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

Section 4(f) expressly authorizes the United States to sue for injunctive or declaratory relief under the Act. The United States has similar authority to enforce other civil rights acts. This section is based on §§2(c) and 2(g) of H.R. 1691.

Section 4(g). If a claimant proves an effect on commerce in a particular case, the courts assume or infer that all similar effects will, in that case, unconstitutionally affect commerce. This section gives government an opportunity to rebut that inference. Government may show that even in the aggregate, there is no effect on commerce. Such an opportunity to rebut the usual inference is not constitutionally required, but is provided to create an extra margin of constitutionality in potentially difficult cases. This section had no equivalent in H.R. 1691.

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

Sections 5(c) and 5(d) have been carefully negotiated to keep this Act neutral on all disputed issues. Section 5(c) provides that nothing in the Act precludes governmental aid to religious organizations and religious activities. Section 5(c) states neutrality on whether such assistance can be provided at all; §§5(d) states neutrality on the scope of existing authority to regulate private organizations that accept such aid. Litigation about such aid will be conducted under other theories and will not be affected by this bill. They are identical to §5(c) and 5(d) of H.R. 1691.

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

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

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

Section 6. This section is taken from RFRA. It was carefully negotiated to ensure that the Act neither creates nor establishes any national standard for the Establishment Clause. It is more general than §§5(c) and 5(d), which were negated in light of this bill's reliance on the Spending Clause. This section is substantially identical to §6 of RFRA.

Section 7. Section 7 amends the Religious Freedom Restoration Act to conform §§7(a)(3) and (2) and 7(b) collectively conform RFRA to the Supreme Court's decision in City of Boerne v. Flores, 521 U.S. 507 (1997), eliminating the further findings and leaving RFRA applicable only to the federal government. Section 7(a)(3) clarifies the definition of "religious exercise," conforming the definition of "RFRA" to the definition in the Act. These sections are substantially the same as §7 of H.R. 1691, but the incorporated definition of religious exercise has been changed in §8.

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

The definition of "demonstrates" in §8(2) is taken verbatim from RFRA. It includes both the burden of going forward and the burden of persuasion. This section is identical to §8(3) of H.R. 1691.

Section 8(h). "Free Exercise Clause" means shall be defined to mean the First Amendment's ban on laws prohibiting the free exercise of religion. This section is substantially the same as §82 of H.R. 1691.

The definition of "government" in §8(4)(A) includes the state and local entities previously covered under RFRA, but does not list the United States or its agencies, because the United States remains subject to RFRA. But a further definition in §8(4)(B) includes the United States and its agencies for the purposes of §§4(b) and (5), because the burden-shifting provision in §4(a), and some of the rules of construction in §5(e) are substantially the same as those §8(3) of H.R. 1691.

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

Section 8(j) provides that certain parts of the definition of program or activity from Title VI of the Civil Rights Act of 1964. This definition ensures that federal regulation is excluded from the definition of government that receives federal aid, and does not extend to everything a government does. This section is substantially the same as §84 of H.R. 1691.

Section 8(k) clarifies the meaning of "religious exercise." The section does not attempt a global definition; it relies on the practical effect of the existing case law, subject to clarification of two important issues that generated litigation under RFRA. First, religious exercise includes any exercise of religion, and should not be compulsory or central to the claimant's religious belief system. This is consistent with RFRA's legislative history, but much unnecessary litigation resulted from the failure to resolve this question in statutory text. This definition does not change the rule that sincere religious claims are not religious exercise at all, and thus are not protected. Nor does it change the rule that an individual's religious belief or practice need not be shared by other adherents of a larger faith to which they adhere. Second, the use, building, or conversion of property for religious purposes is religious exercise of the person or entity that holds the property interest. It is only the use, building, or conversion for religious purposes that is protected, and not other uses or portions of the same property. Thus, if a commercial enterprise builds a chapel in one wing of the building, the chapel is protected if the owner is sincere about its religious purpose, but the commercial enterprise is not protected. Similarly if religious services are conducted once a week in a building otherwise devoted to secular commerce, the building is protected but the secular commerce is not. Both parts of this definition are based on §81 of H.R. 1691.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

HON. HENRY J. HYDE
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 21, 2000

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

RELIGIOUS LAND-USE CASES

"In the last 10 years, zoning conflicts between churches and cities have become a leading church-state issue. Disputes have arisen over church soup kitchens or homeless shelters in suburban churches, conversion of church facilities, parking squeezes on Sunday, breaches of noise ordinances or disagreements on what kind of meetings the zoning board will allow. Growing churches that seek new land to relocate often cannot win zoning approvals in the face of public protest over traffic." Joyce Howard Price, Portland church ordered to limit attendance, Washington Times, February 18, 2000.

MONTGOMERY COUNTY, MD—9/16/00

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


PALOS HEIGHTS, IL—9/10/00

On June 30, 2000, Chicago Public Radio's Jason DeRosa reported that the Al Salam Mosque Foundation encountered opposition from the city council of Palos Heights, Illinois, when Muslims tried to buy a building from a Reformed Church and turn it into a Muslim mosque. Although the city council attempted to block the $2.1 million sale by arguing that the city needed the building for
a recreation center, the community appeared to be driven more by anti-Arab prejudice than by a desire for new recreational facilities. According to the New York Times on August 10, “[t]hat message, meetings, some residents swooped derogatory comments, telling the Muslims to go back to their own countries, and implying that they might have to pay for the electricity from an existing tower in the nearby hills, not from the mobile home. The permit has been denied on the grounds that the radio ministry is not a religious purpose. The new facility cannot be used to ‘feed, clothe, or house individuals.’ The vague language of this amendment (‘individuals’ to ‘individuals’) raises questions about the status of more innocuous church activities that involve ‘feeding,’ such as church potlucks. The Pacific Union of Seventh-day Adventists is interested in challenging the language of the amendment.

Sources: Telephone Interview with Alan J. Reinach, Esq., Director, Department of Public Affairs and Religious Liberty, Pacific Union Conference of Seventh-day Adventists (July 7, 2000), Pacific Union Conference of Seventh-day Adventists, Department of Public Affairs and Religious Liberty, Church State Newsflash: A Busy Week with Land Use Problems, The Religious Liberty Newsflash and Legislative Alerts, May 30, 2000.

BELMONT, MA Ð 7/7/2000

In Belmont, Massachusetts, a new Latter-day Saints (Mormon) Temple has caused a great deal of controversy. The white, 69,000 sq. ft. building sits atop a hill, overlooking an upscale neighborhood of single-family homes. Nearby residents want the Temple demolished. In May 1999, a three-judge panel of the federal appeals court in Boston rejected a challenge to the proposed 139 ft. steeple for the Temple. The lawsuit challenged the unconstitutional state and town laws that prevent property from any zoning area. Boyajian v. Gatzunis, 212 F.3d 1 (1st Cir. 2000).

The court allowed construction to proceed and the Temple to open for worship services.

Other actions over the Temple construction are still pending. Middlesex Superior Court Judge Elizabeth Fahey has ruled that the proposed 139 ft. steeple for the Temple is not essential: “While a spire might have spiritual value and may embody the Mormon model of worship and outreach, and of violence against and war on non-Mormons.”


SAN FRANCISCO, CA Ð 5/4/2000

When the City of San Francisco recently proposed new parking regulations, the Tabernacle was denied a permit to locate a parking lot adjacent to a nearby church by making it impossible for congregation members to park their cars during Saturday worship services. The regulations impose an absolute ban on parking on other days. The Church received a favorable response from a hearing officer at City Hall, who granted their request to amend the parking regulations for one day.


APX, NC Ð 5/12/2000

The Wall Street Journal reports that in many towns across the rural south, downtown shopkeepers would prefer that landlords rent to any type of business rather than a storefront church. Shopkeepers consider it an obstacle to the town’s revitalization plans. Since churches do not generate
weekday traffic, do not add revenues, and do not pay taxes, some shopkeepers support changes in zoning laws to prevent landlords from renting to churches in downtown areas. City officials in Apex, North Carolina, are not seeking to close the town's two existing storefront churches, but they do want to ban any new churches that might hinder their economic plans. The law retained by Apex churches notes that city officials are overlooking the fact that churches can turn indigents into people who contribute to society.


The City of Jacksonville granted First Presbyterian Church a permit to build a sanctuary and an education building on a ten-acre site only if the church met certain conditions. The City close its buildings on Saturdays and during certain weekday hours, would be forbidden to hold weddings or funerals on Saturdays, and would be required to pay its pastor and elders $1,500 a month. The City Council met to revise this proposal after being warned that the wedding and funeral ban could potentially be unconstitutional. The meeting resulted in a conditional use permit with certain conditions. The church would be required to pay his attorney fees.


Orthodox Jews must walk to services on the Sabbath because their religion does not permit them to use cars. Etz Chaim is a congregation of elderly and disabled Orthodox Jews in the Hancock Park area of Los Angeles who have trouble walking distances as short as half a mile. The members of Etz Chaim sought a conditional use permit to establish a synagogue in Hancock Park, an area zoned for single-family dwellings, because their disabilities prevent them from walking to any of the synagogues located in a nearby retail zone. The town's zoning board held a hearing before granting the conditional use permit. The city of Los Angeles retained by Apex churches notes that city officials are overlooking the fact that churches can turn indigents into people who contribute to society.

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of religion. The trial court found that although Pepper’s rights to practice and exercise her religion and to use and enjoy her property for religious purposes are protected by the Ohio and U.S. Constitutions, these rights are not absolute and may be reasonably regulated. The Court found that the FCO’s requirements are a reasonable exercise of police power. The appellate court similarly upheld the “minimal requirements” imposed by the FCO and struck down a challenge to the zoning ordinance. Therefore, I commend to Members’ attention the opinion of the Board of Zoning Appeals, 1999 WL 476087 (No. 97 CA 249) (Ohio App. June 30, 1999).

I am proud to say that the United States has been working with groups such as the Washington Kurdish Institute and scientists and historians such as Christine O’Connor to document the suffering of the people of Halabja and--just as importantly--to find ways to help the people of Halabja treat the victims and bring some sense of justice and dignity to those who have suffered. We are also committed to bringing to justice and accountability for the victims of Saddam Hussein’s regime in Iraq.

THE CRIMINAL RECORD OF THE REGIME OF SADDAM HUSSEIN

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

This may seem self-evident to all of you here today. Interestingly, in my discussions of this Unit 4 I have found some people who will agree that Saddam Hussein is a criminal, but who are genuinely unaware of the magnitude of his criminal conduct. Those who want to gloss over Saddam’s criminal record often want to gloss over the need for him to be brought to justice. This goes to the very heart of why his conduct deserves an international response, so I find it useful to review what we know now of the criminal record of Saddam Hussein and his top associates.

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

2. Halabja. In mid-March of 1988, Saddam Hussein and his cousin Ali Hassan al-Majid—the infamous “Chemical Ali”—ordered the dropping of chemical weapons on the town of Halabja in northeast Iraq. Halabja has an estimated 5,000 civilians, and is a war crime and a crime against humanity. Photograph and videotape evidence of this attack and its aftermath exists. Some able to be presented to Washington Kurdish Institute and scientists and historians such as Christine O’Connor to document the suffering of the people of Halabja and--just as importantly--to find ways to help the people of Halabja treat the victims and bring some sense of justice and dignity to those who have suffered. We are also committed to bringing to justice and accountability for the victims of Saddam Hussein’s regime in Iraq.

3. The Anfal campaigns. Beginning in 1987 and accelerating in early 1988, Saddam Hussein ordered the “Anfal” campaign against the Iraqi Kurdish people. By any measure, this constituted a war crime and a crime against humanity. Chemical Ali has admitted to witnesses that he carried out this campaign “under orders.” In 1995, Human Rights Watch published a confidential report in the summer of 1995, which is now out of print. Human Rights Watch needs to reprint this book. The report contains shocking witness testimony to describe to investigators, doctors and scientists what they were during those terrible days of the Iraqi chemical attack and its aftermath. This will be published in Tehran. The best evidence of all is from the survivors in Halabja itself.

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