1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

"(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the qualified earned income of the spouse with the lower qualified earned income for the taxable year.

"(b) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means 20 percent, reduced by 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income for the taxable year exceeds $50,000.

"(2) TRANSITION RULE FOR 1999 AND 2000.—In the case of taxable years beginning in 1999 and 2000, paragraph (1) shall be applied by substituting '10 percent' for '20 percent' and '1 percentage point' for '2 percentage points'.

"(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

"(A) after application of sections 86,219, and 469, and

"(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

"(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2002' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

"(c) QUALIFIED EARNED INCOME DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified earned income' means an amount equal to the excess of—

"(A) the earned income of the spouse for the taxable year, over

"(B) an amount equal to the sum of the deductions described in paragraphs (1), (2), (7), and (25) of section 62 to the extent such deductions are properly allocable to or chargeable against earned income described in subparagraph (A).

The amount of qualified earned income shall be determined without regard to any community property laws."

"(2) EARNED INCOME.—For purposes of paragraph (1), the term 'earned income' means income which is earned income within the meaning of section 911(d)(2) or 401(c)(2)(C), except that—

"(A) such term shall not include any amount—

"(i) not includible in gross income,

"(ii) received as a pension or annuity,

"(iii) paid or distributed out of an individual retirement plan (within the meaning of section 7701(a)(37)),

"(iv) received as deferred compensation, or

"(v) received for services performed by an individual in the employ of his spouse (within the meaning of section 3121(b)(3)(A)), and

"(B) section 911(d)(2)(B) shall be applied without regard to the phrase 'not in excess of 30 percent of his share of net profits of such trade or business'."

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

"(18) DEDUCTION FOR TWO-EARNER MARRIED COUPLES.—The deduction allowed by section 222."

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

"(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222."

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

"Sec. 222. Deduction for married couples to eliminate the marriage penalty.
"Sec. 223. Cross reference."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent (75 percent in the case of taxable years beginning in 1999 and 2000) of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

By Mr. HATCH (for himself and Mr. KENNEDY):

S. 2148. A bill to protect religious liberty; to the Committee on the Judiciary.

THE RELIGIOUS LIBERTY PROTECTION ACT OF 1998

Mr. HATCH. Mr. President, the first freedom guaranteed in the Bill of Rights is the freedom to believe and to put those beliefs into practice as we think right, without government interference. This promise of freedom of worship is, for many, this country's founding principle—the pilgrims' reason for braving thousands of miles of dark and dangerous seas, and countless privations once here. The Constitutional guarantee of the free exercise of religion for all has been a beacon to the world throughout our history.

In America, priests should not be punished for declining to violate the confidence of the confessional to turn state's evidence against religious confessors. In America, the ability of citizens to hold private Bible studies in their own homes or the freedom of synagogues and churches to locate near their members should not be left entirely to the whims of local zoning boards. Congregants of any faith should not be told by the government who they can and cannot have as religious leaders and teachers. No, not in America.

Last year, when the Supreme Court struck down part of the Religious Freedom Restoration Act in the case of City of Boerne versus Flores (117 S.Ct. 2157 (1997))—an Act that sought to redress a threat to religious liberty of the Court's own making—we who value the free exercise of religion vowed we would rebuild our coalition and craft a solution which appropriately defers to the Court's decision. Well, we have done so, and we are ready to move forward.

We introduce today legislation that uses the full extent of our powers to make government cognizant of and solicitous of the freedom of each American to serve his or her concept of God. Where adjustment in general rules can possibly be made to accommodate this most basic liberty, it ought and must be made. As our government exists to guarantee such freedoms, government should only in the rarest instances itself infringe on this most basic and foundational freedom.

We have worked together across party lines and with a coalition of truly remarkable breadth to fashion federal legislation to protect religious liberty that is consistent with both the vision of the Framers of the First Amendment and the ruling of the current Supreme Court about Congress' power to legislate in this area.

The legislation that we introduce today will subject to strict scrutiny laws that substantially burden religious exercise in those areas within legitimate federal reach through either the commerce or spending powers, and provides procedural helps to ensure a full day in court for believers who must litigate to vindicate Free Exercise claims in areas of predominantly state jurisdiction. The legislation seeks to protect religious activity even in the face of general legislative rules that make that worship difficult or impossible through unawareness, insensitivity, or hidden hostility

We believe we have constructed legislation that can merit the support of all who value the free exercise of religion, our first freedom. We commend it to our colleagues in the Congress, and to all those who wish to keep the Framers' promise of religious freedom alive for all Americans of all faiths.

Mr. President, I commend this important legislation to my colleagues for their support. It is backed by an unprecedented coalition ranging from Focus on the Family, Family Research Council, and the Southern Baptist Convention to People for the American Way and the ACLU. I also ask unanimous consent that a copy of the bill and an explanatory section by section analysis be placed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2148

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 Liberty Protection Act of 1998".

SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.

(a) GENERAL RULE.—Except as provided in subsection (b), a government shall not substantially burden a person's religious exercise—

(1) in a program or activity, operated by a government, that receives Federal financial assistance; or

(2) in or affecting commerce with foreign nations, among the several States, or with the Indian tribes;

even if the burden results from a rule of general applicability.

(b) EXCEPTION.—A government may substantially burden a person's religious exercise if the government 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) FUNDING NOT AFFECTED.—Nothing in this section shall be construed to authorize the United States to deny or withhold Federal financial assistance as a remedy for a violation of this Act.

(d) STATE POLICY NOT COMMANDEERED.—A government may eliminate the substantial burden on religious exercise by changing the policy that results in the burden, by retaining the policy and exempting the religious exercise from that policy, or by any other means that eliminates the burden.

(e) DEFINITIONS.—As used in this section—

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

(2) the term "program or activity" means a program or activity as defined in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a); and

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

SEC. 3. ENFORCEMENT OF THE FREE EXERCISE CLAUSE.

(a) PROCEDURE.—If a claimant produces prima facie evidence to support a claim of a violation of the Free Exercise Clause, the government shall bear the burden of persuasion on all issues relating to the claim, except any issue as to the existence of the burden on religious exercise.

(b) LAND USE REGULATION.—

(1) LIMITATION ON LAND USE REGULATION.—No government shall impose a land use regulation that—

(A) substantially burdens religious exercise, unless the burden is the least restrictive means to prevent substantial and tangible harm to neighboring properties or to the public health or safety;

(B) denies religious assemblies a reasonable location in the jurisdiction; or

(C) excludes religious assemblies from areas in which nonreligious assemblies are permitted.

(2) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of this subsection in a non-Federal forum shall be entitled to full faith and credit in a Federal court only if the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(3) NONPREEMPTION.—Nothing in this subsection shall preempt State law that is equally or more protective of religious exercise.

(4) NONAPPLICATION OF OTHER PORTIONS OF THIS ACT.—Section 2 does not apply to land use regulation.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION.—A person may assert a violation of this Act 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.

(b) ATTORNEYS' FEES.—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by inserting "the Religious Liberty Protection Act of 1998," after "Religious Freedom Restoration Act of 1993,"; and

(2) by striking the comma that follows a comma.

(c) PRISONERS.—Any litigation under this Act in which the claimant is a prisoner shall be subject to the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(d) LIABILITY OF GOVERNMENTS.—

(1) LIABILITY OF STATES.—A State shall not be immune under the 11th amendment to the Constitution from a civil action, for a violation of the Free Exercise Clause under section 3, including a civil action for money damages.

(2) LIABILITY OF THE UNITED STATES.—The United States shall not be immune from any civil action, for a violation of the Free Exercise Clause under section 3, including a civil action for money damages.

SEC. 5. RULES OF CONSTRUCTION.

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

(b) RELIGIOUS EXERCISE NOT REGULATED.—Nothing in this Act shall create any basis for regulation of religious exercise or for claims against a religious organization, including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED.—Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED.—Nothing in this Act shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) EFFECT ON ON OTHER LAW.—Proof that a religious exercise affects commerce for the purposes of this Act does not give rise to any inference or presumption that the religious exercise is subject to any other law regulating commerce.

(f) SEVERABILITY.—If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an 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.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS.—Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is amended—

(1) in paragraph (1), by striking "a State, or subdivision of a State" and inserting "a covered entity or a subdivision of such an entity";

(2) in paragraph (2), by striking "term" and all that follows through "includes" and inserting "term 'covered entity' means"; and

(3) in paragraph (4), by striking all after "means," and inserting "an act or refusal to act that is substantially motivated by a religious belief, whether or not the act or refusal is compulsory or central to a larger system of religious belief.".

(b) CONFORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb–3(a)) is amended by striking "and State".

SEC. 8. DEFINITIONS.

As used in this Act—

(1) the term "religious exercise" means an act or refusal to act that is substantially motivated by a religious belief, whether or not the act or refusal is compulsory or central to a larger system of religious belief;

(2) the term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion and includes the application of that proscription under the 14th amendment to the Constitution; and

(3) except as otherwise provided in this Act, the term "government" means a branch, department, agency, instrumentality, subdivision, or official of a State, or other person acting under color of State law, or a branch, department, agency, instrumentality, subdivision, or official of the United States, or other person acting under color of Federal law.

RELIGIOUS LIBERTY PROTECTION ACT OF 1998—SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that the title of the Act is the Religious Liberty Protection Act of 1998.

Section 2. Section 2(a) tracks the substantive language of the Religious Freedom Restoration Act, providing that government shall not substantially burden a person's religious exercise, and applies that language to cases within the spending power and the commerce power. Section 2(b) also tracks RFRA. It states the compelling interest exception to the general rule that government may not substantially burden religious exercise.

Section 2(a)(1) specifies the spending power applications. The bill applies to programs or activities operated by a government and receiving federal financial assistance. "Government" is defined in §2(e)(1) to include persons acting under color of state law. In general, a private-sector grantee acts under color of law only when the government retains sufficient control that "the alleged infringement of federal rights [is] 'fairly attributable to the State.'" Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982). Private-sector grantees not acting under color of law are excluded from the bill for multiple reasons: because it is difficult to foresee the consequences of applying the bill to such a diverse range of organizations, because applying the bill to religious organizations would create conflicting rights under the same statute and might restrict religious liberty rather than protect it, and because the free exercise of religion has historically been protected primarily against government action and this bill is not designed to change that.

Section 2(a)(2) applies the bill to religious exercise in or affecting commerce among the States, with foreign nations, or with the Indian tribes. The language is unqualified and exercises the full constitutional limit of the commerce power, whatever that may be. The provision is tautologically constitutional; to the extent that the commerce power does not reach some religious activities, the bill does not reach them either. To the extent that this leaves some religious exercise outside the protections of the bill, that is an unavoidable consequence of constitutional limitations on Congressional authority.

Section 2(c) prevents any threat of withholding all federal funds from a program or activity. The exclusive remedies are set out in §4.

Section 2(d) emphasizes that this bill does not require states to pursue any particular public policy or to abandon any policy, but that each State is free to choose its own means of eliminating substantial burdens on religious exercise.

Section 2(e) contains definitions for purposes of §2.

The definition of "government" in §2(e)(1) tracks RFRA, except that the United States and its agencies are excluded. The United States remains subject to the substantially identical provisions of RFRA and need not be included here.

Section 2(e)(2) incorporates part of the definition of "program or activity" from Title VI of the Civil Rights Act of 1964—the part that describes programs and activities operated by governments. This definition ensures that federal regulation is confined to the program or activity that receives federal aid, and does not extend to everything a state does. The constitutionality of the Title VI definition has not been seriously questioned.

The definition of "demonstrates" in §2(e)(3) is taken verbatim from RFRA.

Section 3. This section enforces the Free Exercise Clause as interpreted by the Supreme Court. Section 3(a) provides generally that if a complaining party produces prima facie evidence of a free exercise violation, the government then bears the burden of persuasion on all issues except burden on religious exercise.

This provision applies to any means of proving a free exercise violation recognized under judicial interpretations. See generally Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993); Employment Division v. Smith, 494 U.S. 872 (1990). Thus, if the claimant shows a burden on religious exercise and prima facie evidence of an anti-religious motivation, government would bear the burden of persuasion on the question of motivation. If the claimant shows a burden on religious exercise and prima facie evidence that the burdensome law is not generally applicable, government would bear the burden of persuasion on the question of general applicability. If the claimant shows a burden on religion and prima facie evidence of a hybrid right, government would bear the burden of persuasion on the claim of hybrid right. In general, where there is a burden on religious exercise and prima facie evidence of a constitutional violation, the risk of nonpersuasion is to be allocated in favor of protecting the constitutional right.

Section 3(b) provides prophylactic rules to prevent violations of the Court's constitutional tests as applied to land use regulation. Land use regulation is administered through highly individualized processes, often without generally applicable rules. These individualized processes are conducive to discrimination that is difficult to prove in any individual case, but there appears to be a pattern of religious discrimination when large numbers of cases are examined. Section 3(b)(1) provides that land use regulation may not substantially burden religious exercise, except where necessary to prevent substantial and tangible harm, that jurisdictions may not deny religious assemblies a reasonable location somewhere within each jurisdiction, and that religious assemblies may not be excluded from areas where nonreligious assemblies are permitted.

Subsection 3(b)(2) guarantees a full and fair adjudication of land use claims under subsection (b). Procedural rules before land use authorities may vary widely; any procedure that permits full and fair adjudication of the federal claim would be entitled to full faith and credit in federal court. But if, for example, a zoning board with limited authority refuses to consider the federal claim, does not provide discovery, or refuses to permit introduction of evidence reasonably necessary to resolution of the federal claim, its determination would not be entitled to full faith and credit in federal court. And if in such a case, a state court confines the parties to the record from the zoning board, so that the federal claim still can not be effectively adjudicated, the state court decision would not be entitled to full faith and credit either.

Subsection 3(b)(3) provides that equally or more protective state law is not preempted. Subsection 3(b)(4) provides that §2 shall not apply to land use cases. The more detailed standards of §3(b) control over the more general language of §2.

Section 4. This section provides remedies for violations. Sections 4(a) and (b) track RFRA, creating a cause of action for damages, injunction, and declaratory judgment, creating a defense to liability, and providing for attorneys' fees.

Section 4(c) subjects prisoner claims to the Prison Litigation Reform Act. This permits meritorious prisoner claims to proceed while effectively discouraging frivolous claims; prisoner claims generally dropped nearly a third in one year after the Prison Litigation Reform Act. Crawford-El v. Britton, 66 U.S.L.W. 4311, 4317 n.18 (May 4, 1998).

Section 4(d)(1) overrides the states' Eleventh Amendment immunity in cases in which the claimant shows a violation of the Free Exercise Clause, enforced under §3. Section 4(d)(2) waives the sovereign immunity of the United States in the same cases. This override of state immunity and waiver of federal immunity do not apply to statutory claims under §2.

Section 5. This section states several rules of construction designed to clarify the meaning of all the other provisions. Section 5(a) tracks RFRA, providing that nothing in the bill authorizes government to burden religious belief. Section 5(b) provides that nothing in the bill creates any basis for regulating or suing any religious organization not acting under color of law. These two subsections serve the bill's central purpose of protecting religious liberty, and avoid any unintended consequence of reducing religious liberty.

Sections 5(c) and 5(d) were carefully designed to keep this bill neutral on all disputed questions about government financial assistance to religious organizations and religious activities. Section 5(c) states neutrality on whether such assistance can or must be provided at all. Section 5(d) states neutrality on the scope of existing authority to regulate private entities as a condition of receiving such aid. Section 5(d)(1) provides that nothing in the bill authorizes additional regulation of such entities; §5(d)(2), in an abundance of caution, provides that existing regulatory authority is not restricted except as provided in the bill. Agencies with authority to regulate the receipt of federal funds retain such authority, but their specific regulations may not substantially burden religious exercise without compelling justification.

Section 5(e) provides that proof that a religious exercise affects commerce for purposes of this bill does not give rise to an inference or presumption that the religious exercise is subject to any other statute regulating commerce. Different statutes exercise the commerce power to different degrees, and the courts presume that federal statutes do not regulate religious organizations unless Congress manifested the intent to do so. NLRB v. Catholic Bishop, 440 U.S. 490 (1990).

Section 5(f) states that each provision and application of the bill shall be severable from every other provision and application.

Section 6. This section is taken verbatim from RFRA. It is language designed to state neutrality on all disputed issues under the Establishment Clause.

Section 7. This section amends RFRA to delete any application to the states and to leave RFRA applicable only to the federal government. Section 7(a)(3) amends the definition of "religious exercise" in RFRA to clarify that religious exercise need not be compulsory or central to a larger system of religious belief.

Section 8. This section defines important terms used throughout the Act.

Section 8(1) defines "religious exercise" to clarify two issues that had divided courts under RFRA: religious exercise need not be compulsory or central to a larger system of religious belief.

Section 8(2) defines "Free Exercise Clause" to include the First Amendment clause, which binds the United States, and also the incorporation of that clause into the Fourteenth Amendment, which binds the States.

Section 8(3) defines "government" to include both state and federal entities and persons acting under color of either state or federal law. This tracks the RFRA definition. The free exercise enforcement provisions of §3 and the remedies provisions of §4 supplement RFRA, and these provisions are subject to the rules of construction in §5; each of these sections applies to both state and federal governments. This definition does not apply in §2, which has its own definition that reaches only state entities and persons acting under color of state law.

By Mr. REID (for himself and Mr. BRYAN):

S. 2149. A bill to transfer certain public lands in northeastern Nevada; to the Committee on Energy and Natural Resources.

THE NORTHEASTERN NEVADA PUBLIC LANDS TRANSFER ACT

• Mr. REID. Mr. President, I rise to introduce The Northeastern Nevada Public Lands Transfer. This Act provides for the transfer of Federal land to the Cities of Wendover, Carlin, and Wells and the Town of Jackpot, all in Elko County, Nevada.

Mr. President, the rural communities in northeastern Nevada, are growing. For example, in 1997, the City of West Wendover was certified as Nevada's fastest growing city. These communities are surrounded by Federal lands, with every little private land available for expansion and growth. In addition, because over 71 percent of the land in Elko County is in Federal ownership, these local governments do not have the resources to just go out and buy more land.