

of violating the statute's provisions. In striking down that statute, Justice Jackson wrote for the Court:

To believe in patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

This legislation would strip the parents of those children of the right to go to court and defend their children's religious liberty. If this legislation is passed, schools could expel children for acting according to the dictates of their faith and Congress will have slammed the courthouse door shut in their faces. When I was a child, I always wondered why, when the rest of the class recited the Pledge of Allegiance, she always sat quietly. Today, I understand that it was because she was of the 7th Day Adventist faith and therefore reciting the "under God" provision would force her to frustrate her religious faith. If H.R. 2028 were law back then, the school administrators could have forced her to say the pledge and she would have no recourse in the federal courts.

The Jackson-Lee Amendment protects religious minorities, Mr. Chairman.

Recently, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law requiring recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students.

In *Circle School v. Pappert*, the court found that:

It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.

Again, under H.R. 2028, such a coercive speech case could never reach the federal courts.

DUE PROCESS AND SEPARATION OF POWERS

Protecting fundamental due process of the law requires independent judicial forums capable of determining federal constitutional rights—with experience. H.R. 2028 will deprive the federal courts of the ability to hear cases involving fundamental free exercise and free speech rights of students, parents, religious affiliates, and many others. Congressional denial of a federal forum to plaintiffs in a specified class of cases would force these plaintiffs out of federal courts—which are specifically suited for the vindication of federal interests, and into state courts which may be inexperienced and hostile to federal claims.

The Pledge Protection Act threatens to destroy the U.S. Constitution, the independence of the federal judiciary, separation of powers, and individual rights and protections guaranteed by the Constitution. Mr. Chairman, I urge my colleagues to save this country from legal demise and defeat the base bill.

GREATER REGULATION OF RELIGION IN KAZAKHSTAN?

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 24, 2004

Mr. SMITH of New Jersey. Mr. Speaker, as Chairman of the U.S. Helsinki Commission I am concerned about Kazakhstan's draft law on combating extremist activity, as the legislation could violate Kazakhstan's OSCE commitments on religious freedom and damage the country's positive reputation on religious tolerance and liberty. In President Nursultan Nazarbaev's address to the parliament on September 1, he urged deputies to pass the bill while dismissing concerns about the further regulation of religion. Nevertheless, the text is problematic in several respects and would benefit from further refinement. Considering that Kazakhstan wishes to be the OSCE Chair-in-Office in 2009, I urge Kazakhstan to seek the advice of the OSCE Panel of Experts on Religious Freedom or Belief, as President Nazarbaev wisely did two years ago regarding a proposed draft law on religion.

Intended to combat terrorism, the draft law would criminalize membership in certain groups or the holding of certain beliefs, rather than combating actual criminal deeds. A critical portion of the law is also vague, as the text fails to define clearly the term "extremism." The omission is glaring and will very likely lead to its misapplication. In addition, the draft uses the word "religious" ten times and links religion with an ill-defined understanding of "extremism." In the context of an anti-terrorism law, such a connection gives rise to concern, as these types of statutes can easily be misused against unpopular religious communities. The draft law would strengthen state control over religious activity by giving the State Agency for Work with Religious Associations the ability to monitor groups. From its observations, the State Agency can recommend the banning of a group for "extremist activity," but again the text does not spell out what activities would qualify.

Another problematic provision included in the draft concerns the foreign classification of a group as "extremist," as the law will honor the classification by another country and ban their activity in Kazakhstan. This clause would in effect allow the long arm of a repressive government to outlaw a group in Kazakhstan, as well. I remember when a Moscow court labeled the Salvation Army as a "paramilitary" organization; under this draft bill, Kazakhstan could follow this erroneous assertion and ban this well-respected humanitarian organization.

Existing Kazakh law fully provides for the prosecution of criminal acts, so these new provisions are not only unnecessary but harmful. In fact, some articles of current law are too restrictive. For example, Article 375 of the Administrative Code, which requires the registration of religious groups, should be removed. I have received consistent reports since the promulgation of Article 375 of unregistered groups being penalized for legitimate activities and their facing civil and criminal sanctions. Considering the recurring misuse of civil regulations, I fear further abuse under the draft law.

I understand that President Nazarbaev is concerned about the spread of extremism in

his country, especially from "radical" Islamic groups. The President may be tempted to follow the actions of his neighbors, especially Uzbekistan, but I would advise him otherwise. The Uzbek Government has for years ruthlessly clamped down on pious Muslims suspected of being associated with Hizb ut-Tahrir. This reactionary and heavy-handed policy has proven counterproductive, antagonizing the devout Muslim population and leaving it receptive to other, radical voices. Instead of defeating terrorists, demanding legal requirements for religious practice and Uzbekistan's harsh responses have restricted the religious freedoms of the many peaceful Muslims and Christians wanting to practice their faith. Obviously, individuals involved in criminal activity in Kazakhstan should be punished. But, by banning entire groups, particularly independent mosques outside the control of the state-backed Muslim Spiritual Association, entire communities will be penalized. The result will be the inappropriate limiting of a fundamental freedom, while doing little to prevent criminal acts.

In closing, the Congress of World and Traditional Religions convened by President Nazarbaev himself was successful in bringing together Christian, Muslim, Jewish, Buddhist and Hindu leaders to discuss tolerance and understanding. I fear that the draft law on extremism, if not amended, will sully Kazakhstan's reputation on religious tolerance by unduly limiting religious freedoms through the criminalization of certain memberships and beliefs as opposed to addressing real criminal activity.

PERSONAL EXPLANATION

HON. THOMAS G. TANCREDO

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 24, 2004

Mr. TANCREDO. Mr. Speaker, I was out of town on official business, and missed rollcall vote Nos. 457, 458, 459, and 460. Had I been present, I would have voted "no" on rollcall 457, "no" on rollcall 458, "no" on rollcall 459, and "no" on rollcall 460.

PERSONAL EXPLANATION

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, September 24, 2004

Mr. GRAVES. Mr. Speaker, on Thursday, September 23, 2004 I was unavoidably detained and thus missed rollcall vote Nos. 466, 467, 468 469, 470, 471 and 472. Had I been present, I would have voted "nay" on 466, an amendment by Mr. Watt; "yea" on 467, passage of the Pledge Protection Act; "yea" on 468, the Adoption Tax Relief Guarantee Act; "yea" on 469; "yea" on 470; "yea" on 471; and "yea" on 4721, passage of the conference report to H.R. 1308, which I previously supported.