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104TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES }

REPORT
104-621

CHURCH ARSON PREVENTION ACT OF 1996

JUNE 17, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following



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Baltimore, MD

R E P O R T

[To accompany H.R. 3525]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3525) to amend title 18, United States Code, to clarify the Federal jurisdiction over offenses relating to damage to religious property, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Church Arson Prevention Act of 1996".

SEC. 2. DAMAGE TO RELIGIOUS PROPERTY.

Section 247 of title 18, United States Code, is amended

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DEPOSIT

- (1) so that subsection (b) reads as follows:
 "(b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce."; and
 (2) in subsection (a)(1), by inserting ", racial, or ethnic" before "character".

PURPOSE AND SUMMARY

The Church Arson Prevention Act of 1996 amends section 247 of Title 18, United States Code, in three important ways. First, it eliminates the \$10,000 dollar minimum damage requirement in current law. This change will make it easier to prosecute incidents of defacement and desecration, where the value of physical damage to the religious property is small. The Committee found that a minimum dollar amount is not necessary to justify Federal involvement in these cases.

Second, H.R. 3525 provides that if religious real property is damaged because of the racial or ethnic character of the property, it will be a violation of the statute. Current law requires that the damage be caused only because of the religious character of the property. Section 247, as amended by H.R. 3525, will firmly reach any attack of a church that is tied to the racial or ethnic characteristics of the members of the church or house of worship.

Third, H.R. 3525 simplifies the interstate commerce requirement of current law. Section 247 now requires that in committing the offense, the defendant either travel in interstate commerce, or use a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce. The Department of Justice testified that this double interstate commerce requirement is virtually impossible to satisfy, thereby making the section relatively useless. H.R. 3525 cures this problem by replacing current language with the interstate commerce requirement that the "offense is in or affects interstate or foreign commerce."

BACKGROUND AND NEED FOR THE LEGISLATION

Since October 1, 1991, the Bureau of Alcohol, Tobacco and Firearms (BATF)—the primary Federal agency with jurisdiction to investigate arson—has investigated 147 fire incidents at churches across the United States. Of these fires, 115 have proved to be arsons. Fifty-three of those 147 churches were made up of predominantly African-American congregations, many of them located in the Southeastern United States.

The number of fires involving African-American churches reported to Federal authorities has increased dramatically in recent months. In 1992, three African-American church burnings in the Southeast were reported and investigated by the BATF. Two were reported in 1993, four in 1994, and six in 1995. So far in 1996, there have been at least 26 such fires reported. In six incidents, the perpetrators were prosecuted and convicted—four under Federal statutes, and two in state prosecutions. Of the 31 currently pending investigations—where arson or suspicious circumstances have been discovered—six are in Tennessee, five in Louisiana, five in South Carolina, five in Alabama, three in Mississippi, five in North Carolina, one in Virginia, and one in Georgia. Arrests have been made in connection with six of these incidents, and most of the defendants are being prosecuted in state court under arson charges. Two

of these are in South Carolina, where two arsonists who set two separate fires are acknowledged members of the Ku Klux Klan.

The Criminal Section of the Civil Rights Division of the United States Department of Justice prosecutes federal criminal civil rights statutes which prohibit conspiracies to interfere with federally protected rights, deprivation of rights under color of law, the use or threat of force to injure or intimidate someone in their enjoyment of specific rights (such as voting, employment, education, public facilities and accommodations), criminal housing interference and statutes outlawing peonage and involuntary servitude. According to the Department of Justice, there are three principal statutes under which the Civil Rights Division could attempt to prosecute the person responsible for a church burning that is found to be motivated by racism.

In the event that the arson was committed by more than one person, the perpetrators can be charged under section 241 of Title 18, United States Code, which makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant in the free exercise or enjoyment of any rights of privileges secured by the Constitution or Laws of the United States. A violation of this section may lead to a fine of up to \$250,000 and/or a term of imprisonment up to 10 years. If death results, defendants may be sentenced to prison for any term of years or for life, or to death.

If the perpetrator is acting alone, section 241 is not available as a means of prosecution. Instead, a Federal prosecutor must charge the defendant under section 247 or section 248(a)(2) of Title 18.¹ Specifically, section 247 makes it unlawful to intentionally deface, damage or destroy any religious real property or to intentionally obstruct, by force or threat of force, any person in the enjoyment of the free exercise of their religion. However, one of the elements of the violation is that, in committing the crime, the defendant either have (1) traveled in interstate or foreign commerce or (2) used a facility or instrumentality of interstate or foreign commerce in interstate commerce. In the case of many church burnings, there is no evidence that the defendant traveled across state lines, making it necessary to invoke the second clause of the jurisdictional requirement.

When section 247 was initially passed in 1988, Congress intended to expand the circumstances under which there could be

¹ An arsonist could also be charged with a federal crime under the general arson statute, which does not require a showing of racial motivation. Section 844(i) of Title 18, U.S.C. provides, in pertinent part, that "whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce" shall be fined or imprisoned or both.

The authorized penalties under section 844(i) are prison for not less than 5 years and not more than 20 years, fines or both. If personal injury results, the prison term is increased to not less than 7 years and not more than 40 years. If death results, the arsonist is subject to the death penalty, prison for life, or for any term of years. The statute of limitations for prosecution under this section is ten years.

Under Section 248(a)(2) it is illegal to use force or threat of force or physical obstruction to injure, intimidate or interfere (or attempt to do so) with an individual's lawful exercise of his First Amendment right of religious freedom at a place of religious worship. Section 248(a)(3) makes it a crime to intentionally damage or destroy the property of a place of religious worship.

However, in the case of a first offense criminal penalties under this section are limited to a fine of up to \$100,000 and/or imprisonment for not more than one year. A misdemeanor conviction is considered in most instances of church arson to be such insignificant punishment that Federal prosecutors are unwilling to charge the perpetrator under this section.

federal prosecution for religiously motivated violence that crossed state lines. The bi-partisan bill was passed without dissent in the hope that its enactment would increase public awareness of hate crimes and help stem the tide of violence against religious organizations.

This section was targeted at the very crimes at issue today: vandalizing and destroying religious property. Unfortunately, as written, the legislation has proven to be totally ineffective. Since its enactment, only one case has been brought under section 247, and it had nothing to do with destroying religious property. See, *United States v. Barlow*, 41 F.3d 935 (5th Cir. 1994). Yet, as Justice Rehnquist (writing for a unanimous Court) recognized in the Supreme Court case of *Wisconsin v. Mitchell*, bias crimes are "more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims and incite community unrest." 508 U.S. 467, 488 (1993). Quoting Blackstone, Justice Rehnquist noted that "it is but reasonable that among crimes of different natures those should be most severely punished which are the most destructive of the public safety and happiness." *Id.* (quoting 4 W. Blackstone, Commentaries 16). The Church Arson Prevention Act of 1996 will give new teeth to existing law and make it easier to punish those whose racial, ethnic or religious animus lead them to destroy religious property.

The Department of Justice testified that the highly restrictive and duplicative language of the interstate commerce requirement has made section 247 "nearly impossible to use." This means that section 247 is of little assistance to federal prosecutors seeking to convict individual church arsonists. The Department of Justice also testified that the dollar threshold contained in section 247 makes its use impractical in many instances. Where the violation at issue involves damage to real property, the loss must be greater than \$10,000. This means that where the damage from a fire is minimal, or when hate is expressed, not through fire but through desecration of defacement of houses of worship, section 247 cannot be used.

Section 247 is also limited in usefulness in the context of damage to churches with predominantly African-American congregations, because the statute only makes it a crime to damage religious property because of religious considerations. Thus, if an arsonist has burned a church because he or she hates Catholics, or Muslims, or Jews, or religion generally, the statute would be satisfied. If the motivation for the arson is racial animus, however, the conduct would not constitute a crime under current section 247.

HEARINGS

On May 21, 1996, the Judiciary Committee held a hearing on the issue of church fires in the Southeastern United States. Testimony was received from 12 witnesses, including Congressman Donald Payne, on behalf of the Congressional Black Caucus, Assistant Attorney General Deval L. Patrick, Civil Rights Division, Department of Justice, Director John W. Magaw, Bureau of Alcohol, Tobacco and Firearms, Chief Tron W. Brekke, Civil Rights Program, Federal Bureau of Investigation, Assistant Secretary James E. Johnson, Enforcement Division, Department of the Treasury, Chief Robert M. Stewart, South Carolina Law Enforcement Division, Dr. Jo-

seph E. Lowery, President, Southern Leadership Conference, Reverend Earl Jackson, New Cornerstone Exodus Church, as National Liaison for Urban Development of the Christian Coalition, Reverend Terrance G. Mackey, Sr., Mt. Zion African Methodist Episcopal Church, Dr. Richard Land, President, Southern Baptist Christian Life Commission, Nelson Rivers, Southeast Region Director, National Association for the Advancement of Colored People, and Reverend Algie Jarrett, Mt. Calvary Baptist Church. Additional material was submitted for the record by the National Council of Churches of Christ in the U.S.A. and the Southern Poverty Law Center.

Just two days after the hearing, Chairman Hyde and ranking Member Conyers introduced the "Church Arson Prevention Act of 1996" (H.R. 3525). As introduced, H.R. 3525 would have (1) simplified the interstate commerce requirement in current law and (2) reduced the minimum amount of property damage required from \$10,000 to \$5,000.

COMMITTEE CONSIDERATION

On June 11, 1996 the Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 3525, as amended, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Hyde and Mr. Conyers offered an amendment in the nature of a substitute to H.R. 3525, which eliminated the dollar threshold in the bill as introduced, and which clarified that it would be a violation of the statute if the damage to religious property was motivated by racial or ethnic considerations. The amendment was adopted by voice vote. The Committee then, by voice vote, ordered H.R. 3525, as amended, reported favorably to the full House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3525, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3525, the Church Arson Prevention Act of 1996, as ordered reported by the House Committee on the Judiciary on June 11, 1996. CBO estimates that enacting the bill could lead to increases in both direct spending and receipts, but the amounts involved would be less than \$500,000 a year. Because H.R. 3525 could affect direct spending and receipts, pay-as-you-go procedures would apply. The bill contains no intergovernmental or private-sector mandates as defined in Public Law 104-4, and would impose no direct costs on state, local, or tribal governments.

H.R. 3525 would clarify and expand federal jurisdiction over offenses relating to destruction of religious property. Enacting the bill could lead to more federal prosecutions of these crimes. Violators would be subject to criminal fines and imprisonment. The imposition of additional fines could cause governmental receipts to increase through greater penalty collections, but CBO estimates that any such increase would be less than \$500,000 annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3525 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

SECTION 1

The title of this Act is the "Church Arson Prevention Act of 1996."

SECTION 2

Section 2 of H.R. 3525 amends section 247 of Title 18, United States Code in three ways. First, it replaces subsection (b) with a new interstate commerce requirement. H.R. 3525 broadens the jurisdictional scope of the statute by applying criminal penalties if the offense "is in or affects interstate or foreign commerce." This formulation grants Federal jurisdiction, and thus extends the Attorney General's ability to prosecute cases, as to any conduct which falls within the interstate commerce clause of the Constitution.

Under this new formulation of the interstate commerce requirement, the Committee intends that where in committing, planning, or preparing to commit the offense, the defendant either travels in interstate or foreign commerce, or uses the mail or any facility or instrumentality of interstate or foreign commerce, the statute will be satisfied. These are but two examples of the many factual circumstances which would come within the scope of H.R. 3525's interstate commerce requirement.

The Committee is aware of the Supreme Court's ruling in *United States v. Lopez*, 115 S. Ct. 1624 (1995), in which it struck down as unconstitutional legislation which would have regulated the possession of firearms in a school zone. In that case, the Court found that the conduct to be regulated did not have a substantial effect on interstate commerce, and was therefore not within the Federal government's reach under the interstate commerce clause of the Constitution. H.R. 3525, by contrast, specifically limits its reach to conduct which can be shown to be in or to affect interstate commerce. Thus, if in prosecuting a particular case, the government is unable to establish this interstate commerce connection to the act, section 247 will not apply to the offense.

In addition, Congress has authority to enact section 247 under the Thirteenth Amendment to the Constitution. Section 1 of the Thirteenth Amendment prohibits slavery or involuntary servitude. Section 2 of the Amendment states that "Congress shall have power to enforce this article by appropriate legislation." In interpreting the Amendment, the Supreme Court has held that Congress may reach private conduct, because it has the "power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." *Jones v. Mayer*, 392 U.S. 409, 439, (1968). The racially motivated destruction of a house of worship is a "badge or incident of slavery" which Congress has acted to punish through section 247.

In replacing subsection (b) of section 247 with new interstate commerce language, H.R. 3525 also eliminates the current requirement of subsection (b)(2) that, in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction be more than \$10,000. This will allow for Federal prosecution of cases involving poor, rural congregations where the church building itself is not a great monetary value. It will also permit Federal prosecution of cases where the conduct does not result in destruction of the building, but is limited to defacement or desecration. Incidents such as spray painting swastikas on synagogues, or firing gunshots through church windows are clearly hate crimes and are intended to intimidate a community and interfere

with the freedom of religious expression. For this reason, the fact that the economic damage they cause is de minimus should not prevent their prosecution as assaults on religious freedom under this section.

H.R. 3525 also amends section 247 by inserting in subsection (a)(1) the words "racial or ethnic" before "character." This change will extend coverage of the statute to conduct which is motivated by ethnic or racial animus. Thus, in the event that the religious property of a church is damaged by someone because of his or her dislike or hatred of its African-American congregation, section 247 as amended by H.R. 3525 would be available to prosecute the perpetrator.

H.R. 3525 does not change the penalty structure under section 247. Where death results, or in the case of other serious violent felonies (kidnapping, sexual abuse, attempted murder) a fine of up to \$250,000 and/or any term of years or for life, or a death sentence may be imposed. Where there is bodily injury or use, attempted use or threatened use of a dangerous weapon including fire, a fine of up to \$250,000 may be imposed and/or imprisonment for not more than ten years. In any other case, a fine of up to \$100,000 may be imposed and/or the defendant may be imprisoned for up to one year.

In expanding the reach of section 247 to specifically include all church arsons motivated by religious, ethnic, or racial considerations, the Committee does not intend to alter or in any way limit the applicability of section 844(i) of Title 18 to the same conduct. The Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms is charged with primary investigative responsibility over federal arson and bombing offenses set forth in section 844(i). That section provides, in pertinent part, that "whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce" shall be fined or imprisoned or both.

An incident of church arson might be prosecuted both under section 844(i) and section 247, as amended by H.R. 3525. It is the Committee's intent that the Bureau of Alcohol, Tobacco, and Firearms shall have concurrent jurisdiction with the Federal Bureau of Investigation to investigate conduct which might violate section 247, and which involves fire or explosives.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 7, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This presents the views of the Department of Justice on H.R. 3525, the "Church Arson Prevention Act of 1996." The proposed amendments to 18 U.S.C. 247 are an important measure to make that statute a practical and useful tool to

prosecute violence directed at houses of worship. The Department salutes your leadership and that of Mr. Conyers on the bill. We strongly support it, and in this letter outline a number of suggestions which we would urge the Committee to consider in order to strengthen the bill.

Section 247 was enacted in 1988, and its penalties enhanced in 1994, to address the serious problem of religiously motivated violence. As the Committee noted in 1988, the catalyst for this legislation was that "[r]eligiously motivated violence * * * appears to be a growing problem." H. Rep. No. 100-337, 100th Cong., 1st Sess. 2 (1987). Acts of violent obstruction of the free exercise of religion continue to present a significant problem nationwide. As you noted at the Committee hearing on May 21, there has been a disturbing increase in the number of suspicious fires at churches. We also continue to be confronted with acts of violence, targeting places of worship and cemeteries, such as drive-by-shootings, desecrations and vandalism. In many instances, these acts of violence appear to be motivated not only by hatred of members of the houses of worship because of their exercise of their religion, but also because of their race or ethnicity.

Section 247 could be improved to become a more effective weapon for the Department of Justice to use against such violent bigotry. In fact, since its enactment, the statute has been used only once, successfully in a case involving the murders of former members of a religious cult at the hands of other cult members angered at the victims' leaving the church. *U.S. v. Barlow*, 41 F. 3d 935 (5th Cir. 1994).

In an effort to address the problem of violence against houses of worship, the Department has used other statutes to provide federal jurisdiction, primarily 18 U.S.C. 241. While we have had success using Section 241 in some cases of attacks on African-American churches, Section 241 requires proof of a conspiracy and therefore cannot be used to prosecute persons acting alone. In addition, church burning cases filed under Section 241 require proof that the conspiracy was motivated by racial animus.

In 1994, Congress enacted 18 U.S.C. 248, which prohibits interference with the exercise of religion and the desecration of places of worship. Section 248, however, provides inadequate punishment in the absence of injury. As a result, it is important that Section 247 be improved to become a valuable weapon in the arsenal against violence aimed at houses of worship.

Section 247(a) prohibits the defacing of religious property as well as the violent interference with persons in the free exercise of their religious beliefs. Despite this broad prohibitive language, however, other aspects of the statute limit its effectiveness.

First, Section 247(b) imposes an interstate commerce requirement that goes well beyond constitutional necessity. A defendant must either travel in interstate commerce, or a defendant must "use[] a facility or instrumentality of interstate * * * commerce" and he must do so "in interstate * * * commerce." Thus, for example, it is not enough for a defendant to use a telephone to help him commit the crime—the call itself must go out of state. If a defendant uses public transportation to facilitate the crime, it is not enough for that bus or train to have traveled interstate; the defendant

must have used it in interstate commerce. See S. Rep. No. 100-324, 100th Cong., 2nd Sess., at 5.

This highly restrictive interstate commerce prerequisite greatly limits the applicability of the statute. Indeed, the experience of the Department of Justice is that in the majority of these cases, the government is unable to establish that defendants traveled in interstate commerce or used facilities in interstate commerce. As a result, Section 247, as written, is simply not applicable to the very kind of misconduct it was originally intended to address.

Second, Section 247(b) imposes a \$10,000 damage minimum in cases brought under the vandalism portion of the statute. But many of these cases involve acts of defacement and intimidation that simply do not result in significant monetary loss. For example, a gunshot fired into a church may only result in a broken window causing little physical damage to the building (well under the \$10,000 threshold), but the emotional and psychological damage to church members is incalculable. Similarly, a spray painted message of hate on a house of worship is an assault on the very core of a fundamental principal of freedom. Yet it does not result in significant monetary damage and therefore is not actionable under Section 247. A fire that does not spread may well cause less than \$10,000 in damage.

H.R. 3525 would go a long way toward addressing these concerns. The redrafting of the commerce clause paragraph in subsection (b)(1) to make clear that an offense that "affects interstate * * * commerce" is covered by the statute, would broaden the reach of the statute. Under this amendment it would no longer be necessary to establish as a jurisdictional prerequisite that the defendant himself moved in interstate commerce or used a facility in interstate commerce. Instead it would be enough to show that his conduct had an impact on interstate commerce—a standard more in line with existing criminal statutes outlawing, for example, the possession of certain weapons, e.g. 18 U.S.C. 922(g), 924, or the use of fire or explosive devices, e.g. 18 U.S.C. 844(i). This amendment would allow the Department to proceed against defendants who target religious structures.

However, because we believe that there may be constitutional authority for Congress to adopt a more expansive jurisdictional approach, we would like to work with the Committee to explore this possibility.

The reduction of the \$10,000 in damages requirement is also an important step in the right direction. We would also like to explore whether it is appropriate to reduce further or eliminate entirely the damages requirement. The demonstrable and unmistakable threats conveyed by spray painted swastikas on synagogues or gunshots fired through church windows inflict serious assaults on religious freedom and deserve federal protection under this statute. The fortunate fact that the destruction is less severe does not make the threat less damaging.

Finally, the Committee may also want to consider adding the words "racial or ethnic" to subsection (a)(1) of Section 247 after the word "religious," so the full provision would read "intentionally defaces, damages, or destroys any religious real property, because of the religious, racial or ethnic character of the property." This would

firmly reach any attack of a church that is tied to the racial or ethnic characteristics of the members of the church or house of worship.

We appreciate the opportunity to express the views of the Administration on this bill, and look forward to working with the Committee towards its enactment.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 247 OF TITLE 18, UNITED STATES CODE

§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious, *racial, or ethnic* character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (c) of this section.

[(b) The circumstances referred to in subsection (a) are that—

[(1) in committing the offense, the defendant travels in interstate or foreign commerce, or uses a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce; and

[(2) in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction is more than \$10,000.]

(b) *The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce.*

* * * * *

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