

the required inspections and have therefore focused our requested increase to enable states to accomplish this task. Based on estimates of the full cost per inspector (including training and follow-up enforcement support), and the number of inspections that one inspector can do per year, we estimate that the \$26 million increase can fund up to 40,000 additional inspections. We believe that this amount, plus what EPA and states are currently doing, should put states in a position to meet the 3-year inspection cycle required by EPAct.

Although EPAct expanded the allowable uses of the Leaking Underground Storage Tank (LUST) Trust Fund to cover compliance and leak prevention activities, a provision inserted in the Transportation Equity Act of 2005 limited EPA's ability to use LUST Trust Fund monies for the purposes authorized by the EPAct. If EPA were to use LUST Trust Fund monies for purposes other than for carrying out leaking underground storage tank cleanup activities authorized by Section 9003(h) of the Solid Waste Disposal Act in effect at the time of the enactment of Section 205 of the Superfund Amendments and Reauthorization Act of 1986, future tax revenue would not be appropriated into the LUST Trust Fund. Expending LUST Trust Fund appropriations for the compliance and leak prevention activities authorized by the EPAct would trigger this provision. For this reason, the President has requested the additional appropriation from STAG rather than from the LUST Trust Fund to provide financial assistance to states to carry out their compliance and leak prevention responsibilities under the EPAct.

Also included in the President's FY 2007 budget is a request for nearly \$73 million in LUST funds to be used by EPA, states, and tribes to clean up releases caused by leaking underground storage tanks. To date, almost 330,000 releases have been cleaned up. In fact, since FY 2000, a period when LUST funding levels have averaged about \$72 million a year, more than 80,000 sites have been cleaned up, reducing the cleanup backlog from more than 160,000 sites to less than 120,000 sites. As is the case with every budget, EPA must weigh the needs of all programs and we will continue to re-evaluate the adequacy of resources to address this important priority. However, the agency believes that if Congress appropriates the President's request for FY 2007, EPA, states and tribes will be able to continue to make progress cleaning up releases and reducing the backlog of sites needing cleanup.

Thank you, again, for your continued interest in the underground storage tank program. We look forward to working with you as we implement the UST provisions of the EPAct. If you have any further questions or concerns, please contact me, or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

SUSAN PARKER BODINE,
Assistant Administrator.

The President's budget and the actions taken by this rubber-stamp Congress will result in more leaky tanks, more contamination of drinking water supplies, fewer cleanups and very few adverse impacts on the public health and well-being of our communities.

I support, believe it or not, H.R. 6131 and the necessary technical changes it makes, but we must not ignore the real issue at hand, the failure of this President and the administration to prevent contamination of our water supplies and to protect the public health.

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

I would simply say, Mr. Speaker, that I think from the previous speaker and myself you understand that this bill does not do any harm. I think that is why we will support it. It does not do very much about the energy problems in this country, and I really think that is where we ought to be spending our time.

If the Federal Government really was interested in cleaning up the environment, they would spend the money that is there. It is there for that purpose. However, they need it to cover the debts of war and a whole lot of other things which, in my opinion, are not the way this money should have been spent.

So I personally will urge a voice vote and pass the bill.

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

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

Mr. Speaker, I think the bottom line is that the Energy Policy Act of 2005 authorized an additional \$400 million annually for inspection, prevention and cleanup of our water supply; and without passage of this legislation, none of that money can be spent, regardless if you agree with the level of appropriations or not.

So I think it is important that we pass this piece of legislation, and I encourage my colleagues to support it.

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

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Indiana (Mr. CHOCOLA) that the House suspend the rules and pass the bill, H.R. 6131.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

VETERANS' MEMORIALS, BOY SCOUTS, PUBLIC SEALS, AND OTHER PUBLIC EXPRESSIONS OF RELIGION PROTECTION ACT OF 2006

Mr. SMITH of Texas. Mr. Speaker, pursuant to House Resolution 1038, I call up the bill (H.R. 2679) to amend the Revised Statutes of the United States to eliminate the chilling effect on the constitutionally protected expression of religion by State and local officials that results from the threat that potential litigants may seek damages and attorney's fees, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1038, the amendment in the nature of a substitute printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2679

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 "Veterans' Memorials, Boy Scouts, Public Seals, and Other Public Expressions of Religion Protection Act of 2006".

SEC. 2. LIMITATIONS ON CERTAIN LAWSUITS AGAINST STATE AND LOCAL OFFICIALS.

(a) CIVIL ACTION FOR DEPRIVATION OF RIGHTS.—Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended—

(1) by inserting "(a)" before the first sentence; and

(2) by adding at the end the following:

"(b) The remedies with respect to a claim under this section are limited to injunctive and declaratory relief where the deprivation consists of a violation of a prohibition in the Constitution against the establishment of religion, including, but not limited to, a violation resulting from—

"(1) a veterans' memorial's containing religious words or imagery;

"(2) a public building's containing religious words or imagery;

"(3) the presence of religious words or imagery in the official seals of the several States and the political subdivisions thereof; or

"(4) the chartering of Boy Scout units by components of States and political subdivisions, and the Boy Scouts' using public buildings of States and political subdivisions."

(b) ATTORNEY'S FEES.—Section 722(b) of the Revised Statutes of the United States (42 U.S.C. 1988(b)) is amended by adding at the end the following: "However, no fees shall be awarded under this subsection with respect to a claim described in subsection (b) of section nineteen hundred and seventy nine."

SEC. 3. LIMITATIONS ON CERTAIN LAWSUITS AGAINST THE UNITED STATES AND FEDERAL OFFICIALS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a court shall not award reasonable fees and expenses of attorneys to the prevailing party on a claim of injury consisting of the violation of a prohibition in the Constitution against the establishment of religion brought against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction over such claim, and the remedies with respect to such a claim shall be limited to injunctive and declaratory relief.

(b) DEFINITION.—As used in this section, the term "a claim of injury consisting of the violation of a prohibition in the Constitution against the establishment of religion" includes, but is not limited to, a claim of injury resulting from—

(1) a veterans' memorial's containing religious words or imagery;

(2) a Federal building's containing religious words or imagery;

(3) the presence of religious words or imagery in the official seal of the United States and in its currency and official Pledge; or

(4) the chartering of Boy Scout units by components of the Armed Forces of the United States and by other public entities, and the Boy Scouts' using Department of Defense and other public installations.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on the date of the enactment of this Act and apply to any case that—

(1) is pending on such date of enactment; or

(2) is commenced on or after such date of enactment.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SMITH) and the

gentleman from New York (Mr. NADLER) each will control 30 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 2679, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 2679, the Veterans' Memorials, Boy Scouts, Public Seals, and Other Public Expressions of Religion Protection Act of 2006, which was introduced by our colleague from Indiana (Mr. HOSTETTLER); and I would like to thank him for his leadership on this issue.

Mr. Speaker, this legislation was reported out of the House Judiciary Committee on November 7 by voice vote. Let me describe the unfair situation that this legislation addresses.

Today, under Federal law, attorneys' fees can be demanded in lawsuits against States or localities brought in under the Constitution's Establishment Clause.

These lawsuits could mandate, for example, that veterans' memorials must be torn down because they happen to have religious symbols on them; that the Ten Commandments must be removed from public buildings; and that the Boy Scouts cannot use public property.

The case law under the Establishment clause is so confused that States and localities know defending themselves in such lawsuits is simply unpredictable.

In 2005, for example, the Supreme Court issued two rulings on the same day that contained opposite holdings in cases involving the public display of the Ten Commandments. In one case, the court found a framed copy of the Ten Commandments in a courthouse hallway to be an unconstitutional establishment of religion, but in the other case the court upheld a Ten Commandments monument on the grounds of the Texas State Capitol. Not only were these two rulings different, but different constitutional tests were used in each case.

The threat to States and towns having to pay attorneys' fees in such cases, should they happen to lose at any level, often leads those States and localities to give up whatever rights they might have under the Constitution, even before such cases go to trial.

This bill will prevent the legal extortion that currently makes State and local governments, and the Federal Government, accede to demands for the removal of religious imagery when

such removal is not even constitutionally compelled by the Constitution.

The Supreme Court has stated that "the State may not establish a religion of secularism in the sense of affirmatively opposing or showing hostility to religion, thus preferring those who believe in no religion over those who do believe."

Contrary to that principle, current litigation rules are hostile to religion because they allow some groups to coerce States and localities into removing any reference to religion in public places.

This unfair result is made possible because 42 United States Code, section 1983, and 42 United States Code, section 1988, allow advocacy organizations to put the following choice to localities: either do what we want and remove religious words and imagery from the public square, or risk a single adverse judgment by a single judge that requires you to pay tens or hundreds of thousands of dollars in legal fees in a case you cannot afford to litigate.

Consequently, local governments are being forced to accede to the demands of those seeking to remove religious words or tear down symbols, and ban religious people from using the public square, even when allowing those uses might, in fact, be constitutional.

H.R. 2679 amends 42 U.S.C. so that attorneys' fees could not be awarded to prevailing parties in Establishment Clause cases. It amends 42 U.S.C. to make clear that while Establishment Clause cases can continue to be brought against State and local governments, they can be brought only for injunctive or declaratory relief.

This means that a court can still order that a State official or local government stop doing whatever was an alleged violation of the Establishment Clause.

One example of the unfairness this legislation would prevent is a recent case in which the County of Los Angeles was forced to remove a tiny cross from its official county seal that symbolized the founding of that city by missionaries. This tiny cross was on the seal for 47 years. This is costing the county \$1 million, as it entailed changing the seal on some 90,000 uniforms, 6,000 buildings, and 12,000 county vehicles.

In Redlands, California, the city council reluctantly gave in to demands and agreed to change their official seal. But Redlands did not have the municipal funds to replace the seal. As reported by the Sacramento Bee, "rather than face the likelihood of costly litigation," Redlands residents now "see blue tape covering the cross on city trucks, while some firefighters have taken electric drills to 'obliterate it' from their badges."

Mr. Speaker, this is just the kind of injustice this bill seeks to correct.

Finally, Mr. Speaker, H.R. 2679 is clearly constitutional. It has a secular legislative purpose, namely that of preventing the use of the legal system in

a manner that extorts money from State and local governments, and the Federal Government, and inhibits their constitutional actions. In doing so, this bill restores the original purpose of 42 U.S.C., which was to protect individual rights, not Establishment Clause claims.

H.R. 2679 also does not have the primary effect of either promoting or inhibiting religion. Rather, it simply removes the burdensome effects of the current legal rules.

So, again, Mr. Speaker, this bill is constitutional and does not prevent lawsuits from being filed.

I urge my colleagues to join me in supporting this legislation and protect the religious rights of all citizens.

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

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

Mr. Speaker, the gentleman from Texas has a complaint, but his complaint is not against the American Civil Liberties Union, nor is it against section 1983 of the Code. His complaint is against the first amendment of the United States Constitution.

The authors of this bill do not like the protection the courts have given to plaintiffs who allege that their constitutional rights against the establishment of religion in the first amendment have been violated. So he says let us be punitive for winning.

The law says that anyone who brings a lawsuit against the government, Federal, State or local government, and alleges that that government, under color of law, is violating their constitutional rights, if that plaintiff wins, if the court says, and it is not just one judge because it is appealable up to the Supreme Court, but if the court says, yes, Mr. Plaintiff, that government official, mayor so and so, police commissioner so and so, or whatever violated your constitutional rights, you can get damages if you have, in fact, been damaged, monetary damages as you can in any civil lawsuit. You can get an injunction, stop, do not keep doing it, do not keep violating constitutional rights. And you can apply for attorneys' fees.

That is a very important provision. Because these lawsuits can be expensive, and if you cannot get attorneys' fees, it is very difficult to sue, even if you have a very well-established violation of your constitutional rights, and these attorneys' fees are only if you win the lawsuit.

So what does his bill come along and say? Only for establishment cases. We do not like establishment cases. We do not like the Establishment Clause of the Constitution. Only for Establishment Clause violations, you cannot get damages if you prove the government has violated your rights. Only for Establishment Clause cases, you cannot get attorneys' fees if you prove the government has violated your rights.

For any other deprivation of rights under law, violation of the free exercise clause of religion, violation of

freedom of speech, freedom of press, whatever, you can get damages; you can get attorneys' fees.

This puts at a disadvantage in enforcing the law one class of people, religious minorities, basically, people who will sue the government for violating their rights under the Establishment Clause.

In more than a century, nothing like this has ever been done. We have always expanded rights under section 1983, our Nation's oldest and most durable civil rights laws. We have never curtailed them.

Just to be sure, I checked with the Congressional Research Service; and I place their memorandum to that effect in the RECORD at this point.

CONGRESSIONAL RESEARCH SERVICE,
July 25, 2006.

To: House Judiciary Committee.
From: Kenneth R. Thomas, Legislative Attorney, American Law Division.
Subject: Scope of the Proposed Public Expression of Religion Act of 2005.

The memorandum is in response to your request to examine the scope of H.R. 2679, the Public Expression of Religion Act of 2005, which would limit the relief available and the payment of attorney's fees for cases brought under 42 U.S.C. §1983 when the underlying case involves the Establishment Clause of the First Amendment of the Constitution. Specifically, you requested an analysis of whether Congress had previously limited the types of damages available under 1983 as regards particular constitutional provisions. Second, you requested an analysis as to whether the bill would be limited to the public expression of religious faith in a governmental context, or whether this bill would also affect other Establishment Clause issues.

42 U.S.C. §1983 addresses a broad array of rights and privileges protected by the United States Constitution. It provides that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

The proposed Public Expression of Religion Act of 2005 would appear to limit certain litigants from receiving either damages or attorneys fees. Specifically, the proposed Act provides that "[t]he remedies with respect to a claim under [42 U.S.C. §1983] where the deprivation consists of a violation of a prohibition in the Constitution against the establishment of religion shall be limited to injunctive relief." The bill also amends 42 U.S.C. 1983(b) to provide that no attorney's fees shall be awarded with respect to a claim under 42 U.S.C. §1983 regarding the Establishment Clause.

42 U.S.C. §1983 was first passed in 1871. Although it has been recodified and relatively recently amended, it has not been substantially altered since 1871. It does not appear

that it has been amended so as to limit the type of damages available to litigants who choose to utilize its provisions regarding particular constitutional issues. Whether such a limitation is constitutional is beyond the scope of this memorandum.

The provisions of the proposed Public Expression of Religion Act of 2005, despite its title, would appear to include both the public expression of religion under governmental auspices and a variety of other issues. The types of cases which the bill would cover would appear to include, among other things, cases involving financial assistance to church-related institutions, governmental encouragement of religion in public schools (prayers, bible reading), access of religious groups to public property, tax exemptions of religious property, exemption of religious organizations from generally applicable laws, Sunday closing laws, conscientious objectors, regulation of religious solicitation, religion in governmental observances, and religious displays on government property.

It is especially ironic because my friends who today are supporting this bill only yesterday brought forward a bill that would expand the rights of real estate developers, garbage dumps and adult bookstores under section 1983. So the rights they would give to adult bookstores, we would take away from people whose religious freedom rights are violated. That is, I guess, what has become of the party of Lincoln. That is their civil rights agenda in 2001.

This bill is aimed at people who have proved in court that the government has violated their religious liberty protected by the first amendment. By denying them their normal relief for monetary damages and the bill to petition for attorneys' fees, we will deny them not just their day in court, we would also be telling government officials everywhere that Congress thinks it is okay for them to violate people's religious liberty with impunity.

It is especially galling after everyone here, well, almost everyone, has taken a victory lap for reauthorizing the Voting Rights Act, in which we actually enhanced the attorneys' fees provisions by adding a right to be awarded the cost of expert witnesses in addition to the right to be awarded the cost of lawyers.

As the Judiciary Committee stated in its report on the Voting Rights Act, "The committee received substantial testimony indicating that much of the burden associated with either proving or defending a section 2 vote dilution claim is established by information that only an expert can prepare. In harmonizing the Voting Rights Act of 1965 with other Federal civil rights laws, the committee also seeks to ensure that those minority voters who have been victimized by continued acts of discrimination are made whole."

But here we want to say that people with minority religious views who are victimized by government breaking of the Establishment Clause, they shall not be made whole because we do not like them.

□ 1445

I would warn my colleagues that starting down this path will only lead

to depriving other unpopular groups of their civil rights remedies. It wasn't so long ago that attacks on unelected judges and ACLU lawyers, as we heard a few moments ago, stirring up trouble, was the common language of the militant segregationists. It is distressing, and sadly ironic, that today that language is being used to gut the Nation's oldest and most durable civil rights law.

It is all chillingly reminiscent of the infamous 1963 inauguration speech of Alabama's Governor George Wallace who said, "From this day, from this hour, from this minute we give the word of a race of honor that we will tolerate their boot in our face no longer, and let those certain judges put that in their opium pipes of power and smoke it for what it is worth." I think the Governor would feel right at home in this House today.

Or consider the notorious "Southern Manifesto" signed by Members of both houses in defiance of the Supreme Court's school desegregation decision several decades ago:

"We regard the decisions of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people."

Does any of this sound familiar? I would observe that abuses of judicial power are in the eyes of the beholder.

This is not to suggest that any Members of this House are segregationists. Far from it. I only recall the overheated rhetoric of a half century ago to urge Members to take care with their words. Unpopular minorities and decisions defending the rights of unpopular minorities against the will of the majority have always inflamed passions. People have always questioned our system of checks and balances, and especially the role of the independent judiciary.

Recourse to an independent judiciary is a bulwark of our liberties. We recognize this by allowing people to go to court and sue the government and force the government to respect their rights. We recognize this by allowing people victimized by the government to receive damage awards when the government has done damage. We recognize this by ensuring, just as we have done with the Voting Rights Act, that people who can prove their rights have been violated can get attorneys fees paid so that people with valid claims will be able to afford to go to court to vindicate those claims.

I would remind my friends that this legislation is not limited to religious symbols in public places. This legislation applies to any violation of the establishment clause. This would include forced prayer. If government forcing your child to say a prayer of another faith is not the establishment of religion, then the phrase has no meaning. If government at some locality decided

that that locality was Hindu or Muslim or Wicca, or whatever, pick another unpopular or less popular religion, and all children in school must start the day by saying the profession of faith for that religion, you could go to court. It is a violation of the establishment clause. But under this, you couldn't get damages. You couldn't get attorneys fees. You would have to bear the burden of that lawsuit by yourself.

I want to lay to rest right now the red herring, the lie, that was put into this bill when its title was changed from the Public Expression of Religion Act to the Veterans' Memorials, Boy Scouts, Public Seals, and other Public Expressions of Religion Protection Act of 2006. I know that many sincere people have been misled into believing the ACLU, for example, wants to use section 1983 to force the removal of religious symbols from the individual gravestones of thousands of veterans across the Nation and around the world, hence the new title, hence the citation of these specific instances in this bill.

We received testimony from the American Legion to this effect and Members have received a great deal of mail on the subject because people are spreading misinformation. This assertion is a myth. If you are voting for this bill because you are concerned about national cemeteries, don't bother. Neither the ACLU nor anyone else has ever brought such a lawsuit.

As a matter of fact, I have a letter here from the ACLU taking the opposite position; that individual veterans have a first amendment right to have a religious symbol of their or their family's choice on their gravestones.

AMERICAN CIVIL
LIBERTIES UNION,

Washington, DC, July 25, 2006.

Re the Public Expression of Religion Act (H.R. 2679).

HOUSE OF REPRESENTATIVES,
Committee on the Judiciary,
Washington, DC.

DEAR REPRESENTATIVE, On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we urge you to oppose H.R. 2679, the "Public Expression of Religion Act of 2005." This bill would bar damages and awards of attorneys' fees to prevailing parties asserting their fundamental constitutional rights in cases brought under the Establishment Clause of the First Amendment to the U.S. Constitution. H.R. 2679 would limit the longstanding remedies available in cases brought under the Establishment Clause under 42 U.S.C. 1988, which provides for attorneys' fees and costs in all successful cases involving constitutional and civil rights violations.

H.R. 2679 SHUTS THE COURTHOUSE DOORS

If this bill were to become law, Congress would, for the first time, single out one area protected by the Bill of Rights and prevent its full enforcement. The only remedy available to plaintiffs bringing Establishment Clause lawsuits would be injunctive relief. This prohibition would apply even to cases involving illegal religious coercion of public school students or blatant discrimination against particular religions.

Congress has determined that attorneys' fee awards in civil rights and constitutional

cases, including Establishment Clause cases, are necessary to help prevailing parties vindicate their civil rights, and to enable vigorous enforcement of these protections. The Senate Judiciary Committee has found these fees to be "an integral part of the remedies necessary to obtain . . . compliance." The Senate emphasized that "[i]f the cost of private enforcement actions becomes too great, there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases.

Unfortunately, H.R. 2679 would turn the Establishment Clause into a hollow pronouncement. Indeed, the very purpose of this bill is to make it more difficult for citizens to challenge violations of the Establishment Clause. It would require plaintiffs who have successfully proven that the government has violated their constitutional rights to pay their legal fees—often totaling tens, if not hundreds, of thousands of dollars. Few citizens can afford to do so, but more importantly, citizens should not be required to do so where there is a finding that our government has engaged in unconstitutional behavior.

The elimination of attorneys' fees for Establishment Clause cases would deter attorneys from taking cases in which the government has violated the Constitution; thereby leaving injured parties without representation and insulating serious constitutional violations from judicial review. This effectively leaves religious minorities unable to obtain counsel in pursuit of their First Amendment rights under the Establishment Clause.

H.R. 2679 DENIES JUST COMPENSATION

Despite proponents' assertions to the contrary, attorneys' fees are not awarded in Establishment Clause cases as a punitive measure. Rather, as in any case where the government violates its citizens' civil or constitutional rights, the award of attorneys' fees is reasonable compensation for the expenses of litigation awarded at the discretion of the court. After intensive fact-finding, Congress determined that these fees "are adequate to attract competent counsel, but . . . do not produce windfalls to attorneys." H.R. 2679 is contrary to good public policy—it reduces enforcement of constitutional rights; it has a chilling effect on those who have been harmed by the government; and it prevents attorneys from acting in the public's good.

The award of fees in Establishment Clause cases is not a means for attorneys to receive unjust windfalls—it is designed to assist those whose government has failed them.

H.R. 2679 FAVORS ENFORCEMENT OF THE FREE EXERCISE CLAUSE OVER THE ESTABLISHMENT CLAUSE

Among the greatest religious protections granted to American citizens are the Establishment Clause and the Free Exercise Clause. The right to practice religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights. Religious liberty can only truly flourish when a government protects the Free Exercise of religion while prohibiting government-sponsored endorsement, coercion and funding of religion. H.R. 2679 creates an arbitrary congressional policy in favor of the enforcement of the Free Exercise Clause, while simultaneously impeding individuals wronged by the government under the Establishment Clause.

Through the denial of attorneys' fee awards under H.R. 2679, plaintiffs will be able to afford the expense of litigation only when they are seeking to protect certain constitutional rights but not others. This bad con-

gressional policy serves to create a dangerous double standard by favoring cases brought under the Free Exercise Clause, but severely restricting cases under the Establishment clause.

Proponents of this bill have been spreading the urban myth that religious symbols on gravestones at military cemeteries will be threatened without passage of H.R. 2679. The supposedly "threatened" religious markers on gravestones has become a red-herring—indeed it is an urban myth—that has been invoked as a reason for the denial of attorneys' fees in Establishment Clause cases. It should be noted—in light of the wildly inaccurate statements that have repeatedly been made—that religious symbols on soldiers' grave markers in military cemeteries (including Arlington National Cemetery) are entirely constitutional.

Religious symbols on personal gravestones are vastly different from government-sponsored religious symbols or sectarian religious symbols on government-owned property. Gravestones and the symbols placed upon them are the choice of individual service members and their families. The ACLU would in fact vigorously defend the first amendment rights of all veteran Americans and service members to display the religious symbol of their choosing on their gravestone.

If the Constitution is to be meaningful, every American should have equal access to the federal courts to vindicate his or her fundamental constitutional rights. The ability to recover attorneys' fees in successful cases is an essential component of the enforcement of these rights, as Congress has long recognized. The bill is a direct attack on the religious freedoms of individuals, as it effectively shuts the door for redress for all suits involving the Establishment Clause. We urge members of Congress to oppose H.R. 2679.

If you have any questions, please contact Terri Schroeder, Senior Lobbyist.

Sincerely,

CAROLINE FREDRICKSON,
Director.

TERRI ANN SCHROEDER
Senior Lobbyist.

Mr. Speaker, it is an election year, and the months leading up to elections have long been known as the "silly season." We all understand that. But get an earmark for a bridge to nowhere or something, and leave the first amendment and our civil rights out of it.

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

Mr. SMITH of Texas. Mr. Speaker, I yield 6 minutes to the gentleman from Indiana (Mr. HOSTETTLER), who is the author of this legislation.

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

Mr. HOSTETTLER. I thank the gentleman from Texas for yielding.

Mr. Speaker, I rise in support of H.R. 2679, the Public Expression of Religion Act. This legislation would allow establishment clause cases to go to court unfettered by fear or coercion on the part of the defendant. And as an aside, I want to thank the gentleman from New York for clarifying a position earlier made by that side of the aisle when it was suggested by the gentleman from Texas and the gentleman from Massachusetts that somehow this bill would actually affect free exercise cases. But as the gentleman from New

York pointed out, this bill does not address free exercise cases.

The Public Expression of Religion Act would amend 42 U.S.C. sections 1983 and 1988 to prevent the mere threats of the legal system to intimidate communities, States, and groups like the American Legion into relenting without ever darkening the doorsteps of a Federal courthouse.

I first introduced the Public Expression of Religion Act in the 105th Congress after I realized that the mention of attorneys fees in these kinds of cases were jeopardizing our constituents' constitutional rights. An example of this was in 1993, when the Indiana Civil Liberties Union, which is affiliated with the American Civil Liberties Union, mailed a letter to all the public educators in the State of Indiana. In this letter, the ICLU informs the educators that should they support a prayer at graduation, the ICLU will sue both the school and any individuals who approve the graduation prayer. The letter plainly states the ICLU will win and that whoever is sued will have to pay not only their attorneys fees but the ICLU fees as well.

These threats to teachers, who are highly unlikely to be able to pay their own attorneys fees let alone the exorbitant attorneys fees of the ICLU, make it very likely educators would capitulate to the ICLU before even checking to make sure the ICLU has their facts right.

What makes this even more difficult for States and localities is that the jurisprudence in establishment clause cases is about as clear as mud. Different districts and even the Supreme Court itself flipflops on issues. For instance, last year, the Supreme Court handed down two Ten Commandments case decisions on the same day with a different decision in each.

In the Van Orden case, the court applied the Marsh test of historical perspective to determine the Ten Commandments in a public venue was constitutional in Texas; while the McCreary case used the Lemon test to determine the Ten Commandments in a public venue in Kentucky was unconstitutional. Clear as mud.

Our constituents who are being threatened with those lawsuits know even if they are right they will still have to pay their own attorneys fees to take the gamble the court will muddle through the jurisprudential mess of the establishment clause and come out on their side. If the court chooses to use the Marsh test, they might win. If the court chooses to use the Lemon test, they might lose. It is a toss-up.

Unfortunately, many of our constituents do not have the means by which to set aside a small fortune each year to defend their constitutional rights against intimidating liberal organizations. Nor do they look kindly on the fact that their constitutional rights have become subject to the whims of unelected judges; but, Mr. Speaker, that issue is for another legislative

day. Regardless, many do not wish to roll the dice to have their day in court, so they capitulate to these organizations and their often questionable pronouncement of what is or is not constitutional.

A majority of the cases the ACLU and its affiliates represent are facilitated by staff attorneys or through pro bono work, so any attorneys fees awarded to them is icing on the cake. It is a win-win situation for them right now. On the other hand, States and localities have limited resources with which to fight court battles, thus another reason they are capitulating before they even go to court.

This was the case recently with the Los Angeles County seal. The ACLU threatened to sue L.A. County if they did not remove the tiny cross from the county seal. The cross symbolized Los Angeles' birth as a Spanish mission town. The county was forced to choose between paying to change the seal or paying to go to court and possibly pay exorbitant attorneys fees to the ACLU.

In the end, the L.A. county supervisors, in a 3-2 vote, decided to ignore the will of the people of Los Angeles County and pay to change the seal instead of paying to go to court. They had been advised by their attorneys that if they lost in court they would not only have to change the seal but they would additionally have to pay attorneys fees of the ACLU.

Mr. Speaker, I believe it is time to bring this extortion to an end. The Public Expression of Religion Act would make sure these cases are tried on their merits and are not merely used to extort behavior via settlements outside our judicial system.

As the ICLU said at the end of their letter: "The ICLU does not enjoy litigation. We, and you, have better things to do with our time." I for one would like to make sure the ICLU has to think long and hard before litigating, and this would be the case if they knew they would actually have to convince a court of their twisted view of the Constitution. I urge my colleagues to support the legislation.

Mr. NADLER. Mr. Speaker, I now yield 4 minutes to the distinguished gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. Mr. Speaker, I thank my colleague from New York. This bill, which is presented to the Congress under the banner of a so-called American values agenda, turns American values on their head. It is an example of false advertising at its very worst, and it forgets the lessons of American history.

This great country of ours was founded largely on the principle of religious liberty. Many of our earlier settlers to this country came to our shores to escape religious persecution from their mother countries. They didn't want the Church of England or any other government telling them how they should worship God, and they sought to escape a state-imposed religion, to escape the

establishment of a state-sponsored religion. They wanted to practice religion according to the dictates of their own conscience, not the dictates of the state. And that is why the first amendment to the United States Constitution gives each individual the right of religious liberty and why it bars the state from imposing and establishing a state religion.

If this Congress and this government now seeks to impose certain religious faiths upon an individual, that individual can invoke the protections of the United States Constitution. Now, I would think all of us, all of us in this body, would agree that an individual should not have to pay to enjoy the protections of the United States Constitution. Those rights are given to each of us as American citizens under the Constitution, and we shouldn't have to pay when the state, whether it is a local government, a State government, or the Federal Government, violates those rights under the establishment clause or anything else. Yet that is exactly what this bill does.

Under current law, if the court finds a statute is violating your constitutional rights under the establishment clause, the State has to pay the cost that you incurred in protecting your rights against the State. If your government deprives you of your constitutionally guaranteed rights and liberties, the government should pay, not you, the individual citizen. This is a question of the force and muscle of the government and the States against an individual in trying to deprive an individual of his or her constitutionally protected right.

I would ask, since when is it an American value that you have to pay to enjoy the protections of our constitution? Since when is an American value that the government can trample on your religious liberty, deprive you of your rights, and then, when a court of law, whether the Supreme Court, a Federal Court, or any other court, has found indeed that the government did deprive you of your constitutional rights and you were right as an individual and the government was wrong, that you have to pay and not the government?

That is simply a way, when you think about it, that the government can discourage individual citizens from enforcing their constitutional rights. They have to take on the government. They have to take on people with lots of resources. Yet, at the end of the day, even when they win, and the court agrees that their constitutional rights have been violated, it is the citizen that has to pay to enjoy those protections, not the government.

This debate is about American values, and if you want to protect those American values and you want to protect the Constitution of the United States, you should vote "no" on this bill.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman

from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I thank the gentleman for yielding. Mr. Speaker, I rise today in very strong support of H.R. 2679, the Public Expression of Religion Protection Act. With this bill, we will close a loophole that has allowed liberal groups like the ACLU to prey on taxpayers for far too long.

Originally, Congress sought to protect underprivileged civil rights applicants by allowing them to collect attorneys fees if they won their suit.

□ 1500

Today, groups like ACLU scour the country looking to sue cities and States with any kind of religious display, regardless of how popular those religious displays are in those communities. If they sue and win, States and localities not only have to remove or remodel the historic items, but they also must pay the group's attorneys fees. In this backdoor way, the ACLU can collect taxpayer money to fuel even more lawsuits.

Tragically, citizens' precious symbols and monuments are being eroded with their own tax dollars. State seals in existence for hundreds of years have had to be redrawn. Many cities will not even fight in court for fear of paying costly attorneys fees, and some of them just capitulate at the first sign of a lawsuit.

We should not allow these liberal groups to fuel their agendas by exploiting hardworking Americans. The bill before us today removes that attorney fee provision from cases involving establishment of religion. This bill will stop the current taxpayer extortion once and for all.

I urge my colleagues to support this bill.

Mr. NADLER. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, any time you name a bill using the words "veterans memorials" and "religious protection," you can assume that we are just about to cut veterans health care.

Now, if we are going to deal with veterans issues, I would hope that we would fully fund the veterans health care VA expenditures rather than cut them. We ought to do more for veterans pensions, we ought to do more for veterans disability, rather than naming a bill which undermines the freedoms they actually fought for.

Thirty years ago, Mr. Speaker, Congress recognized the importance of passing a law to ensure that those who suffer violations of their constitutional rights or unconstitutional discrimination will be able to obtain legal representation to vindicate their civil rights; but only in cases where they actually win the case will they be able to get help with their attorneys fees.

This bill would rescind the ability of victims whose rights under part of the

first amendment have been found to have been violated from receiving reimbursement for attorneys fees and costs. This means that only the most fortunate in our society will be able to enforce their civil rights and seek redress when those rights are violated. It means that the less fortunate can only get those rights if they can raise enough money to enforce them. When the cost of enforcement becomes too great, there will not be any private enforcement and then our constitutional rights will be reduced to hollow pronouncements for the average citizens because only the wealthy will be able to seek enforcement.

But this bill goes actually further, because the bill will specifically deprive victims whose rights have been found to be violated by a court and those whose rights continue to be violated after the court has ordered, from being able to seek remedies other than those provided in the bill, namely injunctive or declaratory relief.

Now, if a school system were to decide to ignore the Constitution and require school children to recite a state-sponsored Protestant prayer in some areas, or a Mormon prayer in others, what would happen? Or if a State or locality were to just declare itself to have a particular established religion, what would happen under the bill? Nothing. Nothing would happen, until such time as you have a wealthy individual willing to fund a lawsuit to try to vindicate the obvious violation of their constitutional rights.

In all other classrooms and all other localities where you don't have a wealthy individual to fund the lawsuit, nothing will happen, because the perpetrators of the violation will know that there is no sanction. Nothing can happen. The only thing that can happen is you just sit around and wait for a court to declare that you are in violation. Nothing else can happen. And even after that finding occurs, nothing will happen until the court actually starts enforcing the court order, and you will need additional attorneys fees to go in and get that order.

This just invites violations of the law because we know there is no sanction for violating the first amendment. We know that the establishment clause, part of the first amendment of the Bill of Rights, will be the only part of the Constitution without any remedy to effectively enforce the provisions of that Constitution. That is why virtually every civil rights group, religious organization and legal organization opposes the bill; and, Mr. Speaker, I hope we oppose the bill too.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, some opponents of this legislation are arguing that attorneys fees are needed and that establishment clause lawsuits will be deterred unless the people bringing these lawsuits have their attorneys fees paid. This is simply not true.

First, we are aware of no organization that has said they will not bring a good cause case under the establishment clause if they can't be awarded attorneys fees. In fact, the ACLU has said just the opposite. Peter Eliasberg, a staff attorney for the ACLU of Southern California, has said recently, "Money has never been a deciding factor when we take cases." When asked specifically what the ACLU would do if attorneys fees in establishment clause cases were prohibited, he said, "It wouldn't stop us from bringing lawsuits."

Second, this section of the U.S. Code H.R. 2676 amends was never intended to apply to establishment clause cases. 42 U.S.C. 1988, which allows attorneys fees in cases brought under 42 U.S.C. 1983, was intended only to allow the award of attorneys fees under civil rights laws enacted by Congress after 1866.

The history of 42 U.S.C. is as follows: in *Alaska Pipeline Service Company v. Wilderness Society*, the Supreme Court held that Federal courts do not have inherent power to award prevailing party attorneys fees to remedy government violations of the law. The Court observed that the American rule, that is, the rule that each party bears its own attorneys fees "is deeply rooted in our history and in congressional policy."

Mr. Speaker, I want to make one more point, and that is to emphasize that under H.R. 2679, establishment clause cases can in fact continue to be brought against State and local governments for injunctive or declaratory relief, which means that the court can still order that a State official or local government stop doing whatever it was in alleged violation of the establishment clause.

Mr. NADLER. Mr. Speaker, I reserve my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. HOSTETTLER).

Mr. HOSTETTLER. Mr. Speaker, in response to a discussion earlier about the notion of "false advertising" in relationship to this piece of legislation, I have developed some fairly thick skin over the last several years in this job, but I think that I should draw the line today with regard to suggesting that people such as the American Legion would engage in false advertising in their support of the Public Expression of Religion Act.

In a booklet published by the American Legion entitled "In the Footsteps of the Founders," the American Legion set out a course of action, a battle plan, if you will, in their desire to "mobilize America to urge passage of the Public Expression of Religion Act, or PERA."

They close in their mobilization in this regard: "There simply is no reasonable basis to support the profiteering and attorney fees awards ordered by judges in these cases," meaning establishment clause cases. "The very threat of such fees has made elected bodies, large and small, surrender to

the ACLU's demands to secularly cleanse the public square."

They go further to say this: "The American Legion does not intend to surrender to the ACLU or anyone else in defense of veterans memorials, the Boy Scouts or the public display of American religious history and heritage. We are involved because we are veterans who served the Nation when our country called. But most of all, we are involved because we are Americans. 'For God and country' is our credo, and both are imperiled today. In order to win the battle, to safeguard and transmit to posterity the America the Founding Fathers created, it is clear what we must do. We must walk in the footsteps of the Founders. Being involved in making the Public Expression of Religion Act the law of the land is one small but extremely important step that must be taken. This is a crusade we can, we should, we must win, if we are to walk in the footsteps of the Founders. We Americans of this generation can do no less."

So, Mr. Speaker, those are the words of the American Legion themselves that say that today is the day that the House of Representatives must take a stand and must stand in the footsteps of our Founders.

We have heard a lot of discussion today about what this bill would do, that it would essentially eliminate the bringing of establishment clause cases to court. And as the gentleman from Texas has pointed out, even the liberal organizations that some would suggest their funds would be cut off have said this will do nothing to stop them in their pursuit to remove every vestige of religious heritage from our public places. So we should not take that argument at its face, because it is simply not true.

In fact, this bill allows the continuing allowance of injunctive relief, meaning if an individual wants a particular activity to stop or a particular display to be removed, the court can in fact still say that that display must be removed or that that activity must cease. Nothing in this bill eliminates injunctive relief or the ability to enjoin a State or local government to stop violating the establishment clause.

Mr. Speaker, in conclusion, there has likewise been a lot of discussion of the fact that in 1976 the Attorneys Fees Award Act began this march in civil rights with regard to establishment clause cases. That is simply not the fact. In 1962, in *Engel v. Vitale*, the Supreme Court held, 14 years before the Civil Rights Attorneys Award Act was put in place, the Supreme Court held that prayer in public schools in *Engel v. Vitale* was unconstitutional. They held a year later in *Abington v. Shemp* that Bible reading in public schools was unconstitutional as well.

To suggest that the removal of attorneys fees would stop the groups from bringing these cases to court is simply not borne out by history nor by their

own words, and so I ask my colleagues to support the Public Expression of Religion Act.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BILBRAY).

Mr. BILBRAY. Mr. Speaker, I stand today in support of H.R. 2679. Let me just say as a Representative from San Diego County, we have had a situation that I think both sides of the aisle would say was absolutely absurd, where there was a movement to destroy a war memorial on Mount Soledad, and the justification was because that war memorial happened to have been a religious symbol, a cross. One group, or a small plaintiff, not only was pushing for the destruction of the war memorial, but actually got the fees paid to gain profiteering from the destruction of this war memorial.

Now, you may say there must be a logical reason, it must be reasonable, there must have been some good reason to tear down this war memorial. Mr. Speaker, let me remind you that this body had a chance to vote on exactly the same issue, and this body voted 349 to preserve the war memorial, with 74 voting to destroy it. I think that it is quite clear that this body has said that the preservation of certain religious artifacts did not justify the profiteering by those who would want to destroy it.

I strongly ask us to look at this bill and just think about this: this profiteering not only affects the agencies or the people that have to pay out, like the city of San Diego, but that money could have gone to services throughout the community which proportionately help those needy, those poor and those who need it the most.

□ 1515

So, so much of this profiteering is being made at the expense of those who people on both sides of the aisle say do not get enough resources. I just think it is time that we tell the trial lawyers and we tell those who are profiteering from trying to destroy our religious heritage that we are no longer going to allow them to walk away from the courts with bags of the people's money and individuals' resources that can be used in better locations.

Mr. NADLER. I now recognize the gentleman from Virginia for a unanimous consent request.

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that letters from over a dozen organizations in opposition to this bill be entered into the RECORD to the extent that some of them have not been entered in the RECORD so far.

The SPEAKER pro tempore (Mr. REHBERG). Is there objection to the request of the gentleman from Virginia?

There was no objection.

AFRICAN AMERICAN MINISTERS

IN ACTION,

Washington, DC, September 26, 2006.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: As pastors and leaders of predominately African American

congregations across the country, we are writing urging you to oppose passage of H.R. 2679, the "Public Expression of Religion Act of 2005." Where would our nation be on the long march to ending segregation, providing equal education to all, ensuring free speech, enfranchising minorities and women to vote, and a host of other civil rights and civil liberties issues had damages and attorney's fees remedies been denied on those journeys?

This legislation represents an attack on the most fundamental enforcement tools available to people whose religious liberty rights have been violated by singling out those who seek to enforce their constitutional rights under the Establishment Clause of the First Amendment. This is a blatant attack on the religious freedoms of all people of faith. Religious expression is not threatened by the enforcement of the Establishment Clause, but is protected by it. The Establishment Clause promotes religious freedom for all by protecting against government sponsorship of religion.

Congress established enforcement remedies under §1983 more than 100 years ago and, according to the Congressional Research Service, Congress has never limited or eliminated these remedies, let alone deny them to people seeking judicial enforcement of particular constitutional rights. As pastors, we strongly believe that H.R. 2679 is a deliberate attempt to roll back the clock on the protection of our religious freedoms and the protections we have against those who would attempt to force upon us their own religious ideology.

Should Congress adopt this legislation, the precedent would be set for future denials of these remedies for other constitutionally protected civil rights and liberties. While some claim this is merely technical, damages and the awarding of attorney's fees are critical ingredients necessary to ensure the proper representation in court and redress for constitutional violations. More importantly, they are critical for the protection of our civil rights and civil liberties serving as a disincentive for engaging in such violations.

Justice can be denied in many ways, and denying damages and attorney's fees to those seeking to enforce their constitutional rights will be tantamount to barring the courthouse door and any possibility of vindication of the rights we hold sacred. We urge you to oppose H.R. 2679.

Sincerely,

REV. TIMOTHY McDONALD,

Chair.

REV. ROBERT SHINE,

Co-Chair.

ASSOCIATION OF TRIAL

LAWYERS OF AMERICA,

Washington, DC, July 25, 2006.

DEAR HOUSE JUDICIARY COMMITTEE MEMBER: On behalf of the Civil Rights Section of the Association of Trial Lawyers of America, we strongly urge you to vote against H.R. 2679, "Public Expression of Religion Act of 2005." This bill strikes a serious blow against the religious liberties protected under the Establishment Clause of the U.S. Constitution and it sets a precedent for the erosion of other valued constitutional rights.

H.R. 2679 unfairly strips one set of plaintiffs—plaintiffs that bring claims of an Establishment Clause violation—of the important and longstanding civil remedies provided for under Sections 1979 and 722(b) of the Revised Statutes of the United States (42 U.S.C. 1983; 42 U.S.C. 1988(b)). As a result, the bill not only leaves religious minorities without a real means of protecting their constitutional rights, but also encourages state and local sponsored religious activities for the majority without an opportunity for adequate redress, and fosters the suppression of

religious liberty for all others. At the core of our Democracy is the principle of religious freedom (i.e., separation of church and state) and the fact that the Establishment Clause forbids the government from forcing a single religious point of view on all Americans. Under the proposed legislation, however, that constitutional mandate and the foundation of our system of government are eviscerated, and religious minorities pay the price.

The current remedial scheme under H.R. 2679 of "limited to injunctive relief" simply does not work. There are countless instances when injunctive relief would not adequately remedy the harm one suffers when a state-actor imposes a religious point of view on a community. One obvious example is forced prayer in school. Once the prayer is read and an individual is harmed, there is nothing injunctive relief can do to redress that harm. In addition, the current draft of the bill does not afford additional protections to a plaintiff if the defendant state-actor breaches a court-imposed injunction. Thus, a state-actor is free from consequence if it does nothing to fulfill the injunctive relief granted and a plaintiff's harm is left without a remedy.

Not only would the remedial scheme under H.R. 2679 inadequately redress a victim's harm, but the effect of it will deter individuals from bringing causes of action for Establishment Clause violations. The proposed legislation does not permit a plaintiff to be awarded attorney's fees, even if he seeks the only civil remedy available—injunctive relief—and is successful. It is expensive to bring a civil action against the government, so if a victim of an Establishment Clause violation is stripped of the fee-shifting provision under Section 1988(b) it is unlikely that he will even bring a claim in the first place. Moreover, the whole purpose of including a fee-shifting provision under Section 1988(b) is to provide victims with limited means an opportunity to have their day in court and protect their constitutional rights against a defendant with limitless resources.

Finally, we ask that you vote against H.R. 2679, because it is a dangerous precedent. The proposed legislation would set the stage for future limitations on the remedies available for civil rights actions under Section 1983. If today we cite certain factors to distinguish the constitutional protections afforded under the Establishment Clause from other constitutional rights, it is just a matter of time before another group claims that one of the remaining constitutional rights is somehow distinguishable and proposes to subject it to limitation. The bottom line is that Section 1983 is the sole mechanism by which a citizen can protect his constitutional rights against unlawful state-action, thus it is imperative that we avoid any legislation that seeks to curtail the extent and potency of the civil actions provided for under that statute.

We strongly urge you to protect the constitutional rights of religious minorities and all Americans: oppose H.R. 2679.

Very Truly Yours,

MATTHEW DIETZ,
Civil Rights Section Chair, 2006–2007.
SUSAN ANN SILVERSTEIN,
Civil Rights Section Chair, 2005–2006.

THE AMERICAN JEWISH COMMITTEE,
OFFICE OF GOVERNMENT AND
INTERNATIONAL AFFAIRS,

Washington, DC, September 15, 2006.

DEAR REPRESENTATIVE: On behalf of the American Jewish Committee (AJC), the nation's oldest human relations organization with over 150,000 members and supporters represented by 32 regional offices, I write to express our strong opposition to the Public Expression of Religion Act of 2005 (H.R. 2679).

H.R. 2679 would deter citizens with legitimate grievances from defending their most basic civil rights in court by limiting longstanding remedies available under 42 U.S.C. 1988. Among other things, H.R. 2679 would bar judges from ordering state or local governments to reimburse the attorney's fees and monetary damages of plaintiffs whose Establishment Clause rights have been proven to be violated, and would make injunctive and declarative relief the only remedies available in such cases.

Access to the federal courts is fundamental to the ability of Americans to vindicate their constitutional rights. With legal fees often totaling as much as hundreds of thousands of dollars, few victims of religious discrimination can afford to bear the costs of a lawsuit when the government violates their constitutional rights. Even blatant instances of coerced prayer in a public school or other religious discrimination will seldom be challenged in court if a single citizen must face the legal resources of a city.

Proponents of H.R. 2679 argue that some municipalities currently settle out-of-court rather than risk paying attorney's fees and monetary damages for frivolous lawsuits. Whatever the merits of this assertion, there is no constitutional claim that may not occasionally lead to frivolous lawsuits. Moreover, at the end of the day, the courts have generally proved adept at filtering out frivolous claims at an early point in litigation, before substantial legal costs can be incurred. Balanced against these realities is the undeniable fact that this bill would deter Americans with legitimate Establishment Clause grievances from asserting their rights in court. Further, once claims under one clause of the First Amendment have been insulated from meaningful remedy, the entire Bill of Rights is at risk.

The ability to seek appropriate remedies, including damages and attorney's fees, is crucial if citizens are to be able to vindicate their constitutional rights in court. Please protect the longstanding ability of Americans to seek damages, and to recoup costs and fees, when faced with basic constitutional violations. For the aforementioned reasons, we strongly oppose H.R. 2679.

Thank you for considering our views on this important matter.

Respectfully,

RICHARD T. FOLTIN,
Legislative Director and Counsel.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, September 12, 2006.
HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we urge you to oppose H.R. 2679, the "Public Expression of Religion Act of 2005." This bill was voted out from the Judiciary Committee on September 2, 2006 and will soon be on the House floor. H.R. 2679 would limit damages to injunctive and declaratory relief and bar the award of attorneys' fees to prevailing parties asserting their fundamental constitutional rights in cases brought under the Establishment Clause of the First Amendment to the U.S. Constitution. This bill would bar damages and awards of attorneys' fees to prevailing parties asserting their fundamental constitutional rights in cases brought under the Establishment Clause of the First Amendment to the U.S. Constitution H.R. 2679 would limit the longstanding remedies available in cases brought under the Establishment Clause under 42 U.S.C. 1988, which provides for attorneys' fees and costs in all successful cases involving constitutional and civil rights violations.

H.R. 2679 shuts the courthouse doors. If this bill were to become law, Congress would, for the first time, single out one area protected by the Bill of Rights and prevent its full enforcement. The only remedy available to plaintiffs bringing Establishment Clause lawsuits would be injunctive relief. This prohibition would apply even to cases involving illegal religious coercion of public school students or blatant discrimination against particular religions.

Congress has determined that attorneys' fee awards in civil rights and constitutional cases, including Establishment Clause cases, are necessary to help prevailing parties vindicate their civil rights, and to enable vigorous enforcement of these protections. The Senate Judiciary Committee has found these fees to be "an integral part of the remedies necessary to obtain . . . compliance." The Senate emphasized that "[i]f the cost of private enforcement actions becomes too great, there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases."

Unfortunately, H.R. 2679 would turn the Establishment Clause into a hollow pronouncement. Indeed, the very purpose of this bill is to make it more difficult for citizens to challenge violations of the Establishment Clause. It would require plaintiffs who have successfully proven that the government has violated their constitutional rights to pay their legal fees—often totaling tens, if not hundreds, of thousands of dollars. Few citizens can afford to do so, but more importantly, citizens should not be required to do so where there is a finding that our government has engaged in unconstitutional behavior.

The elimination of attorneys' fees for Establishment Clause cases would deter attorneys from taking cases in which the government has violated the Constitution; thereby leaving injured parties without representation and insulating serious constitutional violations from judicial review. This effectively leaves religious minorities unable to obtain counsel in pursuit of their First Amendment rights under the Establishment Clause.

H.R. 2679 favors enforcement of the Free Exercise Clause over the Establishment Clause. Among the greatest religious protections granted to American citizens are the Establishment Clause and the Free Exercise Clause. The right to practice religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights. Religious liberty can only truly flourish when a government can both equally protect the free exercise of religion as well as prohibit state-sponsored endorsement and funding of religion. H.R. 2679 creates an arbitrary congressional policy in favor of the enforcement of the Free Exercise Clause, while simultaneously impeding individuals wronged by the government under the Establishment Clause.

Through the denial of attorneys' fee awards under H.R. 2679, plaintiffs will be unable to afford the expense of litigation only when they are seeking to protect certain constitutional rights but not others. This bad congressional policy serves to create a dangerous double standard by favoring cases brought under the Free Exercise Clause, but severely restricting cases under the Establishment Clause.

H.R. 2679 denies just compensation. Finally, despite proponents' assertions to the contrary, attorneys' fees are not awarded in Establishment Clause cases as a punitive measure. Rather, as in any case where the government violates its citizens' civil or

constitutional rights, the award of attorneys' fees is reasonable compensation for the expenses of litigation awarded at the discretion of the court. After intensive fact-finding, Congress determined that these fees "are adequate to attract competent counsel, but . . . do not produce windfalls to attorneys." H.R. 2679 is contrary to good public policy—it reduces enforcement of constitutional rights; it has a chilling effect on those who have been harmed by the government; and it prevents attorneys from acting in the public's good. The award of fees in Establishment Clause cases is not a means for attorneys to receive unjust windfalls—it is designed to assist those whose government has failed them.

Proponents of this bill have been spreading the urban myth that religious symbols on gravestones at military cemeteries will be threatened without passage of H.R. 2679. The supposedly "threatened" religious markers on gravestones has become a red-herring—indeed it is an urban myth—that has been invoked as a reason for the denial of attorneys' fees in Establishment Clause cases. It should be noted—in light of the wildly inaccurate statements that have repeatedly been made—that religious symbols on soldiers' grave markers in military cemeteries (including Arlington National Cemetery) are entirely constitutional.

Religious symbols on personal gravestones are vastly different from government-sponsored religious symbols or sectarian religious symbols on government-owned property. Gravestones and the symbols placed upon them are the choice of individual service members and their families. The ACLU would in fact vigorously defend the first amendment rights of all veteran Americans and service members to display the religious symbol of their choosing on their gravestone.

If the Constitution is to be meaningful, every American should have equal access to the federal courts to vindicate his or her fundamental constitutional rights. The ability to recover attorneys' fees in successful cases is an essential component of the enforcement of these rights, as Congress has long recognized. The bill is a direct attack on the religious freedoms of individuals, as it effectively shuts the door for redress for all suits involving the Establishment Clause. We urge members of Congress to oppose H.R. 2679.

If you have any questions, please contact Terri Schroeder, Senior Lobbyist.

Sincerely,

CAROLINE FREDRICKSON,
Director.
TERRI ANN SCHROEDER,
Senior Lobbyist.

AMERICAN HUMANIST ASSOCIATION,
Washington, DC, September 11, 2006.

DEAR REPRESENTATIVE: The American Humanist Association strongly urges you to oppose the Public Expression of Religion Act (H.R. 2679), which would bar courts from awarding attorney's fees to prevailing parties bringing suit under the Establishment Clause of the First Amendment. We urge you to vote against this bill, which would severely discourage or outlaw litigation over government practices that violate the First Amendment.

If passed, the Public Expression of Religion Act would prevent concerned citizens from exercising their constitutionally protected rights in court. The bill purports to "eliminate the chilling effect on the constitutionally protected expression of religion by State and local officials that results from the threat that potential litigants may seek damages and attorney's fees." However, these litigants are only awarded attorney's fees if their claims are found valid and thus

unconstitutional; under current law, the "frivolous lawsuits" commonly cited in attempts to reduce attorney's fees are not funded by taxpayer dollars but rather are financed by the losing litigants. Further, though supporters have argued that groups such as the American Civil Liberties Union have reaped enormous compensation from such suits, the reality is that the awarding of attorney's fees is essential to maintaining a fair judicial system; these suits often involve a substantial amount of time and effort that is simply not feasible for most attorneys to undertake on a pro bono basis. The bill would actually create a far more chilling effect in its restriction of challenges to First Amendment freedoms.

If the Public Expression of Religion Act passes it will set a precedent for future restrictions on the ability to gain attorney's fees and costs for constitutional violations that are unpopular with any particular political majority at the moment. The current system does not reimburse attorney's fees for unsubstantiated cases, and it maintains the impartiality of our courts by allowing the judiciary to interpret constitutional concerns as laid out in the Constitution. Please do not allow the legislature to influence the judicial process for political gain.

Humanists are particularly concerned about this bill because it targets religious minorities and nontheists in their attempts to maintain the separation of church and state by severely reducing attorney's abilities to represent them in judicial actions. The threat of lawsuits under the Establishment Clause does not and never has had a "stifling effect" on religious practices; religion is an integral part of many Americans' lives, and we Humanists support the personal expression of religion. What we do not support, however, is governmentally sanctioned religion that infringes on our First Amendment rights. The current laws support a system of checks and balances to ensure that all Americans have the freedom to express themselves without coercion.

The AHA urges you to maintain every American's right to an impartial and accessible judicial system and vote no on the Public Expression of Religion Act.

Sincerely,

MEL LIPMAN,
AHA President.

PROTECT RELIGIOUS LIBERTY AND
OPPOSE H.R. 2679

AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, September 12, 2006.

DEAR REPRESENTATIVE: The American United for Separation of Church and State urges you to oppose H.R. 2679 or any other similar legislation seeking to limit awards of attorney's fees in Establishment Clause cases. Americans United represents more than 75,000 individual members throughout the fifty states and the District of Columbia, as well as cooperating clergy, houses of worship, and other religious bodies committed to preserving religious liberty.

Bills such as H.R. 2679 are extreme and unwise proposals that will do nothing more than deter Americans from seeking to enforce in the federal courts their fundamental constitutional rights to worship freely and to make decisions about religion for themselves and their families, without interference or coercion from the government. Such ill-conceived measures will also set a broader precedent for abolishing court-awarded attorney's fees in other civil-rights cases, thus undermining the system that Congress carefully wrought to ensure that those who suffer unconstitutional discrimination will be able to obtain legal representation to vindicate their civil rights.

H.R. 2679 would prohibit the federal courts from awarding reasonable attorney's fees and costs to parties who prevail in actions brought to enforce their rights under the Establishment Clause of the First Amendment to the U.S. Constitution, and it would limit the remedies available to Establishment Clause plaintiffs to injunctive and declaratory relief, thus barring federal courts from awarding either damages or other equitable relief to parties who prevail on Establishment Clause claims. If passed, the bill would thus, for the first time since the enactment of the Civil Rights Attorney's Fees Awards Act of 1976, eliminate an entire category of civil-rights claims from those for which federal courts can award attorney's fees and costs, and it would in many cases deprive plaintiffs of any effective remedy for substantial constitutional violations.

H.R. 2679 WOULD SUBSTANTIALLY IMPAIR THE ABILITY OF AMERICANS TO ENFORCE THEIR RELIGIOUS-FREEDOM RIGHTS UNDER THE ESTABLISHMENT CLAUSE

Congress recognized the importance of the remedy of fee shifting to the enforcement of civil-rights laws when it passed the 1976 Civil Rights Attorney's Fees Awards Act, 42 U.S.C. 1988:

Enforcement of the laws depends on governmental action and, in some cases, on private action through the courts. If the cost of private enforcement actions becomes too great, there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases.

S. Rep. No. 94-1011, at 6 (1976). Indeed, the enactment of the fee-shifting provision was not an expansion of civil-rights plaintiffs' rights but instead was merely a codification of preexisting practice that Congress viewed as especially important: Responding to an earlier Supreme Court ruling that courts could no longer award attorney's fees to a prevailing party unless specifically authorized to do so by federal statute (see *Alyeska Pipeline Serv. v. Wilderness Soc'y*, 421 U.S. 240 (1975)), Congress recognized that the fee-shifting provision "creates no startling new remedy—it only meets the technical requirements that the Supreme Court has laid down if the Federal courts are to continue the practice of awarding attorney's fees which had been going on for years." S. Rep. No. 94-1011, at 6. H.R. 2679 would thus eliminate an important remedy that has been recognized by statute for three decades and by court practice for far longer.

This turnabout would have a substantial effect on the ability of Americans who have suffered violations of their right to religious freedom to seek redress in the courts because they will be unable to afford counsel to represent them. Indeed, the Act would make it difficult for victims of Establishment Clause violations even to obtain representation from lawyers who might otherwise be willing to represent them pro bono because those lawyers would no longer be able to recoup their actual, out-of-pocket expenses—which can often total tens or even hundreds of thousands of dollars.

Although the bill's sponsors claim that the Act would "eliminate the chilling effect on the constitutionally protected expression of religion by State and local officials," few, if any, Establishment Clause plaintiffs seek to challenge personal religious expression by governmental officials. Rather, most Establishment Clause plaintiffs simply seek to ensure that government does not coerce them or their children to participate in religious activities that conflict with their own sincerely held beliefs.

Many plaintiffs are like the parents in Dover, Pennsylvania, who courageously challenged a decision by their school board to require their ninth-grade students to listen in a biology class to a statement by school administrators disparaging the scientific theory of evolution and encouraging them to accept "intelligent design," a religious view of the origins of life. As one of these plaintiffs, Steven Stough, said, "I have joined this lawsuit because I believe that religious education is a personal matter whose instructional component is best reserved for home or at a church of one's choice. It is my responsibility for the direction of my daughter's religious instruction not the public high school."

But without the availability of attorney's fees, parents like Mr. Stough would not be able to afford the cost of hiring a lawyer: The court in the Dover case found that the plaintiffs were entitled to a reasonable fee award, of which more than \$250,000 represented the plaintiffs' attorneys' actual, out-of-pocket expenses to bring the case. Had H.R. 2679 been the law of the land, the parents of Dover, Pennsylvania, might well never have been able to vindicate their right to direct the religious upbringing of their children without interference by the local school board, for they simply could not have afforded the expenses for the case, much less any attorney's fees, for litigation that required the full-time commitment of a half dozen lawyers for more than a year.

The problem is far more serious in most other cases. Although the Dover plaintiffs were represented pro bono by institutional civil-rights litigators (including Americans United) and a large law firm, many Establishment Clause plaintiffs rely on lawyers who work in small private practices. Indeed, the bulk of constitutional tort litigation is brought by local, small-firm lawyers. See Stewart J. Schwab, *Explaining Constitutional Tort Litigation: The Influence of the Attorney Fees Statute and the Government as Defendant*, 73 *CORNELL L. REV.* 719, 768-69 (1988). So while large law firms and institutional civil-rights litigators may continue to represent Establishment Clause plaintiffs even in the absence of a fee-shifting statute, the majority of Establishment Clause violations will go unredressed because the small-firm lawyers who typically litigate them will be unable to afford to take the cases.

Again, the issue is not one of lawyers' profits: Just as the most well-established civil rights organizations and largest law firms can ill afford to pay the litigation costs for major cases, so too must most small firms and solo practitioners decline to provide representation in more modest cases when they have no ability to cover the out-of-pocket expenses required even in cases where the law is clear and the civil-rights violation egregious.

Compounding the problem is the Act's limitation on the relief available to Establishment Clause plaintiffs. In most other classes of civil litigation, plaintiffs who win their cases receive money damages from the defendant and are able to use a portion of those damages to pay their lawyers. But in Establishment Clause cases, like most civil-rights cases, prevailing parties are usually entitled only to injunctive relief, not damages, and thus receive no funds from the litigation to pay their lawyers. Not content to deny Establishment Clause plaintiffs the fee-shifting protections that Congress has wisely provided, H.R. 2679 would eliminate the possibility of money damages even in the incredibly rare case where Establishment Clause plaintiffs might be able to show a compensable injury, thus denying them the protection of a damages remedy that is available for every other class of legally cognizable injury.

H.R. 2679 COULD PERVERSELY LEAD TO MORE ESTABLISHMENT CLAUSE LITIGATION FURTHER CLOGGING THE DOCKET OF THE FEDERAL COURTS

The fee-shifting provision in 42 U.S.C. 1988 levels the playing field between private citizens and the government in constitutional tort litigation by encouraging private lawyers to take meritorious cases and by increasing the potential costs of litigation to government defendants. It thus deters government from committing many egregious civil-rights violations just the way that damages remedies deter unlawful action in the ordinary run of tort and contract cases. While eliminating attorney's fees would surely reduce the number of Establishment Clause claims being brought, even in cases where the law is most clearly on the plaintiffs side, it would also ensure that those cases that are filed will be more costly and more time-consuming to litigate because the government defendants will have no incentive to settle or to mitigate the costs of litigation, but instead will view as "costless" a fight to defend even the most overt violations of individuals' rights to religious freedom, and so will clog the courts with cases that should be readily resolved.

Unlike private parties, government has virtually unlimited resources with which to litigate cases and can use those resources to drag out litigation. Indeed, government defendants in Establishment Clause cases may not have to spend even one penny of their own money on litigation if, as is becoming increasingly frequent, they are represented for free by a faith-based law firm committed to encouraging public officials to violate citizens' Establishment Clause rights. For example, the Thomas More Law Center provided free representation to the defendants in *Kitzmiller v. Dover Area School District*, leading the school board to conclude that, even though the school district's regular lawyer had warned that the district would lose the case, it should still fight a costless battle to force the school board members' preferred faith on students without regard to the students or their parents' religious beliefs. After the school district lost the case, as its lawyer warned it would, the court held that it was liable to the plaintiffs for their attorney's fees and costs. That award was essential not just because it made it possible for the Dover parents to bring the case, but because it provides a greater incentive to other school boards in the future to avoid the same wrongdoing that the Dover school board committed, or at least to settle early those cases they cannot win, rather than compounding the violations of parents and students' constitutional rights, and compounding costs to everyone, by fighting lost causes to the bitter end.

Just weeks after the *Kitzmiller* decision, for instance, several California parents filed an Establishment Clause challenge to their school district's decision to teach a course on intelligent design and asked a federal court to issue a temporary restraining order prohibiting the school district from offering the course. See *Hurst v. Newman*, No. 1:06-CY-00036 (C.D. Cal.). Recognizing that its actions were unlawful and that it would likely owe substantial attorney's fees and costs to the plaintiffs if it continued to fight, the school board gratefully accepted the plaintiffs' offer to waive their right to request attorney's fees in exchange for the school district canceling the unconstitutional class—a quick and amicable resolution of the case that would not have been possible if the availability of attorney's fees had not been a deterrent to the school board tying up the courts and dividing the community over its dogged but futile pursuit of a plainly unconstitutional policy.

And in Florida, the prospect of attorney's fees had a similar salutary effect: A school district was sued by parents who objected on Establishment Clause grounds to the district's decision to hold several high school graduations in a church, with students accepting their diplomas and having their commencement photos taken beneath a large cross. Although a federal district judge preliminarily found that the parents were likely to win their case on the merits, the school board initially planned to fight the case all the way through a full trial. But with the specter of a mounting bill for the parents' legal fees on the horizon, the school district ultimately thought better of that plan, promising to hold future graduations in secular locations in exchange for an agreement by the parents' attorneys to charge the district only half the fees that they had accrued up to that point. Again, but for the threat of a fee award, justice to the parents would have been delayed and judicial resources would have been squandered. Indeed, without the possibility of being liable for attorney's fees, governmental entities like the Florida and California school districts just described will have every incentive to engage in straightforwardly illegal conduct, infringing the religious freedom of the public—and most especially children, who are most likely to have their complaints about religious discrimination and coercion fall on deaf ears unless their families have recourse in the federal courts.

In Dover, the belief that fighting was costless led the school board to adopt "an imprudent and ultimately unconstitutional policy." *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 765 (M.D. Pa. 2005). Indeed, the court characterized the board's decision as one of "breathtaking inanity" and decried the school board's decision to defend the policy in court, asserting that "[t]he students, parents, and teachers of the Dover Area School District deserved better than to be dragged into this legal maelstrom, with its resulting utter waste of monetary and personal resources." *Id.* Actually making it costless for the government to defend Establishment Clause violations will reproduce that sad state of affairs everywhere.

In passing the Civil Rights Attorney's Fees Awards Act, Congress recognized that rights are meaningless unless individual citizens are able to enforce them against the government:

If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.

S. Rep. No. 94-1011, at 2 (1975). Abolishing attorney's fees in Establishment Clause cases would not simply increase plaintiffs' cost to file these cases; it would render the Establishment Clause—a critical safeguard for religious freedom embodied in the First Amendment of the U.S. Constitution—a dead letter. As the federal courts have consistently acknowledged, the Establishment Clause works in tandem with the Free Exercise Clause to protect Americans' right to practice their religion as they choose. See, e.g., *Venters v. City of Delphi*, 123 F.3d 956, 969 (7th Cir. 1997) (Free Exercise and Establishment Clauses "embody 'correlative and coextensive ideas, representing only different facets of the single great and fundamental freedom [of religion]'" (quoting *Everson v. Bd. of Educ.*, 330 U.S. 1, 40 (1947) (Rutledge, J., dissenting))). So although the avowed purpose of H.R. 2679 or other similar legislation is to protect the religious expression of state and local officials, its effect would be to deeply undermine the religious liberty of all Americans.

If you have any questions regarding this legislation or would like further information on any other issues of importance to Americans United, please contact Aaron D. Schuham, Legislative Director, at (202) 466-3234, extension 240.

Sincerely,

Rev. BARRY W. LYNN,
Executive Director.

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM,

Washington, DC, September 12, 2006.

DEAR REPRESENTATIVE: On behalf of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis (CCAR), whose membership includes more than 1,800 Reform rabbis, I ask you to oppose H.R. 2679, the "Public Expression of Religion Act of 2005." I also urge you to oppose any other efforts that undermine the courts' ability to hear cases in which an individual's rights are at stake.

This dangerous legislation would prevent plaintiffs from being awarded legal fees and out-of-pocket expenses in cases involving First Amendment rights. It is nothing more than an attack on efforts to enforce Constitutionally-protected rights.

The effort to select only certain rights for the full protection of the law is a slippery slope at best; and, more to the point, may spell the start of a full scale assault on fundamental freedoms. Further, this legislation creates two tiers of justice, dividing those who can afford to have their Constitutional rights enforced from those who cannot. This is a shameful denigration of our commitment to the equality of all Americans.

Americans of all economic levels and ideological backgrounds deserve equal protections from our courts and justice system. I strongly urge you to reject the Public Expression of Religion Act.

Sincerely,

MARK J. PELAVIN,
Associate Director.

SEPTEMBER 13, 2006.

DEAR SENATOR REPRESENTATIVE: The Secular Coalition for America urges you to oppose H.R. 2679, the so-called Public Expression of Religion Act (PERA). Passage of this act would have a chilling effect on the rights of citizens seeking to protect their constitutional rights under the Establishment Clause. Without the right to seek attorney fees and costs in successful challenges of the improper intrusion of religion into government, elected and appointed officials will have no obstacles against imposing their religious beliefs on the general public.

If this bill passes, the only penalty for violations of the Establishment Clause will be the court's injunction to end that particular unconstitutional practice. Clever appointed and elected officials will simply modify their practices just enough to circumvent the court's ruling knowing that they will face no penalty for their actions and eventually the plaintiff will be unable to pursue additional cases through the court system.

The purpose of PERA is solely to deny Americans access to the courts to protect their constitutional rights. The current law allows plaintiffs and their lawyers to recover reasonable costs and attorneys fees only if their case is successful. With restitution available only in successful cases, the current law discourages frivolous lawsuits. However, without this reasonable restitution, the vast majority of Americans will not be able to afford the protections guaranteed to them by our Founders.

By severely limiting lawsuits through PERA, elected and appointed officials will be

unfettered in their pursuits to incorporate religious symbols and expressions into governmental spaces and events. These official religious endorsements and use of religious symbols by the majority of the moment relegate members of minority religions and the non-religious to a second-class citizenship.

By allowing citizen access to the judiciary, minorities in our nation gained the protections afforded by the First Amendment. These protections have allowed members of minority religions (such as Jehovah's Witnesses) as well as nonreligious Americans to be free of government required religious exercises and endorsement of religious symbols. Individuals have been free to exercise their own decisions of conscience in public schools and governmental bodies.

Our nation has respected the separation of powers which our founders so wisely created to prevent anyone branch from gaining too much power. Congress must not encroach on the right of citizens to seek the judiciary's power to resolve constitutional issues. The limitations PERA would create for access to the judiciary are equivalent to poll taxes limiting access to the ballot box. With access to the courts, the rights of minorities guaranteed in the Bill of Rights would be meaningless; the Constitution could not be enforced; and a tyranny of the majority would ensue.

Passage of H.R. 2679 also creates a slippery slope that would set a dangerous precedent for future restrictions on the ability to gain attorney fees and costs for other constitutional arenas that are unpopular with the majority of the moment. Any time the judicial branch makes a decision unpopular with the majority in Congress, it could simply pass legislation effectively taking away citizen access to the courts. Passing this type of legislation make the freedoms guaranteed in our Constitution worthless.

Sincerely,

LORI LIPMAN BROWN, ESQ.,
Director.

THE INTERFAITH ALLIANCE,

Washington, DC, September 14, 2006.

DEAR REPRESENTATIVE: As the president of The Interfaith Alliance, I am writing to urge you to oppose H.R. 2679. "The Public Expression of Religion Act of 2005." The Interfaith Alliance is a nonpartisan, grassroots organization that represents more than 185,000 members. We are committed to promoting the positive and healing role of religion in public life. While we fully support the public expression of religion, we cannot support restrictions on the enforcement of the Bill of Rights which was designed to protect all Americans, regardless of their religious beliefs.

Americans of all faiths—Buddhists, Hindus, Sikhs, Muslims, Christians and Jews—and those who profess no faith—must have the right to practice their religion and raise challenges when they feel that there is a specific violation of the clause in the First Amendment which guarantees that "Congress shall make no law respecting an establishment of religion."

And when government has acted in an unconstitutional manner, citizens seeking their constitutional rights must not be required to pay the government's legal fees because that would make it difficult if not impossible for those individuals to successfully challenge the illegal behavior.

If passed, H.R. 2679 would eliminate damages and awards of attorneys' fees for individuals or groups in successful cases brought to ensure their constitutional rights under the Establishment Clause of the First Amendment to the U.S. Constitution. This would effectively prevent the full enforcement of the First Amendment's prohibition

on the establishment of religion by federal, state, and local governments.

Religious freedom as guaranteed by the First Amendment includes both the Free Exercise Clause and the Establishment Clause. One without the other would render religious freedom a hollow phrase. H.R. 2679 would create a double standard with enforcement of Free Exercise cases being protected by guarantees of attorney fees but Establishment Clause cases being denied the same relief.

The Interfaith Alliance considers H.R. 2679 to be an attack on the religious freedoms guaranteed to every American by the Constitution. In the name of religious freedom, we urge you to oppose "The Public Expression of Religion Act of 2005." It is bad for the Constitution. It is bad for religion.

If there is anything that we at The Interfaith Alliance can do to assist you in this important matter, please do not hesitate to contact Preetmohan Singh, Deputy Director of Public Policy, at 202-639-6370.

Sincerely,

Rev. Dr. C. WELTON GADDY,
President, The Interfaith Alliance.

FRIENDS COMMITTEE ON
NATIONAL LEGISLATION,

Washington, DC, September 14, 2006.

MEMBERS, HOUSE OF REPRESENTATIVES,
Washington, DC

DEAR REPRESENTATIVE: The Friends Committee on National Legislation, a 63-year old Quaker lobby on Capitol Hill, urges you to oppose H.R. 2679, the "Public Expression of Religion Act." Though supporters of the bill cite certain types of cases that would be covered by the Act, the legislation itself extends to all claims under the establishment of religion clause. This legislation would effectively deny access to the courts for individuals wishing to protect their religious rights, unless they were personally wealthy enough to fund the litigation.

As members of a minority religion whose foremothers and forefathers came to this country to escape the religious intolerance of the English government, Quakers cherish the U.S. Constitution's protections of religion from the dictates of government. The Bill of Rights was written to protect individuals, not the government. In an ironic twist, H.R. 2679 and similar legislation would turn the "no establishment of religion" clause on its ear, protecting the government against individuals.

Our taxes would pay for the governments' lawyers, but even in a clear case of disregard for established religious freedoms, judges would be powerless to relieve an individual of the burden of paying for litigation to protect his or her constitutional rights.

Cases protesting government actions under the establishment clause rarely involve money. The object is almost always to get the school district, or the registrar's office, or some other local or state official, to carry out regulations and programs in a constitutionally sound manner, without giving preference to a particular religious view or affiliation, or to accommodate the religious beliefs of a minority. Providing for attorney fees in cases in which the plaintiff prevails is the only practical way to provide access to the court for those who are not wealthy.

We urge you to reject H.R. 2679 and similar legislation, and to support the religious freedoms guaranteed by the First Amendment.

Sincerely,

RUTH FLOWER,
Legislative Director.

JEWISH COUNCIL FOR PUBLIC AFFAIRS,
September 12, 2006.

DEAR REPRESENTATIVE: The Jewish Council for Public Affairs, JCPA, is the umbrella organization for the organized Jewish community. Our membership includes 13 national

Jewish agencies and 125 Jewish Community Relations Councils. On behalf of the organized Jewish community, I urge you to oppose the "Public Expression of Religion Act of 2005", H.R. 2679. As Jews, members of a religious minority in the United States, we are particularly sensitive to the relationship between religion and state in this Nation.

The Public Expression of Religion Act, PERA, prevents judges from awarding attorney's fees in Establishment Clause cases. This restriction severely limits the ability of Americans to bring suit against the government or public officials when their religious liberties have been compromised. Lawsuits are very expensive. The passage of this bill would essentially prohibit all but the very wealthy from protecting their rights. Regardless of economic status, all Americans should have the ability to protect their liberties and challenge unconstitutional actions.

JCPA policy calls for a clear separation between religion and government. "In our increasingly pluralistic society, a clear division between religion and state remains the best way to preserve and promote the religious rights and liberties for all Americans, including the Jewish community." PERA compromises this separation and threatens to infringe on the rights of many Americans by making it prohibitively expensive and thus practically impossible, to challenge an official's or jurisdiction's actions.

On Thursday, September 6, the House Judiciary Committee completed its markup of this bill and reported it to the House floor.

I strongly urge you to oppose this legislation and protect the ability of millions of Americans to live in a society that respects religious freedom and liberty.

Sincerely,

HADAR SUSSKIND,
Washington Director.

NATIONAL COUNCIL OF JEWISH WOMEN,
September 12, 2006.

DEAR REPRESENTATIVE: On behalf of the 90,000 members, volunteers, and supporters of the National Council of Jewish Women, NCJW, I am writing in opposition to the "Public Expression of Religion Act," H.R. 2679. This bill would eliminate compensation of attorneys' fees for individuals who bring legal challenges under the Establishment Clause in cases in which they prevail. Effectively, it would prevent low-income Americans from defending their constitutional rights, reserving this protection only for those wealthy enough to afford litigation.

All Americans should have the same ability to defend their constitutionally protected rights, regardless of economic status. Organizations that donate legal services to help those who rights have been violated will be discouraged from this pro bono work if they cannot recoup a portion of their financial expenditures. Instead of protecting religious liberty, this bill seriously compromises it by limiting access to the courts.

For over a century, NCJW has been at the forefront of social change, raising its voice on important issues of public policy. Inspired by our Jewish values, NCJW has been, and continues to be, an advocate for religious liberty with a strong belief that the separation of religion and state are constitutional principles that must be protected and preserved in order to maintain our democratic society.

I urge you to oppose legislation that would limit an individual's ability to defend the liberties provided by the Constitution and the Bill of Rights. Please demonstrate commitment to those documents and the values they represent by voting against the "Public Expression of Religion Act".

Sincerely,

PHYLLIS SNYDER,
NCJW President.

Mr. SMITH of Texas. Mr. Speaker, I would like to yield 4 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. Mr. Speaker, I am grateful for the gentleman's leadership on this issue. I rise in strong support of the Public Expression of Religion Act; and I do so with particular gratitude to my Hoosier colleague, John Hostettler, who, during the course of his career in the United States House of Representatives, has stood for the freedom of religion as perhaps no other American.

And I say that with understandable parochial Hoosier pride, but I also say it as an objective observation, that the gentleman from Indiana has stood for a constitutional accommodationist view of respect for the expression of religion and its importance in American heritage. Mr. Speaker, I commend him for his outstanding work on this legislation.

In 1976, a statute was passed in this Congress called the Civil Rights Attorney's Fees Awards Act. Very simply and plainly, this statute was intended to protect the constitutional rights of citizens and level the legal playing field.

Under this Act, a citizen who felt that his or her constitutional rights had been violated could sue a government official or entity and receive attorney's fees if they win.

This was important legislation, and it has served a great public good. But it has also served to catalyze a form of litigation since the advent of decisions by the United States Supreme Court in the 1960s and 1970s that moved away from our historical view that the freedom of religion was not the freedom from religion, and it has become a tool, I say very respectfully, to their cause. It has become the tool of elements who would advance a radical secularist view of the public square in America, and who have used the opportunity to access the public Treasury in the form of attorney's fees to not only finance massive litigations against government entities to scrub our public square of any vestige of reference to God or reference to the religious heritage of the American people, but also it has been used to prevent that day in court from happening.

The availability of massive amounts of attorney's fees have caused many municipalities, even some in Indiana, to relent in their fight to preserve the public display of the Ten Commandments or references to God in the public square because of the local government's inability to access Federal funds to pay their attorney's fees.

So in a very real sense the unintended consequence of the 1976 law was to take a playing field that was imbalanced to one side and make it imbalanced to the other. And today, because of Congressman John Hostettler's leadership in the Public Expression of Religion Act, we are leveling the playing

field once again. We are saying to every American who believes in their heart that "In God We Trust" should not appear in the well of this Congress as it does behind me, that every American who thinks there should be no reference to religion in the public square whatsoever, it says to every American whose view of the Constitution is that the Establishment Clause is somehow an antiseptic to remove any reference to our religious heritage in this country, it says: The courts are open to you, but the Treasury is not.

As we might say in Indiana, where I was born and raised and lived, that, to put it very plainly, I may fight to the death for your right to hold the views that you hold, but that doesn't mean that I have to pay for it.

And because of Congressman HOSTETTLE's leadership on the Public Expression of Religion Act, we say the courthouse doors are open to anyone who would challenge the public expression by local governors or government officials the acknowledgement of the deep and rich heritage over hundreds and hundreds of years of the American people, who we would say, in this instance, in these cases, the public treasury is not open. Raise your money, bring your challenges, and let the court work its will.

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

Ms. WATERS. Mr. Speaker, I oppose this legislation because it prevents people from getting attorney's fees or economic damages even if a court agrees with them that the Federal Government has violated their constitutional right to religious freedom or not to be forced to recognize one religion over another. In other words, Congress is telling the courts that they do not know how to do their jobs.

Article III of the Constitution states that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Why are we trying to do the Court's job by deciding that these Establishment Clause claims deserve only injunctive or declaratory relief?

This bill reaches right into the Civil Rights Act, for the first time in history, I might add, singles out people who have Establishment Clause claims and tells them that they cannot recover any economic damages. How can this be so, Mr. Speaker? How can this be so, when the 11th Circuit in *Glassroth v. Moore*, a case decided in 2003, stated that: For Establishment Clause claims based on noneconomic harm, the plaintiffs must identify a personal injury suffered by them as a consequence of the alleged constitutional error.

The court found injury in *Glassroth* because the claimants had altered their conduct and incurred expenses in order to minimize contact with a Ten Commandments monument erected in the

rotunda of Alabama's State judicial building.

With this bill, this committee attempts to overturn Federal judicial opinions, and that is simply not our role. Congress established enforcement remedies under section 1983 more than 100 years ago.

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

Mr. Speaker, we have heard a lot of rhetoric that is really beside the point on this bill. We all agree, I hope, that the United States Constitution governs. We all agree, I hope, that the Bill of Rights confers certain rights on Americans, whether citizens or not. We all agree that freedom of religion, freedom to exercise religion, and freedom from establishment of religion are among those rights. We all agree, I hope, that the courts are there to enforce those rights. And then the disagreement begins.

This bill would seek to put a thumb on the scale and say, and we heard this rhetoric: We don't like the ACLU. We don't like what they are doing, even if the courts say they are right in a given case. Because we don't like what they are doing, because their winning court decisions violates our concept of what the Establishment Clause means, we are going to put a thumb on the scale and say that people who win lawsuits, who establish to the court's satisfaction that the government has violated their rights under the first amendment, the Establishment Clause, they cannot get damages, they cannot get attorneys' fees. We are going to put a poll tax on the Establishment Clause. Only people with a lot of money had better sue to enforce their first amendment rights.

If you don't have a lot of money but the government is violating your rights under the Establishment Clause, you can't sue. Because even if your attorney tells you you have got a 99 percent chance of winning because these people know they are wrong, it may still cost you a couple hundred thousand dollars. And they paint the picture of these poor cities and towns and governments having to kowtow to an organization, but the fact is, who generally has more money for a lawsuit? The City of New York, the City of Galveston, the town of whatever, or an individual?

You are putting a means test on protecting your rights to freedom of religion. I don't think that is what this country ought to be about. Because, after all, someone has got to pay for that lawsuit. Someone has got to pay the attorneys' fees, and that is either going to be the plaintiff who alleges a violation of his rights, or it is going to be the government that allegedly violated his rights.

The law says, current law, that if you prove that the government violated your rights, the government should pay the cost of that lawsuit, not you.

This bill says that, for most things, that is still true; but for the Establish-

ment Clause rights, it no longer true, and you have got to pay for the lawsuit that the government made you bring by willfully, or perhaps not willfully, violating your rights.

They say, well, look at the City of San Diego. It is costing them hundreds of thousands of dollars. Well, if they listened to their attorney who said, gee, what you are doing may very well violate the first amendment or does violate the first amendment, then maybe they wouldn't have had to pay those hundreds of thousands of dollars. With this bill, there will be no financial incentive to obey the Establishment Clause.

Second, this bill does not, as I said before, cover only the cases they are talking about; it covers all establishment cases. And let's think of an establishment case. Let's assume, and we know that throughout the history of this country different ethnic groups, different religious groups have different political weights at different times. Let's assume that in some town the Sunni Muslims became a majority, and let's assume that they decided in that town that everybody, Christians, Jews, Muslims, in school had to recite every day on pain of expulsion from class there is no God but Allah, and Mohammed is his prophet. Pretty clear violation of the Establishment Clause in the first amendment.

Now, somebody who is not a Muslim in that case, someone who is Jewish or Christian or something else, decides to sue and wins the lawsuit; and they say you can't do that. You can't get attorneys' fees. He has got to bear the cost of that. Why? Because of hostility on the part of the sponsors of this bill to the Establishment Clause of the first amendment. Because they think that only the majority religion is ever going to be in the position to dominate a local government or any government.

Maybe so. But the real reason we have the first amendment is that you can never be sure. It may be that in the future some group that isn't the majority now will be the majority in some local area; and if you make it difficult to enforce the Establishment Clause of the first amendment, you or your children could be the ones imposed upon.

Now, we heard about this horrible situation, about the challenge to this or challenge to that. But, as I said before, the real complaint is not with the attorneys' fees, the real complaint is with the first amendment. You think you ought to be able to do whatever it was and what the courts have said, no, you can't. Well, maybe you shouldn't or maybe we should amend the Constitution. Which I wouldn't suggest, but that would be the right way to do it. Or maybe we should get different judges or whatever.

But if the courts say you are violating the first amendment, you shouldn't continue to do it. You should be able to get damages if you continue to do it. And the plaintiff, vindicating his own constitutional rights, should

be able to bring a lawsuit without having a lot of money.

Now, we heard also that, well, the various organizations say that even if you pass this bill, they will still sue. But that is not the question. The first amendment does not belong, the Constitution of the United States does not belong to the American Civil Liberties Union or to Americans United for Separation of Church and State or United Americans Against the Separation of Church and State.

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It is the individual right that you are violating here. It is an individual's right, or maybe a whole class of individuals, that you are violating when you violate the establishment clause of the first amendment, and any individual should have the right and the ability to go to court and if he wins, to get attorneys fees.

We have made a decision, we have made a decision in this country, and maybe you want to challenge that decision, but this bill doesn't do that. That decision is that when your constitutional rights are violated and you can prove it to the court, that the government violated your constitutional rights, then the government should pay for the cost of your vindicating the Constitution and vindicating your rights against the government that broke the law by violating your rights. That is a general principle.

Maybe you want to say no, we don't care that much about individual rights any more, first amendment, second amendment, whatever. From now on you want to sue the government because they violated your rights, you pay no matter what, even if you win. Okay, that is a different bill. I would oppose it, but that is a different bill. That is not this bill. This bill says we think all rights are important. If you think that the government violated your second amendment right to own a gun and you go to court and you prove it, the government pays for that lawsuit, and properly so.

But if you think the government violated your right to practice your religion by violating the establishment clause, and you prove it, the government doesn't pay. You have to pay for it because your right to own a gun is a heck of a lot more important than your freedom of religion, apparently. That doesn't make sense.

Mr. Speaker, if we believe in the individual rights enshrined in the Bill of Rights, if we believe in the first amendment and the freedom of religion in this country, and if we believe we shouldn't single out freedom of religion and say that freedom is less important, that freedom if you win, and forget the merits of these cases, if you lose, you don't get attorneys fees or damages.

We are talking about where you are right and the government is wrong. The government is violating your rights, and this bill says you shouldn't get damages or attorneys fees anyway

because we don't like your point of view. That is wrong. It is demeaning to this Congress, and if we believe in freedom of religion and the Bill of Rights, we will defeat this bill.

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

Mr. SMITH of Texas. Mr. Speaker, we have just had a speaker arrive on the House floor, and I would like to yield 1½ minutes to the gentleman from Pennsylvania (Mr. PITTS) if the gentleman from New York doesn't object.

Mr. PITTS. Mr. Speaker, I want to thank the gentleman from Indiana (Mr. HOSTETTLER) for his efforts to raise awareness of this important issue.

Mr. Speaker, passing this bill would be a win for millions of Americans who cherish religious freedom in America. And it would be a win for those who understand our Constitution guarantees freedom of religion, not freedom from religion.

We all know in 1976 Congress passed a law allowing citizens to sue the government if they feel their constitutional rights have been violated. In recent years, groups like the ACLU have twisted this law to advance their agenda of eliminating any public expression of religion.

By using the threat of a lawsuit combined with uncertain jurisprudence on the issue, these groups have been able to bully local governments into removing any expression of religion whatsoever, and this affects public seals, Boy Scouts, veterans memorials, Ten Commandment displays, among other things.

Slowly but surely, groups like the ACLU are using the practice to remove any public acknowledgment of religion. This bill protects religious freedom by eliminating the unfair advantage groups like the ACLU enjoy. By denying these groups the ability to collect attorneys fees in establishment clause cases, this bill puts America's countless cities, towns and localities on a level-playing field. No longer would the taxpayers in these towns be forced to foot the bill to defend their constitutional right to freedom of religion. The bill addresses a real concern in a meaningful way. I urge all Members to support its passage.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, today under Federal law, attorneys fees can be demanded from the winning side in lawsuits against States or localities, or the Federal Government, brought under the Constitution's establishment clause.

Current litigation rules are hostile to religion because they allow some groups to force States and localities into removing any reference to religion in public places.

H.R. 2679 would prevent the legal extortion that currently forces State and local governments, and the Federal Government, to accede to demands for removal of religious text and imagery when such removal is not compelled by the Constitution.

Current laws allow plaintiffs to put the following choice to localities: either do what we want and remove religious words and imagery from your public square or risk a single adverse judgment from a single judge that requires you to pay tens or hundreds of thousands of dollars in legal fees in a case that you can't afford to litigate through the appeals process.

Mr. Speaker, local governments are being forced to accede to the demands of opponents, even when their actions are in fact constitutional.

The section of the U.S. code H.R. 2679 amends was never intended to apply to establishment clause claims. 42 U.S.C. 1988, which allows attorneys fees, was intended only to allow the award of attorneys fees civil rights laws enacted by Congress after 1866. We need to return to that original purpose and pass this legislation. I urge my colleagues to support it.

Mr. HOYER. Mr. Speaker, this legislation—the so-called Public Expression of Religion Act—not only is brazenly hypocritical, but it also is politically cynical and would set a very dangerous precedent.

Quite simply, this bill would bar the award of attorney fees to the prevailing parties asserting their fundamental constitutional rights in cases brought under the establishment clause of the first amendment.

This is, indeed, a change of heart for a Republican party that has tried in vain for years to impose a "loser pays" rule on attorney fees in tort cases.

In fact, with this bill, the House Majority lays bare the outcome determinative agenda that guides the Republican party when it comes to issues that involve our legal system and judiciary.

That is, the majority seeks to enact legal procedural advantages for those with whom it agrees.

Make no mistake, if this bill became law, it would single out one area of Constitutional Protections under the Bill of Rights and prevent its full enforcement.

Without question, that would set a dangerous precedent.

The substance of the Constitution is meaningless unless all Americans have a fair and equal opportunity to go to court when their constitutional rights are curtailed by the state.

By barring the award of attorney fees to prevailing parties asserting their constitutional rights in cases brought under the Establishment Clause, H.R. 2679 will discourage Americans of limited means from defending their rights.

Taken to its logical conclusion, this bill would make the U.S. Constitution the tool for those who can afford to vindicate their rights in a court of law.

As such, it is a dangerous bill that runs counter to more than 200 years of American jurisprudence.

I urge my colleagues: vote against this bill.

Mr. CONYERS. Mr. Speaker, the very first amendment to the constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This protects a right—freedom of religion—that is fundamental in any democratic and free society. Since the bill of rights was approved in 1791, several addi-

tional measures have been taken to safeguard this right. For example, the Civil Rights Act of 1871, now known as Section 1983, and the Civil Rights Attorney's Fee Award Act of 1976, now known as Section 1988, were enacted to provide all citizens with the means to protect all constitutional rights. Today, the Majority would have this Congress take a step back from these critical protections.

I oppose the legislation before us because it is unprecedented, it treats religious minorities unfairly, and it will interfere with meritorious claims.

First, H.R. 2679 is unprecedented. For the first time in our history, Congress will be singling out one area of constitutional protections under the Bill of Rights and prevent its full enforcement. The Congressional Research Service reports, "[Section 1983] has not been substantially altered since 1871." Under this legislation citizens challenging Establishment Clause violations will no longer have the ability to recover attorneys' fees. Remedies will be limited to injunctive and declaratory relief.

On the heels of the Voting Rights Act reauthorization, I am troubled that we would take up legislation that would limit a person's ability to enforce his or her constitutional rights. The VRA reauthorization expanded a plaintiff's ability to obtain expert witness fees. This bill eliminates attorneys' fees and delegates those who seek to enforce their constitutional rights against state sanctioned religion to second class status.

Second, H.R. 2679 treats religious minorities unfairly.

Despite its name, this bill does not encourage the expression of religion. Rather, this bill leaves religious minorities without protection by promoting government sanctioned religion.

This Nation was founded on the principle of religious freedom, and the Establishment Clause forbids the government from forcing one religious viewpoint on all Americans. In 2005 in McCreary County, Kentucky v. ACLU, Sandra Day O'Connor explained, "Voluntary religious belief and expression may be threatened when government takes the mantle of religion upon itself." H.R. 2679 cripples the First Amendment and religious minorities will pay the price.

Third, H.R. 2679 will deter meritorious claims. It is a fact of life in our society that bringing complex civil actions against the government is expensive. Since this bill would deny attorney's fees to a prevailing plaintiff, numerous suits challenging Establishment Clause violations will not be brought.

The point of Section 1988 is to provide victims with limited means an opportunity to have their day in court.

Unfortunately, H.R. 2679 will prevent a victim from protecting his or her constitutional rights against a defendant with large resources, such as the government.

It is interesting that so many religious groups strongly oppose this measure. These groups include the Baptist Joint Committee, American Jewish Congress, and the Unitarian Universalist Association of Congregations. The Leadership Conference on Civil Rights, Lawyers' Committee, Alliance for Justice, Human Rights Campaign, and People for the American Way are also among the numerous organizations that also oppose this bill.

Please vote "no" on this legislation, which will cause great harm to the concept of freedom of religion in this country.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to H.R. 2679, the so-called "Public Expression of Religion Act of 2005." The central purpose of this legislation is to bar damages and awards of attorneys' fees to prevailing parties asserting their fundamental constitutional rights in cases brought under the Establishment Clause of the First Amendment to the U.S. Constitution. H.R. 2679 would limit the longstanding remedies available in cases brought under the Establishment Clause under 42 U.S.C. 1988, which provides for attorneys' fees and costs in all successful cases involving constitutional and civil rights violations.

I oppose H.R. 2679 for three very important reasons. First, the bill limits access to justice and makes it virtually impossible for an injured party to obtain remedial relief from a serious deprivation of a fundamental, constitutionally protected right. Second, H.R. 2679 would jettison a legal and constitutional principle that has stood the nation in good stead for over two centuries: that an injured party is entitled to just compensation for the injury he or she has sustained caused by the intentional wrongdoing or negligent conduct of others. Third, H.R. 2679 discriminates against the Establishment Clause of the First Amendment in favor of the Free Exercise Clause. I will address each of the fatal deficiencies in turn.

1. H.R. 2679 limits access to justice for those seeking to vindicate Constitutional Rights.

If H.R. 2679 were to become law, Congress would, for the first time, single out one area protected by the Bill of Rights and prevent its full enforcement. The only remedy available to plaintiffs bringing Establishment Clause lawsuits would be injunctive relief. This prohibition would apply even to cases involving illegal religious coercion of public school students or blatant discrimination against particular religions.

Awards of attorneys' fees in civil rights and constitutional cases, including Establishment Clause cases, are necessary not merely to help prevailing parties vindicate their civil rights but also to provide an incentive for vigorous enforcement of these protections, which the Framers put in place to protect the Nation. Since widespread observance of the rights and protections set forth in the First Amendment is above a collective good, it is vitally important that there be an incentive for individuals to act as "private Attorneys General" to vindicate their individual rights and the public interest in a robust First Amendment. Our sister committee in the other body has found these fees "an integral part of the remedies necessary to obtain . . . compliance" and emphasized that "[i]f the cost of private enforcement actions becomes too great, there will be no private enforcement."

H.R. 2679 would turn the Establishment Clause into a hollow pronouncement. Indeed, the very purpose of this bill is to make it more difficult for citizens to challenge violations of the Establishment Clause. It would require plaintiffs who have successfully proven that the government has violated their constitutional rights to pay their legal fees—often totaling tens, if not hundreds, of thousands of dollars. Few citizens can afford to do so, but more importantly, citizens should not be required to do so where there is a finding that our government has engaged in unconstitutional behavior.

If our civil rights laws are not to become empty words written on parchment which the

average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases."

In sum, I oppose H.R. 2679 because I believe the elimination of attorneys' fees for Establishment Clause cases would deter attorneys from taking cases in which the Government has violated the Constitution; thereby leaving injured parties without representation and without a remedy. It will insulate serious constitutional violations from judicial review. This effectively leaves religious minorities subject to the unbridled whims of the majority, which is precisely the evil the First Amendment, including its Establishment Clause, was intended to combat.

2. H.R. 2679 Denies Just Compensation.

I am a former judge and, like many members of this Committee, an attorney. We know that attorneys' fees are not awarded in Establishment Clause cases as a punitive measure. Rather, as in any case where the Government violates its citizens' civil or constitutional rights, the award of attorneys' fees is reasonable compensation for the expenses of litigation awarded at the discretion of the court. In fact, after intensive fact-finding, Congress determined that the amount of attorneys fees awarded after review by the court "are adequate to attract competent counsel, but . . . do not produce windfalls to attorneys."

Thus, H.R. 2679 is contrary to good public policy because it reduces enforcement of constitutional rights; it has a chilling effect on those who have been harmed by the Government; it makes it exceedingly difficult for plaintiffs to avail themselves of the services of attorneys experienced and skilled in constitutional litigation, and it prevents attorneys from acting in the public's good.

3. H.R. 2679 Favors Enforcement of the Free Exercise Clause Over the Establishment Clause.

Finally, one cannot help but notice that H.R. 2679 creates an arbitrary congressional policy in favor of the enforcement of the Free Exercise Clause, while simultaneously impeding individuals injured by governmental conduct under the Establishment Clause.

Among the greatest religious protections granted to American citizens are the Establishment Clause and the Free Exercise Clause. The right to practice religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights. Religious liberty can only truly flourish when a government protects the Free Exercise of religion while prohibiting government-sponsored endorsement, coercion and funding of religion.

Through the denial of attorneys' fee awards under H.R. 2679, plaintiffs will be able to afford the expense of litigation only when they are seeking to protect certain constitutional rights but not others. This bad congressional policy serves to create a dangerous double standard by favoring cases brought under the Free Exercise Clause, but severely restricting cases under the Establishment clause.

4. Conclusion

If the Constitution is to be meaningful, every American must have equal access to the federal courts to vindicate his or her fundamental constitutional rights. The ability to recover attorneys' fees in successful cases is an essential component of the enforcement of these rights, as Congress has long recognized. H.R. 2679 is a direct attack on the religious freedoms of individuals. Therefore, I cannot support it.

I am pleased to learn that I am supported in my opposition to this ill-conceived and unwarranted assault on the First Amendment's Establishment Clause by some of the most thoughtful and knowledgeable groups on this subject in America, including: African American Ministers in Action, American Jewish Committee, American Jewish Congress, American Civil Liberties Unions, Americans United for Separation of Church and State, Jewish Counsel for Public Affairs, People for the American Way, The Urban League, American-Arab Anti-Discrimination Committee, Asian Pacific American Legal Center, Mexican American Legal Defense and Education Fund, National Association for the Advancement of Colored People (NAACP), National Senior Citizens Law Center.

I urge my colleagues to uphold the First Amendment's Establishment Clause and join me in opposing this shameful piece of legislation.

Mr. KING of Iowa. Mr. Speaker, I urge support for H.R. 2679, the "Public Expression of Religion Act of 2005." This bill prevents American taxpayers from having to subsidize judicial activism, encouraged by liberal groups bringing establishment clause cases. Today, taxpayers are being forced to pay for the lawyers of the ACLU who demand the removal of religious text and imagery from the public square. These organizations attempt to make public policy through the courts, instead of Congress where such actions belong.

How many times will we stand silent as intolerant organizations such as the ACLU strong-arm the American people into removing cherished symbols of our Nation's heritage and faith? These actions are not compelled by the Constitution or supported by the will of the people. "To compel a man to subsidize with his taxes the propagation of ideas which he disbelieves and abhors is sinful and tyrannical." Thomas Jefferson said that, and contrary to the ACLU, I believe that what our founding fathers believed in and stood for is still relevant today.

American taxpayers currently have to pay for ACLU "victories." ACLU press releases, sadly I must say, tout quite a record. For example:

The County of Los Angeles was recently forced to remove a tiny cross from its official seal, symbolizing the founding of the city by missionaries. The removal of this cross is costing the county around \$1 million, as it would entail changing the seal on some 90,000 uniforms, 6,000 buildings, and 12,000 county vehicles.

In San Diego, the ACLU forced the Boy Scouts out of Balboa Park because of the organization's religious beliefs, and taxpayers were required to pay \$950,000 in legal fees and court costs to the ACLU.

In Barrow County, GA, the ACLU received \$150,000 from taxpayers after a Federal judge ordered the county to remove a framed copy of the Ten Commandments from a hallway in the County Courthouse.

In Redlands, California, the city council was forced into changing its official seal but didn't have the funds to revise every symbol that contained the old seal. Now Redlands' residents see blue tape covering the tiny cross on city trucks, while some firefighters have taken drills to remove the cross from their badge.

These are just a few examples of the kinds of cases the American taxpayer is forced to

subsidize. Americans should not be compelled to pay the lawyers who remove historic American symbols. The Public Expression of Religion Act would stop this action. I am glad to be a co-sponsor of this bill, and I urge support for its passage.

Ms. WOOLSEY. Mr. Speaker, today the Republicans bring to the floor a bill that would undermine yet another basic freedom. The so-called "Public Expression of Religion Act" is nothing more than an attack on religious liberty. It promotes government-sponsored religion by limiting challenges to such constitutional violations.

This bill is about the government stopping people from standing up for their civil rights. By restricting people's ability to stand up for their civil rights when governments promote a particular religion, this bill chips away at the constitutionally protected separation of church and state.

That's not all that's at issue here. Language in the bill leaves the door open to all sorts of state-sponsored violations of constitutional freedoms. It casts a dangerously wide net.

This bill also gives the green light to civil rights violations. Exempt from monetary damage payments, local, State and Federal Governments would not have to think twice before violating the separation of church and state. They could act with impunity.

Paying attorneys' fees is a normal, time-honored procedure. It allows citizens to stand up for their constitutional rights, knowing that if the court rules in their favor, they can recover the legal fees. This bill is an egregious ploy to undercut Americans' civil rights.

Barring attorney's fees would be unprecedented. This dangerous example would set our civil rights on a slippery slope to extinction.

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

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1038, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

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.

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5631, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2007

Mr. COLE of Oklahoma. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1037 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1037

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 5631) making appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from Oklahoma (Mr. COLE) is recognized for 1 hour.

Mr. COLE of Oklahoma. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from California (Ms. MATSUI), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. COLE of Oklahoma. Mr. Speaker, I ask unanimous consent that all Members may have 5 days to revise and extend their remarks and insert tabular and extraneous material into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. COLE of Oklahoma. Mr. Speaker, on Monday the Rules Committee met and reported a rule for consideration of the conference report for H.R. 5631, the Department of Defense Appropriations Act for fiscal year 2007.

Mr. Speaker, when the Rules Committee met on Monday night, it reported a rule that waives all points of order against the conference report and against its consideration. Additionally, it provides that the conference report be considered as read.

Today, I rise to support the rule for H.R. 5631 and the underlying legislation. This piece of legislation is a hard-fought compromise between the House and the Senate. The required give and take in this case is a tremendous example of the dedication that Members of both bodies of Congress and both political parties have when it comes to supporting our troops in the field.

Mr. Speaker, many said we could not be at this point today. Many expected compromise could not be reached. I am pleased to say this has not been the case.

Furthermore, the underlying legislation also provides the continuing resolution for the government to remain in operation until November 17. This represents a great compromise and maintains the lower funding levels from either the House or Senate from the previous year or the fiscal year 2006 current rates. H.R. 5631, in short, represents good, bipartisan, bicameral work.

Mr. Speaker, the primary purpose of the underlying legislation is to secure and improve the defense of our country. To that end, the underlying legislation provides for several critical needs for our forces. First, its overall

level of funding provides \$377.6 billion plus \$70 billion in the fiscal year 2007 bridge for operations in Iraq and Afghanistan.

Additionally, a full \$17.1 billion is provided for the Army for the purpose of resetting and refurbishing the force. This is particularly critical at a time when the Army clearly requires and deserves additional funds to fulfill the many complex and dangerous missions it has been called upon to undertake.

Other critical expenditures in this legislation includes significant dollars for the Army's future combat systems, the Navy's shipbuilding program, and aircraft research and development and procurement by the Air Force.

Rather than focusing on the specific numbers, however, I want to address the fundamental reasons for the underlying legislation and the challenges that it attempts to address.

Mr. Speaker, today we are at war in both Iraq and Afghanistan, and are embarked upon the greatest military rebuilding effort in a generation. While our forces are stretched, they are doing a magnificent job. There is no doubt of their dedication, professionalism, and commitment to the missions we have asked them to fulfill. Frankly, we ask more of them than anyone should have to give; yet when we do, they always exceed our expectations.

Mr. Speaker, our combatant commanders and the administration have been very open during the multiple oversight hearings about the challenges they foresee in what they refer to as the long war. It is not a war that can be fought and won by force alone. It is one that requires military action, but also reconstruction, stabilization, and the fostering of democratic concepts and structures of government in areas and among peoples who have been subjected to dictators and totalitarian regimes for decades.

This task is neither simple nor easy. However, it is necessary for the security of our country. When the American people are asked to support our troops in the field, they always respond with the generosity and commitment required of them. Historically, however, Congress and the President have not always funded the military in peacetime at levels necessary to adequately protect us from future threats. I believe that many of the challenges we face today come from underfunding our military during the 1990s.

Mr. Speaker, today we may hear that the force is stressed. We may hear that we don't have enough troops. We may hear about excessive deployment rates. We may hear about increasing levels of stress on military personnel and their families. In large measure, I accept these assertions as true, but they are issues that have grown out of an historical reluctance to see the world for what it is, a very dangerous place.

At the end of the first Bush administration in 1992, we were left with a military that was much larger and could have sustained operations in the