

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 191 Ecumenical Patriarchate
SPONSOR(S): Rules & Calendar Council; Nehr and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 314

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Rules & Calendar Council	11 Y, 0 N, As CS	Hassell	Birtman
2)	Policy Council		Liepshutz	Ciccone
3)				
4)				
5)				

SUMMARY ANALYSIS

House Memorial 191 urges the U.S. Congress to encourage the government of Turkey to end policies negatively affecting the Ecumenical Patriarchate, which is the spiritual center of the Eastern Orthodox Christian Church and is located in Istanbul. In particular, the memorial urges Congress to encourage the Turkish government to:

- Uphold and safeguard religious and human rights without compromise;
- Cease its discrimination against the Ecumenical Patriarchate;
- Grant the Ecumenical Patriarch appropriate international recognition, ecclesiastical succession, and the right to train clergy of all nationalities; and
- Respect the property rights and human rights of the Ecumenical Patriarchate.

The memorial provides for copies of it to be submitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the state's congressional delegation.

The memorial does not have a fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ecumenical Patriarchate in Turkey

Turkey's constitution establishes the country as a secular state. The U.S. Department of State reports that the constitution contains provisions specifying religious freedom but also contains provisions governing the country's secularism which can operate to restrict religious freedom.¹ The government imposes restrictions on Islamic and other religious groups, including restrictions on Islamic religious expression in governmental offices and state-run institutions, on the grounds of maintaining a secular state. In addition, the department reports that members of religious minorities experience difficulties in worshipping, registering with the government, and training followers.²

Muslims comprise the largest percentage of the Turkish population, with official estimates citing 99 percent. According to the U.S. Department of State, however, the actual population of Muslims in Turkey is slightly lower, because its government recognizes three minority religious communities – Greek Orthodox Christians, Armenian Orthodox Christians, and Jews – and counts other non-Muslim communities as Muslim.³

The Turkish government's recognition of the special legal status of the three religious minorities does not extend to the leadership organs of those minorities. Therefore, for example, the "Armenian and Ecumenical Greek Orthodox Patriarchates continued to seek legal recognition of their status as patriarchates rather than foundations."⁴

¹ U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Turkey: International Religious Freedom Report 2009* (Oct. 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/130299.htm> (last visited March 16, 2010). *See also* Niyazi Oktem, *International Law and Religion Symposium Article: Religion in Turkey*, 2002 B.Y.U. L. REV. 371 (2002).

² U.S. Dep't of State, *supra* note 1.

³ U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Turkey: International Religious Freedom Report 2004*, <http://www.state.gov/g/drl/rls/irf/2004/35489.htm> (last visited March 16, 2010).

⁴ U.S. Dep't of State, *supra* note 1. The status as a foundation rather than a patriarchate affects property rights. A 1974 court ruling limited the ability of minority foundations to acquire property, and the state took control of property acquired after 1936. Law changes effective in 2008 enabled minority foundations to acquire property but did not authorize them to reclaim state-expropriated property. *Id.*

Located in Istanbul, Turkey, the Ecumenical Patriarchate is the spiritual center of the Orthodox Christian Church. The Ecumenical Patriarch is the church's highest authority and spiritual leader of Orthodox Christians worldwide.⁵ Ecumenical Patriarch Bartholomew assumed that spiritual leadership position in November 1991.⁶ However, the Turkish government does not recognize his ecumenical status, "acknowledging him only as the head of the country's Greek Orthodox community."⁷

Although there are an estimated 300 million Orthodox Christians worldwide, there are fewer than 3,000 Greek Orthodox Christians in Turkey.⁸ Particular policies of the government of Turkey are cited as negatively affecting the Ecumenical Patriarchate. For example, in 1971, Turkey nationalized private institutions of higher learning, leading to the closure of the Patriarchate's Halki seminary on the Island of Heybeli. The government has not permitted the reopening of the school, "effectively prevent[ing] the Patriarchate from training clergymen and potential successors to the position of Ecumenical Patriarch."⁹

In addition, Turkey also requires that the Ecumenical Patriarch and the Ecumenical Patriarchate's leadership staff be Turkish citizens. Further, the governor of Istanbul may reject candidates for the position of Ecumenical Patriarch as well as the ultimate choice by the electors.¹⁰ Noting the decline in the population of Greek Orthodox Christians in Turkey, authors on the subject have reported that these policies affect the operational viability of the Ecumenical Patriarchate by limiting the pool of potential successors to the position of Ecumenical Patriarch.¹¹

U.S. Government Policy and Action by States

The U.S. Department of State summarizes the policy of the United States regarding religious freedom in Turkey as follows:

The U.S. Government discusses religious freedom with the Government and state institutions as part of its overall policy to promote human rights. The U.S. Ambassador and other diplomatic officials, including staff of the consulate general in Istanbul and the consulate in Adana, maintained close relations with the Muslim majority and other religious groups. The Ambassador and other officials also continued to urge the Government to permit the reopening of the Halki seminary on Heybeli Island.

On April 6, 2009, President Obama addressed Parliament and emphasized the U.S. interest in seeing Halki seminary reopened in recognition of the importance of religious freedom. On April 7, President Obama met with leaders of religious communities, including the Ecumenical Patriarch, Chief Rabbi, Armenian Archbishop, Syrian Orthodox Metropolitan, and Mufti of Istanbul.

The Ambassador regularly discussed government policy regarding Islam and other religious groups as well as specific cases of religious discrimination and other topics concerning religious freedom in private meetings with cabinet members. The Ambassador met with Diyanet President Ali Bardakoglu on January 8, 2009, to discuss the work of the Diyanet.¹² Other embassy and consulate officers held similar meetings

⁵ Maria Burnett, Maria Pulzetti, and Sean Young, *Turkey's Compliance with Its Obligations to the Ecumenical Patriarchate and Orthodox Christian Minority*, a paper prepared at the request of the Greek Orthodox Archdiocese of America, 1 (December 11, 2004), available at <http://www.ellopos.net/politics/yalelawstudy.pdf> (on file with the House Rules & Calendar Council).

⁶ Ecumenical Patriarchate of Constantinople, *Who is Ecumenical Patriarch Bartholomew?*, <http://patriarchate.org/patriarch/narrative> (last visited March 16, 2010). Istanbul was formerly known as Constantinople.

⁷ U.S. Dep't of State, *supra* note 1.

⁸ There are also an estimated 65,000 Armenian Orthodox Christians in Turkey. U.S. Dep't of State, *supra* note 3.

⁹ Joanna Balaskas, *The International Legal Personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople*, 2 HOFSTRA L. & POL'Y SYMP. 135, 145-46 (1997).

¹⁰ *Id.* at 146; Maria Burnett et al., *supra* note 5.

¹¹ *Id.*

¹² The Diyanet is Turkey's Directorate/Presidency of Religious Affairs. U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report 2005*, <http://www.state.gov/g/drl/rls/irf/2005/51586.htm> (last visited March 16, 2010).

with government officials. Diplomats from the Embassy and consulates met regularly with representatives of various religious groups. These meetings covered a range of topics, including problems faced by non-Muslim groups and the debate over the role of Islam in the country.

The consulate general in Istanbul provided security training for minority religious communities as a part of its overall security strategy.¹³

According to the Order of Saint Andrew the Apostle, Archons of the Ecumenical Patriarchate, 25 states have passed measures similar to the one that is the subject of this bill analysis, asking the U.S. Congress to encourage Turkey to end practices that negatively affect the Ecumenical Patriarchate.¹⁴

Effect of Proposed Changes

This House Memorial expresses the Legislature's desire for the U.S. Congress to encourage the government of Turkey to revise policies negatively affecting the Ecumenical Patriarchate, which is located in Istanbul and is the spiritual center of the Eastern Orthodox Christian Church. In particular, the memorial urges Congress to encourage the Turkish government to:

- Uphold and safeguard religious and human rights without compromise;
- Cease its discrimination against the Ecumenical Patriarchate;
- Grant the Ecumenical Patriarch appropriate international recognition, ecclesiastical succession, and the right to train clergy of all nationalities; and
- Respect the property rights and human rights of the Ecumenical Patriarchate.

The memorial provides for copies of it to be submitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the state's congressional delegation.

Both houses of the Florida Legislature must pass a memorial, but a memorial is not subject to gubernatorial approval or veto and upon its passage is sent directly to the specified congressional officials.¹⁵

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹³ U.S. Dep't of State, *supra* note 1.

¹⁴ Open letter to members of the Florida Legislature from the Order of Saint Andrew the Apostle, Jan. 16, 2010, indicating 24 states have passed similar legislation (on file with the House Rules & Calendar Council). Since the letter's date, the Order has posted an additional state, New Mexico, on its official website, <http://www.archons.org/resolution/> (last visited March 29, 2010).

¹⁵ The Florida House, *Guidelines for Bill Drafting*, 20 (2009).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The memorial does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

3. Other:

Generally the federal government exercises dominion over foreign affairs of the United States. Section 10 of article I of the U.S. Constitution specifically prohibits states from engaging in certain foreign affairs activities. Further, the federal government can preempt conflicting state laws through the enactment of a federal law or treaty, and federal courts can “preempt state laws that improperly affect foreign affairs.”¹⁶ However, because this House Memorial is simply an expression of state intent rather than a proposed enactment of state law, it does not implicate the issue of preemption and state latitude to affect foreign affairs.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 23, 2010, the Rules & Calendar Council adopted two amendments to the House Memorial. The amendments:

- Correct the month of the Conference on Peace and Tolerance II from October to November. The Conference was held November 7-9, 2005.
- Reflect that the Religious Freedom Mission to the European Union by the Archons of the Ecumenical Patriarchate took place from January 26 – February 7, 2010.

The Memorial was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.

¹⁶ Celeste Borei Pozo, *Foreign Affairs Power Doctrine Wanted Dead or Alive: Reconciling One Hundred Years of Preemption Cases*, 41 VAL. U. L. REV. 591, 591-92 (2006).