held a briefing on building the case against Saddam Hussein as a war criminal. The CHRC and the National Catholic Social Justice Conference urged the United Nations to establish a war crimes tribunal to try Saddam Hussein and eleven other Iraqi officials in the deaths of up to 250,000 civilians in Iraq, Iran, Kuwait and elsewhere. Ambassador Scheffer, the Ambassador-at-Large for War Crimes Issues, testified before the CHRC on September 19th. His remarks present the evidence which has been gathered by the U.S. against Hussein. This evidence includes crimes committed during the Iran-Iraq War, the massive use of chemical weapons in Halabja against his own citizens in 1988, the invasion and occupation of Kuwait in 1990 and 1991 and the killing of his political opponents which continues today.

Ambassador Scheffer’s remarks are a thorough account of the horrendous crimes Saddam Hussein has committed and continues to commit, and what the U.S. is doing to promote justice in Iraq. I commend to Members’ attention Ambassador Scheffer’s remarks and hope that the U.S. Congress will strongly support the Administration’s effort to bring Hussein to justice.

The Case for Justice in Iraq

(By David J. Scheffer, Ambassador-at-Large for War Crimes Issues)

Thank you. It is good to be among so many groups and individuals who are dedicated to the pursuit of justice, democracy and the rule of law for the Iraqi people. I am here to tell you all that the United States looks forward to the day when justice, democracy and the rule of law will prevail in Iraq.

I want to do three things this morning, by way of starting us all on a series of interesting presentations on different aspects of the case for justice in Iraq. First, I want to call to everyone’s attention the reason we are here—what has driven the international cycling of Saddam Hussein’s regime. Second, it has been almost a year since I saw many of you here on Capitol Hill. In October 1999, when I spoke at the Carnegie Endowment for International Peace on the subject of Iraq’s war crimes, or at the Iraq National Assembly in New York shortly thereafter. I want to update you on what the U.S. Government has been doing to promote accountability for Saddam Hussein’s 20 years of criminal conduct. Third, I think you will find of interest some of the reaction, in Baghdad and elsewhere, to what we have already said, and many of you—have been doing to promote the cause of justice in Iraq.

Let me begin. Our primary objective is to see Saddam Hussein and the leadership of the Iraqi regime indicted and prosecuted before an international criminal tribunal. If an international criminal tribunal even a commission of experts proves too difficult to achieve politically, there still remains the option, through a broad conference of certain jurisdictions to investigate and indict the leadership of the Iraqi regime. The United States is committed to pursuing justice and accountability in the former Yugoslavia, Rwanda, Cambodia, Sierra Leone and elsewhere around the world. We are also committed to the pursuit of justice and accountability for the victims of Saddam Hussein’s regime in Iraq.

The Criminal Record of the Regime of Saddam Hussein

Let me turn to my first main point, the need to address the criminal record of Saddam Hussein and his top associates for their crimes against the peoples of Iraq, Iran, Kuwait, and other countries. To the United States Government, it is beyond any possible doubt that Saddam Hussein and the top leadership around him have brutally and systematically committed war crimes and crimes against humanity for years, are committing them now, and will continue committing them unless an international community finally says enough—or until the forces of change in Iraq prevail against his regime as, ultimately, they must.

This may seem self-evident to all of you here today. Interestingly, in my discussions of this issue I have found some people who will agree that Saddam Hussein is a criminal, but who are genuinely unaware of the magnitude of his criminal conduct. Those who want to gloss over Saddam’s criminal record often want to gloss over the need for him to be brought to justice. This goes to the very heart of why he deserves an international response, so I find it useful to review what we now know of the criminal record of Saddam Hussein and his top associates.

1. The Iran-Iraq War. During the Iran-Iraq War, Saddam Hussein and his forces used chemical weapons against Iran. According to official Iranian sources, which we consider credible, approximately 5,000 Iranians were killed by chemical weapons between 1983 and 1988. The use of chemical weapons has been a war crime since the 1925 Geneva Protocol on poisonous and gas warfare. Also during the Iran-Iraq War, there are credible reports that Iraqi forces killed several thousand civilians in Halabja in northeastern Iraq. This was also a war crime as well as a grave breach of the Geneva Conventions of 1949, to which Iraq is a party. Other war crimes and crimes against humanity committed by Saddam Hussein and the top leaders around him against Iran and the Iranian people also deserve international investigation.

2. Halabja. In mid-March of 1988, Saddam Hussein and his cousin Ali Hassan al-Majid—the infamous "Chemical Ali”—ordered the dropping of chemical weapons on the town of Halabja in northeastern Iraq. This killed an estimated 5,000 civilians, and is a war crime and a crime against humanity. Photographs and video evidence of this attack and its aftermath exists. Some of this is available to scholars and—for prosecutors through the efforts of the International Monitor Institute in Los Angeles, California. More visual evidence is available from Iranian cameramen, who collected their images of the victims of this brutal attack—most of whom were women and children—in a book published in Tehran. The best evidence of all is from the survivors in Halabja itself.

I am proud to say that the United States has been working with such groups as the Washington Kurdish Institute and scientists like Dr. Christine Goosen to document the suffering of the people of Halabja and—just as importantly—to find ways to help the people of Halabja treat the victims and bring hope to the living. Working with local authorities, we are looking for ways to help investigators, doctors and scientists document this crime and plan the help that the survivors need and deserve. We know they will not get that help from Saddam Hussein. As one example, to help war crimes investigators, the U.S. Government is today announcing the declasification of overhead imagery products of Halabja taken in March 1988, the best image we have that was taken a little more than a week after the attack. We hope this will serve as a photo-map to enable witnesses to describe to investigators, doctors and scientists what they were during those terrible days of the Iraqi chemical attack and its aftermath.


Blacks, and more than a million Kurds and others from waiti nationals, as well as many others from throughout the world.

4. The invasion and occupation of Kuwait. On August 2, 1990, Saddam Hussein ordered his forces to invade Kuwait. This took military force by the international community and actions by the Kuwaiti themselves to liberate Kuwait in February 1991. During the occupation, Saddam Hussein's forces committed many other crimes in Kuwait, including environmental crimes such as

5. The Saddam Hussein Tribunal. In the fall of 2000, the U.N. Security Council unanimously authorized the establishment of the special tribunal to try Saddam Hussein and fourteen other Iraqi officials for crimes against the peoples of Iraq, Iran, Kuwait and other countries. This will be the first time a specialized international criminal court will try a sitting head of state of a UN member state. It will be a historic opportunity to bring justice to the Iraqi people and to the world.

The case for justice in Iraq is compelling. It is morally imperative that we bring Saddam Hussein to justice. It is legally compelling and we have the means to do so. It is strategically compelling and it is in the national interest of the United States. We have the responsibility to see justice done.

It will be a difficult undertaking to bring this man to justice, but I believe that we have the evidence, the means and the moral imperative to do so. I believe that the United States Government, Congress and the international community must fulfill our commitment to bring justice for the victims of Saddam Hussein’s regime.