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I. Preface and Summary of Testimony

Mr. Chairman and members of the Committee: My name is Milner S. Ball. I am the Caldwell Professor of Constitutional Law at the University of Georgia School of Law and a member of the Georgia Bar. I am also an ordained minister of the Presbyterian Church and a member of the Presbytery of Northeast Georgia.

Both professions have committed me to sustained, scholarly attention to the interaction of law and theology, religious liberty, and the separation of church and state. As a lawyer I believe that separation is good for the state. As a theologian I believe that it is good for the Church.

Thank you for the invitation to present testimony on this important Bill. I represent no one on this occasion and speak only for myself.

The United States long sought to "Christianize" Native Americans. It promoted Christianity in apparent violation of the Establishment Clause and suppressed Native American religion in apparent violation of the Free Exercise Clause. The policy finally changed in 1934, but significant hindrances to Native American religious practice continued. Congress has sought to remove these hindrances, notably in the American Indian Religious Freedom Act of 1978. However, Supreme Court interpretation of AIRFA has determined it to lack effective, independent meaning. Native Americans seeking religious liberty have exhausted their executive and judicial options.
Title I of S. 1021 -- Protection of Sacred Sites appears to satisfy the tests of constitutionality under the Establishment Clause for the reasons that it: serves neutrality by lifting governmental burdens of Native Americans' free exercise of their religion; flows from the United States' unique obligation to Native Americans; and belongs to a series of other federal land management measures.

The only additional constitutional issue posed by Title II - Traditional Use of Peyote is Congress' power to apply to the States the provision for peyote use. Title II appears to fall within the ambit of section 5 of the 14th Amendment as interpreted by the Supreme Court. This is so for the reason that it serves neutrality in seeking to remove a marginalizing stigma from Native Americans.

I have given only limited review to Title III - Prisoners' Rights and Title IV - Religious Use of Eagles and Other Animals and Plants. They appear to me to raise no additional, basic constitutional question and to be constitutionally permissible.

The First Amendment's religion clauses aim to guarantee religious liberty. S. 1021 serves that fundamental but sometimes forgotten commitment necessary to the well-being of both religion and government. Violation of the commitment has caused grievous loss both to Native Americans and to American integrity. S. 1021 is an overdue, appropriate response.
II. Introduction

The United States long sought not only to "Americanize" but also to "Christianize" Native Americans. The policy was often well-intended. Sometimes it was not. Either way it was a form of religious aggression. It arose from Christian religion and was directed against Native American religions.¹

The promotion of Christianity was inconsonant with the Establishment Clause. And the suppression of Native American religion was inconsonant with the Free Exercise Clause.

S. 1021, the Native American Free Exercise of Religion Act, would help put an end both to present effects of past wrongs and to present burdens presently imposed. By thus promoting neutrality in United States' treatment of Native American religions -- by serving equilibrium -- S. 1021 would serve the mandates of the Constitution's religion clauses.

¹ Churches debated whether they should civilize or Christianize first. This was "largely a theoretical squabble, for the two processes, civilizing and Christianizing, were inextricably mixed .... it would be difficult to tell where one activity ended and the other began. Nor did it matter to the government, which came to depend upon the church societies for civilizing work among the Indians without intending to promote any particular religion. "It was quietly understood by government officials as well as by church leaders, that the American civilization offered to the Indians was Christian civilization, that Christianity was a component of civilization and could not and should not be separated from it." Francis Paul Prucha, The Great Father 145-46 (1984).
A. Promotion of Christianity.

From the beginning, western contact with Native Americans was aligned with religion and suffused with religious purpose and justification. Formation of the new nation brought no change. By early in the 19th Century the United States had determined its policy of Christianizing Native Americans. That policy was subsequently implemented through such practices as co-operation with Christian missions, support of sectarian schools, and the apportionment of federal Indian agencies among Christian church groups. By its direct use of Christian organizations as the instrumentality of policy, "the federal government abdicated much of its responsibility. Specific governmental functions were handed over to the churches ...."


4. Id. at 141-42, 147, 286, 398.

5. Id., at 289-92.

6. The Annual Report of the Commissioner of Indian Affairs, 1872, serial 1560, pp. 461-62, lists the church groups, the agency assigned to each, and the number of Native Americans under its jurisdiction. See Prucha, The Great Father, supra note 1, at 488-519.

7. Prucha, The Great Father, supra note 1, at 482.
B. Suppression of Native American Religion.

The attempt to Christianize Native Americans was accompanied by attempts to eradicate their religion. The aggression took various forms. In 1883 it took judicial form when Courts of Indian offenses were established for the specific purpose of suppressing religious practices such as the sun dance. In 1890 it took the form of atrocity insofar as the massacre at Wounded Knee was precipitated by and aimed at suppression of the ghost dance religion.

Not until 1934 did the policy change. In that year, John Collier, the Commissioner of Indian Affairs, issued a circular, "Indian Religious Freedom and Indian Culture," calling for "the fullest constitutional liberty [for Indians], in all matters affecting religion, conscience, and culture."  

That directive, however, did not remedy continuing effects of the past policy of aggression and did not cure those continuing "federal and state laws and actions [that] indirectly hindered the

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8. See id., at 646-49. See also Secretary of the Interior, Regulations of the Indian Office 102-103 (1904) (banning the sun dance, "all other similar dances and so-called religious ceremonies, and the practices of medicine men").


free exercise of religion for many Indians." These hindrances included denial of access to or disturbance of sacred sites, restriction on use of ritual substances, and interference with ceremonies.

Since 1934, Congress has taken several steps intended to remove these hindrances by enacting legislation protective of Native American religion and religious concerns, notably the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996. Unfortunately, the Supreme Court has found AIRFA to lack independent, significant meaning. "Nowhere in the law [AIRFA]," the Court has stated, "is there so much as a hint of any intent to create a cause of action or any judicially enforceable individual rights." The consequence has been that "efforts to invoke the Act to limit federal policies adversely affecting Indian access to

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11. Id., at 1127.


religious sites have proven notably unsuccessful."\textsuperscript{15} Many of the hindrances remaining in 1934 continue today.\textsuperscript{16}

It should be observed in this regard that, in recent years, the Supreme Court has proved importantly unreceptive to Native American tribes.\textsuperscript{17} In the instance of free exercise of religion, it has withheld protection. In \textit{Bowen v. Roy},\textsuperscript{18} the Court refused relief from governmental use of a child's social security number, although the use violated her spirit. Then in \textit{Lyng v. Northwest

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In one of these cases, \textit{Badoni}, a water project was shown to deny access to prayer spots and to constitute "the drowning of the Navajo gods." 638 F.2d at 177. In another, \textit{Wilson}, a ski resort would destroy a tribal religion's "most sacred shrine" and therefore cause the tribe's future members to reject "the view that this is the sacred Home of the Kachinas. The basis of our existence as a society will become a mere fairy tale to our people." 708 F.2d at 741, 740 n. 2.

\textsuperscript{17} See Milner Ball, Constitution, Court, Indian Tribes, 1987 \textit{ABF Res. J.} 1.

\textsuperscript{18} 476 U.S. 693 (1986).
Indian Cemetery Protective Ass'n, it granted no relief although the contested Forest Service projects could have devastate traditional Indian religious practices. Most recently, in Employment Division v. Smith, the Court refused First Amendment protection to the sacramental use of peyote and consigned "accommodation [of free exercise of religion] to the political process." Native Americans have exhausted their executive as well as judicial remedies. Congress is their forum of last resort.

III. Establishment Clause Tests

Lemon v. Kurtzman has provided the sometime basis for Supreme Court decision-making under the Establishment Clause. According to Lemon, that Clause requires legislation to have a secular purpose, a primary effect that neither advances nor inhibits religion, and consequences that do not lead to excessive government entanglement with religion. The continuing validity of Lemon has been cast in doubt. One Justice describes it as "[l]ike


some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad." 22

Two alternatives to the Lemon approach have been proposed. One, a distillation of Lemon advanced by Justice O'Connor, would test first whether the government has "endorsed" religion and second whether the government has become "excessively entangled" with a religious institution. 23 The other is the argument of Justice Kennedy that the Establishment Clause proscribes only coercion. 24

Under any of these tests, the United States' past policy of alliance with and promotion of Christianity violated the

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23. See Board of Education of Westside Community Schools v. Mergens, 110 S. Ct. 2356, 2371 (1990); County of Allegheny v. ACLU, 109 S. Ct. 3086, 3095, 3118-3122 (1985); Wallace v. Jaffree, 472 U.S. 38, 70, 76, 83 (1985). See also Lee v. Weisman, 60 U.S.L.W. 4723, 4736 (1992) (Justice Souter concurring, joined by Justices Stevens and O'Connor) (The "principle against favoritism and endorsement has become the foundation of Establishment Clause jurisprudence, ensuring that religious belief is irrelevant to every citizen's standing in the political community....").

24. See County of Allegheny v. ACLU, 109 S. Ct. at 3136 (Justice Kennedy, joined by Chief Justice Rehnquist, and Justices White, and Scalia); Lee v. Weisman, 60 U.S.L.W. 4723, 4725 (as a minimum, government may not coerce) (Justice Kennedy, opinion for the Court). See also id. at 4729-30 (coercion is sufficient but not necessary to an Establishment Clause violation) (Justice Blackmun, joined by Justices Stevens and O'Connor). Cf. id. at 4740 (Lemon replaced by a "psycho-coercion test") (Justice Scalia, joined by Chief Justice Rehnquist, and Justices White and Thomas).
Establishment Clause. In my view, S. 1021 fulfills the purposes of and does not violate the Establishment Clause. (See below.)

IV. Free Exercise Tests

The First Amendment absolutely prohibits governmental regulation of religious belief but may allow governmental regulation of religious practice. (The distinction between belief and practice required by belief is drawn by the Supreme Court but not necessarily by believers.) Until 1990 it was thought that the decisive question for determining the constitutionality of a burden on religious practice was whether it was justified by a compelling governmental interest.

In 1990, Employment Division v. Smith held that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the effect of

25. In Quick Bear v. Leupp, 210 U.S. 50 (1908), the Court held that expending funds for a sectarian school on a reservation did not violate the Establishment Clause, but it did so on the ground that Indian money was being spent as the Indians wished. 210 U.S. at 81-82. See, Prucha, The Great Father, supra note 1, at 777 ("the Indians by signing petitions signified that they approved such use of their funds").


burdening a religious practice. Legal scholars have generally repudiated the reasoning of Smith.\textsuperscript{29} One Supreme Court Justice doubts its precedential value and would re-examine it.\textsuperscript{30}

By any current standard, the United States' suppression of Native American religion in the past violated the Free Exercise Clause. The present measure, S. 1021, is remedial and is patently not prohibitive of the free exercise of religion.

V. S. 1021

A. Title I -- Protection of Sacred Sites

It could be objected that Title I favors religion in general or one religion over others. The objection is not well-taken. By any current Establishment Clause standard (see above), Title I appears to me constitutionally permissible.


a. Title I would help protect sacred sites on federal land and access to the sites. It would thus help to lift historic,
continuing, governmental burdens on Native Americans' religion. This lifting of governmental burdens on the free exercise of religion is correctly viewed as constitutionally legitimate.\(^{31}\)

If anything, although it is an important step, Title I does not go far enough. The United States does not own holy places of any other major religion. Such ownership has led to deleterious entanglement of the government with Native American religion.

This entanglement would only be ended properly by returning ownership of the sacred sites to Native Americans, as Congress has done in specific cases. For example, it returned the sacred Blue

\(^{31}\) The Establishment Clause does not require "that the government must show a callous indifference to religious groups." Zorach v. Clauson, 343 U.S. 306 314 (1952) (upholding program for release of children from school to take religious instruction). But accommodation may nevertheless devolve into a fostering of religion that violates the Establishment Clause.

My point in the text is that lifting burdens is not properly classed as an accommodation. I do not accommodate your speaking when I remove my booted foot from your neck.

My point is also that removing governmental burdens is even less likely an establishment of religion. See Corporation of Presiding Bishop, Church of Latter-Day Saints v. Amos, 483 U.S. 327, 348 (1987) (Justice O'Connor concurring). See also Lee v. Weisman, 60 U.S.L.W. at 4736 (Justice Souter concurring). ("Whatever else may define the scope of accommodation permissible under the Establishment Clause, one requirement is clear: accommodation must lift a discernible burden on the free exercise of religion.").

Additionally, my point is that lifting governmental burdens on Native American religion is a special case that is even much less likely an establishment of religion. (See further below.)

It should be added that, if Title I is an accommodation, accommodation is permissible even where the Free Exercise Clause does not require special treatment, i.e. where the burden lifted is not a free exercise violation. "The limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause." Corporation of Presiding Bishop, Church of Latter-Day Saints v. Amos, 483 U.S. 327, 334 (1987) (quoting Walz v. Tax Commission, 397 U.S. 664, 673 (1970).
Lake to Taos Pueblo in 1970. In signing the Blue Lake bill, President Nixon noted that it "involves respect for religion.... [F]or 700 years the Taos Pueblo Indians worshipped in this place. We restore this place of worship to them for all the years to come."  

Title I returns no sacred sites. It provides less but welcome protection. It is an act of "respect." It is therefore an act of permissible accommodation. As Justice Souter observes: "In everyday life, we routinely accommodate religious beliefs that we do not share. A Christian inviting an Orthodox Jew to lunch might take pains to choose a kosher restaurant; an atheist in a hurry might yield the right of way to an Amish man steering a horse-drawn carriage ... In so acting, we express respect for, but not endorsement of, the fundamental values of others. We act without expressing a position on the theological merit of those values or of religious belief in general, and no one perceives us to have taken such a position."  

So, for example, in Lyng, a majority of the Court cited with apparent approval Congress' solicitude toward Native American  


34. Lee v. Weisman, 60 U.S.L.W. at 4736 (Souter concurring).
religion embodied in the AIRFA.\textsuperscript{35} Title I of the present bill may be said to embody the same solicitude.

I want to be careful here. I am uncertain that "solicitute" is the appropriate expression. The word "solicitute" may sometimes denote "excessive care or concern,"\textsuperscript{36} and it might be thought, wrongly, that S. 1021 is solicitous in this sense, that it is excessively caring of Native American religion. But United States' treatment of Native American religion has not been marked by an excess of care. There has been an excess of hostility. And there has been a deficiency of concern. S. 1021 does not endorse or specially favor Native American religion, does not grant to this religion what it denies to others, does not favor religion in general. Instead it helps to correct the deficiency of care and the excess of hostility hitherto existing. I know of no other religion with a comparable history of suppression by the United States.

Title I would help prevent further governmental interference. It would move the government toward balance, equilibrium, disentanglement, respect. And it that sense it expresses solicitute also for the United States government, which can only belittle itself by failing to respect indigenous religion.

\textsuperscript{35} 485 U.S. at 454-55.

\textsuperscript{36} Webster's New Universal Unabridged Dictionary 1727 (J. McKechnie ed. 1983).
b. Even if Title I were to be viewed as granting special treatment to Native American religion, it would not lie outside the bounds of the permissible. For example, the Supreme Court upheld an employment preference for Indians in the Bureau of Indian Affairs against an equal protection attack because the preference flowed from the singular political relationship between the United States and Native Americans: "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." We may suppose that the "unique obligation" which shields congressional action from heightened scrutiny under the Equal Protection Clause will evoke equivalent deference to actions scrutinized under the Establishment Clause.  

37. 42 U.S.C. § 2000e-2(a), by proscribing employment discrimination on the basis of religion, 42 U.S.C. § 20002-2(a) (1), by requiring accommodation of employee religious practice, and 42 U.S.C. § 2000e-1, by exempting religious organizations from coverage, render the religious better off than they would otherwise be. Nevertheless, this privileging of religion is permissible. And this is so notwithstanding the fact that private discrimination -- not governmental discrimination as in S. 1021 -- is the subject. See Board of Education of Westside Community Schools v. Mergens, 110 S. Ct. 2356, 2371 (1990); Corporation of Presiding Bishop, Church of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

protect species of flora and fauna, historic sites, access, wilderness, the environment, etc.\textsuperscript{39} Title I belongs to this series. It closes a gap. Existing legislation protects plant and animal use of public lands but not the traditional uses of those lands by their original human occupants. Existing legislation provides for consideration of every kind of impact except impacts on Native American religion. In this context, Title I may be seen as not specially directed at religion but as correcting an omission.

There is compelling reason to correct the omission. The indigenous culture is inherently religious. The culture depends upon, is inseparable from, the religion. The failure to protect Native American religion is a failure to protect Native American culture and is thus a failure to fulfill the United States' unique obligation to Native Americans. Title I is as permitted by the Establishment Clause as it is mandated by the United States' historic trust relationship with Native American nations. See Section 101, Findings (2) and (3).

Because Title I lifts governmental burdens on Native Americans' free exercise of religion, flows from the United States' unique obligation, and belongs to a series of other federal land

management requirements, it appears to me to conform to the Establishment Clause.\footnote{For these three reasons, Title I should not prove subject to an argument drawn from Larson v. Valente, 456 U.S. 228 (1982). Larson struck down a statute that imposed reporting requirements only on religious organizations which receive over 50 per cent of their income from non-members. (The statute was regarded by some as an “anti-Moonies” measure). Larson’s basic point is: “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” 456 U.S. at 244. In my view, a Larson attack on Title I would not be successful for the three reasons given in the text and for the additional reason that the protection accorded Native American religions by S. 1021 does not specially disfavor or burden others. See Laurence Tribe, American Constitutional Law 1192-93, n. 167 (2d ed. 1988). Cf. Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 61 U.S.L.W. at 4590 (citing Larson in the context of instances of disfavoring religion or some religious denominations).}

2. \textbf{Specific Examples in the Bill}

a. \textit{Access and Closing}

It could be argued that the proposed access and temporary closing provisions of Section 102(c) accord to Native American religion favorable treatment not available to others. I believe this argument is not finally persuasive for the reasons I have just offered.

It bears emphasizing that the federal government is already involved in the religious lives of Native Americans. Many of their sacred places lie on federal lands. Federal ownership of these sites seems to me to raise real questions under the Free Exercise
and Establishment Clauses. If return of the lands would be a proper solution as it was in the instance of Blue Lake, the lesser remedies of access and temporary closing are surely an appropriate start.

If the United States owned the National Cathedral, it seems to me unlikely that the government would be thought to violate the Establishment Clause by either granting access to members of that Church or temporarily closing the sanctuary to tourists during sacred services. It is more likely that denial of access would violate the Free Exercise Clause. If Section 102 treats practitioners of Native Americans differently than Episcopalians, that is only because they are differently situated to begin with in regard to their holy places and to the United States.

b. Delegation to Religious Groups or Individuals

An objection could be made that the role proposed for Native American religious groups or individuals constitutes a delegation of governmental power in violation of the Establishment Clause. The objection is not well-taken.

In the 19th Century, the United States' delegation of its governmental responsibility to Christian missionaries in Indian country (see above) was clearly unconstitutional, but uncontested. Now to raise a delegation argument against remedial legislation must strike Native Americans as bitterly ironic.
Such an argument might be drawn from *Larkin v. Grendel's Den, Inc.*[^41] which invalidated a statute permitting schools and churches to veto the granting of liquor licenses to establishments within a 500-foot radius of the organization's grounds. The statute was found to violate the separation of church and state "by vesting discretionary governmental powers in religious bodies."[^42] The Court noted that the "Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions."[^43]

Title I provides for notice to and consultation with tribes and traditional leaders. (§§ 102(b)(1) and(2); 103(b); 104(a) and (b).) A formal structure granting to a religious organization a privileged position in governmental processes would pose Establishment Clause difficulties.

In the instance of Title 1, Native Americans are provided not a privileged position but a necessary one. Native Americans are singularly in possession of information about their sacred sites. If it is legitimate -- even required -- to protect Native American religious sites, as I believe it is, it is necessary to learn about them from Native Americans. If the United States is to respect the


[^43]: 459 U.S. at 127.
free exercise of religion at those sites, it must know when the integrity of the sites and the religious practices that take place on them are endangered. In Larkin, religious organizations enjoyed a privileged position in the process of determining the location of liquor licensees. The location of the churches and their use was not an issue and was presumably easy to determine.

Even if Title I were to be construed as granting a religion special treatment in a governmental process, such treatment would be constitutionally warranted for the reasons given above in the discussion of constitutional grounds.

c. "Veto"

Title I provides what might be described as limited "vetoes." See § 102(c)(3) (temporary closings); § 103(d) (90-day prohibition against activity following notice by government); § 104(a)(1) (intermediate discontinuance of activity after notice to government). These are very different than the conclusive veto granted to religious organizations in Larkin. The temporary closings are temporary only and lie within the discretion of the government ("the Secretary ... may"). The 90-day prohibition and subsequent discontinuance are limited and merely serve the effectiveness of notice and consultation.

Title V's provision for judicial resolution and a halt to action, absent a compelling interest and the least restrictive means for satisfying it, together with the various allotments of
burdens of proof, place the final decision in the judicial process, not religious groups.

d. Identification of Sites and Impacts

Title I provides variously for identifying sites and impacts upon them. As already noted S. 1021 closes a gap in federal land management. A large array of impacts of federal actions are already taken into account. Impacts upon religious use of land by human occupants have been omitted. S. 1021 remedies that omission.

It might nevertheless be argued that considering religious impacts creates the possibility of government entanglement in religion. (See, for example, the agency evaluation of comments called for in § 104(a)(4); and the judicial determination that "a governmental actions restricts or would restrict" free exercise of religion provided for in Title V, § 501(b)(1)). Courts may not engage in weighing the centrality or value of religious belief. 44

This bill does not require such a weighing. The question is only whether "a governmental action restricts or would restrict the practitioner's free exercise of religion," § 501(b)(1). This is a common inquiry in free exercise doctrine and practice.

The bill's provisions for safeguarding the traditional secrecy of sites and practices, §§ 104(b); 105(b), are a further means for preventing impermissible, entangling federal inquiry into religion.

B. Title II -- Traditional Use of Peyote

Title II is a remedial response to the Smith case. (See above.) In effect, Title II would make statutory and uniform an exemption for sacramental peyote use presently provided in federal administrative practice.

After citing the fact that some states make an exception to their drug laws for sacramental peyote use, even Smith indicated that such legislatively-created exemptions are permitted and perhaps desirable.45 Moreover Justice Souter has noted that, in "freeing the Native American Church from federal laws forbidding peyote use, see Drug Enforcement Administration Miscellaneous Exemptions, 21 C.F.R. § 1307.31 (1991), the government conveys no endorsement of peyote rituals, the Church, or religion as such; it simply respects the centrality of peyote to the lives of certain Americans."46

The only question about the constitutional legitimacy of Title II that poses issues different from those already discussed under

45. 110 S. Ct. at 1606.

46. Lee v. Weisman, 112 S. Ct. at 2677 (Souter, concurring).
Title I is Congress' power to make Title II apply to State as well as Federal government. I believe that Congress has this power.

The Free Exercise Clause is applicable to the States through the 14th Amendment. 47 Section 5 of the 14th Amendment delegates to Congress "power to enforce [the Amendment's] provisions, by appropriate legislation."

Katzenbach v. Morgan 48 upheld an exercise of this power which nullified New York's English literacy requirement for voting as applied to individuals who successfully completed the sixth grade in schools accredited by Puerto Rico where the language of instruction was other than English. The literacy requirement was facially neutral. Nevertheless, Congress could determine that its application to a particular group did not in fact serve neutrality. (Those who are differently situated must be differently treated if equality is to be observed.) And, under the 14th Amendment, Congress could provide for the exemption from State law.

When they are applied against Native Americans, general laws that criminalize the use of peyote do not serve neutral purposes. As Title II, § 201(10), finds, the failure to exempt traditional use of peyote for religious purposes may stigmatize and marginalize Native Americans. This failure undercuts rather than ensures the foundational principle "that religious belief is irrelevant to


every citizen’s standing in the political community. "49 By reducing the risk that Native Americans will be exposed to further discrimination, Title II falls within the ambit of Congress’ 14th Amendment power upheld in Katzenbach v. Morgan.

C. Titles III - Prisoners’ Rights and IV - Religious Use of Eagles and Other Animals and Plants

My review of Titles III and IV has been limited. Given that restriction, I have not so far detected in them basic constitutional issues that I have not already addressed directly or by analogy.

VI. Conclusion

S. 1021 provides some relief from the United States’ woeful religious war against Native Americans and its aftermath. This Bill pays respect that is due but denied to a nobly, richly spiritual tradition and practice. It pays respect as well to our fundamental but sometimes forgotten commitment to religious liberty. Fulfillment of that commitment is necessary to the well-being of both religion and government. Violation of it has caused grievous

49. Lee v. Weisman, supra, at 4736 (Justice Souter concurring).
loss to both Native Americans and to American integrity. S. 1021 is welcome and long overdue.

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September 10, 1993
Appendix  Suggestions for changes in language:

Section 101 (1), p. 10, lines 11-17: Free exercise is not the only issue. The United States also sought to establish a religion among Native Americans.

(16), p. 14, lines 11-14: add section 3, Article IV.