just spoke to that again in passing the Manzanar bill.

Mr. Speaker, it is now time to tell the world that we made a mistake in denying the American Indians equal and fair honor on the battlefield at the Little Bighorn.

RESTORING OUR FIRST FREEDOM

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 1991

Mr. SOLARZ. Mr. Speaker, yesterday, I reintroduced the Religious Freedom Restoration Act of 1991. This legislation will reverse the disastrous effects of a dastardly and unprovoked attack on our first freedom by the Supreme Court of the United States.

On April 17, 1990, the Supreme Court dealt a devastating blow to religious freedom in the United States. In the case of Oregon Employment Division versus Smith, a majority of the Justices virtually eliminated the first amendment's requirement that Government accommodate the religious practices of all Americans unless it can demonstrate that the burden imposed is the least restrictive means available to achieve a compelling state interest.

With the stroke of a pen, the Supreme Court virtually removed religious freedom—our first freedom—from the Bill of Rights.

We have always accommodated religion, even when religious practices have conflicted with important national priorities. We have allowed the Amish to withdraw their children from compulsory education. We have allowed the use of wine in religious ceremonies during Prohibition. We have allowed deferments from conscription to accommodate religious pacificism even in times of war.

We have been strengthened rather than weakened as a nation by this remarkable record of accommodation. Yet Justice Scalia, writing for the Court, called this outstanding and uniquely American tradition of religious tolerance a luxury we can no longer afford.

The Religious Freedom Restoration Act would simply prohibit the Government from burdening a person's free exercise of religion, even if that burden results from a rule of general applicability, unless it can demonstrate that the governmental action is essential to further a compelling governmental interest and that it is the least restrictive means of furthering that compelling governmental interest.

While the Congress cannot alter the Supreme Court's interpretation of the Bill of Rights by statute, we can decide to accommodate the religious rights of all Americans beyond the Court's narrow reading of the first amendment. Even Mr. Justice Scalia, writing for the majority in Smith, recognized the right of legislatures to accommodate the free exercise of religion beyond what is required by the Court's interpretation of the Bill of Rights.

This legislation has the narrow purpose of restoring the compelling interest test, as enunciated nearly 30 years ago in Sherbert versus Verner and again in Wisconsin versus Yoder. The test strikes an appropriate balance between the needs of the majority and the rights of religious minorities. It would provide a claim or defense to persons whose religious exercise is burdened by Government.

The bill does not attempt to dictate the result in any particular case. Rather, it returns to the courts the role of engaging in this delicate balancing test. It is a rejection of Justice Scalia's attempt to turn our first freedom over to the will of political majorities.

As Mr. Justice Jackson so eloquently put it in West Virginia Board of Education versus Barnette:

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

The Court's reading of the first amendment in Smith is out of step with the Nation and with our historical commitment to religious liberty.

America cannot afford to lose its first freedom—the freedom not just to believe but to act according to the dictates of one's religious faith—free from the restrictions of governmental regulation or interference.

Religious freedom is the foundation of our way of life. This Nation has always provided a haven for refugees from religious persecution. We are Americans because those who came before us voted for freedom with their feet. My family, like many of yours, came to America to worship freely. Even today, Jews from the Soviet Union, Buddhists from Southeast Asia, Catholics from Northern Ireland, Bahais from Iran, and many more willingly renounce their homelands and risk their lives for the luxury of religious freedom.

The Court's grievous and shortsighted error must not be permitted to stand unchallenged. That is why 41 of my colleagues and I have introduced the Religious Freedom Restoration Act. This legislation will simply restore the legal standard for protecting religious freedom that worked so well for more than a generation.

The broad and diverse support this legislation has already drawn from within both the Congress and the religious and civil rights communities demonstrates how fundamental religious freedom is to our way of life.

It is fair to say that support for this bill is ecumenical, both religiously and politically. The diversity of this coalition reflects the diversity of this Nation. That diversity has always made America strong, and will, I believe, guarantee swift passage of this important legislation.

AMERICA HAS LOST A CHAMPION OF JUSTICE

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 1991

Mr. TOWNS. Mr. Speaker, today marks a sad day in America and for the champions of freedom, justice, and equality throughout the world. Supreme Court Justice Thurgood Marshall has announced his resignation from the highest court in the land, leaving an unequaled legacy of judicial activism, compassion, and fairness. As the first and only black Supreme Court Justice, his departure from the Court leaves an enormous void which demands that this institution step forward to protect those statutes which he struggled so hard to create, first as counsel and later as a jurist of unimpeachable commitment to the most basic of human and civil rights.

We, the members of the Congressional Black Caucus recognize that replacing Justice Marshall with a suitably qualified candidate will be difficult. We commend for consideration only that this person meet the standard which Thurgood Marshall has set. Perhaps the greatest testimony to that vision of the law is reflected in Justice Marshall's address before the 1966 White House Conference on Civil Rights where he stated:

> I will attempt no assessment of how far we have come and what is left to be done. Clearly, there remains a great deal of work in translating into concrete reality the rights already won, and new tools must still be forged. That is the goal of the proposed Civil Rights Act of 1966. There are, however, some lessons for the future in the history of the struggle for Negro rights.
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> What is striking to me is the importance of law in determining the condition of the Negro. He was effectively enslaved, not by brute force, but by a law which declared him a chattel of his master, who was given a legal right to recapture him, even in free territory. He was emancipated by law, and then disfranchised and segregated by law. And, finally, he is winning equality by law.
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> Of course, law—whether embodied in acts of Congress or judicial decisions—is, in some measure a response to national opinion, and, of course, non-legal, even illegal events, can significantly affect the development of the law. But I submit that the history of the Negro demonstrates the importance of getting rid of hostile laws and seeking the security of new friendly laws. Provided there is a determination to enforce it, law can change things for the better. There is very little truth in the old refrain that one cannot legislate equality. Laws not only provide concrete benefits; they can even change the hearts of men—some men, anyway—for good or evil. Certainly, I think the history I have just traced makes it clear that the hearts of men do not change of themselves.
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> Of course, I don't mean to exaggerate the force of law. Evasion, intimidation, violence, may sometimes defeat the best of laws. But, to an important degree, they, too, can effectively be legislated against. The simple fact is that most people will obey the law. And some at least will be converted by it. What is more, the Negro himself will more readily acquiesce in his lot unless he has a legally recognized claim to a better life. I think the Segregation decision of 1954 probably did more than anything else to awaken the Negro from his apathy to demanding his right to equality.
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> It seems to me that the experience under the recent public accommodations law and the Voting Rights Act of 1965 proves the point. Of course there have been resistance and evasion and intimidation in both cases. But it must have surprised the cynics that so many restaurants in fact desegregated in obedience to the law and, more so, that so many Negroes in Alabama and elsewhere are actually voting less than a year after the Voting Act was passed.
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> I do not suggest a complacent reliance on the self-executing force of existing laws. On the contrary, I advocate more laws and stronger laws. And the passage of such laws requires untiring efforts.