CONGRESSIONAL RECORD—HOUSE

July 15, 1999

Mr. MORAN of Virginia. Mr. Speaker, our message today is really directed at the majority. We are asking them not to shoot themselves in the foot, not to let this wonderful economy be dissipated by policies that are contrary to the public interest, tax cut policies that are counterproductive at best and severely damaging to our economy at worst.

We know that we are enjoying the finest economy that this country has ever experienced. And it can be a sustainable economy. We have had a decade of unprecedented profits and productivity with low inflation and high employment.

The only thing that could kill that prosperity now is a tax cut that was too deep, that was irrational, that gave relatively small amounts of benefit to a lot of people who need them the least. The fact is that too deep a tax cut will arrest the kind of controlled inflation and low unemployment that we are now experiencing. An $800-billion tax cut would do that.

We can responsibly target our tax cuts and achieve more at 1/3 the revenue cost. We can keep this economy going. We can keep inflation low. Do not give Mr. Greenspan reason to increase interest rates. We have got a good thing going. Let us keep it going. Do not go overboard with an irrational tax cut.

THE JOURNAL

The SPEAKER pro tempore (Mr. Hefley). Pursuant to clause 8 of rule XX, the pending business is the question of agreeing to the Speaker’s approval of the journal of the last day’s proceedings.

The question is on the Speaker’s approval of the Journal of the last day’s proceedings. The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HAYES. Mr. Speaker, I object to the ayes appearing to have it.

Mr. Hefley. The ayes have it. The question is on the Speaker’s approval of the Journal of the last day’s proceedings. The question was taken; and the ayes appeared to have it.

The Sergeant at Arms will notify ab-yea” to “nay.”

So the Journal was approved. The result of the vote was announced as above recorded.

RELIGIOUS LIBERTY PROTECTION ACT OF 1999

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 245 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 1691) to protect religious liberty. The bill shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) a further amendment printed in the Congressional Record pursuant to clause 8 of rule XVIII, if offered by Representative Conyers of Michigan or his designee, which shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except (1) one hour of debate on the bill, as amended, equally divided and controlled by the majority and minority member of the Committee on the Judiciary; (2) a further amendment printed in the Congressional Record pursuant to clause 8 of rule XVIII, if offered by Representative Conyers of Michigan or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. Hefley). The gentleman from North Carolina (Mrs. Myrick) is recognized for 1 hour.
from Ohio (Mr. HALL), pending which I yield myself such time as I may consume without being considered of this resolution, all time yielded is for the purpose of debate only.

Yesterday, the Committee on Rules met and granted the structured rule for H.R. 1691, the Religious Liberty Protection Act.

The rule provides for 1 hour of debate to be equally divided between the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives all points of order against consideration of the bill.

The rule makes in order an amendment in the nature of a substitute if printed in the CONGRESSIONAL RECORD and if offered by the gentleman from Michigan (Mr. CONTERS) or his designee, debatable for 1 hour, equally divided between the proponent and an opponent.

Finally, the rule provides for one motion to recommit with or without instructions.

Mr. Speaker, this is a fair rule which will permit a thorough discussion of all the relevant issues. In fact, the Committee on the Judiciary considered one amendment during its markup of H.R. 1691, and that amendment is made in order under this rule.

Prior to 1990, Mr. Speaker, the Supreme Court vigorously protected our first amendment freedoms. A State or local government could not impede religious expression unless its laws were narrowly tailored to prevent a compelling government interest. In 1990, this all changed. In the case of Employment Division v. Smith, the Supreme Court said courts are subject to all generally applicable and civil laws as long as the laws were not enacted in a blatant attempt to suppress religious expression.

The potential impact of the Smith case is frightening. Now police can arrest a Catholic priest for serving communion to minors in violation of a State's drinking laws. Local officials can force an elderly lady to leave her apartment to an unwed or homosexual couple in violation of her Christian beliefs. Our law enforcement officials can conduct an autopsy on an Orthodox Jewish victim in violation of the family's religious beliefs.

Mr. Speaker, this is wrong, and it has to be changed. The Religious Liberty Protection Act would essentially overturn the Smith decision and return religious expression to its rightful place.

Under H.R. 1691, State and local officials must narrowly draft their commerce regulations so they do not penalize religion. In addition, under the bill anyone who receives Federal grant money cannot turn around and discriminate against religion, and State and local governments cannot adopt land use laws that treat religious organizations differently than non-religious organizations. There are legitimate health and safety reasons for local governments to make zoning decisions, but religious discrimination is not one of them.

I urge my colleagues to support this rule and to support the underlying legislation.

Again I repeat:

The Committee on the Judiciary considered only one amendment during its markup of H.R. 1691, and that amendment was made in order under this rule; Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume, and I want to thank my colleague, the gentlewoman from North Carolina (Mrs. MYRICK), for yielding me the time.

Mr. Speaker, this is a structured rule. It will allow for consideration of H.R. 1691, which is called the Religious Liberty Protection Act. As my colleague from North Carolina has explained, this rule provides 1 hour of general debate to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary. The rule permits only one amendment which may be offered by the ranking minority member of the Committee on the Judiciary or his designee.

The bill restricts States or local governments from passing laws that impose a substantial burden on an individual's rights to practice his or her religion. The bill attempts to reverse the effects of a Supreme Court decision which made it easier for States to interfere with religious freedom. This bill balances the rights of individuals to practice their religion against the need of the States to regulate the conduct of their citizens. The bill attempts to give the right to practice religion the same kind of protected status as the right of free speech.

I want to call attention to the enormous support this bill has received from the religious community. It is supported by more than 70 religious and civil liberty groups including Protestant, Catholic, Jewish and Muslim leaders. There have even been one piece of legislation unite so many different religious organizations as this bill has done.

America was founded by people who wanted to practice their religion free from government interference, and I am pleased to be a cosponsor of this bill because I think it will protect the basic American right, freedom of religion.

Mr. Speaker, the bill has broad bipartisan support and was adopted in an open committee process. I urge adoption of the rule and the bill.

Mrs. MYRICK. Mr. Speaker, I yield 3½ minutes to the gentleman from Texas (Mr. PAUL).

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. Mr. Speaker, I rise in support of this rule but in opposition to the bill.

Mr. Speaker, as a legislature of enumerated powers, Congress may enact laws only for constitutionally authorized purposes. Despite citing the general welfare and commerce clause, the purpose of H.R. 1691 is obviously to "protect religious liberty." However, Congress has been granted no power to protect religious liberty. Rather, the first amendment is a limitation on Congress, prohibiting the Federal government from interfering with the free exercise of religion.

That amendment to the United States Constitution provides that Congress shall make no law prohibiting the free exercise of religion, yet H.R. 1691 specifically prohibits the free exercise of religion because it authorizes a government to substantially burden a person's free exercise if the government demonstrates some nondescript, compelling interest to do so.

The U.S. Constitution vests all legislative powers in Congress and requires Congress to define government policy and select the means by which that policy is to be implemented. Congress, in allowing religious free exercise to be infringed using the least restrictive means whenever government pleads a compelling interest without defining either what constitutes least restrictive or compelling measures, compels the courts to legislate powers to make these policy choices constitutionally reserved to the elected body.

Nowhere does H.R. 1691 support to enforce the provisions of the fourteenth amendment as applied to the States. Rather, its design imposes a national uniform standard of religious liberty protected beyond that allowed under the United States Constitution, thereby, by intruding upon the powers of the State to establish their own policies governing protection of religious liberty as preserved under the tenth amendment. The interstate commerce clause was never intended to be used to set such standards for the entire Nation.

Nuttidnds, instances of State government infringement of religious exercise can be found in various forms and in various States, mostly of which, however, occur in government-operated schools, prisons and so-called government enterprises and in consequence of Federal Government programs. Nevertheless, it is reasonable to believe that religious liberty will be somehow better protected by enacting national terms of infringement, a national infringement standard which is ill-defined by a Federal legislature and further defined by Federal courts, both of which are remote from those whose rights are likely to be infringed.

If one admires the Federal government's handling of the abortion question, one will have to wait with even greater anticipation to witness the Federal government's handiwork with respect to religious liberty.

To the extent governments continue to expand the breadth and depth of their reach into those functions formally presumed by private entities, governments will continue to be caught in a hopeless paradox where intolerance of religious exercise in government facilities is argued to constitute establishment and, similarly, restrictions
religious exercise constitute infringement.

Mr. Speaker, our Nation does not need a constitutional Federal standard of religious freedom. We need instead for government, including the courts, to respect its existing constitutional limitations so we can have true religious liberty.

Mr. EDWARDS. Mr. Speaker, I yield 7 minutes to the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I rise in support of this rule and this bill, the Religious Liberty Protection Act. The first 16 words of the Bill of Rights were carefully chosen by our Founding Fathers to protect the religious freedom of all Americans. The words are these: "Congress shall pass no law respecting an establishment of religion or prohibiting the free exercise thereof."

For over 200 years those words and the principles they represent have given Americans a land of unprecedented religious freedom and tolerance. The establishment clause was intended to prohibit government from forcing religion in the public domain. The exercise clause was designed to keep government from limiting any citizen's rights to exercise his or her own religious faith.

In recent weeks, I have been greatly concerned about congressional efforts that I felt would undermine the establishment clause and consequently tear down the wall of separation between church and State. Our Nation's religious community has been seriously divided on these issues. However, the legislation today does not focus on the establishment clause. Rather, it focuses on the importance of the free exercise clause of the First Amendment.

I would suggest that the freedom to exercise one's religious beliefs is the foundation for all other freedoms we cherish as Americans. Without freedom of religion, the freedom of speech, press, and association lose much of their value.

It is a commitment to the free exercise of religion that has united over 70 religious and civil rights organizations in support of this bill. It is the free exercise of religion that has united religious groups in support of this legislation that have been badly divided on so many other religious measures recently before this House. I will greatly respect Members of this House who cannot support this legislation today because I believe religious votes should be a matter of conscience, not of party. However, I am gratified to see so many diverse religious organizations come together on this particular issue. Organizations from the Anti-Defamation League to the Christian Coalition, numerous organizations such as the American Jewish Committee, the American Congress, the Methodist church, the Southern Baptist Convention, groups that have very seldom come together in recent days, have come together in the support of the free exercise of individual American's religious rights.

Mr. Speaker, the point I make in listing some of these organizations in support of this is not to say any Member must or should support this bill because of these religious groups' endorsement. My point is that the legislation was put together on a broad-based nonpartisan basis. Its intent was to protect religion, not to deal in partisan issues. The common bond of these diverse religious groups on this issue is their assurance that the government should have to show a compelling reason to limit any citizen's religious rights. I agree with those groups.

More importantly, I believe the Founding Fathers intentionally began the First Amendment with the protection of religious rights because they recognized the fundamental role of religious freedom in society.

Now, I have been interested to see that some local and State officials have argued recently that this legislation might inconvenience them. Let me say that I agree with the fact, if they will read the Bill of Rights, the Bill of Rights was written precisely to inconvenience governments. The Bill of Rights was written to make it inconvenient to step on the religious rights of citizens in this country.

For that reason, I think this is a measure that should pass for the very precise reason that it does inconvenience local and State governments in their efforts as mentioned by the gentlewoman from North Carolina (Mrs. MYRICK) in her speech, their efforts to limit the rights of Americans in their religious exercise.

In other words, Mr. Speaker, might argue in good faith that this bill will be used by some religious groups to defend discrimination based on sexual orientation. I can only say that it is neither my intent nor the primary co-sponsor of this bill nor the intent of the religious groups with whom I have met to design a bill for that purpose. Our intent is rather to build into the statutes a shield against government regulations that would limit religious freedom. Our intent, in the words of Rabbi David Saperstein, is to clarify, quote, "A universal, uniform standard of religious freedom."

This legislation protects the right of government entities to limit religious actions if there is a compelling interest to do so. Court cases have clearly established, for example, that protecting against race and gender discrimination are compelling State interests, as are safety and health protections in the laws.

In the real world I recognize there are sometimes direct conflicts between one citizen's right and another citizen's right. That is why we have the judicial system, a system that can look at those issues on a case-by-case basis. I believe the judicial system, rather than the legislative system, is the best way to determine those specific cases. Consequently, personally I believe it would be a mistake for Congress in this bill to try to define who does and who does not have protected religious rights or to exclude certain circumstances from free exercise protections under this bill. Whether intended or not, and I do not think it is intended, such an action could in some cases relegate religious rights to a secondary status, something I do not think our Founding Fathers intended when they chose the first words of the first amendment to protect religious liberty.

To my Democratic colleagues who will vote for the Nadler amendment, I respect your decision. No one in this House has been a stronger defender of religious liberty and civil rights in Congress than the gentleman from New York (Mr. NADLER), and I respect his genuine concerns about possible conflicts between religious rights and other rights.

In other words, if the gentleman's amendment fails, I would hope that Members who supported his amendment would vote for final passage of this bill. The need to protect religious freedom and the rights of all citizens is real and important. This bill can still be modified in the Senate, in the conference committee, and Members can make their final decision on passage at that time. But the principle of protecting religious freedom in my opinion is too important to delay.

Mr. Speaker, no bill is perfect. I do not suggest this bill meets that impossible standard. But I believe the Religious Liberty Protection Act deserves our support because it protects the fundamental principle that government must have compelling reason to limit the religious rights of individual citizens. I can find few reasons more compelling to support any legislation before this House.

Mrs. MYRICK. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. BLUNT).

Mr. BLUNT. Mr. Speaker, I rise in support of this rule and of the legislation and certainly in support of the remarks just made by the gentleman from Texas (Mr. EDWARDS) that were so well said in this area.

This is clearly an area that needs protection. It is an area where local government constantly in the recent years have fought in the face of what we consider to be First Amendment rights. A small church in Florida was ordered to stop its feeding ministry for feeding the homeless.

In Greenville, South Carolina, home Bible study was banned in communities that could still have at the exact same locations Tupperware parties. When the Bible study was banned, the courts did not allow Tupperware parties there is some significant violation of the First Amendment there.

A family in Michigan was tried under state statute and then they were found guilty of child abuse because of what they taught their children at home for religious reasons and did not have certification. In Philadelphia, Pennsylvania,
Christian day care centers were threatened with closure if they did not change their hiring practices which barred denominational hiring of non-Christians, but these were Christian day care centers.

In Douglas County, Colorado, officials tried to limit the operational hours of churches. A local community college required a loyalty oath that made it impossible for Jehovah witnesses whose faith instructs against taking such oaths to go to work at that facility. Certain fire and police stations promulgate a blanket of no beards rules which interferes withAmong other groups, Muslim firefighters.

Mr. Speaker, these infringements on religious liberty are significant. They are not pervasive yet, but they are certainly present. The bill allows churches in places like Rolling Hills Estates, California, to build in an area that was zoned commercial where the churches are told they cannot build if they want to, but adult businesses and adult massage parlors can be built in this same area of that community.

The RLPA would allow an orthodox Jewish community to build their houses of worship within walking distance of their neighborhoods. It would allow prison ministries, which have had such a great impact all over the country, to continue to do efforts and prison programming that are currently threatened. This would also deal with the question of land-use regulation that so affects religious practice in communities today.

Mr. Speaker, I would like to enter into the RECORD, as I conclude my comments in support of this rule, I would like to enter into the RECORD a list that is even more inclusive than the list that was just referred to by the gentleman from Texas of religious groups that really cover a broad, broad spectrum of religious activity and associations in this country who are in favor of H.R. 1691, and I am sure would also encourage the passage of this rule so we can get on to this important debate.

Mr. Speaker, I urge my colleagues to support this. It is bipartisan and I hope that we can move it and get back to some of the other issues that are before Congress.

Mrs. MYRICK. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Speaker, I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me this time.

Mr. Speaker, I rise in support of the rule on H.R. 1691 and also for the subsequent legislation. What this legislation attempts to do is put some common sense in the murky waters of the First Amendment regarding the separation of church and state. And we can say, well, it is right to be crystal clear. But that water is murky, and it will remain murky.

Mr. Speaker, a couple of examples: we all remember the debate several years ago about nursing homes that receive Medicare not being able to have in their advertising in the Yellow Pages religious symbols if they have a religious, faith-based organization that supports the nursing home. If they want to use a cross in the Yellow Pages, that is a violation.

The prayer-in-school issue, and this does not really affect these directly, but I am trying to prove a point about the murky water. Should kids be allowed to pray in school, non-denomination school prayer? There have been lots of cases on this, but let us look at the case of Littleton, Colorado. If a teacher were huddled in the classroom while gun shots were outside the door and in a room safely with kids and that teacher said, “Can we bow our heads and say a prayer,” as the shots were fired outside the door, they are not allowed to do that.

Mr. Speaker, the point is there is murky water in the question of religion, prayer, and the role of the State. And what this does in a narrowly defined area, and that area which was really opened up by the Employment Division versus Smith decision in 1990, it simply tries to put some common sense into it by saying that the local laws of the State cannot interfere with religious beliefs.

I think it is a very small step. It is a very carefully balanced bill. It is crafted. It is, in terms of public prayer, a significant public religion-type bill at all. This again is just a very slight adjustment and it tries to put common sense in it.

Mr. Speaker, I urge my colleagues to support this. It is bipartisan and I hope that we can move it and get back to some of the other issues that are before Congress.

Mrs. MYRICK. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Florida (Mr. CANADY), the subcommittee chairman.

Mr. CANADY of Florida. Mr. Speaker, I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me this time. And I thank all the members of the Committee on Rules for their bipartisan support for the rule that is before the House now. I would particularly like to also thank the gentleman from Texas (Mr. EDWARDS) for
his leading role in sponsoring this legislation.

Mr. Speaker, I want to respond very briefly to a point that the gentleman from Texas (Mr. PAUL), my good friend, raised concerning our government being a government of enumerated powers. I certainly agree with him on that point and this bill is by no means inconsistent with the principle that we are a government of enumerated powers.

Indeed, this bill is carefully drafted with that principle in mind and is carefully based on specific enumerated powers of the Congress which are set forth in the United States Constitution.

In using the enumerated powers that are in this bill, we are following well-established tradition with respect to the use of those same powers to protect civil rights other than the free exercise of religion.

We use the commerce clause in this bill to protect the free exercise of religion. That same power is used in the 1964 Civil Rights Act to protect against discrimination in employment and public accommodations.

We use the spending clause in this bill to protect against the infringement of religious freedom. That same power is used once again in the 1964 Civil Rights Act under title VI of that Act to prevent discrimination in programs at the State and local level, which receive Federal funds.

We also use section 5 of the 14th amendment, which was used previously in the civil rights context to protect voting rights. So we are following in a well-established tradition of protecting civil rights using enumerated powers of the Congress under our Constitution.

This bill is carefully crafted. I want to thank the Members of the Committee on Rules for bringing forward a rule which allows for the consideration of this bill, and I urge all Members to support the rule and to support the bill on final passage without amendment.

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. CONYERS), the ranking member of the committee.

Mr. CONYERS asked and was given permission to revise and extend his remarks.

Mr. CONYERS. Mr. Speaker, I want to thank the distinguished gentleman from Massachusetts (Mr. MOAKLEY), the ranking member of Committee on Rules, for granting me this time.

Religious freedom has been one of the cornerstones of American democracy, of course, since our founding. Like the Members of this body, I believe all of them, and I believe all are committed to preserving religious freedom.

So we have before us today, first of all, we have a rule which I am in support of, but the bill, well-intentioned as it is, may cause far more harm than good. Because, instead of limiting religious discrimination, it will allow for an increase in other forms of discrimination. Instead of enhancing constitutional protections, it may very well run afoul of the Constitution itself.

I would like to take a moment or two to explain this. A letter came to me from the American Civil Liberties Union that started out working with a coalition supporting this bill. It was a multiracial, multireligious. But now the Religious Liberty Protection Act is being opposed by the Civil Liberties organization because it does not include explicit language ensuring that the language will not undermine the enforcement of civil rights laws.

The Congress should not break from its long-standing practice, they say, of refraining from undermining or pre-empting State civil rights laws that are more protective of civil rights sometimes than even Federal law.

So the opposition by the Civil Liberties organization is, unless this bill is corrected and amended to protect civil rights organizations, I think the substitution of the gentleman from New York (Mr. NADLER) would accomplish this, we would have a very serious problem.

The Civil Liberties Union goes on to say that,

We are no longer a part of the coalition supporting the Religious Liberty Protection Act because we could not ignore the potentially severe consequences that it may have on State and local civil rights laws. And although we believe that courts should find civil rights laws compelling and uniform enforcement to the least restrictive means, we know that at least several courts have already rejected that position.

We have found that landlords across the country have been using State religious liberty claims to challenge the application of State and local civil rights laws protecting persons against marital status discrimination.

Now, none of these claims involve owner-occupied homes. The landlord-owned multiple investment properties that were outside of the State laws exemptions for small landlords. These landlords are companies, national. And all sought to turn the shield of religious liberty protection into a sword against civil rights prospective tenants.

So, Mr. Speaker, we want to consider an alternative, an improvement, if possible, to this measure. Without this improvement, I think this is a serious regression in both religious liberty and in civil rights protections as well.

Remember, if you will, that a measure that will lead to an increase in discrimination, because whenever a party is sued for discrimination, this bill will allow in effect, the religious liberty defense, it will in effect allow a defendant to say, I have discriminated because my religion allowed me to do it. My religion made me do it.

This is a right no other citizen or government can assert. So the bill is so sweeping that this new defense will not only apply to religious institutions themselves but to companies and corporations as well.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I am very pleased to hear all of the speakers today say they are in support of the rule. This is a fair rule, and I urge all of my colleagues to do the same.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered. The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. CANADY of Florida. Mr. Speaker, pursuant to House Resolution 245, I call up the bill (H.R. 1691) to protect religious liberty, and ask for its immediate consideration.

The Clerk read the title of the bill. The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Pursuant to House Resolution 245, the bill is considered read for amendment.

The text of H.R. 1691 is as follows:

H.R. 1691
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 Liberty Protection Act of 1999."

SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.
(a) General Rule.—A government shall provide in subsection (b), a government shall not substantially burden a person's religious exercise.

(1) in a program or activity, operated by a government, that receives Federal financial assistance;

(2) in any case in which the substantial burden on the person's religious exercise affects, or in which a removal of that substantial burden would affect, commerce with foreign nations, foreign nations, or Indian tribes;

even if the burden results from a rule of general applicability.

(b) Exception.—A government may substantially burden a person's religious exercise if the government demonstrates that application of the burden to the person—

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

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

(c) Remedies of the United States.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this Act.

Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or the United States or any agency, officer, or employee thereof under other law, including section 4(d) of this Act, to institute or intervene in any action or proceeding.

SEC. 3. COMPLIANCE WITH CONSTITUTIONAL RIGHTS.
(a) Procedure.—If a claimant produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of a provision of this Act enforcing that clause, the government shall bear the burden of persuasion on any element of the claim; however, the claimant shall bear the burden of persuasion on whether the challenged government practice, law, or regulation burdens or substantially burdens the claimant's exercise of religion.

(b) Land Use Regulation.—

(1) Limitation on Land Use Regulation.—

(A) Where, in applying or implementing any land use regulation or exemption, or system of land use regulations or exemptions, a government has the authority to make individualized assessments of the proposed uses
to which real property would be put, the government may not impose a substantial burden on a person's religious exercise, unless the government demonstrates that the application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

(B) No government shall impose or implement a land use regulation in a manner that does not treat religious assemblies or institutions on equal terms with nonreligious assemblies or institutions.

(C) A State shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(D) No government with zoning authority shall unreasonably exclude from the jurisdiction over which it has authority, or unreasonably limit within that jurisdiction, assemblies or institutions principally devoted to religious exercise.

(2) FULL FAITH AND CREDIT.—Adjudication in this section shall be governed by the general rules of standing under article III of the Constitution.

(b) ATTORNEYS' FEES.—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by inserting "the Religious Liberty Protection Act of 1996," after "Religious Freedom Restoration Act of 1993;" and

(2) by striking the comma that follows a comma.

(c) PRISONERS.—Any litigation under this Act in which the claimant is a prisoner shall be subject to the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(1) in paragraph (1), by striking "a State, or subdivision of a State" and inserting "a covered entity or a subdivision of such an entity";

(2) in paragraph (2), by striking "term," and all that follows through "includes" and inserting "term 'covered entity' means"; and

(3) in paragraph (4), by striking all after "means, and inserting "conduct that constitutes 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. As used 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 subdivision of a State" and inserting "a covered entity or a subdivision of such an entity";

(2) in paragraph (2), by striking "term," and all that follows through "includes" and inserting "term 'covered entity' means";

(b) EFFECT ON OTHER LAW.—In a claim filing in this section shall be construed to authorize the use of real property for religious exercise, or by any other means that eliminates the substantial burden.

(c) CONFORMING AMENDMENT.—Section 2(a)(3) of this Act, proof that a substantial burden on a person's religious exercise, or removal of that burden, affects or would affect commerce, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any other law.

(d) AUTHORITY OF UNITED STATES TO ENFORCE.—Nothing in this Act shall be construed to authorize the United States, or any person acting under color of law, to so regulate or affect, commerce with foreign nations, the non-Federal forum.

SEC. 8. DEFINITIONS.

As used in this Act—

(1) the term "religious exercise" means conduct of a religious nature that constitutes an exercise of religion under the first amendment to the Constitution; however, such conduct need not be compelled by, or central to, a system of religious belief; the use, building, or converting of real property for religious exercise shall itself be considered religious exercise of the entities that intend to use the property for religious exercise;

(2) the term "Free Exercise Clause" means the portion of the first amendment to the Constitution that prohibits Congress from enacting any law that would affect, commerce with foreign nations, among the several States, or with Indian tribes; even if the burden results from a rule of general applicability.

(b) EXCEPTION.—A government may substantially burden a person's religious exercise if the government demonstrates that application of the rule to the person would affect, commerce with foreign nations, among the several States, or with Indian tribes; even if the burden results from a rule of general applicability.

(c) REMEDIES OF THE UNITED STATES.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this Act. However, nothing in this subsection shall be construed to deny, impair, or
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otherwise affect any right or authority of the Attorney General or the United States or any agency, officer, or employee thereof under other law, including section 4(d) of this Act, to institute or intervene in any action or proceeding.

SEC. 5. ENFORCEMENT OF CONSTITUTIONAL RIGHTS.

(a) Procedure.—If a claimant produces prima facie evidence of the claims alleged to support a violation of the Free Exercise Clause or a violation of a provision of this Act enforcing that clause, the government shall bear the burden of persuasion as to any element of the claim; how­ever, the claimant shall bear the burden of persua­sion on whether the challenged government practice, law, or regulation burdens or substan­tially burdens the exercise of religion.

(b) Land Use Regulation.—

(1) LIMITATION ON LAND USE REGULATION.—

(A) Where, in applying or implementing any land use regulation or exemption, or system of land use regulations or exemptions, a government has the authority to make individualized assessments of the proposed uses to which real property may be put, the government may not impose a substantial burden on a person’s reli­gious exercise, unless the government demon­strates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental inter­est.

(B) No government shall impose or implement a land use regulation in a manner that does not treat religious assemblies or institutions on equal terms with nonreligious assemblies or institutions.

(2) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of the Free Exercise Clause or this subsection in a non-Federal forum shall be entitled to full faith and credit in a Federal court only if the claimant has a full and fair adjudication of that claim in the non-Federal forum.

(3) NONPREEMPTION.—Nothing in this sub­section shall preempt State law that is equally or more protective of religious exercise.

(c) Prisoners.—Any litigation under this Act in which the claimant is a prisoner shall be sub­ject to the Prison Litigation Reform Act of 1995.

(d) Other Authority to Impose Conditions on Funding Unaffected.—Nothing in this Act shall preempt State law that is equally or more protective of religious exercise, unless the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

(e) Effect of Other Law.—In a claim under section 2(a)(2) of this Act, proof that a substantial burden on a person’s religious exercise, or removal of that burden, affects or would affect commerce, shall not be sufficient to preclude application of the Free Exercise Clause.

(f) Severability.—If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of the Act or amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

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. As used in this section, the term “government,” used with respect to government funding, benefits, or exemptions, includes the States, and any person acting under color of State law; and

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) by striking “(a) the Religious Liberty Protection Act of 1993,”; and
(2) by striking the comma that follows a semicolon.

(b) Authority of United States to Enforce This Act.—The United States may sue for injunctive or declaratory relief to enforce compliance with this Act.

(c) Prisoners.—Any litigation under this Act in which the claimant is a prisoner shall be sub­ject to the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(d) Authority of United States to Enforce This Act.—The United States may sue for injunctive or declaratory relief to enforce compliance with this Act.

SEC. 8. RULES OF CONSTRUCTION.

(a) Religious Belief Unaffected.—Nothing in this Act shall be construed to affect any right or authority of any government to burden any religious belief.

(b) Religious Exercise Not Regulated.—Nothing in this Act shall create any basis for restric­tion or burdening religious exercise or for claims against a religious organization, includ­ing any religiously affiliated school or univer­sity, not acting under color of law.

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

(d) Other Authority to Impose Conditions on Funding Unaffected.—Nothing in this Act shall—

(1) authorize a government to regulate or af­fect, directly or indirectly, the activities or poli­cies of a person other than a government as a condition of receiving funding or other assist­ance; or
(2) restrict any authority that may exist under other law to so regulate or affect, except as pro­vided in this Act.

(2) Limits on Federal Government Action.—Nothing in this Act shall preempt State law that is equally or more protective of religious exercise; and (B) any conduct protected as exercise of religion under the first amendment to the Constitution; “Free Exercise Clause” means that portion of the first amendment to the Con­stitution that proscribes laws prohibiting the free exercise of religion and includes the appli­cation of that provision under the 14th amendment to the Constitution.

(3) The term “land use regulation” means a law or decision by a government that limits or restricts any private person’s uses or development of land, or of structures affixed to land, where the law or decision applies to one or more par­ticular parcels of land or to land within one or more designated geographical areas; and where the private person has an ownership, leasehold, easement, servitude, or other property interest in the regulated land, or a contract or option to acquire such ownership or other property interest.

(4) The term “program or activity” means a program or activity as defined in section 2(a) or 2(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2).

(5) The term “demonstrates” means meets the burdens of going forward with the evidence and of persuasion on whether the challenged government action, or the effect of such action, substantially burdens religious exercise.

(6) The term “government”—

(A) means—

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

(ii) any branch, department, agency, instrumentality, subdivision, or official of an entity listed in clause (i); and

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

(B) for the purposes of sections 3(a) and 5, in­cludes the United States, a branch, department, agency, instrumentality or official of the United States, and any person acting under color of Federal law.

The SPEAKER pro tempore. After 1 hour of debate on the bill, as amended, it shall be in order to consider the further amendment printed in the Congres­sional Record if offered by the gentleman from Michigan (Mr. Conyers) or his designee, which shall be considered read and debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Florida (Mr. Canada) and the gentleman from Michigan (Mr. Conyers) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. Canada).

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker. H.R. 1691, the Religious Liberty Protection Act, is legislation designed to ensure that the free exercise of religious belief is not trampled on by the insensitive and heedless actions of government. It is supported by a broad coalition of more than 70 religious and civil rights groups, ranging from the Christian Coalition and Campus Cru­sade for Christ to the National Council
of Churches and People for the American Way.

This legislation has been introduced and is now being considered by the House because the Supreme Court has taken, as Professor Douglas Laycock has aptly described it, "the cramped view that one has a right to believe a religion, and a right not to be discriminated against because of one's religion, but no right to practice one's religion."

The purpose of this bill is to use the constitutional authority of the Congress to help ensure that people do have a right, respected by government at all levels, to practice their religion. The supporters of the bill recognize that the free exercise of religion has been a hallmark of the American system of constitutional government and that Congress has a responsibility to protect the free exercise of religion to the maximum extent practicable.

In considering the need for this legislation, it is important to understand that, at least in some respects, protection for religious liberty in America does remain strong. The Supreme Court has recognized that governmental actions which target religion for adverse treatment by governmental actions under neutral government may not substantially burden a person's religious exercise.

In response to widespread public concern regarding the impact of the Smith decision, the Congress in 1993 passed the Religious Freedom Restoration Act, frequently referred to as RFRA. This legislation sought to require application of the compelling interest/least restrictive means test to governmental actions that substantially burden religious exercise.

RFRA was based in part on the power of Congress under section 5 of the 14th amendment to enforce, by appropriate legislation, the provisions of the 14th amendment as they apply to the States. The provisions of the first amendment are applied to the States by virtue of the 14th amendment.

The Supreme Court in 1997 in the City of Boerne versus Flores case held that Congress had gone beyond its proper powers under Section 5 of the 14th Amendment in enacting RFRA.

The Religious Liberty Protection Act, which is before the House today, approaches the issue of protecting free exercise of religion in fact; it is not subject to the same challenge that succeeded in the Boerne case.

The heart of the bill, which is now before the House, is in Section 2, where the general rule is established that government may not substantially burden a person's religious exercise even if there is a compelling interest. The general rule applies unless the government demonstrates that application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. As I have noted, the same test was adopted by Congress in the Religious Freedom Restoration Act, and a similar compelling interest test was applied by the Supreme Court for many years until it was abandoned by the court in 1990.

As set forth in Section 2, this general rule is applicable in two distinct contexts. First, it applies where a person's religious exercise is burdened "in a program or activity operated by the government that receives Federal financial assistance." This provision closely tracks title VI of the Civil Rights Act of 1964, which prohibits discrimination on the ground of race, color, or national origin under "any program or activity receiving Federal financial assistance."

Second, the general rule under Section 2 is applicable where the burden on a person's religious exercise affects interstate commerce, or where the removal of the burden would affect interstate commerce. As with the provision on Federal financial assistance, this provision follows in the tradition of the civil rights laws. It uses the commerce power to protect the civil right of religious exercise as the Civil Rights Act of 1964 uses the commerce power to protect discrimination in employment and public accommodations.

The provisions of the bill requiring application of the compelling interest/least restrictive means test are based on the conviction that government should accommodate the religious exercise of individuals and groups unless there are compelling reasons not to do so.

Application of this test will not mean that a religious claimant will necessarily win against the government. And that is a very important point to remember. Indeed, in a great many cases the government will be able to establish that it has acted on the basis of a compelling interest using the least restrictive means, and thus justify the burden it has imposed on the free exercise of religion.

Under the test provided for in the bill, however, the religious claimant will not automatically lose because the burden on the free exercise of religion is imposed by a neutral law of general applicability. The mere absence of an intention to persecute the religious claimant will not be sufficient to justify the governmental action.

Section 3 of the bill contains additional safeguards for religious exercise. The provisions in Section 3 are remedial measures designed to prevent the violation of the bill's substantive protections that will not be subject to the same challenge as those in Section 2.

In 1964, the Supreme Court in Employment Division v. Smith held that governmental actions under neutral laws of general applicability, which is laws that do not target religion for adverse treatment, are not ordinarily subject to challenge under the free exercise clause, even if they result in substantial burdens on religious practice. Prior to the Smith decision, the Court had for many years recognized, as the Court said in 1972 in Wisconsin v. Yoder, that a "regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise of religion."

Yoder was a case that dealt with the adverse impact of a compulsory school attendance law on the religious practices of the Amish. It did not involve circumstances in which government had targeted religion for adverse treatment.

In Yoder, the Court explained that the "essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to a free exercise of religion."

As Justice Kennedy, writing in 1993, stated: "Legislators may not determine that the interest is greater than the 'interest in accommodating the religious exercise of citizens' that is to be protected "in the maximum extent practicable."

The shorthand description of the standard applied in Yoder and similar cases is the compelling interest/least restrictive means test.

The provisions of the bill are applicable to the States by virtue of the 14th amendment.
pattern well documented in the hearings of the Subcommittee on the Constitution of the Committee on the Judiciary, of discriminatory and abusive treatment suffered by religious individuals and organizations in the land-use context.

These limitations include a provision requiring application of the compelling interest/least restrictive means test "when the government has the authority to make individualized assessments of the proposed uses to which real property will be put."

This provision allows the principle articulated by the Supreme Court in the Smith case that "where the State has in place a system of individualized determinations or individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason."

Under Subsection (b), land-use regulations must treat religious assemblies or institutions on equal terms with nonreligious assemblies or institutions and must not "discriminate against any assembly or institution on the basis of religion or religious denomination." In addition, a zoning authority may not "unreasonably limit" or "unreasonably exclude" assemblies or institutions principally devoted to religious exercise.

I would like to make a comment about the impact of this bill on local land use. The impact of this bill on local land use will be the same as the impact that was intended by the Religious Freedom Restoration Act. So there is no real difference between the purpose of this bill with respect to land use and the Religious Freedom Restoration Act, which the Congress passed with an overwhelming vote of support.

It is important to understand that we should not casually interfere with local land-use decisions, but I believe that where fundamental rights are at stake, the Federal Government does have an important role to play. And based on the record of abuse that we have seen in this particular context, I believe that the actions that we would take under this bill to protect the free exercise of religion in the local land-use context are very well justified.

I would point out that those particularly who are committed to using Federal power to protect property rights against local land-use decisions, will be the same as the impact that was intended by the Religious Freedom Restoration Act.

Finally, in summarizing the bill, let me point out that the bill amends the Religious Freedom Restoration Act of 1993 to conform with the holding of the Supreme Court in the Boerne case.

This provision of the bill recognizes the legal reality that after Boerne the courts will apply RFRA solely to the Federal Government and not to the States.

Now, I have discussed the legal concepts involved in this legislation, but I should also mention some examples of the types of cases where the enforcement of neutral rules of general application may be challenged under the bill. We have heard some reference to such examples already, but let me cite to the Members of the House a catalogue of cases that Professor Michael McConnell has gathered. These are cases which were decided under RFRA before the Boerne decision.

While RFRA was on the books, successful claimants included a Wash-ington, D.C. church whose practice of feeding a hot breakfast to homeless men and women reportedly violated zoning laws; a Jehovah's Witness who was denied employment for refusing to take a loyalty oath; the Catholic University of America, which was sued for gender discrimination by a canon-law professor denied tenure; a religious school resisting a requirement that it hire a teacher of a different religion; a Catholic prisoner who was refused permission to wear a crucifix; and a church that was required to disgorg the tithes contributed by a congregant who later declared bankruptcy.

The same sorts of cases would be affected by this legislation.

"Mr. Speaker, the goal of protecting the ability of Americans freely to practice their religion according to the dictates of conscience is deeply rooted in our experience as a people. James Madison wrote of his "particular pleas-ure" in the immunity of religion from civil jurisdiction in every case where it does not trespass on private rights or the public peace."

"As Professor McConnell has written: "Accommodations of religion in the years up to the framing of the First Amendment were frequent and well-known. For the most part, the largely Protestant population of the States as of 1789 entertained few religious tenets in conflict with the civil law; but where there were conflicts, accommodations were a frequent solution."

"The best known example of accommodation from that period is the exemption from military conscription granted by the Continental Congress to members of the peace churches. In the midst of our great struggle for inde-pendence as a Nation, the Continental Congress passed a resolution to grant the exemption from conscription, ob-liging the people, who, from religious principles, cannot bear arms in any case, this Congress intends no violence to their consciences."

"The purpose of avoiding government action that does violence to the consciences of individuals is based on the understanding that there are claims on the individual which are prior to the claims of government."

"This understanding finds expression in Madison's Memorial and Remonstrance Against Religious Assessments. Madison there wrote: "It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent in order of time and degree of obligation, to the claims of civil society. Every man who becomes a member of any particular Civil Society, must do it with a saving of his allegiance to the Universal Sovereign."

In the Christian tradition, the principle of prior allegiance is eloquently summed up in the words recorded in the Book of Acts of Peter and the other apostles who, when ordered to cease their preaching, responded by saying, "We must obey God rather than men."

A government based on the idea of liberty must not turn a deaf ear to such claims of conscience. The government of a people who love freedom must not heedlessly enforce requirements that do violence to the consciences of those who seek only to "render to the Creator such homage" as they believe to be acceptable to him. So long as they do "not trespass on private rights or the public peace," Americans should be free to practice their religion without interference from the hands of government. That is the sole purpose of the Religious Liberty Protection Act. Let this House today show that we respect the rights of conscience and honor the principles of liberty, just as the Continental Congress did more than two centuries ago. I urge the Members of the House to support this bill, to reject the substitute amendment which would weaken the bill, and move forward with the goal of protecting religious liberty for all Americans.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield some time as he may consume to the gentleman from New York (Mr. NAD-LER), who has worked very diligently on this measure.

Mr. NADLER. Mr. Speaker, the bill we have before us today is a good and important bill, and I worked with the gentleman from Florida (Mr. CANADY) and others prior to its original introduction.

I want to associate myself with the remarks of the gentleman from Florida, and I agree with every word he said about the necessity for this bill and about its drafting. Unfortunately, this bill needs to be amended to ensure that while it acts as a shield to protect the fundamental religious rights of all Americans, it cannot be used as a sword to do violence to the rights of others.

I will be offering an amendment in the nature of a substitute later today which will consist of the exact language that I have proposed in a provision that would ensure that the appropriate balance between competing rights is struck.

With that change, I would hope that every Member of this House would support this important legislation. And I hope that if my amendment is adopted, my colleagues will do so. Without the amendment, unfortunately, the bill carries with it a fatal flaw threatening
to undermine existing civil rights protections, Mr. Speaker. And I would urge my colleagues in that case to vote against the bill in order to increase the odds that the bill will be properly amended either in this House or in the Senate. It is a very difficult stand for me to take. As many of my colleagues know, I worked very hard for passage of the original Religious Freedom Restoration Act, or RFRA, in 1993. Since the Supreme Court decision declaring RFRA unconstitutional, I have worked hard to undo the damage the Supreme Court has repeatedly inflicted on our first freedom.

Correct legislation of this sort has been, since the Supreme Court’s infamous decision in Employment Division versus Smith 8 years ago, one of my top priorities. So I want my colleagues to know it with great sorrow I contemplate the possibility that I might have to vote against the legislation which addresses a problem that is very dear to my heart.

Religious freedom is in peril because of the rulings set down by the court in Smith. Under that rule, facially neutral, generally applicable laws, having the incidental effect of burdening religion, are no longer tested by the First Amendment.

This is unacceptable. The Committee on the Judiciary, in its hearings on this legislation, received more than ample evidence that religion has suffered under the court’s new rule and that, by following the indication of Justice Scalia for the political branches to deal with conflicts between law and faith, religious liberty has not fared very well at all.

This bill attempts to restore the protection of free exercise of religion which the Supreme Court has deprived us but does so at the cost of creating a new rule to the endowment of State and local civil rights laws prohibiting discrimination on the basis of gender, marital status, disability, sexual orientation, having or not having children, or any other innate characteristic.

The bill as drafted would enable the CEO of a large corporation to say, ‘My religion prohibits me from letting my corporation hire a divorced person or a disabled person or a mother who should be at home with her children and not at work or a gay or lesbian person and my religion prohibits me from letting my hotel or my motel room to any such people. And we needn’t the States’ civil rights laws that prohibit that kind of discrimination.

If this bill passes in its current form, many conservatives will say that the State does not have a compelling interest in enforcing their laws against these kinds of discrimination and that discrimination will go on despite the laws because of this bill.

It is not right, Mr. Speaker, to abrogate the civil rights of many Americans in order to protect the religious liberty of other Americans; and it is not necessary to do so.

Thankfully, we do not face such a stark choice between religious liberty and civil rights. We can protect the religious liberty of all Americans without threatening the civil rights of any Americans. And that is what my amendment in the nature of a substitute will do.

So I will urge my colleagues to support the amendment that I will introduce later when I introduce it in greater detail, and, if it is adopted, to support what will then be an excellent and very important bill.

But if the amendment is not adopted, I will unhappily urge my colleagues to vote against the bill in its current form in order to increase the likelihood that the bill will be properly amended either in the House or in the Senate.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I merely wanted to commend the gentleman on his statement. It is a very courageous statement, and it is also a very well thought out statement from a constitutional point of view. I thank him very much for his contribution.

Mr. NADLER. Mr. Speaker, reclaiming my time, I appreciate the comments of the distinguished ranking member of the committee.

Mr. Speaker, I will address this issue further when we get to the substitute.

At this time, let me simply reiterate, the bill, except for its effect on civil rights laws, its potential effect, is a necessary and important bill. I hope we can amend it to get rid of this one but, unfortunately, fatal flaw so that we can really protect the religious liberties of all Americans without threatening the civil rights of any Americans.

Mr. CANADY of Florida. Mr. Speaker, I yield 3 1/2 minutes to the gentleman from Arkansas (Mr. HUTCHINSON), a member of the Committee on the Judiciary.

Mr. HUTCHINSON. Mr. Speaker, I thank the gentleman for yielding me the time.

I want to first respond to the gentleman from New York (Mr. NADLER), who has done an outstanding job of raising concerns about this bill. But this bill has been heard in subcommittee and in full committee, and those concerns have been addressed by the constitutional scholars, and I believe that it is not going to be the problems that have been addressed and expressed by the gentleman from New York.

This bill has broad bipartisan support, and I think that that is important as we move through this process. I want to congratulate the chairman of the Subcommittee on the Constitution, the gentleman from Florida (Mr. CANADY), who has done such an outstanding job in studying and providing leadership on this issue. He certainly has given the justified expression in this Congress that he is a constitutional scholar.

If we look at the history as to how we got here today, Congress enacted the Religious Freedom Restoration Act in 1993 to enforce the constitutional guarantees of free exercise of religion.

The Act codified a balancing test that had been applied by the court in 1990. Under this test, the government could restrict a person’s free exercise of religion only if it is established that this amount of action is necessary to further a compelling governmental interest and it is the least restrictive means of achieving that governmental interest.

Unfortunately, on June 25 of 1997, in the Burn decision, the Supreme Court struck down the law as it applied to the State but left open the opportunity for Congress to accomplish the same protections but in a different way.

For the last 2 years, the Committee on the Judiciary Subcommittee on the Constitution has been setting legislative HOLDING hearings, listening to constitutional scholars, and we learned clearly that the law is necessary to protect the religious freedoms promised by the Constitution.

The legislation before us today strikes a good balance between providing much-needed protection while not exceeding the limitations on Federal power set forth in the Constitution.

The development of this legislation is an example of how legislation should be developed in Congress. We pass legislation. The Supreme Court addresses it. We come back. We try to do it and answer the concerns of the Supreme Court. We hold the hearings. We listen to the constitutional scholars. It has been done in the right way under the Constitution, the legislative process. And we have learned why it is necessary.

It is necessary to make sure that a small church is able to continue its Ministry to the homeless. It is necessary to make sure that home churches may continue to meet. It is necessary to make sure that prisoners are able to participate in Holy Communion. It is necessary to make sure that people of faith are not discriminated against in government employment. It is necessary to make sure that localities do not limit the number of students who may attend a religious school. It is necessary to make sure that Jewish boys are not prohibited from wearing yarmulkes at school. And it is necessary to make sure that Jewish boys are not prohibited from wearing yarmulkes at school. And it is necessary to make sure that Jewish boys are not prohibited from wearing yarmulkes at school. And it is necessary to make sure that Jewish boys are not prohibited from wearing yarmulkes at school.
Mr. Speaker, we are confronted with a very unusual situation here that, unless we put the legislation that we handled in 1993, which was passed by a voice vote, and of course many Members now present were not in the House at that time, it is important that Congress not on the Committee on the Judiciary at that time, into perspective, we may miss what is attempted to be done here.

The Court rendered part of that law invalid. They rendered the part that deals with State and local civil rights laws invalid, that it did not apply to them.

What this measure is doing is coming back and getting the other part of it. And so, this is part of a one-two punch in which we are now doing something incredible if we look at it in the broader context.

We have already put restrictions on Federal civil rights laws as a result of the 1993 case, and now we are coming back to get the part that escaped the court's criticism. That is why the leading civil rights litigation organization in the United States, the NAACP Legal Defense and Educational Fund, which has sent, sent me a strong letter explaining why they cannot support this measure.

In addition, the American Civil Liberties Union, probably the second-most active litigating organization, has also indicated their strong reservations about this measure in its present form. I would just give my colleagues a part of the reasoning of Director Counsel General Elaine Jones of LDF's letter to me that indicates why they urged Members not to succumb to this bill, as enticing as it may be, without some correction.

Defendants in discrimination cases brought under State or local fair housing, employment laws may seek to avoid liability by claiming protection under the Religious Liberty Protection. This would require individuals proceeding under such state and local antidiscrimination laws to prove that the law they wish to utilize is a least restrictive means of furthering a compelling governmental interest. This requirement would significantly increase the litigation time and expense of pursuing even workday anti-discrimination laws to prove that the law in question is a compelling governmental interest. The Court would create an additional burden for plaintiffs attempting to vindicate their civil rights.

For these reasons, LDF asks that you oppose RLPA, which may be used as a mechanism to limit African Americans and other minorities from proceeding under state and local laws that prohibit discrimination in a wide range of areas.

Sincerely,

ELAINE R. JONES
Director-Counsel.

REEF COLFAX,
Assistant-Counsel.

EXAMPLES OF UNINTENDED AND ADVERSE CONSEQUENCES FROM ENACTMENT OF H.R. 1691, THE "RELIGIOUS LIBERTY PROTECTION ACT"

1. Knives in schools. Pursuant to its policy prohibiting possession of any weapons on school property, the school district forbade Sikh elementary school children to wear kirpans—seven-inch, ceremonial knives that are required by their religion. Pursuant to the "Religious Freedom Restoration Act," the Sikhs filed suit and moved for a preliminary injunction barring the district from applying its no-knives policy to ban the possession of kirpans at school. The court required the school district to permit the children to wear the knives if the knives were banded in their scabbards. See Cheema v. Thompson, 36.F.3d 1102 (9th Cir. 1994).

2. Sexual abuse. In Arizona, a Waco-style cult operated which he alleged sexual abuse of a 13-year-old girl as part of the Wiccan religion. The open question is what is the least restrictive means of dealing with religious conduct that results in sexual abuse or statutory rape. Although the state may have a compelling interest in preventing sexual abuse or statutory rape, conviction and incarceration may not be the least restrictive means of dealing with such individuals.

3. Refusal to pay child support. A member of the Northeast Kingdom Community Church—which requires members to eschew all their personal possessions and work for the benefit of the Community and forbids the accumulation of personal property and personal credit cards or children who live outside the community—was found in contempt of court; for failure to comply with an order to pay child support.
He alleged that both the finding of contempt and the court's order granting temporary restraining order violated his religious rights. The court vacated the judgment of contempt and remanded the cause for a hearing as to the least restrictive means of achieving the compelling governmental interests. See Hunt v. Hunt, 162 Vt. 423 (1994).

4. Faith healing resulting in the death of a child. The mother of a child named Patrick, who is a believer in the Christian Science Religion died at age 11 from juvenile-onset diabetes following three days of Christian Science care. A medical professional who examined the child's diabetes from the various symptoms he displayed in the weeks and days leading up to his death (particularly breath with a fruity aroma). Although juvenile-onset diabetes is usually responsive to insulin, even up to within two hours of death, the Christian Science individuals who cared for the child during his last days failed to seek medical care for him—pursuant to a central tenet of the Christian Science religion. The mother argued that a wrongful death suit brought by the child's father was not the least restrictive means of serving the state's interest in the health of the child. Rather, the state interest was so great that it required the mother to report the child's illness to the authorities when death seemed imminent. The court held that the constitutional right to the free exercise of religion does not extend to conduct that threatens a child's life. See Lundman v. McKown, 530 N.W.2d 807 (Minn. App. 1995).

5. Refusal to cooperate with discovery request. A wrongful death suit alleged that the Church of Scientology is responsible for the death of an individual who died of a blood clot in her left lung after spending 17 days in the care of church staffers. The church is attempting to block discovery by contending that religious deference for the defendant's files violate the church's "sacred religious belief" that the files remain confidential and that they be retained by the church for use in a parishioner's future lives. The court ruled that the decedent's estate had the right to see her files. Upon the passage of the Florida religious freedom restoration act, the court is now reviewing this ruling. See Thomas C. Tobin, Scientologists Fight to Keep Files Secret, St. Petersburg Times, Aug. 6, 1999, at A15.

6. Conjugal visits in prison. A Roman Catholic argued that a prison regulation prohibiting confined inmates from receiving conjugal visits was a restriction on his first amendment right to free exercise of religion. The court rejected this argument because the prisoner failed to show that the prison regulation prohibiting conjugal visits for confined inmates is not rationally related to a valid penal interest. See Noguera v. Rowland, 940 F.2d 1330 (9th Cir. 1991). Under RFRA and RLRA, the court would have to show that its policy regulating conjugal visits was the least restrictive means of achieving compelling governmental ends.

7. Jewelry in prison. Wisconsin severely restricted the wearing of jewelry by jail and prison inmates. The prison regulation forbade the wearing of "items which because of shape or configuration are apt to cause a laceration if applied to the skin with force." The state rejects a a distinction between the "mark of the beast" in the biblical Book of Revelation and refused to give the DMV their numbers for applications of their driver's licenses. The court held that because religious convictions were involved, the DMV must use an alternate identification for those individuals. See John Dart, Judge Upholds Objection to "Mark of the Beast" in the biblical Book of Revelation and refused to give the DMV their numbers for applications of their driver's licenses. The court held that because religious convictions were involved, the DMV must use an alternate identification for those individuals. See John Dart, Judge Upholds Objection to "Mark of the Beast" in the biblical Book of Revelation and refused to give the DMV their numbers for applications of their driver's licenses. The court found that New York's action turned on whether the church's religious activity is a "substantial burden" and determined that there was no such burden. In other words, RFRA and RLRA open the doors to the courthouse in many cases when the religious exercise cannot meet the threshold inquiry.

10. Polygamy and abuse. A battered and bruised teenager fled from an isolated ranch to a nearby town that is used by a Utah polygamist sect as a reeducation camp for recalcitrant women and children. The husband of the girl was charged with unlawful sexual conduct stemming from the sexual relations he allegedly had with her, his fifteenth wife. See Tom Kenwoorthy, Spotlight on Utah Polygamy, Teenager's Escape from Sect Reveals Scrutiny of Practice, The Washington Post, Aug. 9, 1998, at A3. RLPA would offer the father a defense against statutory rape and polygamy.

11. Refusal to provide social security numbers to DMV. California residents contended that social security numbers served as the "mark of the beast" in the biblical Book of Revelation and refused to give the DMV their numbers for applications of their driver's licenses. The court rejected this argument because sincere religious convictions were involved, the DMV must use an alternate identification for those individuals. See John Dart, Judge Upholds Objection to "Mark of the Beast" in the biblical Book of Revelation and refused to give the DMV their numbers for applications of their driver's licenses. The court found that New York's action turned on whether the church's religious activity is a "substantial burden" and determined that there was no such burden. In other words, RFRA and RLRA open the doors to the courthouse in many cases when the religious exercise cannot meet the threshold inquiry.

12. Historic preservation. A Roman Church holds one service per week asked permission to demolish the church which is located in the historic preservation district, for the purpose of expanding. When the City Council refused permission to demolish the church in its entirety, the church filed a complaint under the Religious Freedom Restoration Act, claiming that the city's historic preservation law could not be applied to a church. The Supreme Court held that RFRA is unconstitutional. Boerne v. Flores, 117 Ct. 2157 (1997). RLPA invites churches and religious individuals to thwart and ignore all land use laws, including historic and cultural preservation laws.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska).

The Chair advises that the gentleman from Florida (Mr. CANADY) has 10 minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 20 minutes remaining.

Mr. CANADY of Florida. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. DOOLITTLE).

Mr. DOOLITTLE of California, and was given permission to revise and extend his remarks.

Mr. DOOLITTLE. Mr. Speaker, I believe that the present Smith standard sufficiently protects religious freedom and matter the mission of churches at their most fundamental level, whether it is with regard to proselytizing or to the erection of houses of worship within communities.

I commend the gentleman from Florida (Mr. CANADY) for drafting this bill, which has not been easy to do. I think he has crafted a piece of legislation which we should all support.

The Religious Liberty Protection Act addresses the serious situation caused by the "Employment Division v. Smith" decision by restoring the general rule that State or local officials may not burden a religious exercise without demonstrating a compelling governmental interest.

The legislation before us protects religious institutions by giving them their day in court if they can show that their religious freedom has suffered at the hands of a State or local government.

There is a long list of cases in which the religion freedom of Americans has been, in my opinion, unconstitutionally abridged since the 1990 Smith decision. Many of these infringements touch core religious teachings and beliefs.

Let me just briefly cite three examples. As a result of these so-called neutral laws of general applicability, a Catholic hospital has been denied State accreditation based on its refusal to instruct its residents on the performance of abortion in accordance with their strong religious objections. In New York, a religious mission for the homeless operated by the late Mother Teresa's order has been shut down because it was located on the second floor of a building without an elevator, thus violating a local building code. In Missouri, for example, a city there passed an ordinance prohibiting all door-to-door contacting and religious proselytizing on certain days of the week and indeed severely limiting the
Mr. Speaker, religious liberty is a fundamental right of all Americans and must not be trampled on by insensitive bureaucrats or bad policy. Having only to show a rational basis for such policy is no protection at all.

These incidents are increasing, and that is why we need to adopt the measure before us today, which will stay the hand of the courts on these heinous forms of enacting laws that substantially burden the free exercise of religion.

I urge my colleagues, Mr. Speaker, to join me in supporting this much-needed legislation.

Mr. CONyers. Mr. Speaker, I yield 6 minutes to the gentleman from North Carolina (Mr. WATT). I believe he is the ranking member on the subcommittee. Mr. WATT of North Carolina. Mr. Speaker, I thank my colleague for yielding me the time.

Mr. Speaker, I want to start by complimenting all the parties to this debate and on both sides.

We have been at this for a good while in the subcommittee, in the full committee and now on the floor. While I rise in opposition to this bill, I would note that many of my colleagues of all political persuasions and members of the public are supporting this bill which should give Members and the public some indication of how difficult an issue this is. My opposition to the bill is based on several different factors.

First of all, I believe this bill is of uncertain constitutionality. The earlier religious protection law that the Supreme Court struck down as having constitutional problems is addressed in this bill in tying this particular bill to the commerce clause. In effect, it gives us the jurisdiction to do what we are doing under this bill by virtue of a connection to the commerce clause. The problem with that is that it seems to me that that benefits larger, more established religions who tend to operate in interstate commerce at the expense of more localized private religious groups who tend to operate in interstate commerce. The irony of this is that many of the people who are advocating that the commerce clause should cover this kind of activity and action are the very same people that are saying that the Federal Government should stay out of a number of different things and that the commerce clause is not meant to be used to make Federal law.

I think on the commerce clause issue, while it is an ingenious way to bootstrap our way into hoping that the Supreme Court will not strike this down, I think it has its limitations and problems.

Second, this bill is of uncertain interaction with other civil rights bills and civil rights laws. I am sure that people are going to be advocating on both sides of this, either that it overrules civil rights laws or that it does not overrule civil rights laws. The truth of the matter is that we do not know. But I am concerned that many of my constituents not prepared to take a gamble with this. I do not think we can simply pass a law that could be interpreted to place religion over race or religion over other civil rights and give religion a more important place in our judicial process than we have. The irony of this is that we give just another civil rights law. I simply do not believe we can do that. I think the gentleman from New York’s amendment would address that, but I have not seen any inclination yet on the part of the supporters of this bill to be supportive of the gentleman from New York’s amendment. I want to come back to that briefly at the end of my discussions.

The third reason that I have concerns about this bill is that it will give the Federal Government substantially more control and involvement in local zoning and land use decisions. This is something that we have historically reserved to local and State governments. Yet many of the very people who have said that this is something that is sacrosanct, that should be decided at the local levels, the advocates of States rights, so to speak, are some of the people who are advocating that we now put a national standard in this bill having to do with land use decisions. I think that is a problem.

Finally, I want to address the people who continue to say, especially like my good friend the gentleman from Texas (Mr. Bonner), “We’re going to fix the concerns that we have about this bill, about civil rights and other civil rights issues, in conference,” that this consideration of this bill has been going on for a long, long time. There has been no indication that that is the problem. That is why the gentleman from New York, who was one of the original cosponsors of this bill, is now on the floor of the United States Senate offering an amendment to address the problem. That problem needs to be addressed now. Otherwise, this bill should not warrant our support.

I encourage my colleagues to oppose this bill in its current form.

Mr. CONyers. Mr. Speaker, I yield myself 1 minute to underscore a point made by the gentleman from North Carolina with reference to the commerce clause, because that has not been brought up and discussed in the fullness that he has done it. The bill is essentially a license to discriminate. The question is whether we seek to have a cover of constitutionality to protect religious liberty.

In order to invoke that clause, it seems to me that we will now have to equate religion with interstate commerce, and the Supreme Court will not strike this down, I think it has its limitations and problems.

When a bill like this was presented in Texas, an amendment was offered which exempted all legislation aimed at protecting the civil rights of individuals. What the law in Texas says is, yes, we will protect people’s rights to exercise their religion, but where we have a legislature and a governor decided that certain rights of individuals and groups are important and that certain classes of people should be protected against discrimination, we will not allow you to use religion as a license for this discrimination.

Now, that was signed into law by Governor George Bush, and I thought it made a lot of sense. We are not trying to go as far as Governor Bush. The gentleman from New York has a very thoughtful amendment which allows people to invoke religion as a means of ignoring civil rights laws. It allows, in fact, people to use their religion as a license to discriminate against discrimination. I think that is a very reasonable accommodation the gentleman has offered. He has said you do not give it to corporations, etcetera. If the amendment offered by the gentleman from New York does not pass, what we will have is a law which will say, “All you need do is invoke your religion and you can defeat many civil rights laws.”

Now, interestingly it says, “Unless otherwise provided by State laws.” Unless a State law provides that particular civil right law protects a fundamental right.” I am interested that people who describe themselves as conservative opponents of judicial activism want to so empower the judiciary, because what this bill will do absolve the amendment by the gentleman from New York, it is to say to the court, “You now have the power to decide.” There are civil rights laws at the State level. Various States have passed laws protecting different groups of people, based on religion, sex, race and the like. It does not matter whether or not you have children, based on sexual orientation. We the
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Congress will say to you the Federal courts, "Pick and choose among those. You decide which of those will have to give up their rights. And this is a Federal statute and which do not," rather than have the Federal Government decide, or emultate Texas and say, "In general the religious right will win unless it is an anti-discrimination law.

And remember, under our constitutional system, we do not want to subject individuals to some kind of inquiry when they invoke religion. So people who wish to invoke religion, people have to go to Federal court and say, "Hey Federal judge, let me ignore this law that this State passed," under this law the Federal courts will be empowered to let people pick and choose and they simply will have to say, "My religion doesn't allow it." We certainly do not want a situation where that religion is subjected to some kind of examination.

So what you will do is to tell the States, in effect, no matter what they may have decided through their own local democratic processes about protecting groups, the Congress will empower Federal courts to pick and choose among them and to say, "No" to some and "Yes" to others. I do not think that is appropriate.

While the amendment from the gentleman from New York, because he has been very accommodating in that, does not completely rule that possibility out, it substantially diminishes it and is the one thing that will save this bill.

Ms. JACKSON-LEE of Texas. Mr. Speaker. I yield myself 5 minutes.

Mr. Speaker, let me thank the ranking member and chairman of this committee. Let me also acknowledge the leadership of the gentleman from New York (Mr. NADLER) of some 10 or 12 years on this issue. I think that our presence here today should hopefully connote to those who may be listening in on this enormously important debate, and as I was reminded when we debated the flag amendment, let us not have it break down in partisan discourse but recognize that there is probably no more important right amongst others, if you will, than the free exercise of religion. And the first amendment gives us that.

And so this legislation, Mr. Speaker, is in fact needed to provide protections that have been dangerously eroded by the Supreme Court in its 1990 Employment Division v. Smith decision. We have heard the Smith decision being mentioned quite frequently because it has been the one that has upset the apple cart in terms of recognizing the importance of individuals having the personal and private right of exercising their religion. Congress attempted to remedy this by enacting on a bipartisan basis the Religious Freedom Restoration Act which the court struck down in part in its 1997 City of Boerne v. Flores decision.

H.R. 1651, the Religious Liberty Protection Act, seeks to restore the application of strict scrutiny in those cases in which facially neutral, generally applicable laws have the incidental effect of substantially burdening the free exercise of religion. In cases in which the government should not have the ability to substantially burden a right that is enshrined in constitutional premise unless it is able to demonstrate that it has used the least restrictive means of achieving a compelling State interest, such as Thomas v. Review Board.

I believe that this legislation is necessary because in the wake of the aforementioned Supreme Court decisions, religious groups in general and religious minorities in particular are no longer guaranteed the religious liberty protections of the Constitution and are more vulnerable to the danger of governmental restrictions on religious freedom.

There are numerous examples that we can find, for example, where it was partially struck down, of churches being ejected from certain neighborhoods, church soup kitchens and welfare programs being closed and prisoners having been denied basic rights to worship.

But, Mr. Speaker, I started out by saying this is an enormously important constitutional right. Why can we not have the compromise and collaboration and respect for the various interests that are here today not denying the right to the free exercise of religion but at the same time acknowledging that we do not want to deny the civil rights of those who are underrepresented who may be most challenged, and I say this in the backdrop of the wonderfully positive legislative initiative of the State of Texas, my State, a legislative initiative proposed and fostered by State Representative Scott Hochberg of Texas and signed into law by Governor George Bush. That legislative initiative recognized generally the high importance, the high importance, of the free exercise of religion, but at the same time it provided, if my colleagues will, the particular provision that recognized the civil rights of individuals, that they should not be pounced upon and they should not be denied because of the constitutional right of the free exercise of religion.

My question to my colleagues: Can we do less in the United States Congress? Can we in fostering a bill that is to enhance rights not ensure that we protect the rights of others who simply want to ensure that they in a more vulnerable position not be denied civil rights?

I would hope that my colleagues will support the Nadler amendment from an individual who has made it very clear that he is one of the strongest proponents of the free exercise of religion, does not come to this floor in any way to attempt to undermine this legislative initiative but in keeping with the spirit of those in Texas and who I represent. My fear is that passing of this legislation without respecting the civil rights has some concerns that we should acknowledge. I hope my colleagues will see in their wisdom the importance of joining with the leadership of the Governor of the State of Texas, George Bush, on this issue and to provide for the civil rights of others as we move toward the complete free exercise of religion.

Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker. I yield 3 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Speaker, I rise today in support of H.R. 1691, the Religious Liberties Protection Act of 1999.

But the realization of these principles is not always simple. The growth of government on every level, combined with government's inherent tendency to over-regulate, requires occasional legislative clarification. Given the complexities, there is no practical way to measure whether anti-religious motivation plays a factor in such matters as cities' planning and zoning decisions.

In Senate hearings on this subject there was testimony that, "Since the Smith decision, governments throughout the U.S. have run roughshod over religious conviction. In time, every religion in America will suffer. Must a Catholic church get permission from a landmarks commission before it can relocate its altar? Can Orthodox Jewish basketball players be excluded from interscholastic competition because their religious beliefs require them to wear yarmulkes? Are certain evangelical denominations going to be forced to ordain female ministers?"

I believe that a balance can be struck, but we do not have that balance today.

It is somewhat ironic that under current first amendment principles a city can totally zone out a church that desires to construct an edifice for its members and the surrounding community, but it cannot zone out of its community a sexually oriented adult bookstore.
Religious freedom should never depend upon the amount of religious sensitivity in a particular community or on the willingness of local governments to craft appropriate exemptions for religious practices. I urge my colleagues to support the Religious Liberties Protection Act of 1999. 

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Speaker, I reluctantly rise to oppose this bill drafted by my good friend and colleague and classmate, the gentleman from Florida (Mr. CANADY).

The first amendment is quite clear. It says, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. And yet, if we look at the words of the statute, it says, a government may substantially burden a person's religious exercise if the government demonstrates that application of the burden of the person is in furtherance of a compelling interest or is the least restrictive means of doing so.

So, the first thing we have here is Congress making a statement that is in direct contradiction to the firm mandatory words of the United States Constitution. That bothers me for several reasons. One of those is that the attempt to protect religious liberties under the Religious Liberty Protection Act hinges on the spending clause of the Commerce Clause, and the Commerce Clause of the Constitution, and we thus ask ourselves this question: What bothers me about the Alaska case or the Alaskan statute, which is the equivalent of the statute we are trying to pass today, is the asserted government interests, the asserted government compelling interests are in the commerce clause of the Constitution, which the courts may end up saying the liberties do the people have? Is it pregnant with omissions, that the courts may end up saying the liberties set forth in the statutes simply do not supply to the people?

The third problem I have with it is the fact that Justice Thomas back in 1994 after the Smith decision wrote a dissent in a case coming out of Alaska where the Supreme Court denied certiorari, and he said this. He said:

What bothers me about the Alaska case or the Alaskan statute, which is the equivalent of the statute we are trying to pass today, is that the asserted government interests, the asserted government compelling interests are in the commerce clause of the Constitution, which the courts may end up saying the liberties do not supply the people.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I would like to address several questions: First, the question of is this bill constitutional. Obviously, legal scholars on this floor and elsewhere throughout the country may disagree, but for the RECORD I would like to read and then insert the full letter, a letter of July 14 to the Speaker of the House, the Honorable J. DENNIS HASTERT from Jon P. Jennings, Acting Assistant Attorney General. He says that, quote:

The Department of Justice has concluded that the Religious Liberty Protection Act, as currently drafted, is constitutional under governing Supreme Court precedents.

The second question I would like to address, Mr. Speaker, to all of the constituents—particularly with respect to religious groups, supporting this legislation:

The Department of Justice has worked diligently with supporters of RLPA to amend prior versions of the bill so as to address serious constitutional concerns. Moreover, we have reviewed carefully the testimony of several legal scholars who have questioned the constitutionality of the bill. We have also reviewed the testimony of those that RLPA raises important and difficult constitutional questions—particularly with respect to recent and evolving federalism doctrines—and that there may be ways to amend the bill further to make it even less susceptible to constitutional challenges. Nevertheless, the Department of Justice has concluded that the revised version of RLPA would fit within the constitutional framework as currently drafted.

The Administration looks forward to working with Congress to ensure that any religious liberty case comes up as quickly as possible.

The administration strongly supports H.R. 1691, the Religious Liberty Protection Act (RLPA), which would protect the religious liberty of all Americans. RLPA would, in many cases, forbid state and local governments from imposing a substantial burden on the exercise of religion, unless they could demonstrate that imposition of such a burden is the least restrictive means of advancing a compelling governmental interest. This Administration has prohibited—up in the cases in which it applies, embody the test that was applied by the Supreme Court as a matter of Constitutional law prior to 1990 and that is important to the government under the Religious Freedom Restoration Act (RFRA). RLPA will, in large measure, restore the principles of RFRA, which was track, certainly none of us want to be in a position where government is discriminating against the free exercise of

religion, but, by the same token, as we have community after community across the country struggling to be able to maintain their liveability, to try and deal with issues of quality of life, to provide for good environments, religious institutions, to be able to violate the rules of the game that other people play by in terms of environmental protection, in terms of land use and transportation is ill advised. This is why we need a broad coalition of groups that deal with land use, with transportation, with the environment who are rising their voices in opposition led by the National Trust for Historic Preservation.

We have heard here that there are areas where somehow there is discrimination against churches and their exercise of building and development activities, but this legislation would provide a requirement that in all instances government that has the authority to make individualized assessment, the action requires the State or local government to demonstrate the reasons for the land use are compelling and that the regulation is the least restrictive means supplied to each affected individual furthering that interest.

This is something as a local official I can tell my colleagues the requirements economically, legally and practically to establish that burden unlike we would do for anybody else is unjustified and unnecessary. I find it frustrating that the Federal Government runs roughshod over local neighborhoods and communities where we have things like the local post office that does not obey local land use laws and zoning codes. To carve out another broad exemption under this act, that would have, I think, serious unintended consequences.

Regardless of the outcome of today’s vote in this legislation, I hope there is a careful look at section 3(b)(a) and people make sure that they assure that we are protecting the rights of our neighborhoods for liveability and environmental protection.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. BEREUTER) for the purpose of a colloquy.

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding me this time.

I am an urban planner by training. I have prepared local zoning ordinances for municipalities and counties, a certified planner by the American Planning Association, and on my own initiative I wanted a clarification from the gentleman. I thank him for yielding for a colloquy, and I have two questions.

Will anything in the bill prevent local government from precluding religious uses in a particular category of zoning such as an industrial zone?

Mr. CANADY of Florida. Mr. Speaker, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Not ordinarily. But it would under certain circumstances, such as if the exclusion from use is reasonable and there is a reasonable opportunity to locate within the jurisdiction or if like uses are not precluded from the particular category of zoning or if the exclusion is based on the religious nature of the use. This question is governed by section 3(b)(a) and (b).

I would also say the communities that provide reasonable locations for churches have nothing to fear from this legislation, but sometimes exclusion from particular zones is in fact a device for excluding from the whole community. We have heard about cases where property was spot zoned industrial after the church bought it.

Some cities exclude churches from commercial zones, knowing that it is impractical to locate a church in a built-up residential zone. The intention and effect is to exclude all new church- es. We believe that is not appropriate. Mr. BEREUTER. I agree with the gentleman that the examples given are abuses of the local zoning law.

My second question will be this: Will anything in the bill prevent local government from requiring compliance with conditions authorized by statute for a conditional or special use permit for religious facilities or other traffic-generating uses in certain zoning categories?

Mr. CANADY of Florida. If the compliance requirement substantially burdens religious exercise and is not the least restrictive means of furthering the local government’s compelling interest, then a religious facility would have a claim that could be successful.

This is governed by section 3(b)(1)(a).

An example would be an orthodox Jewish temple forced by city with parking space requirements. With the orthodox temple, no one drives a car in any case.

Another example is if the condition for a special use permit is that the use "serve the general welfare," or such other vague standards that can be used to exclude whomever the board chooses to exclude.

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for his colloquy. I think that is reassuring, particularly in light of the comments of the gentleman from Oregon.

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is my pleasure to yield 1 minute to the distinguished gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, I just have a few questions. I am very worried about this bill. Just 2 weeks ago when we had the gun debate on violence, this Congress passed, if Members can believe it, post- ten Commandments, and this was our response to Columbine, post the Ten Commandments. It did not say which version of the Ten Commandments, the Catholic, Protestant, or Jewish version, it just said Ten Commandments.

This is really getting me nervous, this notion that we are going to give religions preference in their religious tenets over our own civil rights.

Let us make no mistake about it, the right wing of the Republican party is against gays and lesbians. They want to discriminate against people who are homosexuals. Let us just be right in front on what this debate is about.

So they feel that if one has in their religion a belief that gays and lesbians would be damned by God, then you should be able to discriminate against them. But what this also does is it discriminates against all kinds of other people.

Just imagine that fellow who killed all those people out in Chicago last week. He was part of this Church of the Creator. Is that kind of religion protected under this religious freedom? Is that going to take precedence over our civil rights in this country?

I think we are all children in the eyes of God, and no religion should practice hate or intolerance of any kind. That is why I am going to vote against this bill when it comes up for a vote.

Mr. CANADY of Florida. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I want to respond briefly to the comments the gentleman just made. It is unfortunate that the gentleman has misconstrued the purpose of this bill.

This bill does not touch on the establishment clause issues that have from time to time divided the Members of this House. This is a bill that has broad bipartisan support. It has broad support in the religious community.

We believe forward that has the support of both the Christian Coalition and People for the American Way, major Jewish organizations and the National Council of Churches, I think this is an opportunity for the House to stand up for principles that we can all agree to to prevent religious liberty.

I would urge the Members of the House to do just that by adopting this bill.

Mr. UDALL of New Mexico. Mr. Speaker, today I rise in support of the Religious Liberty Protection Act.

Religious freedom is the foundation on which our nation was built. Every American, be they Catholic or Protestant, Jewish or Muslim, Buddhist, Sikh or of any other faith community, has the Constitutional right to practice their religious tradition without fear of government intervention or retribution.

Unfortunately, as we have heard throughout this debate, too many people of faith in this country, particularly those in religious minorities, often find themselves facing rigid government policies that burden their religious practices.

This bill, Mr. Speaker, would prevent government restrictions against religious practices, unless there is a compelling government
I find myself in disagreement with their position on religious liberty. The Religious Liberty Protection Act (RLPA) is the most important step in protecting the civil rights of all individuals, with special attention to those populations that are at particular risk of discrimination.

I am disappointed, Mr. Speaker, that the House failed to pass the amendment introduced by the Speaker of the New York Assembly. I believe that this amendment would have addressed the concerns that many have voiced.

I urge my colleagues, therefore, to support future measures in this body to protect the civil rights of those minority segments of our population that do not enjoy Constitutional protection.

And I urge our colleagues in the other body to further clarify and resolve these issues as the legislation moves through the Senate.

Mr. PACKARD. Mr. Speaker, I would like to express my support for H.R. 1691, the Religious Liberty Protection Act. The intent of this bill is to protect practices from unnecessary government interference.

Religious freedom is one of the most important freedoms in our Constitution. The framers placed the right to free worship as our first Constitutional right. As stated by the father of our Constitution, Thomas Jefferson, "The constitutional freedom of religion is the most inalienable and sacred of all human rights."

Despite this fact, over the past few decades, the Supreme Court has continued to weaken our right to practice faith freely.

The Religious Liberty Protection Act will reaffirm our Constitutional right to practice individual faith by requiring judges to use strict scrutiny when reviewing a government burden on religious practices, unless it is to protect the health or safety of the public. This bill is simply common sense legislation. Protecting the freedom of religion should be one of the highest priorities for our nation and this Congress.

Mr. Speaker, I encourage my colleagues to support the Religious Liberty Protection Act.

Mr. HOSTETTLER. Mr. Speaker, I rise to oppose H.R. 1691. I would like to say that I am pleased to be submitting these remarks, but I am not.

I know that the drafters and supporters of the Religious Liberty Protection Act (RLPA) share many of my beliefs about faith, government, and the Constitution, and it is not often that I find myself in disagreement with their views.

But on one major RLPA issue, my conscience convicts me that in trying to right what many perceive to be wrong, Congress today is taking a dangerous step in a constitutional direction—a constitutional step that I cannot in good faith support.

It is a constitutional step that I believe may well undermine the protections for religious freedom under which Americans have prospered for over two hundred years.

Today, because of a disagreement with the Supreme Court of the United States, and in keeping in line with the myth of the Court's supremacy over the other branches of government, we are seeking to change the nature of our right to the free exercise of religion.

We are seeking to rewrite our liberty. Because the Supreme Court has boxed Congress in, Congress is choosing to fight for the moment, Congress is trying to find any basis, whatsoever, to strike a blow for religious liberty.

But we must not move in haste.

Such haste may lead to unintended consequences.

For all this legislation is drafted, one issue we are going to address, what is really being raised as an issue, is whether the constitutional right to the free exercise of religion will be a fundamental right protected by the First and Fourteenth Amendments, or merely an element of interstate commerce, which is not a right at all.

This is not insignificant.

By regulating religious liberty to Congress' power to regulate commerce, as the RLPA does, Congress may be opening the future to the end of liberty as we have been privileged to know it.

Yes, some are burdened by the Supreme Court's treatment of the free exercise clause and the Fourteenth Amendment.

I am not unsympathetic to believers who are suffering for their faith.

But we must also consider the future ramifications of our actions.

This future may well entail debates focused not on the fundamental right to the free exercise of religion, but on something that is not a right at all.

That something is Congress' simple power to, and I quote from the Constitution: "regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

In form, the argument today is not new.

It is a form of the age-old question of whether the end justifies the means.

While one might struggle with whether the end justifies the means, we must not ignore that the end will always, in some manner, reflect the means.

This is especially true when we are determining the constitutional basis for our actions.

We must today pause and ask ourselves, will our children and grandchildren, even to the fourth generation, look back at this day and say: There was the beginning of the end.

There was the day when Congress—though well intentioned—cheaperon our liberties.

There was the day when Congress ceded the federal arena and there is a fundamental right, independent of incidental affects on commerce, independent of what a particular congress might define as commerce, a right which our founders' cherished so much that they set it forth separately in our Bill of Rights.

No, I do not relish being here today opposing my friends.

But what we are doing today is wrong and I cannot simply turn my head.

It does not matter that Congress has used the commerce clause in unprincipled ways in the past.

It does not matter that we have been unable to come to an agreement as to how to proceed in light of the Court's rulings.

Truth is truth.

The free exercise of religion is a right, not because of any possible connection to commerce, but because it is a right given by our Creator.

Our founders wisely sought to give special protection to these rights.

Today, I fear that we are ignoring this wisdom for merely short term, but by no means permanent, gratification.

I hope that my fears will not be realized.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). All time for general debate has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. NADLER.

Mr. NADLER. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the Record.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. NADLER:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Religious Liberty Protection Act of 1999".

SEC. 2. PROTECTION OF FREE EXERCISE.

(a) GENERAL RULE.—Except as provided in subsection (b), a government shall not substantially burden a person's religious exercise—

(1) in a program or activity, operated by a government, that receives Federal financial assistance; or

(2) in any case in which the substantial burden on the person's religious exercise affects, or in which a removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes; even if the burden results from a rule of general applicability.

(b) EXCEPTION.—A government may substantially burden a person's religious exercise if the government demonstrates that application of the burden to the person—

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

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

(c) REMEDIES OF THE UNITED STATES.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this Act. However, nothing in this subsection shall be construed to deny, impair, or otherwise affect any right, or authority of the Attorney General or the United States or any officer, employee thereof under other law, including section 4(d) of this Act, to institute or intervene in any action or proceeding.

SEC. 3. ENFORCEMENT OF CONSTITUTIONAL RIGHTS.

(a) PROCEDURE.—If a claimant produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of a provision of this
Act enforcing that clause, the government shall bear the burden of persuasion on any element requiring proof by the government; however, the government shall bear the burden of persuasion on whether the challenged government practice, law, or regulation burdens or substantially burdens the claimant's exercise of religion.

(b) LAND USE REGULATION.—

(1) LIMITATION ON LAND USE REGULATION.—

(A) WHERE, in applying or implementing any land use regulation or exemption system of land use regulations or exemptions, a government has the authority to make individualized assessments of the proposed uses to which property would be put, the government may not impose a substantial burden on a person's religious exercise, unless the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

(B) No government shall impose or implement a land use regulation in a manner that does not treat religious assemblies or institutions equally with nonreligious assemblies or institutions.

(C) No government shall impose or implement a land use regulation that discriminates against an assembly or institution on the basis of religion or religious denomination.

(D) No government with zoning authority shall impose or implement a land use regulation that excludes from the jurisdiction over which it has authority, or unreasonably limits within that jurisdiction, assemblies or institutions principally devoted to religious exercise.

(2) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of the Free Exercise Clause of this subsection in a non-Federal forum shall be subject to full faith and credit in a Federal court only if the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(3) NONPREEMPTION.—Nothing in this subsection shall preempt State law that is equally or more protective of religious exercise.

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 thereon. 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) ATTORNEYS' FEES.—Section 722(b) of the Revised Statutes (42 U.S.C. 2000e(b)) is amended—

(1) by inserting “the Religious Liberty Protection Act of 1998,” after “Religious

(c) CLAIMS TO FUNDING UNAFFECTED.—Nothing in this Act shall affect, directly or indirectly, the activities and policies of any person other than a government, as a condition of receiving funding or other assistance from a government.

(d) OTHER AUTHORITY TO IMPose CONDITIONS ON FUNDING UNAFFECTED.—Nothing in this Act shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government, as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to regulate or affect, except as provided in this subsection, the exercise of an individual's religious exercise.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE.—A government may not impose the preemptive force of law by changing the policy that results in a substantial burden on religious exercise, by retaining the policy and exempting religious exercise, by providing exemptions from the policy for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW.—In any claim under section 2(a)(2) of this Act, proof that a substantial burden on a person's religious exercise is to be imposed by, or would affect commerce, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to regulation by that provision.

(g) BROAD CONSTRUCTION.—This Act should be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by its terms and the Constitution.

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

SEC. 5. RULES OF CONSTRUCTION.

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

(b) RELIGIOUS EXERCISE NOT REGULATED.—Nothing in this Act shall create any basis for restricting or burdening religious exercise or religious assembly or institution, including any religiously affiliated school or university, not acting under color of law.

(c) NURSERY SCHOOL AND PRESCHOOL EXEMPTED.—Nothing in this Act shall create or preclude a right of any religious organization to receive federal funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing any substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED.—Nothing in this Act shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government, as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to regulate or affect, except as provided in this subsection, the exercise of an individual's religious exercise.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFIRMED.

Nothing in this Act shall be construed to make religious exercise the official religion of the United States, or to require or permit religious tests, oaths, or affirmations, or the imputation of religion, or the establishments of religion (referred to in this section as the "Establishment Clause").

(1) A government, including the United States, a State, a unit of government, or any other governmental unit created under the authority of a State, shall not enact or enforce any law that establishes religion, vests legislative powers in religious organizations, or distinguishes between religions or between persons or institutions on the basis of religion.

(2) A government, including the United States, a State, a unit of government, or any other governmental unit created under the authority of a State, shall not give aid, either directly or indirectly, to any church, school, or other institution designed to teach, administer, or promote religion.

(3) The Federal Government, including the United States, a State, a unit of government, or any other governmental unit created under the authority of a State, shall not promote, either directly or indirectly, one religion over another or over nonreligious belief.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS.—Section 5 of the Religious Freedom Restoration Act of 1996 (42 U.S.C. 2000bb-5) is amended—

(1) in paragraph (1), by striking “a State, or subdivision of a State” and inserting “a State, county, municipality, or other governmental unit created under the authority of a State”;

(2) in paragraph (2), by striking “government” and inserting “State, county, municipality, or other governmental unit created under the authority of a State”;

(3) by striking “or” at the end of subsection (b) and inserting “or” in lieu thereof;

(4) by striking “or” at the end of subsection (e) and inserting “or” in lieu thereof;

(5) by striking clause (ii) in paragraph (3) and inserting “State, county, municipality, or other governmental unit created under the authority of a State” in lieu thereof.

(b) FORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1996 (42 U.S.C. 2000bb-6(a)) is amended by striking “and” and inserting “or” in lieu thereof.

SEC. 8. DEFINITIONS.

As used in this Act—

(1) the term “religious exercise” means any exercise of religion, whether or not compelled by, or central to, a system of religious belief that includes (a) the use, building, or conversion of real property by a person or entity intending that property for religious exercise; and (B) any conduct protected as exercise of religion under the first amendment to the Constitution;

(2) the term “Free Exercise Clause” means the first amendment to the Constitution, as the “Establishment Clause”.

SEC. 9. GENERAL PROVISIONS.

(a) People of the United States to Enforce This Act.—The United States may sue for injunctive or declaratory relief to enforce compliance with this Act.

(b) Definition of Terms.—(1) the term “religious belief” includes the exercise of religion (including provisions of law amended by that Act).

(c) RELIGIOUS BELIEF OF A MINOR OR PERSON WITH A PHYSICAL OR MENTAL DISABILITY.—In any proceeding brought by a minor or a person with a physical or mental disability, a religious belief of the minor or person shall be considered as established by the belief as expressed by his or her parent, or any other person with legal authority to act on behalf of the minor or person.

SEC. 10. RIGHTS OF STATES.

SEC. 11. RIGHTS OF STATES.

SEC. 12. RIGHTS OF STATES.

SEC. 13. RIGHTS OF STATES.

SEC. 14. RIGHTS OF STATES.

SEC. 15. RIGHTS OF STATES.

SEC. 16. RIGHTS OF STATES.

SEC. 17. RIGHTS OF STATES.

SEC. 18. RIGHTS OF STATES.

SEC. 19. RIGHTS OF STATES.

SEC. 20. RIGHTS OF STATES.

SEC. 21. RIGHTS OF STATES.

SEC. 22. RIGHTS OF STATES.
The amendment recognizes that religious rights of all Americans, will not be used as a sword against the civil rights of other Americans. I believe the amendment in the nature of a substitute strikes that balance, and does so without doing violence to the underlying purpose of the bill.

Members who support this legislation need not be concerned that the substitute will nullify its protections in any way. It is no secret there is substantial concern that establishing a standard that says a State and local law cannot be enforced in any case where someone raises a religious claim, unless the State can show a compelling interest in enforcing its law in the specific case, causes concerns about whether religious claims will prevail against State and local civil rights laws.

The Committee on the Judiciary has received testimony from some supporters of this bill who have testified very forthrightly that they have and will continue to bring free exercise litigation in an effort to undermine some civil rights protections.

While those religious beliefs may be sincere and entitled to a fair hearing, I think it is necessary to strike an appropriate balance without broad carve-outs and without politicizing the process, if that is possible.

The amendment recognizes that religious rights are rights that belong to individuals and to religious assemblies and institutions. General Motors does not have sincerely held religious beliefs, by its nature. My amendment protects individual and religious institutions.

In order to protect civil rights laws against those who would say, "My religion prohibits me from letting my corporation hire a divorced person or a disabled person, or a mother who should be at home with her children, or a gay or a lesbian person, and it prohibits me from letting my hotel rent a room to such people," never mind the State civil rights laws that prohibit this kind of discrimination, in order to protect civil rights laws against that sort of religious claim, the amendment places some limits on who may raise a claim under this bill against the application of a State or local law.

Secondly, I believe that without good faith compromise by people with vastly different beliefs, it would be difficult to get this bill through the Senate, through the House, and through the President. That was our experience with RFRA, and nothing has changed.

This amendment offers us a way to do both, protect the religious liberties we need to protect, as the gentleman from Florida (Mr. CANADY) and others have deeply expressed, but do so without violating or posing a threat to civil rights of Americans.

We ought to do it in the proper way without posing a threat to the civil rights of Americans. I therefore urge my colleagues to adopt this substitute amendment and, reluctantly, if the substitute is not adopted, I will urge my colleagues to vote against the bill and the House work to develop this bill, to strike a balance, and to do both, protect the religious liberties and the civil rights of all Americans.

I believe that without good faith compromise by people with vastly different beliefs, it would be difficult to get this bill through the Senate, through the House, and through the President.
Mr. Speaker, H.R. 1691 is designed to provide the fundamental civil right of all Americans to practice their religion with a high level of protection, consistent with their fundamental rights. The Nadler amendment would subordinate religious liberty to all other civil rights, perpetuating the second class status for religious liberty that the court in effect created in the Smith case.

I do not think that is the gentleman's intent, but that is the actual effect of what his amendment does. We cannot get away from that. That is not something that this Congress should countenance.

Like the Religious Freedom Restoration Act, the Religious Liberty Protection Act is intended to provide a uniform standard of review for religious liberty claims. H.R. 1691 employs the "compelling interest/least restrictive means" test for all Americans who seek relief from substantial burdens on their religious exercise.

Under the amendment offered by the gentleman from New York, only a preferred category of plaintiffs are granted this protection. The gentleman can describe it as a "carve in" or a "carve out," but the fact is some people are not going to get the protection that the bill would otherwise afford them.

While H.R. 1691 would restore the strong legal protection for religious freedom that was taken away by the Supreme Court in the Smith case, the Nadler amendment in effect perpetuates the weaker standard by intentionally excluding certain types of religious liberty claims from strict scrutiny.

One reason the gentleman has expressed for the limitation on claims to businesses of five or fewer employees is to preclude General Motors from filing a religious liberty claim as a ruse to discriminate against people. With all due respect to the gentleman from New York, I think that no one who has seriously looked at this law could conclude that General Motors would have any claim under the Religious Liberty Protection Act. The argument that General Motors would have such a claim ignores the requirement of the bill that a claimant prove that his religious liberty has been substantially burdened by the government. I do not think that General Motors or Exxon Corporation or any other such large corporation that the gentleman wants to bring forward as an example could come within a mile of showing that anything that was done would substantially infringe on their religious beliefs. They do not have a religious belief that they do not have a religious practice. It is not in the nature of such large corporations to have such religious beliefs or practices. So I think that argument about Exxon and General Motors is, quite frankly, a bit of a red herring.

The gentleman from New York admits that his amendment does not track Title VII's exemptions from civil rights laws for religious institutions. He does not explain why he thinks that substantially infringe on their religious practice. The Nadler amendment would restrict claims to the employment activities, reading the faith... performing... in devotional services or... involved in the internal governance of the institution.

Title VII on the other hand states its provisions barring discrimination in employment "shall not apply... to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion... to perform work connected with the carrying on by [a religious institution] of its activities."

Federal courts have recognized that this special provision for religious institutions is a broad one and permits those entities, churches, synagogues, schools, which are covered by it to discriminate on the basis of religion in the hiring of all of their employees."

Mr. Speaker, if the Nadler amendment passes, Congress will have departed from the long-standing protection that it has afforded churches, synagogues, schools and all other religious institutions for decades by embodying in Federal law for the first time a narrower protection for the religious liberty of religious institutions. There is no good reason to depart from the policy of protection for religious organizations established in Title VII.

I think it is worth noting that the groups that urge adoption of this amendment did not find similar fault with the Religious Freedom Restoration Act. And I know that is not something that the proponents of this amendment say about that. But that was then and this is now. But all the arguments related to civil rights that have been advanced today were equally applicable to the Religious Freedom Restoration Act.

On a general point about civil rights, the President and the administration have expressed their strong support for this legislation. I cannot speak for the President, but I have read the letter that was sent. Strong support is expressed.

The President was a strong proponent of the Religious Freedom Restoration Act, and I know he views legislation accomplishing as some sort of a "compelling interest/least restrictive means" test for all Americans who have the fundamental civil right of the exercise of religion is of the highest importance. The President also views that as a matter of Federal policy in the protection of religious freedom against a neutral law of general applicability. The Nadler amendment, on the other hand, exemplifies the problem created in the Smith case by legislatively doing out protection only to politically influential classes of claimants, or perhaps more accurately denying protection to politically not influential classes of claimants. Now, that is not the way we should be operating when we are dealing with religious liberty. Religious liberty should not be put in a second-class status to other civil rights. That is just not right.

Now, we are not saying in this bill that religious freedom always takes precedent over everything else. That is not what the bill does, and the gentleman knows that, and anyone who has read the bill knows that. But those of us who oppose this amendment are simply saying that it is not right to establish as a matter of Federal policy in the protection of religious freedom against a neutral law of general applicability --

Mr. Speaker, we go back to RFRA, the ACLJ, and the APA. Now they have changed their minds. What triggered this objection? I think what I think what all of this is about, if we get right down to the facts of what is motivating this, was a 9th Circuit case in which a small religious landlord challenging a housing law was granted an exemption from compliance. This should not be a cause for alarm. It is clear from the case law that under strict scrutiny sometimes religious landlords win their claims for exemption, sometimes they do not depending upon the facts of the case.

H.R. 1691 will continue in this traditional weighing and balancing competing interests based on real facts before the Court. Religious interests will not always prevail, nor will those of the government. But the Nadler amendment would determine in advance that the interest of the Government will always prevail in certain cases. That is not what this Congress intended when it passed RFRA unanimously here in the House and is not the type of law I believe the American citizens want their Congress to enact.

Let me finally say that H.R. 1691 remedies the Smith case's tragic outcome which resulted in only politically influential people being able to obtain meaningful protection for their religious freedom against a neutral law of general applicability.

The Nadler amendment, on the other hand, exemplifies the problem created in the Smith case by legislatively doing out protection only to politically influential classes of claimants, or perhaps more accurately denying protection to politically not influential classes of claimants. Now that is not the way we should be operating when we are dealing with religious liberty. Religious liberty should not be put in a second-class status to other civil rights. That is just not right.

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circumstance when we can come to the floor with such broad support. We have that broad support in the religious community. We have the support of the administration.

Mr. Speaker, I would like to thank the Department of Justice for the work that they have done in helping us crafted this legislation and addressing various concerns that had existed. They were very helpful in making suggestions which I think have strengthened the bill; and 1, as the chief sponsor of this legislation, want to express my gratitude to the Attorney General for the assistance that was provided.

We need to get on with this job. This is a problem that we have been struggling with since 1990, nearly a decade. Congress tried to address the problem back in 1993 during my first term as a Member of Congress. The effort we have made then has proved to not be successful in the way that we intended it. We have come back to the drawing board, and now have an approach here which I think will do the job within the constraints that the Supreme Court has imposed on us.

Mr. Speaker, the House should listen to the religious community. The House should reject this weakening amendment and pass this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 2 ½ minutes to the gentleman from New York (Mr. WEINER), a member of the committee.

Mr. WEINER. Mr. Speaker, as a member of the Committee on the Judiciary I have found a comfortable place standing somewhere between the gentleman from Florida (Mr. CANADY) and the gentleman from New York (Mr. NADLER), and on this issue I believe I am there again. I want to commend the gentleman from Florida for drafting an excellent bill, one that I am proud to cosponsor. And I also am proud to support the amendment offered by the gentleman from New York, which I believe makes a good bill a little bit better.

In 1963, the Supreme Court issued an important decision in Sherbert vs. Verner. In that case a South Carolina woman was denied unemployment compensation. Her denial was not based on any lack of interest in working but because she refused to work on Saturdays. South Carolina tried to argue that this woman had refused a compensation. Her denial was not based on any lack of interest in working but based on her religious beliefs. Her case was litigated all the way to the Supreme Court, and the Court held that the State's refusal violated the free exercise clause because its denial of unemployment compensation forced Mrs. Sherbert to choose between religious adherence and unemployment compensation benefits.

The Court rightly ruled that South Carolina's interest in denying benefits was neither compelling nor was it narrowly tailored. Unfortunately, since that time the Supreme Court has retreated from that position and there have been several other examples that have emerged.

The bill that the gentleman from Florida (Mr. CANADY) and I and others have sponsored seeks to reverse that. And I believe that the gentleman from New York (Mr. NADLER) has said in his arguments on the floor that he supports that concept. It is something that all of us agree on. The gentleman from Florida has argued, and I agree, that this is not a bill that is intended to be an attack on civil liberties. What the Nadler amendment seeks to do is make it clear. Make it clear that in our efforts to restore religious liberties we are not taking a hatchet to civil liberties. I would not have sponsored the bill if I thought that that was the case.

Mr. Speaker, I think what the Nadler language does make it very clear that while we are going to have conflicts between religious rights and between civil liberties with or without H.R. 1691, this amendment makes it clear is where we stand, and that is we are not trying to take from one group of rights to serve another group. The Nadler amendment strengthens what is already a very good and a strong bill. It allows us to all vote for strong civil liberties and strong religious liberties.

Mr. Speaker, I urge my colleagues to support H.R. 1691, and I urge support for the amendment offered by the gentleman from New York.

Mr. CANADY of Florida. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. HYDE), chairman of the House Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I asked and was given permission to revise and extend his remarks.

Mr. HYDE. Mr. Speaker, I would like to ask the gentleman from New York (Mr. NADLER) to listen to what I say and tell me if I am wrong. I want to make sure I understand the impact of his amendment.

It seems to me that what the gentleman is seeking to do is carve out of the law a preference to the religious claim. That is not the case. This amendment does not take away from the protections that already exist. This legislation and I think the Court has held that the Court finds it has a compelling State interest. If the amendment does not lead to the decision of the States, what trumps what.

Any State law would be trumped if the court finds that the State does not have a compelling State interest. If the court finds it has a compelling State interest, it is not trumped.

This amendment in effect takes out from that question and gives more effect to the State law in the limited cases of housing and employment discrimination with a carve-out from that provision for churches, small landlords, and small businesspeople. Mr. HYDE. Mr. Speaker, I think the gentleman from Illinois has got it backwards. The bill and the amendment does not lead to the decision of the States, what trumps what. Any State law would be trumped if the court finds that the State does not have a compelling State interest.

And it says anybody may bring a claim, except with respect to housing discrimination small landlords only, and housing discrimination small businesspeople or churches and religious institutions only may bring a claim. Who benefits from that depends on State and local law. That could be anybody. In other words, who can bring a claim against a State or local law.

Mr. HYDE. Mr. Speaker, reclaiming my time, it seems to me that absent the gentleman's amendment, the bill itself restores the compelling-interest standard which obtained before the SMITH case and that the question of which civil right trumps the free exercise of religion can be left to the States on a case-by-case basis.

Therefore, the amendment of the gentleman from New York (Mr. NADLER) is really not needed.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. HYDE. Surely. I yield to the gentleman from New York.

Mr. NADLER. Mr. Speaker, I think the gentleman from Illinois has got it backwards. The bill and the amendment does not lead to the decision of the States, what trumps what. Any State law would be trumped if the court finds that the State does not have a compelling State interest.

Mr. HYDE. Mr. Speaker, I just believe that the gentleman from New York is unduly complicating what is essentially not a complicated proposition. The civil rights that may or may not be jeopardized and any conflict with the free exercise of religion can be protected and will be protected on a case-by-case basis without the complexity of the gentleman's amendment.

So I just take this time to congratulate the gentleman from Florida (Mr. CANADY) for such an important bill and his persistence in getting it to this point. I support it without the Nadler amendment.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California.

Ms. PELOSI. Mr. Speaker, I thank the gentleman from New York (Mr. NADLER) for yielding me this time and for his leadership on this very, very important issue.

Certainly we all support the spirit of the Religious Liberty Protection Act.
and I also commend the maker of H.R. 1881 for bringing it to the floor. It does not mean we should shy away from using it for good or that we should shy away from it to protect this freedom, to protect religious freedom.

This legislation makes the use of the power of Congress to enforce the rights under section 5 of the 14th amendment consistent with recent court decisions, particularly the Supreme Court’s decision in Boerne v. Flores. What this does, it attempts to simplify litigation of free exercise violations as defined by the Supreme Court. These litigations do not need to be cumbersome. They do not need to be needlessly burdensome. Certainly no right in these litigations needs to be secondary to other rights in these litigations.

Evidence shows that individuals who have determinations in land use regulation that work against them, frequently we see that as a burden for religious activities. We see that particularly as it relates to minority faiths, and this bill reaches out and protects those minority faiths. We know that from the evidence of the very broad base of groups that are supporting this legislation today.

Again, I would like to close by simply saying that this legislation levels the playing field for a critical first amendment right. It does not allow the creation of a secondary right.

I think the Nadler substitute, while well intentioned, and I really admire what the gentleman from New York (Mr. NADLER) has done in these areas in the past, while this amendment is well intentioned, I think it does have the potential and the likelihood, and, in fact, what I think it does is relegate religious freedom and religious liberty and religious practice and religious rights to a secondary position. I think we need to have those rights as protected as any other right. Those decisions can be made by those groups that believe in those efforts.

I support the bill and oppose the amendment, but I do so with deference to the sponsor of the amendment.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York (Mrs. MALONEY).

(Mrs. MALONEY of New York asked and was given permission to revise and extend remarks.)

Mrs. MALONEY of New York. Mr. Speaker, I thank the gentleman for yielding me this time, and I thank him for his strong leadership on so many issues. I rise in support of the Nadler amendment.

The Religious Liberty Protection Act is a well-intentioned bill with a noble purpose. No State or local government should be able to restrict legitimate religious practices such as the wearing of a yarmulke or a crucifix or the celebration of certain religious holidays. But if we are not careful, then this well-intentioned bill may be used to weaken our Nation’s civil rights laws.

I would just like to say today that I think really what we are talking about here is the protection of religious liberty. When the gentleman from New York (Mr. NADLER) mentioned earlier his amendment would allow us to show what triumphs what, I think that is exactly why I wanted to speak on this topic today, because I think we need to be careful that we do not create a second-class status for religious rights where those rights are automatically secondary to other rights. We should not be deciding that those religious interests trumped by other rights. That is not what we are about here.

This legislation, as it is written, gives the fundamental civil right of all Americans to practice their religion a high level of protection. It is consistent with the other fundamental rights that we give in the Constitution and in our laws.

This legislation is consistent with the Supreme Court's longstanding exemptions for employees of religious institutions. There is nothing in this legislation that continues that.

This legislation establishes a process whereby we balance competing interests based on the real facts before the court. Religious interests, as defined here, would not always prevail, but they would not automatically be secondary. The facts that support those rights have equal standing in court with other rights equally protected by the Constitution.

I believe, and those of us in this body universally believe, that this is a government based on enumerated powers. Those powers are enumerated in the Constitution. Those enumerated powers are evidenced in this legislation.

This Act relies on three constitutional powers: the power to spend, the power to regulate interstate commerce, the power to reach certain conduct under section 5 of the 14th amendment.

First of all, the Religious Liberty Protection Act protects individuals participating in federally assisted programs from burdens imposed by a government as a condition of participating, that those people could not be exempted from these programs because of their religious beliefs.

For example, an individual cannot be excluded from or discriminated against in a federally assisted program because of his or her religious dress or the holidays that they observe unless the case can prove there is a compelling interest that that particular religious activity somehow makes it impossible to do that job.

Secondly, this Act protects religious exercise in the affecting of commerce. Some of our friends say we should not use the commerce clause here to determine whether or not a church can be built. Well, clearly, if one builds a church, if one adds on it a facility, one affects tens of thousands, sometimes hundreds of thousands, occasionally millions of dollars of commerce.

Using the commerce clause to protect religious liberty is appropriate and
Without the Nadler amendment, this bill could threaten the rights of single mothers, gays and lesbians, the disabled, and even perhaps members of certain religious groups.

Unfortunately, the Supreme Court retreated from Sherbert v. Hudnall, and since then the Court has not upheld any religious objections. We are left with a decade-long dialogue over how to properly guarantee that all of our citizens are able to freely exercise their religious beliefs. This is not an academic debate being conducted in ivory towers and judicial chambers. Rather, this is a real-world issue of deep concern to my constituents and to Americans everywhere.

For example: The Jewish principle of kavod hamet mandates that a dead body is not left alone from the moment of death until burial. For this reason, autopsies, in all but the most serious circumstances, are forbidden. The Supreme Court’s ruling in 1990, courts in both Michigan and Rhode Island forced Jewish families of accident victims to endure intrusive government autopsies of family members, even though the autopsies directly violated Jewish law.

In Los Angeles, a court declined to protect the rights of fifty elderly Jews to meet for prayer in the Hancock Park area, because Hancock Park had no place of worship and the City did not want to create precedent for one. In Tennessee, a Mormon church was denied a permit to use property which had formerly been used as a church. The city of Forrest Hills, Tennessee decided it would not be in the best interests of the city to grant the church a construction permit and a local judge upheld the decision.

This bill could be used to deny housing or employment or otherwise discriminate against individuals based on their race, sexual orientation, disability, or marital status.

Mr. Speaker, there is no justification for discrimination. Our Nation has made enormous strides in the past 30 years toward offering equal opportunities for all, regardless of race, gender, religion, or sexual orientation.

We must not undo that progress under the guise of protecting religious freedom. But we also need to protect religious freedom. I urge my colleagues to support the Nadler amendment.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. DEUTSCH).

Mr. DEUTSCH. Mr. Speaker, I rise today in support of the Nadler substitute. In the 103rd Congress, I was an original cosponsor of the Religious Freedom Restoration Act. I would take second place to no one in this Chamber in terms of a concern about religious liberty protection. I take that very seriously. I understand the intent of this legislation as well.

But I think all of us who have looked at this legislation realize that the legislation will have an incredibly unfortuitous consequence and that would be to allow the overturning of anti-discrimination statutes in the United States of America, statutes which are really at a fundamental core of the American experience.

There are well-intentioned, good arguments on both sides of this legislation. I think we come to this in one of our really better moments as an institution. But I really think and I really plead with my colleagues who are contemplating not supporting the Nadler amendment to really spend the time to understand specifically what the effect of this legislation would do.

For example, the Catholics cannot have a parade. They attempted to have a parade in New York, and people whose social lives and social values are totally in conflict with what Catholics believe feel that they can force their way into a Catholic parade, which is, to me, violating the Catholics’ right to have their own beliefs.

We have the Boy Scouts of America, which is a private organization, and they have certain moral standards that they believe in. Now, who is under attack? Who is under attack here? The Boy Scouts of America are spending millions of dollars just to maintain what they consider to be their moral standards.

No one is forcing their way into the homes of other people who want to live in their privacy and want to live decent lives with their own values in terms of whether or not they are in agreement with some of these more traditional values, but the ones with the more traditional values are under attack all the time.

I think this piece of legislation is going to try to swing the pendulum back. Certainly 25 and 30 years ago there was great advantage in our country against certain nonconformists, one might say, of people who had different than the traditional values.

Today, that pendulum has swung so far in the opposite direction that people with more traditional values are under attack, and we need to protect their rights as well.

So this, I think, is a balance and I support the legislation.

Mr. NADLER. Mr. Speaker, I yield myself 15 seconds.

The views expressed by my friend from California are very interesting views. I would simply point out two things.

Number one, this bill does and is intended to protect religious freedom for traditional Christians and Jews and for untraditional people, for wiccans, witches, or whatever their religious views. And, secondly, this has nothing whatsoever to do with this amendment.

It does with the bill, but not with this amendment.

Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. WEXLER).

Mr. WEXLER. Mr. Speaker, I rise in support of the Nadler amendment, strong support, and in doing so acknowledge and recognize that H.R. 1691 and the sponsor, the gentleman from Florida (Mr. NADLER), seek to address very important wrongs that are occurring throughout the United States. There are, in fact, numerous examples of planning and zoning decisions that are being made for the either inherent or obvious purpose of denying individuals or groups their religious freedom.

In my own community in South Florida, oftentimes there are autopsies...
that are conducted in violation or contrary to people's religious beliefs, when there is little or no State purpose for doing so. And the State acts either out of insensitivity or just out of lack of knowledge for people's religious beliefs. And I believe the purpose of this bill would be to correct those violations, and that I support and compliment.

But in doing so, there also is a flip side. The flip side is that in protecting one group's religious freedom which is noble and certainly applaudable, we are, to some degree, and we can argue to what degree that is, but to some degree jeopardizing the rights of others.

And while the gentleman from California (Mr. ROHRABACHER) may suggest that people are trying to force themselves on maybe more traditional people in this country, I do not see it that way. What these so-called less traditional people are trying to do is work. They do live in an apartment. And if that is forcing themselves on someone, well then, that is exactly why we need the Nadler amendment. Although, although, what the Nadler amendment seeks to do is both protect religious freedom and protect civil rights.

This bill, as it is currently drafted, puts us in an untenable situation, civil rights versus religious liberty. Support the Nadler bill.

Mr. NADLER. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). The gentleman from New York (Mr. NADLER) has 12 minutes remaining, and the gentleman from Florida (Mr. CANADY) has 7 minutes remaining.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the Nadler amendment points out the problem of applying the prevailing, and that is that without this amendment it may sabotage the enforcement of laws of general application, like civil rights laws, child protection laws and others. We should not subject vigorous enforcement of civil rights laws to individual beliefs.

We know that there are some in our society, and we have seen on Web sites the Church of the Creator, where some have studied beliefs about race, and we should not make civil rights laws optional. Without this amendment, those people who just do not believe in civil rights can require a showing of a compelling State interest and least restrictive means to complicate the enforcement of civil rights laws by declaring that the compliance with the civil rights laws might violate their beliefs.

Mr. Speaker, I would hope that we would not subject our civil rights laws it took us too long to enact and so long to enforce to this kind of situation. I would hope that we would adopt the Nadler amendment so these civil rights laws could be enforced.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. EDWARDS) for the purpose of a colloquy.

Mr. EDWARDS. Mr. Speaker, I would like to engage the chief sponsor of this legislation in a colloquy in order to address concerns that the bill advantages or disadvantages any group or ideological persuasion.

Could the gentleman from Florida please explain how the compelling interest standard works in this legislation?

Mr. CANADY of Florida. Mr. Speaker, will the gentleman yield?

Mr. EDWARDS. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Speaker, the compelling-interest standard is fair, but rigorous, not only for the government but also for religious claimants. The standard neither allows religious interests to always prevail, nor those of the government, even when its interests are compelling.

The standard weighs and then balances competing interests, first considering the burden on the claimant's interest and then evaluating the government's interest in disallowing an exemption to the law or regulation and achieving its alternative means for achieving the government's goals. The Religious Liberty Protection Act, like the Religious Freedom Restoration Act, does not define the various elements of the standard.

The legislation imposes a standard of review, not an outcome, and the cases are litigated on the real facts before the courts. Thus, it is difficult in some hypothetical cases to weigh the interests which will prevail.

Mr. EDWARDS. Reclaiming my time, Mr. Speaker, I would further ask if it is correct that the point of this legislation is that by adopting the compelling-interest standard is acknowledging that courts will consider and weigh important interests behind these laws; and that because each religious claimant's situation is unique, it is appropriately left to the courts to weigh the competing interests; and that because the legislation is not designed to resolve any specific case or set of facts, it is neutral and does not directly address a specific outcome.

Mr. CANADY of Florida. That is correct.

Mr. EDWARDS. I thank the gentleman for this clarification.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I rise in support of the Nadler amendment and want to encourage my colleagues to support the amendment.

This is a bill that is trying to achieve the same objective, protecting religious freedom and protecting civil rights laws.

The problem is those same people started out together, and they have changed their minds. And we have people claiming to be achieving the same objective, protecting religious freedom and protecting civil rights laws.

The problem is those same people started out together, and they have changed their minds. And we have people claiming to be achieving the same objective, protecting religious freedom and protecting civil rights laws.

The thing that is really interesting is that the proponents of the underlying bill say, "Oh, no, we are not trying to trump civil rights laws." The gentleman from New York (Mr. NADLER) says, "Oh, no, we are not trying to trump religious use protection." And then we have people claiming to be achieving the same objective, protecting religious freedom and protecting civil rights laws.

We know that there are some in our society who are trying to force them-
to live together, it will be up to the Federal Government to judge whether or not they can rent an apartment from a corporation, the stockholders of which said it is their religious objection.

The gentleman from New York (Mr. NADLER) says this: If they seek to live somewhere in a non-owner-occupied building or a very large apartment building, or if you seek a job with an employer with more than five people, if they can do the job, if they can pay the rent, their personal habits, whether they are married or not, whether they are gay or not, whether they have some particular affliction or not that might offend someone of a different religion will not keep them off of the work rolls, it will not keep them out of that house.

We do not impinge on anybody’s individual religious practice. Nobody goes into anybody’s home. No one is involved here, under the Nadler amendment, with the ability to interfere.

We are saying that they should not say where a State has said they wish to confess to their religious institutions. The Nadler amendment protects the Bill of Rights, the freedom of speech, the freedom of religion and civil rights and has been a freedom guaranteed in our Constitution.

I would hope that every Member of this body, with not three dissenting votes but unanimously, would say to the religious and the nonreligious, if they can do the job and have the religious freedom, it will not be violated. They worked together in this case where the Supreme Court has shirked that responsibility and has put the freedom of religion and have put the freedom of religion and civil rights in the rental market, their right to observe the Sabbath, to feed the homeless; we will not allow Federal judges selectively to overrule those because those Federal judges do not find the State’s policy a compelling interest.

The SPEAKER pro tempore (Mr. BARRETT of Nebrasca). The gentleman from Florida (Mr. CANADY) has 5½ minutes remaining. The gentleman from New York (Mr. NADLER) has 7 minutes remaining.

Mr. CANADY of Florida. Mr. Speaker, I yield 2½ minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Speaker, first of all, I would like to commend the gentleman from Florida (Mr. Canady) for his excellent work in defending our Constitution and the first freedom enunciated there.

In fact, we all know from our history that our forefathers came to this country for religious liberty. And it was not a coincidence that when they drafted our Constitution the very first right that they enumerated was the right to religious liberty. And this right has been unquestioned in our country until 1990.

Of all things, in 1990, the Supreme Court of the United States, in a 5-4 decision, questioned the right of the citizen to full expression of our religious freedom and beliefs. There was a long-standing principle that the State had to have a compelling reason to interfere with that right, and they did away with that.

I am happy to say that this Congress, in 1993, with only three dissenting votes, passed legislation again saying that the Government has to have a compelling reason to interfere with our religious liberties. President Clinton signed that legislation.

Unfortunately, the Supreme Court came back and basically said, we cannot do that; it is unconstitutional for the Congress to try to protect our freedom of religion. Thank goodness they had breadth that with some of our other freedoms.

So we are here today again. And I will say to my colleagues that, as a Congress, all three branches of government have an obligation and a duty to protect our constitutional rights and our freedom. It is not the sole responsibility of the Supreme Court, particularly in this case where the Supreme Court has shirked that responsibility and has put the freedom of religion in the rental market, their right to observe the Sabbath, to feed the homeless; we will not allow Federal judges selectively to overrule those because those Federal judges do not find the State’s policy a compelling interest.

I offer in testimony, Mr. Speaker, the words of Scott Hochberg, the proponent of the legislation in Texas, where, in a bipartisan manner, this same legislation was passed and George Bush signed it. And what it offered to say is that he supports a strong religious liberty but he wanted to ensure that the Texas civil rights were not violated. They worked together in Texas.

I will close by simply saying, let us work together and vote for the amendment.

Mr. Speaker, today, we discuss what I believe is sorely needed legislation to restore the legal protections for the free exercise of religion. These legal protections have been dangerously eroded by the Supreme Court in its 1990 Employment Division v. Smith decision. Congress attempted to remedy this by enacting, on a bipartisan basis, the Religious Freedom Restoration Act, which the Court struck down in 1997 City of Boerne v. Flores decision.

H.R. 1691, the Religious Liberty Protection Act ("RLPA") seeks to restore the application of strict scrutiny in those cases in which facially neutral, generally applicable laws have
the incidental effect of substantially burdening the free exercise of religion. I believe that the government, if it were not to have the ability to substantially burden a right that is enshrined in the Constitution unless it is able to demonstrate that it has used "the least restrictive means of achieving a compelling state interest." (Thom­

I am concerned that this legislation if left unamended could have deleterious affects on the enforcement of State and local civil rights laws. And I think these, including those involving crime victims, single parents, and those living in difficult circumstances. Even though the increased availability of anti-defamation league, religious freedom, and the enforcement of state criminal laws.

The amendment, crafted in consultation with both religious and civil rights groups clarifies the fact that religious liberty is an individual right enjoyed by both religious organizations and individuals. It also makes clear that the right to establish a claim under RLPA applies to all individuals. A non-religious corporate entity could not use a RLPA for a claim or defense to attack civil rights laws.

Individually, under this amendment, could still raise a claim based on their sincerely held beliefs which are substantially burdened by the government, whether in the conduct of their businesses, their employment by government, their participation in the rental market, their right to observe the Sabbath or to wear religious articles and to follow the other teachings of their faith, including those relating to family life, the education of children and the conduct of their religious institutions.

I urge my colleagues to join with me in supporting the Nadler amendment as it is a positive step forward in protecting the rights of all Americans. It has been my hope to restore the legal protections for religious freedom for the average American citizens that have been threatened for nearly a decade.

Testimony of Texas State Representative Scott Horsley, Senate Judiciary Com­mittee—June 23, 1999

Mr. Chairman and Members of the Committee;

I appreciate the opportunity to share some thoughts with you today.

Two weeks ago, Governor George W. Bush signed the Texas Religious Freedom Restoration Act (Texas RFRA) into law, I, as a privi­leged to work the Gov. Bush as the House au­thor of this important bill. And I'm proud of this bill, because I believe it strengthens religious freedom in Texas without weakening other fundamental individual rights.

Long before I ever heard of the Smith case or the federal RFRA, I knew how hard it was for individuals to assert their first amend­ment religious freedoms against the bu­reaucracy. In the Smith case, the incident that occurred in a Houston courtroom, where an Orthodox Jewish man was required to remove his skullcap, a direct conflict with his religious practices, because the court system over allowing Jewish prisoners to practice their faith. And I found I had to pass a law before I could be sure that judges would not not be able to override legislatively. I urge you to adopt a strong law to rein­force what we have done in Texas. But in so doing, we would also ask you to follow the wisdom of our governor and our legislature and include language to protect state civil rights laws.

I also recognize that some states have already adopted similar anti-discrimination laws, which establish religious freedom as a preeminent principle of state law. In Texas, we have included language clarifying that the RFRA applies to all persons, including religious organizations.

Thank you again for your consideration.

Mr. NADLER. Mr. Speaker, how much do I have remaining?

The SPEAKER pro tempore. The gentle­man from New York (Mr. NADLER) has 4 minutes remaining. The gentle­man from Florida (Mr. CANADY) has 3 minutes remaining.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, everything that has been said in support of this bill, as my colleagues know, I agree with. I sup­port this bill. I think it is an important bill. I helped craft it. But it has a ter­rible flaw, and we must pass this amendment. The bill should be used as a shield for religious liberty but not as a sword against civil rights laws.

My distinguished colleague, the gentle­man from Florida (Mr. CANADY), who has done yeoman's work on behalf of religious liberties and who I really re­spect, says that this amendment would subordinate religious liberty. It does not subordinate religious liberty in any way.

In fact, the bill, by establishing the compelling interest standard, estab­lishes religious freedom as preeminent over other rights. Rarely can a State show a compelling as opposed to a le­gitimate interest. We could, if we wanted to, adopt the Supreme Court test of balancing the competing interests by the legitimate interest tests, and that would be an even playing field. But we are not doing that.

We are, and I agree with this, estab­lishing a compelling State interest test which establishes religious liberty as compelling over other interests. And I think that is proper. We should afford religion a preferred status, but we are also entitled to fine­tune that balance if we think the courts, pursuant to that mandate of es­tablishing religious freedom as a pre­ferred status, will not do it quite right.

What this amendment does is to cre­ate a somewhat different balance in the area of civil rights. Because recent court decisions that found that States had no compelling State interest in a case involving, for example, a State law against housing discrimination in a multiple dwelling, the State did not have compelling interest to enforce its antidiscrimination law in a multiple dwelling.

The courts sometimes make mis­takes. We want to exercise our rights in this amendment to tell the courts a little more finely how to balance it in the civil rights area. We are telling them to use the compelling State in­terest test to establish religion as pre­eminent in every other case. In civil right cases, we are saying, be a little dif­ferent than that.

Finally, let me say that the religious groups that are supporting this bill, I have spoken with most of them, not all
of them, and most of them told me that they agree, they can live with the amendment, it gives them no practical problems, it protects all their legitimate interests. They only disagree with it because of what the gentleman from Florida (Mr. CANADY) said before, the principle of indivisibility, that there should be one standard.

Mr. Speaker, let me simply say, sometimes we have to balance competing rights. We should adopt this amendment so that we do not have to say we will protect religious liberty at the expense of civil rights or civil rights at the expense of civil liberty. We can and should do both. With this amendment, we can and should pass the bill. And without the amendment, I would hope that we would not pass the bill today so that we can get a little more leverage to fine-tune the bill with something like this amendment before we finally pass it, as indeed we must eventually.

So I urge my colleagues to support this amendment.

Mr. CANADY of Florida. Mr. Speaker, yield myself the balance of my time.

Mr. Speaker, I want to encourage the Members to focus on what is actually taking place and the actual consequence of the amendment that the gentleman has offered. It would establish as a matter of congressional policy that religious liberty would have a second-class status. I do not think that is what the gentleman wants to do. I acknowledge that, but that is the effect of the language of his amendment.

Let me point out that there are folks who have some of the same views on a whole range of civil rights issues, including issues related to homosexual rights, that the gentleman from New York has who have expressed their support for this bill, without the gentleman's amendment. Members of Congress have received a letter just this week from groups such as the Friends Committee on National Legislation, the American Humanist Association, the Evangelical Lutheran Church in America, the Board of Church & Society of the United Methodist Church, People for the American Way, the Presbyterian Church (USA), Washington Office, where they say and they recognize some of the concerns that the gentleman has expressed but where they conclude, and I quote them, "We believe that in every situation in which free exercise conflicts with government interest, application of the Religious Liberty Protection Act standard is appropriate." They go on to say, "A no-exemptions, no-amendment Religious Liberty Protection Act provides the strongest possible protection of free exercise for all persons.

I would suggest that some who have listened to the concerns expressed by the gentleman from New York and others pay attention to the view of these religious and civil rights groups. I would suggest that Members consider the broad coalition of groups that are supportive of this legislation. I do not have time to list them all. I will try to list a few in the few seconds that I have remaining.

The American Jewish Committee, Americans United for Separation of Church & State, the Anti-Defamation League, the Baptist Joint Committee on Public Affairs, Campus Crusade for Christ, the Catholic League for Religious and Civil Rights, the Christian Coalition, the Christian Legal Society, Christian Science Committee on Public Affairs, the Church of the Brethren, the Church of Jesus Christ of Latter-Day Saints.

I will skip toward the end of the alphabet here. The Union of American Hebrew Congregations, the Union of Orthodox Jewish Congregations of America, the United Methodist Church, Board of Church & Society; the United States Catholic Conference, the United Synagogue of Conservative Judaism; Women of Reform Judaism; Federation of Temple Sisterhoods. Those are just a few of the more than 70 religious and civil rights organizations that support the Religious Liberty Protection Act.

I would urge all Members of this House to join together in a bipartisan effort to protect America's first freedom by passing this bill, this important bill, without the weakening amendment offered by the gentleman from New York. His amendment would do harm to this bill and needs to be rejected. We need to move forward with the passage of this legislation.

ORGANIZATION SUPPORTING H.R. 1091, "RELIGIOUS LIBERTY PROTECTION ACT OF 1999"

A Agudath Israel of America
The Aleph Institute
American Baptist Churches, USA
American Christian Center for Law and Justice
American Conference on Religious Movements
American Ethical Union, Washington
American Humanist Association
American Jewish Congress
American Jewish Committee
American Muslim Council
Américas for Democratic Action
Americans for Religious Liberty
Americans United for Separation of Church & State
Anti-Defamation League
Association on American Indian Affairs
Association of Christian Schools International
B Baptist Joint Committee on Public Affairs
B'nai B'rith
C Campus Crusade for Christ
Catholic League for Religious and Civil Rights
Central Conference of American Rabbis
Christian Church (Disciples of Christ)
Christian Coalition
Christian Legal Society
Christian Science Committee on Public Affairs
Church of the Brethren
Church of Jesus Christ of Latter-Day Saints
Church of Scientology International
Coalition for Christian Colleges and Universities
Council of Jewish Federations
Council on Religious Freedom
Council on Spiritual Practices
Criminal Justice Policy Foundation
D Episcopal Church
Ethics, and Religious Liberty Commission of the Southern Baptist Convention
Evangelical Lutheran Church in America
F Jerry Falwell's Liberty Alliance
Family Research Council
Focus on the Family
Friends Committee on National Legislation
G General Conference of Seventh-Day Adventists
Guru Gobind Singh Foundation
H Hadassah, the Women's Zionist Organization of American, Inc.
Interfaith Religious Liberty Foundation
International Association of Jewish Lawyers and Jurists
International Institute for Religious Freedom
J Kay Coles James
Japanese American Citizens League
Jewish Council for Public Affairs
The Jewish Policy Center
The Jewish Reconstructionist Foundation
Justice Fellowship
K Liberty Counsel
M Mennonite Central Committee U.S.
Muslim Prison Foundation
Muslim Public Affairs Council
Mystic Temple of Light, Inc.
N NA'AMAT USA
National Association for the Advancement of Colored People
National Association of Evangelicals
National Campaign for a Peace Tax Fund
National Committee for Public Education and Religious Liberty
National Council of Churches of Christ in the USA
National Council of Jewish Women
National Council on Islamic Affairs
National Jewish Coalition
National Jewish Commission on Law and Public Affairs
Native American Church of North America
Native American Spirit Correction Project
Navajo Nation Corrections Project
North American Council for Muslim Women
P Pacific Justice Institute
People for the American Way Action Fund
Peyote Way Church of God
Presbyterian Church (USA), Washington Office
Prison Fellowship Ministries
R Rabbinical Council of America
Religious Liberty Foundation
Rutherford Institute
S Sacred Sites Inter-faith Alliance
Soka-Gakkai International-USA
U Union of American Hebrew Congregations

July 15, 1999
Mr. NADLER. Mr. Speaker, on that I reserve the balance of my time.

The question is on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Speaker pro tempore announced that the ayes had it.

Mr. NADLER. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 190, nays 234, not voting 10, as follows:

[Roll No. 298]

**YEAS—190**

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The SPEAKER pro tempore. The question is on the passage of the bill. The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 306, noes 118, not voting 10, as follows:

... (names of congressmen)

The question was taken; and the ayes appeared to have it.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 246 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 246

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the Consent Calendar for consideration of the bill (H.R. 2490) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2000, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman of the Committee on Appropriations and the minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. Points of order against provisions in the bill for failure to comply with clause 2 or rule XCI are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the journal. In any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto of final passage without intervening motion except on emotion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. PEASE). The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MOAKLEY), pending which I yield myself such time as I may consume. Mr. Speaker, during consideration of this amendment, all time is yielded for the purpose of debate.

The Speaker, the legislation before us is an open rule providing for the consideration of H.R. 2490, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President and certain independent agencies for fiscal