ant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this Act, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) WAIVER OF CERTAIN CLAIMS AGAINST THE UNITED STATES.—Any person or entity accepting the benefits of this Act or failing to act to seek such benefits within the time allotted by this Act with respect to any base or other lands shall be deemed to have waived any claims against the United States, its agents or contractors, with respect to such lands, or with respect to any revenues received by the United States from such lands prior to the date of enactment of this Act. All non-Federal, third party rights granted by the United States with respect to base lands shall remain effective subject to the terms and conditions of the authorizing document. The United States may reserve any rights-of-way currently occupied or used for Government purposes.

SEC. 3. OTHER CLAIMS.

(a) JURISDICTION AND DEADLINE.—(1) Subject to the requirements and limitations of this section, a party claiming right, title, or interest in or to land vested in the United States by section 2(c)(2) of this Act may file in the United States Claims Court a claim against the United States seeking compensation based on such vesting. Notwithstanding any other provision of law, the Claims Court shall have exclusive jurisdiction over such claim.

(2) A claim described in paragraph (1) shall be barred unless the petition thereon is filed within 1 year after the date of publication of a final list pursuant to section 2(d) of this Act.

(3) Nothing in this Act shall be construed as authorizing any claim to be brought in any court other than a claim brought in the United States Claims Court based upon the vesting of right, title, and interest in and to the United States made by section 2(c)(2) of this Act.

(b) LIMITATIONS, DEFENSES, AND AWARDS.—(1) Nothing in this Act shall be construed as diminishing any existing right, title, or interest of the United States in any lands covered by section 2(c), including but not limited to any such right, title, or interest established by the Act of July 6, 1960 (74 Stat. 334).

(2) Nothing in this Act shall be construed as precluding or limiting any defenses or claims (including but not limited to defenses based on applicable statutes of limitations, affirmative defenses relating to fraud or speculative practices, or claims by the United States based on adverse possession) otherwise available to the United States.

(3) Nothing in this Act shall be construed as entitling any party to compensation from the United States. However, in the event of a final judgment of the United States Claims Court in favor of a party seeking such compensation, or in the event of a negotiated settlement agreement made between such a party and the Attorney General of the United States, the United States shall pay such compensation from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.

(c) SAVINGS CLAUSE.—This Act does not include within its scope selection rights required to be recorded under the Act of August 5, 1955 (69 Stat. 534), regardless of whether compensation authorized by the Act of August 31, 1964 (78 Stat. 751) was or was not received.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.●

By Mr. KENNEDY (for himself, Mr. HATCH, Mr. BENNETT, Mr. BOND, Mr. BRADLEY, Mr. BUMPERS, Mr. CAMPBELL, Mr. DANFORTH, Mr. DASCHLE, Mr. EXON, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HARKIN, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. REID, Mr. RIEGLE, Mr. SPECTER, Mr. WELLSTONE, and Mr. WOFFORD):

S. 578. A bill to protect the free exercise of religion; to the Committee on the Judiciary.

RELIGIOUS FREEDOM RESTORATION ACT OF 1993

Mr. KENNEDY. Mr. President, I am honored to join with Senator HATCH and 31 other Senate colleagues in introducing the Religious Freedom Restoration Act of 1993. Identical legislation is being introduced today in the House of Representatives by Representative SCHUMER of New York, Representative COX of California, and over 130 other sponsors.

The Supreme Court's 1990 decision in Oregon Employment Division versus Smith sharply limited the first amendment's guarantee of freedom of religion. Until then, Government actions that interfered with individuals' ability to practice their religion were prohibited, unless the restriction met a strict two-part test. It must be necessary to achieve a compelling governmental interest, and there must be no less burdensome way to achieve the goal.

The compelling interest test had been the constitutional standard for nearly 30 years. Yet, in 1990, the Court abruptly abandoned it. Under the new standard, there is no special constitutional protection for religious liberty, as long as governmental restrictions are neutral on their face as to religion and have general application.

The bill we are reintroducing today restores the compelling interest test by statute. Not every free exercise claim will prevail. The previous standard had worked well for many years, and it deserves to be reinstated.

Few issues are more fundamental to our country. America was founded as a land of religious freedom and a haven from religious persecution. Two centuries later, that founding principle has been endangered. Religious liberty is damaged each day the Smith decision stands. Since Smith, more than 50 cases have been decided against religious claimants, and harmful rulings are likely to continue.

As a result of the Smith decision, it has been suggested that Government could regulate the selection of priests and ministers, dry communities could ban the use of wine in communion services, government meat inspectors could require changes in the preparation of kosher food, and school boards could force children to attend sex education classes contrary to their faith.

Because of this threat to religious freedom, organizations with widely divergent views strongly support this legislation, including the National Council of Churches, the National Association of Evangelicals, the United States Catholic Conference, the American Jewish Committee, the American Muslim Council, the Southern Baptist Convention, the Baptist Joint Committee, the Episcopal Church, the Christian Legal Society, the Church of Jesus Christ of Latter-day Saints, the American Civil Liberties Union, People for the American Way, Coalitions for

America, Concerned Women for America, and the House School Legal Defense Association.

I am especially pleased that in this year's bill, we have been able to clarify its provisions to meet concerns expressed by the U.S. Catholic Conference that the legislation might be construed to provide a basis for challenging government programs that benefit religious organizations. That was never the intent of the bill, and it was not the result of the pre-Smith test. This year's bill makes clear that, so long as government programs are consistent with the Establishment Clause of the Constitution, they do not violate the legislation. The Catholic Conference has endorsed the 1993 legislation, and we are very pleased to have their support.

It should also be clear that the bill does not give practitioners of a particular religion the right to violate general criminal laws protecting public safety. Our society clearly has a compelling interest in protecting people and property. Criminal behavior cannot and would not overcome that important interest.

President Clinton has endorsed this legislation, and we are grateful for the administration's support. With the bipartisan assistance of our colleagues and the hard work of the organizations supporting the legislation, I am confident that we will have the bill on the President's desk this year.

I ask unanimous consent that the text of the bill, the text of a letter from President Clinton, and a section-by-section analysis of the bill may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 578

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 "Religious Freedom Restoration Act of 1993".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) PURPOSES.—The purposes of this Act are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is burdened; and

(2) to provide a claim or defense to persons whose religious exercise is burdened by government.

SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.

(a) IN GENERAL.—Government shall not burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) EXCEPTION.—Government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) JUDICIAL RELIEF.—A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

SEC. 4. ATTORNEYS FEES.

(a) *JUDICIAL PROCEEDINGS.*—Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting "the Religious Freedom Restoration Act of 1993," before "or title VI of the Civil Rights Act of 1964".

(b) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(C) of title 5, United States Code, is amended—

(1) by striking "and" at the end of clause (ii);

(2) by striking the semicolon at the end of clause (iii) and inserting ", and"; and

(3) by inserting "(iv) the Religious Freedom Restoration Act of 1993;" after clause (iii).

SEC. 5. DEFINITIONS.

As used in this Act—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

SEC. 6. APPLICABILITY.

(a) IN GENERAL.—This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act.

(b) RULE OF CONSTRUCTION.—Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(c) RELIGIOUS BELIEF UNAFFECTED.—Nothing in this Act shall be construed to authorize any government to burden any religious belief.

SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

TEXT OF LETTER FROM PRESIDENT CLINTON TO SENATOR KENNEDY

I am pleased that you and Senator Hatch, and Representatives Schumer and Cox, will be reintroducing the Religious Freedom Restoration Act (RFRA).

The right to practice one's faith free from governmental interference is among the most fundamental liberties protected by our Constitution. That right was seriously undermined by the Supreme Court's 1990 decision in the *Smith* case.

RFRA is urgently needed to restore full legal protection for the exercise of religion. I look forward to working with the Congress to secure speedy enactment of this important legislation.

SECTION-BY-SECTION ANALYSIS

SECTION 1. This section provides that the title of the Act is the Religious Freedom Restoration Act of 1993.

SEC. 2. In this section, Congress finds that the framers of the Constitution recognized that religions liberty is an inalienable right, protected by the First Amendment, and that government laws may burden that liberty even if they are neutral on their face. Congress also determines that the Supreme Court's decision in *Employment Division* v. *Smith* eliminated the compelling interest test for evaluating free exercise claims previously set forth in *Sherbert* v. *Verner* and *Wisconsin* v. *Yoder*, and that it is necessary to restore that test to preserve religious freedom. The section recites that the Act is intended to restore the compelling interest test and to guarantee its application in all cases where the free exercise of religion is burdened.

SEC. 3. This section codifies the compelling interest test as the Supreme Court had enunciated it and applied it prior to the *Smith* decision. The bill permits government to burden the exercise of religion only if it demonstrates a compelling state interest and that the burden in question the least restrictive means of furthering the interest. It permits persons whose religious exercise has been burdened in violation of the Act to assert that violation as a claim or defense in a judicial proceeding and to obtain appropriate relief against a government. Standing to assert such a claim or defense is to be governed by the general rules of standing under Article III of the Constitution.

SEC. 4. This section amends attorneys' fees statutes to permit a prevailing plaintiff to recover attorneys fees in the same manner as prevailing plaintiffs with other kinds of civil rights or constitutional claims.

SEC. 5. This section defines the terms "government", "State", "demonstrates" and "exercise of religion". "Government" includes any agency, instrumentality or official of the United States, any State or any subdivision of a State. "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and every territory and possession of the United States. "Demonstrates" means to meet the burden of production and persuasion. "Exercise of religion" means the exercise of religion under the First Amendment.

SEC. 6. This section states that the Act applies to all existing state and federal laws, and to all such laws enacted in the future. It also clarifies that the authority it confers on the government should not be construed to permit any government to burden any religious belief.

SEC. 7. This section makes it clear that the legislation does not alter the law for determining claims made under the Establishment Clause of the First Amendment. It also confirms that granting government funding, benefits or exemptions, to the extent permissible under the Establishment Clause, does not violate the Act; but the denial of such funding, benefits or exemptions may constitute a violation of the Act, as was the case under the Free Exercise Clause in *Sherbert* v. *Verner*.

Mr. HATCH. Mr. President, I am pleased today to introduce, along with Senator KENNEDY and others, the Religious Freedom Restoration Act [RFRA] of 1993. This legislation responds to the Supreme Court's April 17, 1990, decision in *Employment Division* v. *Smith*, 494 U.S. 892 (1990). In the Smith case, the Supreme Court abandoned the compelling State interest standard of review for government practices burdening an individual's exercise of religion where the Government action involves a "valid and neutral law of general applicability." 494 U.S. at 879.

In my view, the standard outlined by the Court in Smith does not sufficiently protect an individual's first amendment right to the "free exercise" of religion. Freedom of religion is the first freedom in the Bill of Rights, guaranteed to every individual, not just those who practice their faith in a majority religion. I do not believe the Framers of the first amendment envisioned that the religious minority would remain at a relative disadvantage in our society as an unavoidable consequence of our democratic government, as the Court suggests. In my view, it was exactly this relative disadvantage a religious minority might suffer that the authors of the first amendment specifically sought to avoid and protect against. The free exercise of religion is not a luxury afforded our citizenry, but a well conceived and fundamental right.

In a Senate hearing held this past Congress, religious leaders like Elder Dallin Oaks of the highest governing body of the Church of Jesus Christ of Latter-day Saints, testified before our committee and underscored the urgency and critical importance of this legislative initiative. Supporters of this legislation include over 55 groups, representing an extremely broad and diverse coalition of religious and civil liberties organizations, including the U.S. Catholic Conference.

It is clear to me a legislative response is critical to the preservation of the full range of religious freedoms the first amendment guarantees to the American people, particularly those whose religious beliefs and practices differ from the religious majority in our country. This bill will serve to reestablish those rights guaranteed in the first amendment by imposing the "compelling state interest" standard for judicial review of governmental action which burdens an individual's free exercise of religion.

It is imperative Congress act expeditiously in response to the Smith decision. I look forward to working with Senator KENNEDY, the distinguished chairman of the Judiciary Committee, Senator BIDEN, and others, in reaffirming this fundamental right to the free exercise of religion.

By Mr. SMITH:

S. 579. A bill to require Congress to comply with the laws it imposes on others; to the Committee on Governmental Affairs.

REQUIRING CONGRESS TO COMPLY WITH MANDATES IT IMPOSES ON OTHERS

• Mr. SMITH. Mr. President, I am today introducing legislation which would require Congress to comply with the mandates it imposes on everyone else.

Over the past 30 years, the Federal Government has heaped one regulation after another on the private sector. According to the U.S. Chamber of Commerce, business spent approximately $70 billion in 1992 merely to comply with the costs of clean air, disability, and other new regulations.

Is it any wonder that American business finds itself weighed down by regulations which make it almost impossible to compete with countries such as Japan, Taiwan, and Korea?

As much as the American public resents the foolish and counterproductive impositions placed on it by the Federal Government, what they resent even more is the fact that the legislators who have piled all these burdens on the general public somehow feel that they themselves are above any requirement of compliance.

Last year, the Senate took a terrified first step in the direction of congressional accountability. It created a Senate Office of Fair Employment Practices to hear complaints from Senate employees that their rights were violated at the hands of the Senate itself. It is now apparent that the procedure it created was a sham.

This office, delegated to monitor the Senate, is itself appointed by the Senate. Its power is limited to mediation, rather than any binding arbitration. And clearly, this convoluted procedure continues to send a message to the American people that Congress has placed itself above the law.

Mr. President, the bill I am introducing today would reverse this disturbing and hypocritical trend.

First, I would apply to Congress six current statutes from which Congress has conveniently exempted itself. These are: The Americans with Disabilities Act; Federal prohibitions against race discrimination; the National Labor Relations Act; the Fair Labor Standards Act; the Equal Pay Act; and the Occupational Safety and Health Act.

These statutes would be applicable to Members of Congress in the same manner as other Americans. In addition, my bill would require a supermajority of three-fifths of those Senators and House Members chosen and sworn for any future legislation of general applicability which sought to exempt Congress from its provisions.

In summary, Mr. President, what's sauce for the goose is sauce for the gander. If we are going to impose regulation after regulation on American business, the least we can do is hold ourselves accountable. This legislation would force Members of Congress to comply with the same laws as other Americans. I urge its adoption.•

By Mr. ROTH (for himself, Mr. DOLE, Mr. BOREN, Mr. MOYNIHAN, Mr. COHEN, and Mr. LIEBERMAN):

S. 580. A bill to enhance the competitiveness of the United States in the global economy through the establishment of Department of Trade as an executive department of the Government, and for other purposes; to the Committee on Governmental Affairs.

TRADE REORGANIZATION ACT OF 1993

Mr. ROTH. Mr. President, I rise today to reintroduce legislation establishing a Cabinet-level Department of Trade. I am again pleased to be joined in this effort by Senators DOLE, BOREN, MOYNIHAN, COHEN, and LIEBERMAN.

As I said when introducing my Reinventing Government Act, S. 15, we need to create a new government structure that is much less bureaucratic and more responsive in its service to the public. As a long time advocate of streamlining government and improving program effectiveness, I must say that I am encouraged by the President's renewed pledge to reexamine the executive branch. During the past decade, companies all across America have had to restructure for the 21st century and in my view, the Federal Government faces an obligation to do the same. The American taxpayer deserves nothing less.

While there are many areas of our Government that call for reform, none in my opinion is more urgent or important than trade. According to the Carnegie Endowment of International Peace and the Institute for International Economics, "If we wish to compete in the new global economy and deal effectively with other 'new priorities,' reorganizing the government for the postcold war world is a necessity, not a luxury.

The importance of our ability to compete in international markets is central to our future economic growth, our domestic welfare and our national security. Just as America prevailed in the cold war, we must continue to lead the world in the global economy of the next century. Our present system, by failing to integrate into our overall policy economic and other global concerns, makes it virtually impossible to develop a coherent and effective strategy for the post-cold war era. As President Eisenhower observed more than 30 years ago, poor organization "can scarcely fail to result in inefficiency and can easily lead to disaster."

If we really want to restake our claim in the international market-