
AMENDING CHAPTER 13 OF TITLE 18, UNITED STATES CODE, TO IMPOSE
CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND FOR
INJURY TO PERSONS IN THE FREE EXERCISE OF RELIGIOUS BELIEFS

SEPTEMBER 12, 1986.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 4980]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4980) to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND AND NEED FOR THE LEGISLATION

Religiously-motivated violence—which can involve simple vandalism (such as defacing the walls of a synagogue with a swastika) or more dangerous acts of destruction (such as arson or bombing)—appears to be a growing problem. Although precise statistics are not maintained on the number of incidents directed against religious groups,¹ the record shows recurring incidents of defacement or destruction of places of worship, and in some instances, personal injury or murder motivated by religious hatred.²

The majority of religiously-motivated crimes of destruction are believed to be committed against synagogues, and involve such things as swastikas painted on walls or destruction of Torah

¹ See U.S. COM'N ON CIV. RTS., INTIMIDATION AND VIOLENCE: RACIAL AND RELIGIOUS BIGOTRY IN THE UNITED STATES (Jan. 1983).

² See Chandler, *Arson, Theft at Churches on Increases*, L.A. Times, March 16, 1980, § 1, col. 4; Goldberg, *Fight Possible on Desecration Bills*, Richmond Times Dispatch, June 24, 1985, at 1, col. 4; Guest, *Sudden Rise of Hate Groups Spurs Federal Crackdown*, U.S. News & World Report, May 6, 1985, at 65; Blair, *Study Finds Anti-Semitic Acts Rose Again in Year*, N.Y. Times, January 6, 1982, § B, at 10, col. 1; Reid, *F.B.I. Says It Blunted Neo-Nazi Uprising*, Washington Post, April 14, 1985, § A, at 7, col. 1.

scrolls.³ Black churches are believed to be the next most frequent target of religiously-motivated violence.⁴ However, the statistics generated by reported cases probably represent the tip of the iceberg, since we cannot speculate as to unreported cases. More accurate statistics cannot be obtained from public records because such incidents are reported therein as vandalism, assault, or similar offenses without any indication of religious motivation.

While the States have the primary responsibility for law enforcement with regard to such matters, the Federal Government has a responsibility as well. Many of the hate groups that appear to be behind religiously-motivated violence have members in several states and operate across state lines.⁵ The Covenant, the political and paramilitary arm of the anti-Semitic Church of Zarepath-Horeb, is only one of the extreme right-wing groups under investigation by the Federal Bureau of Investigation. F.B.I. investigators have found that the links among these groups are religious, rather than organizational, based on the violently anti-Semitic teachings of sects referred to collectively as the Christian Identity Movement.⁶ The FBI has also made a top priority of the Silent Brotherhood, a breakaway faction of the Aryan Nation white supremacy group. The FBI has found the group's footprints in more than a dozen states.⁷ The Posse Comitatus, a paramilitary, anti-Semitic, antitax group, functions openly in Wisconsin and Kansas, and its leaders claim that the group flourishes underground in other states.⁸

In April 1985, a federal grand jury in Seattle indicted 23 members of a group called the Order for robbing and murdering to advance their cause. Specifically, the group was charged with robbing a California armored truck of 3.6 million dollars and planning and executing the gangland style murder of Alan Berg, a liberal Jewish radio personality from Denver, Colorado, who was an outspoken critic of such groups.⁹

Current federal law permits prosecution of religiously-motivated violence in limited circumstances. First, the federal government can prosecute persons who engage in religiously motivated violence while acting under color of law, as well as those acting in concert with persons acting under color of law.¹⁰ However, instances where

³ The Anti-Defamation League of B'nai B'rith (ADL) has compiled an unofficial count of anti-semitic episodes reported to its regional offices over the past several years. These unofficial statistics show an increase in anti-semitic violence since 1978. In 1984, the ADL reported 369 assaults or threats against Jews—up 5.4 percent over 1983—and 715 acts of vandalism—up nearly 7% over the previous year. Included in these figures are bombings of a Boise, Idaho synagogue, 17 acts of vandalism in a Bronx, N.Y. housing project, and the burning of a swastika on a lawn in a swank Los Angeles subdivision. See Anti-Defamation League of B'nai B'rith, 1982 Audit of Anti-Semitic Incidents 1 (Jan. 1983); Anti-Defamation League of B'nai B'rith, 1983 Audit of Anti-Semitic Incidents 1 (Jan. 1984).

⁴ Goldberg, *Fight Possible on Desecration Bills*, Richmond Times Dispatch, June 24, 1985, at 1, col. 4; statement of Rep. Dan Glickman concerning H.R. 665 and Related Bills before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary at 8 (May 16, 1985).

⁵ King, *Anti-Semitism Links Violent Groups*, N.Y. Times, April 28, 1985, § A; at 1, col. 1.

⁶ *Id.*

⁷ Starr, *Violence on the Right*, Newsweek, March 4, 1985, at 24.

⁸ *Id.* at 26.

⁹ Guest, *Sudden Rise of Hate Groups Spurs Federal Crackdown*, U.S. News & World Report, May 6, 1985, at 65.

¹⁰ 18 U.S.C. 242, 241.

person engage in religiously-motivated violence while acting under color of law, or with another who is acting under color of law, are rare.

Secondly, the Federal Government can prosecute religiously-motivated violence if explosives are used (or attempted to be used) or arson (or attempted arson) is involved and (1) the offender flees across a state line with intent to avoid prosecution,¹¹ or (2) the property damaged is used in or affects interstate or foreign commerce.¹² Thus, the federal unlawful flight provision would not, for example, permit prosecution if the underlying offense was defacing property—one of the most common forms of damage sustained by synagogues.¹³

Finally, the federal government can prosecute the damage of religious property located on enclaves within the exclusive jurisdiction of the United States under the Assimilative Crimes Act.¹⁴ This act permits prosecution by federal authorities in federal courts using the state definition of the offense and subjects the defendant to the maximum penalty allowed by State law.¹⁵

COMMITTEE CONSIDERATION

The Subcommittee on Criminal Justice held two hearings on the problem of religiously-motivated violence, receiving testimony from Representatives Glickman, Matsui, and McGrath, and representatives of the United States Department of Justice and the American Jewish Committee.¹⁶ Representative Fiedler also submitted a written statement.

In response to the testimony developed at the Subcommittee's hearing, Representative Glickman introduced H.R. 4980. On June 12, 1986, the Subcommittee unanimously voted to report the bill favorably, and on August 13, 1986, the Committee on the Judiciary unanimously reported favorably upon the bill.

The Justice Department opposed the bills pending before the Subcommittee when it testified, questioning the constitutionality of the bills under the Establishment Clause, arguing that the Free Exercise Clause does not empower Congress to legislate in this area, and suggesting that current law is adequate to deal with the situation. The Committee has carefully considered these arguments, and believes that the bill it has reported is constitutional and necessary to improve current Federal law.

Section 242, which prohibits the willful deprivation of a right secured or protected by the Constitution or laws of the United States, requires proof of a specific intent. *Screws v. United States*, 325 U.S. 91 (1945). See *United States v. Ehrlichman*, 546 F.2d 910 (D.C. Cir. 1976), cert. denied 431 U.S. 933 (1977). Section 241 prohibits conspiring to injure a citizen in the exercise of a right secured or protected by the Constitution or laws of the United States. If the right involved is one protected from interference by state action, such as a First Amendment right, then one of the conspirators must be acting under color of law. *United States v. Guest*, 383 U.S. 745 (1966).

¹¹ 18 U.S.C. 1074.

¹² 18 U.S.C. 844(i).

¹³ Blair, *Study Finds Anti-Semitic Acts Rose Again in Year*, N.Y. Times, January 6, 1982, § B, at 10, col. 1.

¹⁴ 18 U.S.C. 13.

¹⁵ See H.R. REP. No. 1396, 96th Cong., 2d Sess. 424-28 (1980). H.R. 4980 would not alter this provision.

¹⁶ On May 16 and June 19, 1985. The bills under consideration were H.R. 613, H.R. 665, and H.R. 775.

The American Jewish Committee, in response to the Subcommittee's request, submitted a brief on the constitutional questions raised by the Justice Department.¹⁷ The AJC agrees with the Justice Department that legislation could not be justified as necessary to enforce the First Amendment, since the First Amendment protects the free exercise of religion only from governmental action, and thus does not authorize making criminal private actions in derogation of that right. The AJC believes, however, that the commerce clause empowers Congress to proscribe acts in derogation of the First Amendment, citing Supreme Court confirmation of Congress' power to legislate against private interference with civil rights in such cases as *Heart of Atlanta Motel, Inc. v. United States*.¹⁸ The Committee concurs in this judgment.

The Justice Department argued that, since the bills pending before the Subcommittee when it testified protected only religious property and activity, it could therefore be argued that they advanced the cause of religion and served no secular purpose, thus violating the Establishment Clause of the Constitution.¹⁹ The Committee does not agree.

Our government is founded upon the principle of separation of church and state. The Establishment Clause of the Constitution prohibits government, state and federal, from engaging in activity that in any way favors or "establishes" any religion or religious activity. Legislation dealing with religious matters must therefore be considered in light of the Establishment Clause.

The Supreme Court has established a tripartite test for determining whether specific governmental activities are permissible under the Establishment Clause.²⁰ In the Committee's opinion, H.R. 4980 does not violate the Establishment Clause because the legislation does not promote any particular activity of a religious organization. H.R. 4980 meets all three elements of the Court's tripartite test: H.R. 4980 serves the legitimate secular concern—enunciated by the Constitution itself—of protecting individuals in the exercise of a protected right. Moreover, protection of the health and welfare of persons who, individually and without government encouragement have chosen to exercise this constitutionally guaranteed right, promotes "[n]o particular activity of a religious organization—for example, the propagation of its beliefs" ²¹ Finally, no excessive entanglement is created, since the state's involvement with religious institutions would be no greater than when it affords other protections against criminal conduct which the state is indisputably entitled to provide.

There is case law supporting both state and federal authority to protect against individual encroachment on First Amendment rights. Several jurisdictions have upheld statutes that have prohibited disturbances of religious meetings and desecration of religious sanctuaries.

¹⁷ R. Foltin, "Constitutionality of Proposed 'Hate Crimes' Legislation" (June 16, 1986).

¹⁸ 379 U.S. 241 (1964).

¹⁹ Statement of Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, concerning H.R. 665 and Related Bills, before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary at 5 (May 16, 1986).

²⁰ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

²¹ *Walz v. Tax Commission*, 397 U.S. 664, 689 (1970) (Brennan, J., concurring).

The District of Columbia Court of Appeals sustained as constitutional a statute prohibiting disturbances of religious meetings.²² The court characterized that statute as “a guarantee of the free exercise of religion to all persons.”²³ In so holding, the court upheld the lower court’s rejection of the argument that the statute violated the Establishment Clause, finding that there is “a legitimate governmental interest in protecting freedom of worship as well as the maintenance of peace and good order”²⁴

The New Mexico Court of Appeals held similarly when it sustained against challenge a state statute prohibiting desecration of a church.²⁵ Noting that “church” utilized in the state statute refers to places of worship generally and not only to Christian institutions, the court found that the provision “does not advance religion; all it does is to provide a penalty for conduct resulting in damage to a church.”²⁶ The court also rejected the defendant’s argument that to penalize desecration of a church as a greater offense than the criminal destruction of other kinds of property was a violation of equal protection rights, pointing out that certain of the elements necessary to establish violation of the challenged statute were distinguishable from those ordinarily necessary to establish the crime of criminal destruction. The court noted,

even if the statutes were the same, there is a rational basis for treating criminal damage to a church differently than criminal damage to other property. Churches “uniquely contribute to the pluralism of American society by their religious activities.”

* * * * *

Neutrality of the state toward religion “does not dictate obliteration of all religious traditions.”

* * * * *

A rational basis for treating criminal damage to a church differently than criminal damage to other property is the role of religion in society as a whole.²⁷

The Justice Department also argued that the legislation pending before the Subcommittee was not within Congressional power under the religion clause of the First Amendment.²⁸ The Justice Department concedes that Congress has the power to legislate against the efforts of any state government to interfere with the free exercise of religion, based on the 14th Amendment, but points out that Congress is not empowered to prohibit purely private interference with religious freedom under the religion clauses.

The Committee agrees that legislation of this nature cannot be sustained as under the religion clauses of the First Amendment.

²² *Riley v. District of Columbia*, 283 A.2d 819 (D.C. 1971), *cert. denied*, 405 U.S. 1066 (1972).

²³ *Id.* at 825.

²⁴ *Id.*

²⁵ *New Mexico v. Vogenthaler*, 89 N.M. 150, 548 P.2d 112 (Ct. App. 1976).

²⁶ *Id.* at 548 P.2d 114.

²⁷ *Id.* at 115.

²⁸ Statement of Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, concerning H.R. 665 and Related Bills, before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary at 5 (May 16, 1986).

H.R. 4980, however, is grounded in the Commerce Clause, and, as such, is capable of sustaining constitutional challenge.

The Supreme Court has explicitly stated that under the Commerce Clause Congress has the power to prohibit private encroachment on First Amendment rights.²⁹ The Court stated, in upholding the authority of Congress to prohibit racial discrimination by a restaurant:

[T]he power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce.³⁰

Finally, the Justice Department argued when it testified that the most effective approach to the investigation and prosecution of religiously-motivated violence is the traditional approach of relying on local law enforcement agencies, supplemented by current Federal laws discussed previously.³¹

H.R. 4980 does not supplant or replace local law enforcement authority and responsibility, but strengthens the federal response when one is called for. In the Committee's judgment, the tools available to the Federal government are limited. The scope of the existing Federal laws renders them inadequate to augment state and local law enforcement in a substantial manner. Existing Federal laws, moreover, do not adequately express the moral condemnation felt by the Committee at the escalating numbers of hate crimes being committed in our society. The Committee believes that it is important to send a strong signal that religiously motivated violence will not be tolerated.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill adds a new section to title 18 of the United States Code, section 247, entitled "Damage to religious property; injury to persons in the free exercise of religious beliefs". New section 247(a)(1) makes it an offense to travel in interstate or foreign commerce, or to use a facility or instrumentality of interstate or foreign commerce, with intent to deface, damage, or destroy any religious real property because of the religious character of the property. New section 247(a)(2) makes it an offense to travel in interstate or foreign commerce or to use a facility or instrumentality of interstate or foreign commerce with intent to obstruct, by force or threat of force, any person in the free exercise of religious beliefs.

New section 247(b) sets forth the penalty scheme for the above offenses. If death results, new section 247(b)(1) authorizes a fine under title 18 and imprisonment for any term of years or for life, or both. If serious bodily injury results, new section 247(b)(2) authorizes a fine under title 18 and imprisonment for not more than 15 years, or both. In any other case, new section 247(b)(3) author-

²⁹ *United Brotherhood of Carpenters & Joiners v. Scott*, 463 U.S. 825, (1983).

³⁰ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964).

³¹ Statement of Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, concerning H.R. 665 and Related Bills, before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary at 5 (May 16, 1986).

izes a fine under title 18 and imprisonment for not more than 5 years, or both. The maximum fine authorized by 18 U.S.C. 3623 is \$250,000 if the defendant is an individual and \$500,000 if the defendant is an organization.³²

New section 247(c) defines two terms used in the bill. New section 247(c)(1) defines "religious real property" to mean any church, synagogue, religious cemetery or other religious real property. New section 247(c)(2) defines "serious bodily injury" to mean a substantial risk of death, unconsciousness, extreme physical pain, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.³³

Section 2 of the bill amends the table of sections for chapter 13 of title 18 to add a reference to new section 247.

OVERSIGHT FINDINGS

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to this Committee by the Committee on Government Operations.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 4980 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committee within the meaning of the Federal Advisory Committee Act of 1972.

³² 18 U.S.C. 3623(c)(1) also provides that if the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

³³ The Committee recently used this definition in the "Sexual Abuse Act of 1986," which revises federal rape laws. See H.R. 4945, § 2 (proposed 18 U.S.C. 2245(4)); H.R. REP. No. 594, 99th Cong., 2d Sess. 19 (1986).

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, August 19, 1986.

Hon. PETER W. RODINO, Jr.,
 Chairman, Committee on the Judiciary, House of Representatives,
 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4980, a bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs, as ordered reported by the House Committee on the Judiciary, August 13, 1986. We estimate that enactment of the bill would result in no significant cost to the Federal government and in no cost to state or local governments.

The majority of crimes covered by H.R. 4980 are committed by juveniles and are prosecuted at the state level. Based on information provided by the Department of Justice, CBO expects that there would be relatively few prosecutions under this statute and thus no significant cost to the Federal government.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
 Sincerely,

RUDOLPH G. PENNER, *Director.*

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office and estimates that the enactment of this legislation will result in no significant cost to the Federal Government, and no cost to State or local governments.

COMMITTEE VOTE

The Committee reported H.R. 4980 on August 13, 1986, by voice vote, a quorum of Members being present.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

SEC.

241. Conspiracy against rights of citizens.

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247. *Damage to religious property; injury to persons in the free exercise of religious beliefs.*

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

(a) *Whoever, travels in, or uses a facility or instrumentality of, interstate or foreign commerce with intent to—*

(1) deface, damage, or destroy any religious real property, because of the religious character of that property; or

(2) obstruct, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs;

shall be punished as provided in subsection (b) of this section.

(b) *The punishment for a violation of subsection (a) of this section shall be—*

(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than fifteen years, or both; and

(3) in any other case, a fine in accordance with this title and imprisonment for not more than five years, or both.

(c) *As used in this section—*

(1) the term "religious real property" means any church, synagogue, religious cemetery, or other religious real property; and

(2) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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