(4) the Board does not disapprove the reorganization within the 30-day period.

Section 242. Exemption of certain holding company formations from registration under the Securities Act of 1933

This section adds an exemption under Section 4 of the Securities Act of 1933 for the reorganization of a bank into a bank holding company. The exemption provides that the interests of the securities holders in the new holding company must be in substantially the same proportion as their interest in the bank and that the newly-formed holding company has substantially the same assets and liabilities as the bank had immediately prior to the reorganization.

Section 243. Expedited procedures for bank holding companies to seek approval to engage in nonbanking activities

Section 243 establishes a new expedited procedure for bank holding companies to engage in nonbanking activities. Such companies must give at least 45 days notice to the Federal Reserve Board before engaging in, or acquiring ownership or control of the shares of a company engaged in nonbanking activities under Section 4(c)(8) of the Bank Holding Company Act.

The Board must define, by regulation or on a case-by-case basis, the contents of the notice. Only information relevant to the nature and scope of the proposed transaction or activity and to certain specified valuation criteria may be requested by the Board.

The Board may disapprove an activity or transaction by issuing an order to the holding company setting forth the reasons for disapproval before the end of 45 days following receipt of the notice. The 45-day period may be extended for an additional 30 days. A holding company may immediately engage in an activity or proceed with a transaction if it receives written notification of approval from the Board. With respect to particular activities, the Board may eliminate the notice requirement or shorten the notice period. With respect to a proposal to engage in a nonbanking activity under section 4(c)(8) not previously approved by order or regulation, the Board may extend the notice period for an additional 90 days.

In considering a notice under this paragraph, the Board must generally evaluate the proposal using the following criteria: managerial resources, financial resources, including capital; any material adverse effect on the safety and soundness or financial condition of an affiliated bank or thrift; and, as to the nonbanking activity, whether there is reasonable expectation that the public benefits will outweigh possible adverse effects.

Sections 244 and 245. Reduction of post-approval waiting period for bank holding company acquisitions and bank mergers

Section 244 amends section 11(b)(1) of the Bank Holding Company Act and Section 245 amends Section 18(c)(6) of the Federal Deposit Insurance Act to permit, with the concurrence of the Attorney General, reduction of the thirty-day post certification approval waiting period to not less than 5 days.●

By Mr. METZENBAUM:

S. 2968. A bill to amend the Federal Food, Drug, and Cosmetic Act to prevent misleading advertising of the health benefits of foods; to the Committee on Labor and Human Resources.

NUTRITION ADVERTISING COORDINATION ACT

Mr. METZENBAUM. The Nutrition Advertising Coordination Act of 1991, S. 2968, amends the Federal Food, Drug, and Cosmetic Act to grant the Food and Drug Administration [FED] expanded jurisdiction to prevent false and misleading nutrition and health claims in food advertising. The FDA already has the authority to control the use of false and misleading claims in food labeling. The purpose of this bill is to ensure that consumers receive consistent and reliable nutritional information from food labeling as well as food advertising.

For years, the Surgeon General and numerous health organizations have urged Americans to improve their diets in order to reduce the risk of heart attacks, cancer, and other diet-related diseases. During the 1980's, members of the food industry began taking advantage of the public's concern by bombarding consumers with false and misleading claims about food and nutrition. In response to this problem, Congress overwhelmingly approved the Nutrition Labeling and Education act of 1990 [NLEA], which requires the FDA to regulate nutrition and health claims.

Recognizing the importance of a uniform Federal policy in this area, Agriculture Secretary Madigan, whose Department is responsible for the labeling of meat and poultry products, announced that the USDA would follow the same nutrition labeling rules as the FDA. Despite the obvious differences in jurisdiction and authority between the USDA and the FDA, Secretary Madigan understood the importance of ensuring that processed food, meat and poultry all have the same nutrition and health labeling.

Unfortunately, the Federal Trade Commission [FTC], which has jurisdiction over food advertising, has not followed the USDA's lead. While the FTC repeatedly states that it is working closely with the FDA to harmonize advertising and labeling policies, several recent FTC enforcement actions indicate otherwise. The bottom line is that the FTC allows food companies to make nutrition and health claims in ads that both the FDA and USDA believe are misleading and hence would prohibit on labels.

For example, the FTC permits health claims for products that have significant nutritional drawbacks. Under a proposed FTC settlement agreement with Campbell Soup, the company would make a "heart healthy" claim for soups that are low in fat and cholesterol even though they are extremely high in sodium. The NLEA would prohibit such claims on labels because the high sodium content of this product makes it unhealthy for several reasons.

The FTC's policy on nutrition claims also undermines the congressional intent of the NLEA. A primary purpose of the act was to create a limited number of standardized nutrition terms that consumers could learn to depend on. The FTC has failed to take enforcement action against numerous companies that are currently misusing such well-defined terms as "low sodium" or "lean" in food advertising. In addition, the FTC has not indicated that it will prevent companies from using nutrient terms not permitted under the NLEA. The use of an endless number of other nutrient terms, limited only by the creativity of Madison Avenue advertising executives, will only serve to mislead health conscience consumers.

Legislation granting the FDA explicit jurisdiction over health and nutrition claims in advertising is necessary to remedy these problems. In March, the FDA denied a petition requesting that the FDA renegotiate the 1954 agreement between it and the FTC under which the FDA agreed that the FTC would regulate advertising. The petition requested that the FDA take back its authority over food advertising or require the FTC to bring its policies into line with FDA's. The FDA rejected the petition, stating that "Only Congressional action can move FTC authority to FDA".

S. 2968 would do just that by building upon the current authority of the FDA to approve drugs and regulate the advertisements for prescription drugs. The FDA's scientists, nutritionists and other experts are clearly qualified to evaluate the validity of nutrition and health claims in advertising.

Applying the same standards to nutrition claims in advertising and labeling would also help to create a level playing field for competing food companies. A company that spends time and money to develop a product and label that meets the FDA nutrition claims labeling standard of "low in fat" should not be undermined by a competitor that advertises its product as "low in fat" even though the product does not meet the FDA's scientific standard for labeling claims.

The FDA has estimated that the new labeling regulations will reduce the incidence of cancer and heart disease by more than 39,000 cases over the next 20 years. The FTC's policies on food advertising must not be permitted to undermine these important benefits. The Nutrition Advertising Coordination Act of 1991, will help ensure that the benefits of nutrition labeling are enhanced and not diminished.

By Mr. KENNEDY (for himself, Mr. HATCH, Mr. METZENBAUM, Mr. GARN, Mr. ADAMS, Mr. HATFIELD, Mr. BURDICK, Mrs. KASSEBAUM, Mr. GRAHAM, Mr. PACKWOOD, Mr. HARKIN, Mr. SPECTER, Mr. INOUYE, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. PELL, Mr. RIEGLE, Mr. WELLSTONE, and Mr. WIRTH):

S. 2969. A bill to protect the free exercise of religion; to the Committee on the Judiciary.

RELIGIOUS FREEDOM RESTORATION ACT

Mr. KENNEDY. Mr. President, today, along with Senator HATCH and many of our colleagues on both sides of the aisle, I am introducing the Religious Freedom Restoration Act of 1992.

The Supreme Court's 1990 decision in Oregon Employment Division versus Smith was a rare, serious, and unwarranted setback for the first amendment's guarantee of freedom of religion. Before the Smith decision, actions by Federal, State, or local governments that interfered with individuals' ability to practice their religion were prohibited, unless the restriction met a stringent two-part test—first, that it was necessary to achieve a compelling governmental interest; and second, that there was no less burdensome way to accomplish the goal.

The compelling interest test had been the legal standard protecting the free exercise of religion for nearly thirty years. Yet, in one full swoop, the Court in the Smith case, overruled that test and declared that there is no special constitutional protection for religious liberty, as long as the law in question is neutral on its face as to religion and is a law of general application.

Under Smith, a government no longer has to justify burdens on the free exercise of religion, as long as these burdens are "merely the incidental effect of a generally applicable and otherwise valid provision."

As Justice Sandra Day O'Connor wrote of the majority's ruling, in her eloquent and forceful opinion concurring in the judgment, "today's holding dramatically departs from well-settled first amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty."

The Religious Freedom Restoration Act we are introducing today restores the compelling interest standard for evaluating free exercise claims. It does so by establishing a statutory right that adopts the standards previously used by the Supreme Court. In essence, the act codifies the requirement for the government to demonstrate that any law burdening the free exercise of religion is essential to furthering a compelling governmental interest, and is the least restrictive means of achieving that interest.

The act creates no new rights for any religious practice or for any potential litigant. Not every free exercise claim will prevail. It simply restores the long-established standard of review that had worked well for many years, and that requires courts to weigh free exercise claims against the compelling-state-interest standard.

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 is suddenly in danger. 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.

Because of this clear and present threat to religious freedom, numerous organizations with widely divergent views strongly support this legislation including the American Civil Liberties Union, the American Jewish Committee, the Baptist Joint Committee, the Christian Legal Society, the Church of Jesus Christ of Latter-day Saints, Coalitions for America, Concerned Women for America, the Episcopal Church, the Home School Legal Defense Association, the National Association of Evangelicals, the National Council of Churches, People for the American Way, and the Southern Baptist Convention.

I look forward to working with Senator HATCH and other interested Senators to enact this important legislation to preserve religious liberty. I ask unanimous consent that the text of the bill and a section-by-section analysis may be printed in the RECORD.

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

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 1992".

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 Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) is a workable test for striking sensible balances between religious liberty and competing governmental interests.

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

(1) to restore the compelling interest test as set forth in Sherbert v. Verner and Wisconsin v. Yoder 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 essential to further 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 1992," 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 1992;" 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; and

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

SEC. 6. APPLICABILITY.

(1) 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 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.

SECTION-BY-SECTION ANALYSIS

SECTION 1

This section provides that the title of the Act is the Religious Freedom Restoration Act of 1992.

SECTION 2

In this section, Congress finds that the framers of the Constitution recognized that religious 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.

SECTION 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.

SECTION 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.

SECTION 5

This section defines the terms "government", "State", and "demonstrates". "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."

SECTION 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.

SECTION 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.

Mr. HATCH. Mr. President, I am pleased today to introduce, along with Senator KENNEDY and others, the Religious Freedom Restoration Act [RFRA] of 1992. This legislation responds to the Supreme Court's April 17, 1990, decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990). There, the Supreme Court indicated that "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." 494 U.S. at 878. This is the lowest level of protection the Court could have afforded religious conduct.

In my view, this standard does not sufficiently protect a person's First Amendment right to the "free exercise" of religion. Freedom of religious practice is the first freedom mentioned in the Bill of Rights. It deserves stronger protection than the Supreme Court has given it in Smith. I will mention just two examples that illustrate the concern engendered by this decision. If a State has a legal drinking age of 21, it would be illegal for anyone under that age to use sacramental wine in taking communion in that State. A Jewish student in a public school who wishes to wear a yarmulke in class can be forced to remove it pursuant to a general rule against headwear in class. I believe the free exercise of religion needs protection, even when legislative majorities are unresponsive to religious liberty concerns in a particular instance. I do not believe that a person's right to take communion or wear a yarmulke in a public school should turn on the whim of legislative majorities.

A tough standard is necessary to protect religious liberty. This bill imposes a compelling interest test on State and Federal Governments when a governmental rule or law burdens someone's free exercise of religion.

I fully expect that the Judiciary Committee will conduct hearings on this bill this year. These hearings might reveal ways this bill can be improved or refined, in a manner acceptable to those of us who are deeply concerned about protecting religious liberty. It is clear to me that a legislative response to the Smith decision is important for the preservation of the full range of religious freedom the first amendment guarantees to the American people, especially for those whose religious beliefs and practices differ from the majority in a State or in the country. I am dedicated to enacting this legislation this year.

I believe it is imperative for Congress to act expeditiously in response to the Smith decision, and I look forward to working with the distinguished chairman of the Judiciary Committee, Senator BIDEN, in achieving this result.

Mr. HATFIELD. Mr. President, it is well known that our country was founded by many intrepid individuals who had suffered from religious persecution. The first amendment to our Constitution plainly speaks the will of our Founding Fathers regarding the ability of each citizen to freely exercise their religion of choice.

Much like those first pilgrims who escaped religious persecution in Europe by settling in the new world, the settlers of Oregon traveled long distances in search of a better way of life. The descendants of these settlers and those new travelers who come to our State take their liberty very seriously. However, one of these liberties was placed in jeopardy when a case relating to freedom of religion in Oregon was decided by the United States Supreme Court in April 1990.

This case, Employment Division, Department of Human Resources of Oregon versus Smith, eliminated the strict test formerly used to determine when the Government may abridge one's right to exercise religion and replaced it with a test that would allow free exercise of religion to be incidentally hindered by laws aimed at entirely unrelated activities. Following this reasoning, some courts have already started to erode settled law protecting religion. Today we are introducing the Religious Freedom Restoration Act to restore the state of the law to the standard used before the Smith decision.

In a strong dissent to the Smith opinion, Justices Brennan and Marshall joined with Justice Blackmun who struck to the heart of this issue when he wrote, "I do not believe the Founders thought their dearly bought freedom from religious persecution a 'luxury,' but an essential element of liberty—and they could not have thought religious intolerance 'unavoidable,' for they drafted the Religion Clauses precisely in order to avoid that intolerance."

As always, we must strive to keep the larger picture in focus. Governments do need the ability to regulate dangerous activities of its citizens. But, applications of laws that our legislatures pass which infringe upon the exercise of religion should be strictly scrutinized. This does not put an undue burden on the government in its regulation of public safety. As before the Smith decision, the Religious Freedom Restoration Act would allow governments to use the least restrictive means necessary to further the compelling interests of the state.

Freedom of religion is one of the many freedoms in this country that we often take for granted. One has only to look at the recent history of many nations to realize that no freedom should be taken for granted, especially not the freedom to worship. Religion inspires great passion, both in those who practice it, and in those who would limit its practice. Our Nation's very foundation was in part principled upon the desire to protect the individual ability to worship.

It was Albert Camus who wrote, "Absolute freedom mocks at justice. Absolute justice denies freedom." Certainly there must be some limitations on what constitutes the free exercise of religious practice. However, the "compelling interest" test that this bill would reinstate provides for these limitations while giving religious exercise the protection that it deserves. I am pleased to cosponsor the Religious Freedom Restoration Act, and hope that we will see its rapid adoption into law.

By Mr. SASSER (for himself, Mr. SEYMOUR, Mr. BREAUX, Mr. LIEBERMAN, Mr. MITCHELL, and Mr. HATFIELD):

S. 2970. A bill to amend the Cash Management Improvement Act of 1990, and for other purposes; to the Committee on Governmental Affairs.

CASH MANAGEMENT IMPROVEMENT ACT AMENDMENTS OF 1992

• Mr. SASSER. Mr. President, I rise at this time to introduce for the Senate's consideration the Cash Management Improvement Act Amendments of 1992. I am pleased to number, as original cosponsors of this legislation, Senator SEYMOUR, the ranking member of the Subcommittee on General Services, Federalism, and the District of Columbia, which I chair; Senator BREAUX; Senator LIEBERMAN, who is also a member of my subcommittee; the distinguished majority leader, Senator MITCHELL; and Senator HATFIELD.

Essentially, this legislation would defer the effective date of certain provisions of the Cash Management Improvement Act of 1990 [CMIA], of which I and Senator ROTH were principal cosponsors. Currently, the effective date