Justice Department then entered the case on the side of Operation Rescue, saying Judge Kelly had no authority to make this order.

Attorney General Richard Thornburgh, on his way out the door to run for the Senate, claimed the Justice Department action had nothing to do with abortion, which is still for the moment a constitutional right, or with support for Operation Rescue's tactics, which are uncontestably illegal. After a day of bad press, Bush even remarked that protests "ought to be done within the law." But what good is the law if it can't be enforced, and what good are constitutional rights if they can't be protected?

The power of federal judges to restrain Operation Rescue will be debated at the Supreme Court next month in Bray v. Alexandria Women's Health Clinic. In this case, too, the Justice Department has intervened on the side of Operation Rescue. At issue is a long tangle of constipated legal prose known as the Klu Klux Klan Act of 1871. The Klan Act was originally intended to authorize lawsuits against Klan persecution of blacks in the Reconstruction South, but it speaks more generally of conspiracies to deprive "any person or class of persons of the equal protection of the laws."

In their briefs, Operation Rescue and the Justice Department offer half a dozen reasons why the Klan Act may not apply in this situation. Not all of them can be dismissed out of hand. There is a question whether the group being oppressed in this case should be defined as "women" or as "women seeking abortions," and whether the latter category is acceptable. One side says: Not all women want abortions, or even support abortion. The other side replies: Not all blacks tried to vote back in 1872, but the law protected those who did.

The Justice Department emphasizes, as if it were a virtue, that Operation Rescue does not merely aim to oppress women: "Petitioners direct their actions at anyone, whether male or female, who assists or is involve in the abortion process—doctors, nurses, counsellors, boyfriends, husbands and family members, staff and others." Oh well, in that case go right ahead.

There is a question whether the law, which refers to suing for damages, authorizes judges to issue injunctions as well. Since most constitutional rights protect you only against deprivation by the government itself, not by private individuals, there is a question whether this limit also applies to the Klan Act. Lower courts have avoided this particular complication by holding that Operation Rescue is violating not the right to choose abortion but the right to interstate travel, which does not require government involvement. But then there is a question whether the mere fact that many clinic patients come from out of state is enough to establish that this right is being violated.

My own conclusion, after reading the briefs, is one of impatience. Is it really possible that federal judges lack the authority to protect citizens from organized mobs systematically denying them the ability to exercise their constitutional rights? If so, the law ought to be changed.

President Bush does not believe in abortion rights, or claims not to. But as president he cannot openly endorse mob action to deprive people of rights that are still the law of the land. So he and his administration resort to technicalities The solution is simple. The Ku Klux Klan Act is only a statute, not a constitutional provision. Congress ought to pass a new statute, stripped of all the complications. If Bush were presented with the bald proposition, in the form of a bill, that the federal government ought to be able to protect people in the exercise of their federal constitutional rights, would he dare to veto it? If the Democrats were a bit faster on their feet, they could have a bill like this on Bush's desk in a week. It would leave him in a bind he truly deserves.

THE AMERICAN SAMOA STUDY COMMISSION ACT

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today to introduce the "American Samoa Study Commission Act."

For several years, I have been concerned that as the only unincorporated, unorganized territory of the United States, the actual political status of American Samoa is not known. This problem is compounded because what is now known as the Territory of American Samoa was really ceded to the United States by two separate treaties.

As Samoa and the other territories continue to explore new options in their relationships with the United States, it seems crucial to me that Samoa's current status be known and well defined.

Today's legislation will establish a federal commission to provide a comprehensive review of fundamental issues affecting Samoa's interests.

OREGON EMPLOYMENT DIVISION VERSUS SMITH: A TRESPASS OF RELIGIOUS FREEDOM

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Mr. ANDERSON. Mr. Speaker, on April 17, 1990, the Supreme Court handed down an opinion in Oregon Employment Division versus Smith that radically undercut the fundamental right of each and every American to the free exercise of religion as embodied in the First Amendment to the Constitution. In the words of the dissent in the Smith decision, this "holding dramatically departs from well-settled First Amendment jurisprudence . . . and is incompatible with our Nation's fundamental commitment to individual religious liberty." The free exercise clause of the Constitution reads, "Congress shall make no law . . . prohibiting the free exercise [of religion.]" Through the 14th amendment this clause is applicable to the States. Through the Smith decision, the Supreme Court has misread the first and foremost amendment of our Bill of Rights. Now, a coalition of religious and civil liberties groups that reaches across all political and ideological lines has assembled to overturn the Smith decision's abridgement of this constitutional right. I rise to announce my commitment to this effort as reflected in H.R. 2797, the Religious Freedom Restoration Act, introduced by my colleague STEPHEN SOLARZ of New York.

The Smith decision seems to rest on a small and isolated matter; the denial of unemployment benefits to two Native American church members fired from their jobs for their use of peyote in a native American church ritual. Oregon bans the use of peyote as a schedule I controlled substance, and denies unemployment benefits to those discharged for work-related misconduct. While not challenging the job dismissal, these two men did claim that the Oregon law prohibiting their use of peyote as part of church ritual infringed upon their free exercise rights. Thus the constitutional argument was joined.

The right to practice one's religion is intrinsically linked to the constitutional right of unfettered religious belief. This connection and right is embodied in longstanding legal precedent. But the freedom to act on one's belief can also conflict with an obvious need for society to regulate conduct. Like all rights, religious freedom is not an absolute. As Justice Burger wrote in Wisconsin versus Yoder, "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." Indeed, the history of the Court with regard to the free exercise clause is a continuous balancing act, replete with cases where the interests of an ordered society are weighed against an individual's right to religious sanctity. Not only have laws that are specifically intrusive toward religion been struck down, but generally applicable laws, which are seemingly neutral toward religion on the surface and dedicated to other ends, have also been found to be unconstitutionally intrusive in specific instances.

In the Yoder case, in which an Amish family did not wish to comply with a State compulsory education law for religious reasons, the Court declared that, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Generally applicable laws which were found to be burdensome to the Free Exercise Clause could only be justified if the Government could prove a compelling interest in the law. This was set forth in the landmark Sherbert versus Verner case which also turned on the extension of unemployment benefits for a member of the Seventh-day Adventist Church who would not work on Saturdays as this day is regarded as the Sabbath by her religion.

With the Smith decision, this traditional balancing act has been rejected in favor of a radical new principle that no compelling interest need be proved if a challenged law is not targeted specifically at religious practice. The new law created by Smith states:

> The Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons.

In clearer terms, any religious practice can be infringed upon if it conflicts with any general, nonspecific law. Incomprehensibly, against all original intent of the Founding Fathers and the history of American law, Smith allows majorities to trample on individual religious freedoms without any recourse to the courts for constitutional protection.

If the Smith case had followed precedent, a majority of the Court could have found the State of Oregon had an overriding and compelling interest in restricting the trade and use

of peyote, and therefore come to the conclusion that no religious freedom exception could be made for these two men. The answer to the question: "will exempting respondents from the State's general criminal prohibition 'unduly interfere with fulfillment of the governmental interest'?" could then have been "yes" and precedent would have been preserved. But the majority of the Court didn't even want that question asked, believing the Court has no place in limiting the will of the State even if that will may impinge upon the constitutional rights of these two men.

Somehow the Rehnquist Court, in an opinion written by Judge Scalia, came to the conclusion that if an exception to Oregon's drug laws were made for this religious case an "extraordinary right to ignore generally applicable laws that are not supported by 'compelling governmental interest' on the basis of religious belief" would be created. For fear that this "extraordinary right" would be created, the Smith decision allows no limited exceptions even if the religious practice which conflicts with State law is central to the practice of that religion. Judge Scalia notes:

Nor could such a right be limited to situations in which the conduct prohibited is "central" to the individual's religion, since that would enmesh judges in an impermissible inquiry into the centrality of a particular beliefs or practices to a faith.

While the Court's desire to refrain from the examination of what is and what is not "central" to any particular religion is natural, the illogical refusal to examine any State infringements on religious practices is disastrous to those religious practices which may not conform to general law and do not have the popular support to find politically granted exceptions. Though an unlikely example due to our society's majority Judeo-Christian composition, the drinking of sacramental wine may be forbidden to minors because of State age-related liquor laws, though this sacrament is clearly central to the teachings of the Christian church.

Indeed, the law must weigh restrictions on our constitutional freedoms to protect societal order. Heretofore, this process of weighing would seem to have forced the Court to judge the importance of the religious practice, and then again weigh the importance of protecting that practice against the need of the larger society to regulate conduct for the betterment of all citizens. What Justice Scalia would like to do is unburden the Court from that role. He writes,

It is no more appropriate for judges to determine the "centrality" of religious beliefs before applying a "compelling interest" test in the free exercise field, than it would be for them to determine the "importance" of ideas before applying the "compelling interest" test in the free speech field.

Essentially, because he believes this determination can't be done, he won't do it; thereby throwing the baby out with the bathwater because protection of our constitutional rights is not always an easily workable formulation.

Judge Scalia defends his argument by stating,

Any society adopting such a system (of a compelling interest standard) would be courting anarchy, but that danger increases in direct proportion to the society's diversity or religious beliefs, and its determination to coerce or suppress none of them. Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," * * * and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind.

Unfortunately, his is an argument based on fear, not principle. Even Judge Scalia admits that this possible anarchy was strictly limited even under the Sherbert compelling interest requirement. In rebuttal to Justice Scalia, Justice O'Connor notes "that courts have been quite capable of strik[ing] sensible balances between religious liberty and competing state interests." Essentially, Justice Scalia is content to ignore the constitutional rights of two men because of the precedent he fears it might set for mass exceptions to other generally applicable laws. What Justice Scalia fails to realize is that providing exceptions to generally applicable laws does not necessarily weaken those laws, while refusing exceptions clearly and irrevocably undermines one's constitutional right to freedom of religion.

This question may be looked at, not from the angle of inquiry into centrality, but through the question of severe impact. Is the burden constitutionally significant? Instead of examining how this case may affect generally applicable laws, we should examine the cases impact on future ability to sustain our constitutional right to freedom of religious expression. Traditionally, we have been protected by the Court from this severe impact. Justice Scalia would like to remove the Court's role and have us rely on the States for our protection. His opinion states "a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well" even though he acknowledges that, "leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in." Mr. Scalia would not have us worry, believing an "unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs."

Unfortunately, Justice Scalia is apparently not a student of history, which unequivocally demonstrates that it is States which are the greatest trespassers of our constitutional rights, not its greatest protectors. States have been notorious for not respecting the rights of individuals, often poor and powerless, in haste to please the demands of either the powerful or the many. The Bill of Rights was created expressly to protect those fundamental rights that majority government had a long history of trampling for reasons of political expediency. In large part due to individual States' inability to protect individual rights, the fourteenth amendment was enacted. An intent not to review any infringement on religious liberties as inflicted by State laws is an absolute abdication of the Supreme Court's role as guardian of the Constitution. As stated by Justice Jackson in 1940,

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Justice Scalia would like us to believe that because of this Nation's religious plurality, we cannot afford the luxury of protecting the first amendment. While Justice Scalia may represent the majority on this conservative Court, we should not let his radical views undercut our commitment to preservation of the Constitution. Thankfully, Justice Blackmun, author of the second dissenting opinion in the Smith decision, understands that constitutional protection of the free exercise of religion is not a "constitutional anomaly." Indeed it is a "preferred constitutional activity."

The dissent in this case firmly rejects Justice Scalia's opinion, noting that his argument not only is warped in its use of precedent, but fundamentally undermines all preceding jurisprudence on the first amendment's free exercise clause. In separate dissenting opinions, Justices O'Connor and Blackmun reinforce the need to protect religious minorities, especially when the assaults are in the firm of laws making certain religious acts criminal. These intrusions require "heightened judicial scrutiny," on a case-by-case analysis; not blind rejection. In response to Justice Scalia's fears about inquiry into religious centrality, Justice O'Connor writes,

The distinction between questions of centrality and questions of sincerity and burden is admittedly fine, but it is one that is an established part of our free exercise doctrine, and one that courts are capable of making.

As to Justice Scalia's fears about potential anarchy, Justice Blackmun notes,

This Court's prior decisions have not allowed a government to rely on mere speculation about potential harms, but have demanded evidentiary support for a refusal to allow a religious exception.

Justice O'Connor also highlights the need "to apply this test in each case to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling * * * the first amendment at least requires a case-by-case determination of the question sensitive to the facts of each particular claim."

The Supreme Court has long, though not always, been the champion of individual constitutional rights, even in instances of conduct that general society may find repugnant. Smith is a dangerous opinion because, in the interests of judicial simplicity and enforcing anti-drug laws, the Court is content to forget the Constitution. In this Nation of individuals; in all the creeds and races and differences in outlook, opinion, and belief, we persevere as a single entity because of our commitment to the notion that the sanctity of individual liberty is a greater promoter of our social welfare than any government-designed policy of social cohesion. The Court in Smith takes both a narrow reading of the Constitution and an expansive reading of the force of State law on individual liberties. Indeed, there will be times when the extent of our constitutional freedoms must be limited for societal ends. But on each occasion, we must navigate this

course with care and circumspection. The emotions of the day cannot defeat the aims of freedom and liberty to which our Founding Fathers strove. Oregon Employment versus Smith is a case contradictory to our constitutional principles; it must be overturned. I urge my colleagues to lend their support to the Religious Freedom Act and to set us back on a proper course.

SHUT DOWN THE OFFICE OF THE SPECIAL PROSECUTOR

HON. THOMAS W. EWING

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Mr. EWING. Mr. Speaker, U.S. District Judge Gerhard Gesell announced yesterday that he was dismissing the case against Lt. Col. Oliver North. I say this action is long overdue.

After spending nearly 5 years and $35 million in taxpayer money to pursue this case, Independent Prosecutor Walsh has concluded that "the Government is not likely * * * to sustain a successful outcome" in this case.

Oliver North has been completely exonerated in this case, and the taxpayers are the only true losers. For far too long, the Office of the Special Prosecutor has justified dragging out this case and increasing the cost to the taxpayers. It is clear that the time has come to put an end to this operation, which employs over 35 attorneys and support staff, before the taxpayers pay more.

The time has come to immediately shut down the Office of the Special Prosecutor and put an end to this issue, once and for all.

TRIBUTE TO CONGRESSMAN BILL GRAY

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Mr. GAYDOS. Mr. Speaker, esteemed colleagues, I am here today to pay tribute to a man who has not only done a great service for the Second District of Pennsylvania, but who has also dedicated his time and effort pursuing avenues to create a better and fair society in America.

I have been lucky enough to serve with Congressman Bill Gray since 1978. In this time, I have come to know a man whose drive and determination is like none other I have ever come across. Bill posesses a sense that all of us wished we had. A sense that enables him to see many avenues of opportunity and permits him to mold different views and ideologies together in order to create a finished product that we can all stand by. This sense gives him the ability to eventually come out on top and succeed.

It is obvious in the time that Bill was here, that many of his views and ideas rubbed off on all of us. With his leadership at the majority whip position, Bill was able to rekindle the fire of who and what the Democrats are and what we stand for.

I can remember in the height of the Reagan years, when the American economy was reeling from the Reagan revolution, I watched Bill mold four consecutive budget agreements that effectively ended the Reagan stranglehold on middle class America. The amazing story behind this is that in those 4 years, a combined total of only 77 Democrats voted against the agreements. Less than 20 Democrats a year. Considering the diversity of the Democratic party, that in itself is an astounding achievement.

The success of Bill Gray does not come from luck, it comes from a harmonious combination of personality, vision, and intelligence. With his abilities, Bill has proven that he can take a view, an idea, or a fragmented thought and create something concrete and beneficial. Something that will help people succeed and society to grow.

I am not only speaking for myself when I say Bill is a true leader of the people. Ask around the halls of Congress and the Members will tell you what a fair, hard-working, and engaging leader he is. Although the House of Representatives will be losing a great leader and potential speaker, the United Negro College Fund will be gaining a man who will tirelessly strive to assist black Americans.

Bill Gray will not leave this body as a beleagured politician, resting on the laurels of where he has been and what he has done. This man will exit this body with his head held high and his eyes wide open; he will leave as a champion looking for new obstacles to overcome, other mountains to climb, and new campaigns to wage.

In closing, I would like to extend my sincerest congratulations and gratitude to Bill and also wish him the best of luck with the endeavors he must yet face.

ESTABLISH 17-MEMBER COMMISSION TO DISMANTLE THE GLASS CEILING FOR THE ADVANCEMENT OF WOMEN AND MINORITIES

HON. SUSAN MOLINARI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Ms. MOLINARI. Mr. Speaker, today, I have introduced a bill to establish a 17-member Commission to study further why the glass ceiling—the invisible barrier keeping qualified minorities and women from moving up into management jobs—exits. The Commission will make recommendations with respect to policies for business to promote opportunities for the advancement of women and minorities and lead to the removal of artificial barriers to such advancement. In addition, this legislation establishes the National Award for Diversity and Excellence in American Executive Management. This award will be presented annually to a business which has made substantial efforts to break down the glass ceiling.

The Department of Labor's recent glass ceiling report confirms what many of us have suspected all along—that women and minorities have not been advancing up the corporate ladder as quickly as white males. This report is an important first step in understanding and removing the barriers toward women and minorities. However, it is just a first step toward a pervasive problem that has existed in our society for far too long. The legislation I am introducing today will establish a high-level government commission charged with building on the work of, and expanding the record of, the Department of Labor's efforts. It is important to note that the report completed by the Department of Labor was a modest pilot study, examining only nine Fortune 500 companies. Today's legislation will enable the high-powered Commission to compile hard facts on a multitude of businesses, versus sampling of corporate America.

During the past 25 years, shifting demographics, coupled with a more global business environment has changed the composition of the work force. Significant among these is the increased importance of women and minorities to the competitive status of the American economy. If we are to ensure a level playing field—that women and minorities have the opportunities guaranteed under the law—we must have statistical data and recommendations to break down the glass ceiling.

Mr. Speaker, I believe the proposed legislation measure will help ensure accountability in equal employment opportunities for women and minorities. It will also provide significant incentives to those companies which have undertaken particularly creative and effective initiatives to assure equal opportunity for all.

TRIBUTE TO WILLIAM J. MARSCHALK

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 17, 1991

Mr. DREIER of California. Mr. Speaker, on July 12, William J. Marschalk, an executive vice president of Great Western Corp., died following treatment for Hodgkin's disease. Over the past 2 months, I've had the opportunity to reflect upon the life and career of a remarkable individual whose legacy is one of giving and caring.

Since 1986, I had the pleasure of working with Bill on a number of issues that were before the House Banking Committee. During that time, I came to admire his professionalism and his commitment to his country and his community. His advice was sound and his instincts were usually right. During the many years of debate on the causes of and solutions to the savings and loan crisis, he was a voice of reason when reason was in short supply. He was a positive influence on a troubled industry.

In addition to being a prominent and highly respected professional Bill Marschalk was a man of compassion for those in our society who are less fortunate. When President Bush spoke of those "thousand points of light," the person who first came to mind was Bill Marschalk.

As a member of the board of directors of the Big Brothers of Greater Los Angeles, Bill spent countless hours intimately involved in the lives of hundreds of young men in need of positive male role models. In an effort to broaden education and housing opportunities for low- and moderate-income families, Bill worked as director of the California Housing Partnership Corp. and as a member of the president's council of California State University, Northridge.