Mr. HATCH. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Con. Res. 132) was agreed to, as follows:

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring) That, in conformance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, July 27, 2000, Friday, July 28, 2000, or Saturday, July 29, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Tuesday, September 5, 2000, or until noon on Wednesday, September 6, 2000, or until such time on either day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Thursday, July 27, 2000, or Friday, July 28, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2:00 p.m. on Wednesday, September 6, 2000, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 684, S. 2869.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2869) to protect religious liberty, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise today to thank the Senate in anticipation of its action in passing the Religious Land Use and Institutionalized Persons Act of 2000. I want to express my appreciation specifically to the lead cosponsor of this bill, Senator KENNEDY; and I worked together almost 10 years ago in enacting the Religious Freedom Restoration Act. He has once again demonstrated his commitment to religious liberty by his leadership and effort on this bill.

I also express my appreciation to Senators THURMOND and REID. Both of these Senators have strong and serious concerns about portions of this bill but were willing to work with us to secure passage of this legislation because of their overriding commitment to religious freedom.

Our bill deals with just two areas where we are threatened—land use regulation and persons in prisons, mental hospitals, nursing homes and similar institutions. Our bill will ensure that if a government action substantially burdens the exercise of religion, the government must demonstrate that imposing the burden serves a compelling public interest and does so by the least restrictive means.

In addition, with respect to land use regulation, the bill specifically prohibits various forms of religious discrimination and exclusion.

It is no secret that I would have preferred a broader bill than the one before us today. Recognizing, however, the hurdles facing passage of such a bill, supporters have correctly, in my view, agreed to move forward on this more limited, albeit critical, effort. The willingness of many serious and well-intentioned persons has brought us to this successful conclusion in the Senate today and likely swift action in the House of Representatives this fall.

I thank all persons involved in this effort. Numerous religious denominations have come together in the spirit of cooperation to form the Coalition for the Free Exercise of Religion. They have joined forces and concentrated their energy on this vital issue—I am grateful to all of them.

In conclusion, I thank the staff members who devoted so much of their time and who worked so hard to ensure the success of this bill. In particular, I would like to thank Eric George, my former counsel, Manus Cooney, my Chief Counsel, Sharon Prost, my Deputy Chief Counsel, and Sam Harkness, a law clerk for the Judiciary Committee. Their collective work has brought us to where we are today. Furthermore, I would like to express my gratitude to the staff of Senator KENNEDY; specifically, Melanie Barnes and David Sutphen, who were a pleasure to work with. Eddie Ayoob, from the office of Senator Reid, also provided valuable assistance. Finally, I would like to thank the dedicated professionals at the Department of Justice who helped in the effort.

I ask unanimous consent that following my statement and that of Senator KENNEDY the following items be printed in the RECORD: A manager's statement consisting of a joint statement by myself and Senator KENNEDY; a letter received today by the administration in support of the bill, and several other letters of support.

The PRESIDING OFFICER. Without objection, it is so ordered.

(Senate Joint Statement of Senators Hatch and Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000)

SUMMARY AND PURPOSE

The Religious Land Use and Institutionalized Persons Act of 2000 ("This Act") is a targeted bill that addresses the two frequently occurring burdens on religious liberty. The bill is based on three years of hearings—three hearings before the Senate Committee on the Judiciary and the House Subcommittee on the Constitution—that addressed in great detail both the need for legislation and the scope of Congressional power to enact such legislation.

The bill targets two areas: land use regulation, and persons in prisons, mental hospitals, and similar state institutions. Within those two target areas, the bill applies only to the extent that Congress has power to regulate under the Commerce Clause, the Spending Clause, or Section 5 of the Fourteenth Amendment. Within this scope of application, the bill applies the standards of the Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1, sets a high standard that substantially burdens the exercise of religion, it must demonstrate that imposing that burden on the claimant serves a compelling interest by the least restrictive means.

In addition, with respect to land use regulation, the bill specifically prohibits various forms of religious discrimination and exclusion. Finally, the bill provides generally that when a claimant offers prima facie proof of a violation of the Free Exercise Clause, the burden of persuasion on most issues shifts to the government.

NEED FOR LEGISLATION

Land Use. The right to assemble for worship is at the very core of the free exercise of religion. Churches cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.

The hearing record compiled massive evidence that this right is frequently violated. Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the basis of zoning codes and also in the highly individualized and discretionary processes of land use regulation. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. The codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways.

Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church, especially in cases of black churches and Jewish shuls and synagogues. More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or "not consistent with the city's land use plan." Churches have
been excluded from residential zones because they generate too much traffic, and from commercial zones because the generate enough traffic. Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, opera houses, and skating rinks—any and all sorts of buildings that were permitted when they generated traffic for secular purposes.

The record contains testimony that these forms of discrimination are very widespread. Some of this evidence is statistical—from national surveys of cases, church officials, and others. Some of it is anecdotal, with examples from all over the country. Some of it is testimony by witnesses with wide experience who say that the anecdotes are representative. This cumulative and mutually reinforcing evidence is summarized in the report of the House Committee on the Judiciary (House Rep. 106-219) at 18-24, in the testimony of Prof. Douglas Laycock to the Committee on the Judiciary 25-45 (Sept. 9, 1999), and in Douglas Laycock, State RFRA’s and Land Use Regulation, 32 U.C. Davis L. Rev. 755, 769-83 (1999).

This discrimination against religious uses is a nationwide problem. It does not occur in every jurisdiction with land use authority, but it occurs in many such jurisdictions throughout the country. Where it does occur, it is often covert. It is impossible to make separate findings about every jurisdiction, or to legislate in a way that reaches only those jurisdictions that are guilty.

Institutionalized Persons. Congress has long acted to protect the civil rights of institutionalized persons. Far more than any other Americans, persons residing in institutions are subject to the authority of one or a few officials. Institutional residents have no way to practice their faith if at the mercy of those running the institution, and their experience is very mixed. It is well known that prisoners often file frivolous claims. It is less well known that prison officials sometimes impose frivolous or arbitrary rules. Whether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways.

The Senate Subcommittee on the Constitution heard testimony to this effect from Charles Colson and Patrick Nolan of Prison Fellowship and detailed accounts about violations of the rights of Jewish prisoners, from Isaac Jaroslawicz of the Aleph Institute. The Senate Committee on the Judiciary learned of examples of institutionalized prisoners from Robert Harceland, 104 F.3d 1522 (9th Cir. 1997), which jailed authorities surreptitiously recorded the sacrament of confession between a prisoner and the Roman Catholic chaplain; Sament v. Sullivan, 197 F.3d 290 (7th Cir. 1999), in which a Wisconsin prison rule prevented prisoners from wearing religious jewelry such as crosses, on grounds that Judge Posner found discriminated against Protestants “without the ghost of a reason,” id. at 292; and other cases. In the District of Colorado in 1994, in which authorities let a prisoner attend Episcopal worship services, but forbade him to take communion. This Act can provide a remedy and a neutral forum for such cases if they fall within the reach of the Spending Clause or the Commerce Clause.

The compelling interest test is a standard that responds to facts and context. What the judicial branch may do is to give the compulsion of law to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and administrative efficiency (as a class are unquestionably significant). See Boerne v. Flores, 520 U.S. 507, 532 (1997). The structural authority to enact this bill in light of recent developments in Supreme Court federalism doctrine. Constitutional authority to enact an earlier and much broader bill is explained in the House Committee Report (No. 106-219) at 14-18, 27, and in the testimony of constitutional scholars to the Senate Committee on the Judiciary. See State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 398, 434 (2003). The jurisdictional element in this bill is not certainty, but “reason to believe” and “significant likelihood.” See Boerne v. Flores, 520 U.S. 507, 532 (1997). The factual record is itself sufficient to lend themselves to discrimination, and it also makes it difficult to prove discrimination in any individual case. But the committees in each house have examined large numbers of cases, and the hearing record reveals a widespread pattern of discrimination against churches as compared to secular places of assembly, and of discrimination against small and unfamiliar denominations as compared to larger and more familiar ones. This factual record is itself sufficient to justify prophylactic rules to simplify the enforcement of constitutional standards in land use regulation of churches.

The General Rules in §§2a(1), and the specific provisions in §2(b), are proportionate and congruent responses to the problems documented in this factual record. The Congress does not only exempt religious uses from land use regulation; rather, it requires regulators to more fully justify substantial burdens on religious exercise. This duty of justification under a heightened standard of review is proportionate to the widespread discrimination and to the more widespread individualized assessments, and it is directly responsive to the difficulty of proof in individual cases.

Second, and without regard to the factual record—by the liberal use of provisions of this bill to satisfy the constitutional standard legally. Each subsection closely tracks the legal standard. The Commerce Clause poses three questions: Where government has authority to make individualized assessments of the proposed uses to which the property will be put. There goven{ous authority to make individualized assessments, permitting some uses and excluding others, it cannot exclude religious uses without compelling justification. See Church of

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ADDITIONAL DISCUSSION ON INTENDED SCOPE ON LAND USE PROVISION

Not land use immunity

This Act does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available, without discrimination or unfair delay.

Definition of religious exercise

The definition of "religious exercise" under this Act includes the "use, building, or conversion" of real property for religious exercise. However, not every activity carried out by a religious entity or individual constitutes "religious exercise." In many cases, real property is used by religious institutions for purposes not specifically connected to religious activities, and those activities are conducted by those entities and others. While recognizing that these activities or facilities may be owned, sponsored or operated by a religious entity, or may permit a religious institution to obtain additional funds to further its religious activities, this Act does not include as religious activities or facilities within the bill's definition or "religious exercise." For example, a burden on a commercial building, which is connected primarily by the fact that the proceeds from the building's operation would be used to support religious exercise, is not a substantial burden on religious exercise.

Definition of substantial burden

The Act does not include a definition of the term "substantial burden" because it is not the intent of this Act to create a new standard for the definition of "substantial burden" on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence. 508 U.S. 520, 537-38 (1993); Smith, 483 U.S. 327, 335-36 (1987). The Act's protection for religious liberty does not violate the Establishment Clause. It is triggered only by a substantial burden on, a discrimination against, a total exclusion of, or an unreasonable limitation on the free exercise of religion. Regulatory exemptions are constitutional if they lift government-imposed burdens on religious exercise, Board of Education v.orea et al., 425 U.S. 379 (1976), Corporation of the Presiding Bishop v. Amos, 483 U.S. 327, 335-36 (1987).

ADDITIONAL COMMENT

An earlier draft of this legislation had a subsection that would have reversed that result in Bronx Household of Faith v. Community School District, 127 F.3d 207 (2nd Cir. 1997), and its progeny. Although that provision did not survive the necessary consensus building that has made possible this bipartisan bill, the holding in Bronx Household is indeed troubling in light of the Supreme Court's recent negative precedent, 454 U.S. 263, 269 n.6, 271 n.9, 272 n.11 (1981), to not set parameters to public forum that require differentiating between religious worship and all other forms of religious speech. We trust that the federal judiciary will revisit this issue at an early opportunity.


Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Mr. Chairman: I am writing to express the Department of Justice's strong support for S. 2869, the "Religious Land Use and Institutionalized Persons Act of 2000." The Department of Justice has consistently supported legislative activity such as the Religious Freedom Restoration Act ("RFRA"), that are designed to protect religious liberty. The Department is proud to have been able to work closely with the House and Senate Judiciary Committees to refine this important legislation. With this letter, we hope to address certain questions that have been raised by the bill.

We understand that some Members may be concerned about the constitutionality of S. 2869, that is supported by the Supreme Court's evolving federalism doctrines. Because of the importance of these issues, we have worked diligently with Senate and House staff, as well as with representatives of a wide array of private groups interested in the legislation, to craft a constitutional bill. In our view, S. 2869 is constitutional under prevailing Supreme Court precedents.

In addition, apparently there has been some question about the potential effect of S. 2869 on local civil rights laws, such as fair housing laws. Although prior legislative proposals implicated civil rights laws in a way that the Department of Justice had opposed, Section 3 of S. 2869 would not apply to State prisons, a fact that we believe S. 2869 cannot and should not be construed to require exemptions from such laws.

Finally, we are aware that some Members may be concerned about the effect of S. 2869 on the operations of State prisons. While Section 3 of S. 2869 would not apply to State prisons, we do not believe it would have an unreasonable impact on prison operations. RFRA has been in effect in the Federal prison system for six years and compliance with that statute has not been an unreasonable burden to the Federal prison system. Since enactment of RFRA in 1994, Federal inmates have filed approximately 65 RFRA complaints in Federal court naming the Bureau of Prisons (or its employees) as defendants. Most of these suits have been dismissed or settled by the defendants. Very few, if any, have gone to trial. With respect to RFRA, Congress emphasized that courts should "continue the tradition of giving due recognition to the experience and expertise of prison and jail administrators in establishing necessary regulations." 42 U.S.C. § 2000bb-1 (1994). Under federal law, most religious housing is not a "corrective or disciplinary setting," and prisoners are permitted to receive religious services. As is the case with RFRA, increasing Federal enforcement responsibilities will be accompanied by appropriate resources increases.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Robert Baken, Assistant Attorney General.


Dear Representative: We urge you to co-sponsor the "Religious Land Use and Institutionalized Persons Act of 2000" (RLUPA) for bipartisan support. This legislation seeks to protect important aspects of a right that is foundational in our country—the right to worship free from unnecessary governmental interference. It would provide critical protection for houses of worship and other religious assemblies from restrictive land use regulation that all too often thwarts the practice of faith in our nation. The legislation also will ensure that institutionalized
persons will have the ability to exercise their religion in ways that do not undermine the security, discipline and order of their institutions.

In a series of Congressional hearings beginning in 1997, evidence was presented which indicated that the discretionary, nonstandardized determinations made as a part of local land use regulation result in a pattern of burdensome and discriminatory actions on the activities of houses of worship and religious assemblies. A study produced by law professors at Brigham Young University and attorneys from the law firm of Mayer, Brown & Platt has shown, for example, that small religious groups and nondenominational churches are greatly overrepresented in reported church zoning cases. Other testimony has documented the fact that some land use regulations intentionally exclude all new houses of worship from an entire city, while others are carefully crafted so that they can be secured as a special use permit, meaning that zoning authorities hold almost complete discretion in making these determinations. Some testimony presented explicit evidence of religious and racial bias associated with such land use determinations.

In a significant number of communities, land use regulation makes it difficult or impossible to build, buy or rent space for a new house of worship, whether large or small. Testimony from across the nation also has demonstrated that nonreligious assemblies are often treated far better by zoning authorities than religious assemblies. For example, recreation centers, health clubs, backyard barbecues and banquet halls are frequently the subjects of more favorable treatment than a home Bible study, a church's homeless feeding program or a small gathering of individuals for prayer.

After close scrutiny of this nationwide problem, members of Congress have properly chosen to address Congress' power under Section 5 of the 14th Amendment as well as through the spending and interstate commerce powers, consistent with recent U.S. Supreme Court decisions. RLUIPA generally provides that the government shall not implement land use regulation in such a way that it substantially burdens religious exercise unless such a burden is justified by a compelling governmental interest that is being implemented in a manner that is least restrictive of religious exercise.

It is important to note that RLUIPA does not provide a religious assembly with immunity from zoning regulation. If the religious claimant cannot demonstrate that the regulation places a substantial burden on sincere religious exercise, then the claim fails without further consideration. If the claimant is successful in demonstrating a substantial burden, the government will still prevail if it can show that the burden is the unavoidable result of a compelling governmental objective. RLUIPA also places on the government the burden of justifying any religious exercise that discriminates against any institution on the basis of religion, totally exclude religious assemblies from a jurisdiction or unreasonably limit such uses within a jurisdiction.

RLUIPA also provides a remedy for institutionalized persons who are inappropriately denied the right to practice their faith, including the right to religious meals (such as homes for the disabled and chronically ill) and correctional facilities. Congressional testimony included descriptions of instances in which a Catholic priest was forced to do battle over bringing a small amount of sacramental wine into prisons, and cases in which prison officials not only refused to accept even donated matzos from a Jewish organization. RLUIPA empowers the courts to order the government to provide adequate and reasonable accommodations, and to provide adequate religious meanings to persons residing in state or locally run institutions.

We greatly appreciate the work of the leadership sponsors in crafting the legislation that will provide important new protections for religious exercise, without the harmful consequences for civil rights laws. These protections are especially important to preserve the exercise of religious beliefs by adherents of minority religious groups, who often are in a position of having limited ability to influence the political process.

We believe that the new legislation will ensure appropriate protection against government burdens on the free exercise of religious beliefs in two important areas. The legislation will protect the religious exercise of persons whose beliefs are burdened by zoning or land marking laws, or by laws affecting persons residing in state or locally run institutions.

Governments have frequently applied zoning and land marking laws in ways that discriminate against, or severely limit, the ability of houses of worship and individuals to use their houses of worship or homes for religious exercise. The Hatch-Kennedy bill will be particularly useful for those religious groups whose ministries of feeding or housing low-income or homeless persons have been curtailed by zoning laws.

The Hatch-Kennedy bill also provides an important remedy for persons residing in, or confined to, state or local institutions, as defined by the Civil Rights of Institutionalized Persons Act. The new legislation makes clear that, in governmental residential facilities such as state or local institutions, nursing homes, group homes, or prisons, the government may not dictate whether, how, or when an individual can practice his or her religion, unless the government has a compelling interest in enforcing its regulation. The legislation will help ensure that a person will not be stripped of his or her ability to exercise his or her religious beliefs when entering a state or local government-run hospital, nursing home, group home, or prison.

We appreciate your consideration of our views on this issue. We urge the Senate to pass the legislation without any amendments.

Sincerely,
MELISSA ROGERS
General Counsel
Baptist Joint Committee on Public Affairs

Mr. KENNEDY. Mr. President, religious freedom is a bedrock principle in our Nation. The Religious Land Use and Institutionalized Persons Act of 2000 reflects our commitment to protect religious freedom and our belief that Congress still has the power to enact legislation to enhance that freedom, even after the Supreme Court's decision in 1997 that struck down the broader Religious Freedom Restoration Act that 97 Senators joined in passing in 1995.

Our bill has the support of the Free Exercise Coalition, which represents over 50 diverse and respected groups, including the Family Research Council, the Christian Legal Society, the American Civil Liberties Union, and People for the American Way. The bill also has the endorsement of the Leadership Conference for Civil Rights.

The broad support for this bill by religious groups and the civil rights community is the result of many months of difficult, but important negotiations. We carefully considered ways to strengthen religious liberties in other ways in the wake of the Supreme Court's decision. We are mindful of not undermining existing laws intended to protect other important civil rights and civil liberties. It would have
been counterproductive if this effort to protect religious liberties led to confrontation and conflict between the civil rights community and the religious community, or to a further court decision striking down the new law. We believe that our bill successfully addresses these difficulties by addressing two of the most obvious current threats to religious liberty and by leaving open the question of what future Congressional actions can be taken to protect religious freedom in America.

Our goal in passing this legislation is to reach a reasonable and constitutionally sound balance between respecting the compelling interests of government and protecting the ability of people freely to exercise their religion. We believe that the legislation accomplishes this goal in two areas where infringement of this right has frequently occurred—the application of land use laws, and treatment of persons who are institutionalized. In both of these areas, our bill will protect rights in the Constitution—the right to worship, free from unnecessary government interference.

I commend Senator HATCH for his commitment and diligence in developing this legislation. The consensus bill before us is in large part the product of his skillful leadership. Many others in the Senate also deserve credit for this legislation, including Senator LIEBERMAN, Senator DASCHLE, Senator SCHUMER, Senator REID, Senator BENNETT, Senator HUTCHINSON, and Senator GORDON SMITH.

A broad array of groups also played a central role in crafting this legislation. Among those deserving special recognition are the American Civil Liberties Union, the Baptist Joint Committee, People for the American Way, the Union of Orthodox Congregations, the American Jewish Committee, and the Christian Legal Society. Professor Douglas Laycock of the University of Texas School of Law had an indispensible role in this process. Finally, I commend the White House and the Department of Justice for their guidance and expertise in developing an effective and constitutionally sound bill.

Senator HATCH and I are including in the RECORD a section-by-section summary of the bill along with a joint statement providing a detailed explanation of the need for this important legislation. Numerous committee reports have also described numerous examples of thoughtless and insensitive actions by governments that interfere with religious freedom, even though no valid public purpose is served by the governmental action.

The Religious Land Use and Institutionalized Persons Act of 2000 is an important step forward in protecting religious liberty and reflects the Senate’s long tradition of bipartisan support for the Constitution and the nation’s fundamental freedoms and I urge the Senate to approve it.

Mr. President, I rise today in support of S. 2869, the Religious Land Use and Institutionalized Persons Act. Before addressing the substance of this legislation, I would like to thank and congratulate the chairman of the Judiciary Committee, Senator HATCH, as well as the senior Senator from Massachusetts, Senator KENNEDY, for the outstanding, bipartisan efforts they have taken to produce the legislation we are considering today. I am well aware of the various difficulties and interests which had to be addressed, and I believe they did a fine job under such circumstances.

Mr. President, though modified and reduced in scope in order to secure its passage, S. 2869 is the most recent attempt by the Congress to protect the free exercise of religion. Prior to 1990, American courts had generally applied a strict scrutiny test to governmental actions that imposed substantial burdens on the exercise of religion. As my colleagues know, the strict scrutiny test is the highest standard the courts apply to actions on the part of government. However, in 1990, in Employment Division, Oregon Department of Human Resources, v. Smith, the United States Supreme Court largely eliminated the strict scrutiny test for free exercise cases.

Three years later, in direct response to the Smith decision, the 103rd Congress enacted the Religious Freedom and Institutionalized Persons Act (RFIPA), restating and extending the strict scrutiny test to all government actions, including those of state and local governments, that imposed substantial burdens on religious exercise. In 1997, the Supreme Court ruled, in City of Boerne, Texas v. Flores, that RFIPA’s coverage of state and local governments exceeded Congressional authority.

In response to the City of Boerne ruling, the Religious Liberty Protection Act (RLPA) was introduced during the 106th Congress. RLPA also reapplied a strict scrutiny standard to the actions of state and local governments with respect to religious exercise, but attempted to draw its authority from Congressional powers to attach conditions to federal funding programs and to regulate commerce. While the companion measure passed the House of Representatives overwhelmingly in July 1999, the legislation stalled in the Senate when legitimate concerns were raised that RLPA, as drafted, would supersede certain civil rights, particularly in areas relating to employment and housing. These concerns were most troubling to the gay and lesbian community. Discrimination based upon race, national origin, and gender, as well as sexual orientation, played a significant role in RLPA’s application to institutionalized persons. Opponents of the legislation argued that RLPA would protect religious liberties for persons committed to religious orders while at the same time protecting the free exercise of religion involving land use decisions.

As I stated earlier, protecting hard-fought civil rights, including those which prohibit discrimination based upon sexual orientation, played an important role in my desire to pursue a more narrowly-tailored religious freedom measure. I am proud to have had the opportunity to work with Senators HATCH and KENNEDY to accomplish the worthwhile endeavor of protecting legitimate civil rights while at the same time protecting the free exercise of religion involving land use decisions.

While the first section of S. 2869 focuses upon land use, the second concerns the free exercise of religion as applied to institutionalized persons. As my colleagues are well aware, in 1993, during the consideration of the Religious Freedom Restoration Act, I offered an amendment on the Senate floor that would have restored the applicability of RFRA to incarcerated individuals. I offered
that amendment for a variety of reasons, not the least of which was my belief, one and all, that prisoners in this country have become entirely too litigious. Frivolous lawsuits seem to be the norm, not the exception to the rule. In 1993, more than 1,400 more lawsuits were filed by federal prisoners against the government, whether it was corrections officers, prison wardens, attorneys general, etc., than were filed by the government against criminals. That unbelievable situation within our federal judicial system, coupled with the high costs that my home State of Nevada was incurring defending frivolous prisoner lawsuits, led me to offer the amendment which would have prohibited the applicability of RFRA to prisoners. Regrettably, that effort failed. However, I remained a proud supporter of the underlying legislation.

Seven years later, I am faced with a similar set of circumstances. I support the underlying legislation which protects the free exercise of religion within our federal, state and local prisons will encourage prisoners, and on the courts, to second guess the decisions of our corrections employees and other prison officials. Furthermore, I have been contacted by many corrections officers and by the American Federation of State, County and Munici­pal Employees, AFSCME, which represents more than 60,000 dedicated men and women who are on the front line in our nation’s prisons. They have legitimate concerns about what impact this legislation may have on prison security.

A number of corrections officers have contacted me to relay their own personal experiences. These dedicated men and women have real concerns. In fact, AFSCME recently alerted the corrections officer membership that this legislation was coming up for a vote, and was deluged with phone calls from members expressing their distress about how this bill might affect their ability to maintain security and protect the safety of the public. As you can well imagine, getting inmates to comply with security measures in prison is no easy task. Many prisoners will use any excuse to avoid searches and to evade security measures instituted to protect prison personnel and the general public from harm.

While I continue to believe that we should not extend the privilege of a strict scrutiny standard to restrictions on the free exercise of religion behind the bars of our nation’s prisons, I also recognize certain realities. The Prison Litigation Reform Act, PLRA, which we passed during the 104th Congress, has led many Senators to believe that my amendment was not necessary. I disagree with this conclusion given that PLRA applied to RFRA from April 1996, through June 1997, and there was no perceivable reduction in the number of prisoner RFRA lawsuits, or their corresponding burden. Furthermore, corrections officers, even when cases are screened and dismissed under the provisions of the Prison Litigation Reform Act, those lawsuits still show up on the public record, making it much more difficult for corrections employees who have been sued to obtain mortgages and car loans.

Mr. President, rather than offer an amendment to strike the provisions of S. 2869 relating to Institutionalized Persons, I believe that the impact this legislation would fail this year, I have decided, in consultation with the managers of this legislation, to pursue a different approach. My distinguished colleague from Utah, the Chairman of the Judiciary Committee, has agreed to hold a hearing next year on the impact of this legislation on our nation’s penal institutions and their dedicated employees. I am hopeful that this will provide the opportunity for corrections officers and other personnel to air their concerns about how this legislation may affect security in these institutions. I would also expect several Attorneys General, including the Nevada State Attorney General who has made limiting frivolous prisoner lawsuits a priority in my home State, to express their opinions. I look forward to this debate, and I would offer my personal gratitude to Chairman Hatch for the commitment. I also am joining with Senator Hatch to request that the General Accounting Office conduct a detailed study as to what effects the Religious Freedom Restoration Act had on our nation’s prisons, both before, during and after the application of the Prison Litigation Reform Act, and what effects, at the appropriate time, this legislation will have.

In conclusion, Mr. President, while I retain serious reservations about the effects of this bill, I commend Senators Hatch and Kennedy for diligently working in a bipartisan fashion to craft a narrowing-tailored religious freedom protection measure that will pass this Senate.

Mr. HATCH. Mr. President, I thank my friend, the assistant Democratic leader and the Senior Senator from Nevada, for his leadership which has allowed us to bring S. 2869 to the floor today. He has made it clear that the President himself and Senator Kennedy, and I am sure he joins me in thanking the Senator for his contributions to this important legislation.

I would also say that I recognize his commitment in reducing the number of frivolous lawsuits by prisoners, and that several of our colleagues, particularly Senator Thurmond, have raised serious concerns relating to the Institutionalized Persons section of the bill. As I have already relayed to the Senator, I am committed to holding a hearing next year in the Judiciary Committee on these matters.

Mr. REID. I thank the distinguished Chairman of the Judiciary Committee and I look forward to that hearing next year.

I also ask if it is the chairman’s intention to join with me in requesting that the General Accounting Office conduct a study on the effects that the Religious Freedom Restoration Act has had, and that the Religious Land Use and Institutionalized Persons Act will have on our nation’s prisons, both at the federal and state level, including the dedicated men and women who serve this country as corrections employees.

Mr. HATCH. The Senator is correct, stating that I intend to request such a study from the GAO.

Mr. REID. Again, I thank the distinguished Chairman. I also reiterate my appreciation and congratulation to him and Senator Kennedy for the outstanding work they have done on a bipartisan basis to bring this legislation to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2869) was read the third time and passed, as follows:

Mr. HATCH. Be it enacted by the Senate and House of Represent­atives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the ‘‘Religious Land Use and Institutionalized Persons Act of 2000’’.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS.—(1) GENERAL RULE.—No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on religious exercise within the several States, or with Indian tribes, unless the government demonstrates that the burden on religious exercise is necessary to further a compelling governmental interest, and the government’s means of furthering that compelling governmental interest are the least restrictive means of furthering that compelling governmental interest.

(b) DISCRIMINATION AND EXCLUSION.—(1) EQUAL TERMS.—No government shall impose or implement a land use regulation
in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

2. NONDISCRIMINATION.—No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

3. EXCLUSIONS AND LIMITS.—No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unnecessarily limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE.—No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION.—This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION.—A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION.—If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the government bears the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.

(c) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT.—The United States, or any agency, officer, or employee of the United States, acting under authority of any law of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance, is held to be unconstitutionally aggregating religious exercise. Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the Establishment Clause). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term “granting”, used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS.—Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended—

(1) in paragraph (1), by striking “a State, or a subdivision of a State” and inserting “or of a covered entity”; and

(2) in paragraph (4), by striking all after “government” and inserting “government, or of any other person.”

(b) CONFORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking “and State”.

SEC. 8. DEFINITIONS.

In this Act:

(a) CLAIMANT.—The term “claimant” means a person raising a claim or defense under this Act.

(b) DEMONSTRATES.—The term “demonstrates” means meets the burdens of going forward with the evidence and of persuasion.

(c) FREE EXERCISE CLAUSE.—The term “Free Exercise Clause” means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(d) GOVERNMENT.—The term “government” means—

(A) a State, county, municipality, or other governmental entity created under the authority of a State;

(B) any branch, department, agency, instrumentality, or official of an entity listed in clause (1); and

(C) any other person acting under color of State law.

(e) LAND USE REGULATION.—The term “land use regulation” means any zoning or similar regulation, the requirement of a permit or a license, or the application of a substantive law, that limits or restricts a claimant’s use or development of land (including a religious exercise) or that allows a governmental entity to retain, restrict, or use the land for any governmental purpose.

(f) PROGRAM OR ACTIVITY.—The term “program or activity” means all of the operations of an entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

(g) RELIGIOUS EXERCISE.—(A) IN GENERAL.—The term “religious exercise” includes any exercise of religion.
TRAFFICKING VICTIMS PROTECTION ACT OF 2000

Mr. HATCH. I ask unanimous consent that the Senate consider Calendar No. 584, H.R. 3244.

The PRESIDING OFFICER. The Senate was notified that Mr. HATCH was about to present an amendment at the desk. Without objection, the Senate agreed to the amendment filed with the Clerk for consideration.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate consider Calendar No. 584, H.R. 3244.

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