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**PROTECTING RELIGIOUSLY AFFILIATED INSTITUTIONS
ACT OF 2018**

AUGUST 22, 2018.—Ordered to be printed

Mr. GRASSLEY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 994]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 994) to amend title 18, United States Code, to provide for the protection of community centers with religious affiliation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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**I. BACKGROUND AND PURPOSE OF THE PROTECTING RELIGIOUSLY
AFFILIATED INSTITUTIONS ACT OF 2018**

A. BACKGROUND

In the past two years, numerous threats have been made against religious institutions, including against the Jewish and Muslim communities. There were 161 bomb threats made to Jewish Community Centers in 2017—an increase of 127 percent from the pre-

vious year, and the FBI reported that hate crimes against Muslims rose 67 percent from 2014 to 2015, the second-most reported amount of incidents ever.

The House introduced H.R. 1730 on March 23, 2017. On December 11, 2017, the bill was reported by the Committee on the Judiciary and passed in the House by a roll call vote of 402–2. The bill was referred to the Senate Committee on the Judiciary the next day.

B. PURPOSE

The amendments of Title 18 in S. 994 are intended to protect community centers with religious affiliation and those spaces leased by religious institutions and increases the criminal penalty where there is damage to religious real property.

1. *Revision of Section 247*

The amendments to Section 247 have three aims. First, to explicitly address the threats made against religious real property, section 247(a)(2), as it is codified, punishes whomever “intentionally obstructs, by force or threat of force” any person’s free exercise of religious beliefs. The amendment to section 247(a)(2) would explicitly include threats that intentionally obstruct persons from free exercising of their religious beliefs by means of threats against religious real property.

Second, the amendment to section 247(a)(4) imposes a heightened criminal penalty on a perpetrator regardless of whether bodily injury or death occurs if the damage or destruction exceeds \$5,000. As codified, section 247(d)(1)–(3) address punishments for death and bodily injury (with a more severe penalty if the bodily injury occurs by means of fire or an explosive). Section 247(d)(4) imposes a maximum prison sentence of one year. The amendment to Section 247(a)(4) would increase the maximum prison sentence to three years if the damage or destruction exceeds \$5,000.

Third, the amendment to section 247(f) includes real property that is “owned or leased by a non-profit, religiously affiliated organization.” As codified, section 247(f) does not include religious community centers, which received the brunt of threats that spurred this legislation. This modest expansion would include facilities like Jewish Community Centers, and others.

2. *The bill does not expand the death penalty*

The changes adopted in the manager’s substitute amendment are intended to *clarify* that a “threat of force” under subparagraph (a)(2) includes “threats of force” made against religious real property. The authors of the substitute amendment do not intend, and the substitute amendment should not be read, to *expand* the permissible application of the death penalty provision found in subsection (d)(1).

In any event, even if the manager’s substitute amendment were interpreted to expand the permissible application of the death penalty to threats made against religious real property, such a penalty would be extremely unlikely. This is because the Federal Death Penalty Act requires the government to prove beyond a reasonable doubt that a defendant “intentionally” killed a victim or committed offenses while contemplating that the life of a person be taken. *See*

18 U.S.C. § 3591 (providing for when sentence of death may be imposed).

More specifically, in federal death penalty proceedings, 18 U.S.C. §§ 3591 and 3593 require that the government prove beyond a reasonable doubt that the defendant:

- intentionally killed the victim;
- intentionally inflicted serious bodily injury that resulted in the death of the victim;
- intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or
- intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act.

These additional elements mean that a threat against religious real property, as a standalone offense, would be extremely unlikely to result in a sentence of death.

3. *Threats of force*

While the legislation does not specifically define the term, “threats of force,” the substitute amendment should not be read to encroach on protected speech. Courts have long distinguished “true threats” from protected speech by asking whether those who hear or read the threat reasonably consider it to be an “actual threat.” *See, e.g., R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992) (explaining that prohibiting true threats “protect[s] individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that threatened violence will occur”); *United States v. Wheeler*, 776 F.3d 736, 743 (10th Cir. 2015) (“[T]rue threats [are] statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual.”) (internal quotation marks omitted).

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

On May 1, 2017, Senator Hatch introduced S. 994, the Protecting Religiously Affiliated Institutions Act. Senator Feinstein was an original cosponsor. The bill was referred to the Committee on the Judiciary.

On May 2, 2017, the Committee on the Judiciary held a hearing entitled, “Responses to the Increase in Religious Hate Crimes.” Testimony was received from Eric Treene, Special Counsel for Religious Discrimination, Civil Rights Division, U.S. Department of Justice; Jonathan A. Greenblatt, CEO and National Director of the Anti-Defamation League; Dr. Prabhjot Singh, Chair of the Department of Health System Design & Global Health and Director of the Arnhold Institute for Global Health at the Mount Sinai Health System; Vanita Gupta, President & CEO of the Leadership Conference on Civil and Human Rights; and Chief Will D. Johnson, Chair of

the International Association of Chiefs of Police, Human and Civil Rights Committee.

Mr. Treene noted that hate crimes, which make up 4 percent of the violent crimes in the United States, are meant to intimidate and terrorize communities. Religion-based hate crimes are the second-largest category, after race-based; the FBI Uniform Crime Report showed a 67 and 9 percent increase in anti-Muslim and anti-Jewish hate crimes, respectively. In his written testimony, Mr. Treene explained that the Church Arson Prevention Act (CAPA) has been used to prosecute crimes that interfere with religious exercise, including against Dylann Roof, for the killing of nine African Americans at the African Methodist Episcopal Church in Charleston, SC, and Robert Duggart, who “solicited another man to help him launch an attack” in Islamburg, NY, which was founded by African-American Muslims.

Mr. Greenblatt noted that the FBI’s crime data invariably underreported the instances of hate crimes and that it is “actually shocking” that 87 major U.S. population centers told the FBI that there were no hate crimes, or did not provide data on hate crimes at all. Mr. Greenblatt recommended strengthening federal hate crimes bills, including the criminalization of threats under CAPA. In his written testimony, Mr. Greenblatt explained that criminalizing violent threats to religiously-affiliated organizations is important because “the First Amendment’s guarantee of religious freedom means little to those not safe in their house of worship.”

Ms. Gupta in her written testimony recommended passing legislation that filled the gaps in current law, specifically CAPA, to include not only attempts, but “*threats* to religious property (emphasis original). Ms. Gupta also recommended passing the NO HATE Act to provide funding for reporting hate crimes.

B. COMMITTEE CONSIDERATION

The Committee considered S. 994 on April 19, 2018. Senator Hatch offered a manager’s substitute amendment which the Committee adopted without objection. The Committee then voted to report the Protecting Religiously Affiliated Institutions Act of 210, with an amendment, favorably to the Senate, by voice vote.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the “Protecting Religiously Affiliated Institutions Act of 2018.”

Section 2. Protection of community centers with religious affiliation

This section makes adjustments to U.S. criminal law in order to broaden the prohibited conduct towards religiously affiliated institutions.

The section amends Section 247 of Title 18, United States Code, to broaden the scope of prohibited conduct by specifically addressing threats made against religious real property, including that which is owned or leased by a nonprofit, religiously affiliated organization.

The section inserts new language in section 247(a)(2) to include that the threat of force means that it is “including by threat of force against religious real property.”

The section inserts in the matter preceding paragraph (1) of subsection (d) that subsection (d) contains the punishment provisions for both (a) and (c), and deletes the “and” at the end of the paragraph 247(d)(3).

New language in section 247(d)(4) specifies that if the the damage or destruction of the property exceeds \$5,000, the imprisonment will be up to three years.

The section redesignates 247(d)(4) as 247(d)(5).

The section inserts new language in 247(f) to include real property owned or leased by a nonprofit, religiously affiliated organization.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 994, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

APRIL 25, 2018.

Hon. CHUCK GRASSLEY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 994, the Protecting Religiously Affiliated Institutions Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

S. 994—Protecting Religiously Affiliated Institutions Act of 2018

S. 994 would broaden the coverage of current laws against damaging religious property; that change would allow the government to pursue some cases that it otherwise may not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such spending would be subject to the availability of appropriated funds.

Because people prosecuted and convicted under S. 994 could be subject to criminal fines, the federal government might collect additional fines under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the bill would probably affect a small number of cases.

Pay-as-you-go procedures apply because enacting S. 994 would affect direct spending and revenues. However, CBO estimates that any such effects would be insignificant on an annual basis.

CBO estimates that enacting S. 994 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 994 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On November 20, 2017, CBO transmitted a cost estimate for H.R. 1730, the Protecting Religiously Affiliated Institutions Act of 2017, as ordered reported by the House Committee on the Judiciary on November 2, 2017. CBO's estimates of the budgetary effects of the two pieces of legislation are identical.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 994.

VI. CONCLUSION

The Protecting Religiously Affiliated Institutions Act of 2018, S. 994, will further protect religiously affiliated institutions by broadening the scope of prohibited conduct with regards to threats against religious real property.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 994, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

* * * * *

§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, *including by threat of force against religious real property*, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (d).

(b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce.

(c) Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be punished as provided in subsection (d).

(d) The punishment for a violation of subsection (a) *or* (c) of this section shall be—

(1) if death results from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death;

(2) if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment for not more than 40 years, or both;

(3) if bodily injury to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title and imprisonment for not more than 20 years, or both; **and**

(4) if damage to or destruction of property results from the acts committed in violation of this section, which damage to or destruction of such property is in an amount that exceeds \$5,000, a fine in accordance with this title, imprisonment for not more than 3 years, or both; and

[(4)] (5) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.

(e) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(f) As used in this section, the term ‘religious real property’ means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship, *or real property owned or leased by a nonprofit, religiously affiliated organization.*

(g) No person shall be prosecuted, tried, or punished for any non-capital offense under this section unless the indictment is found or the information is instituted not later than 7 years after the date on which the offense was committed.

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