The safe and secure operation of prisons is an extremely difficult and complex task. I fear that establishing new legal rights for inmates through this law will only make that job more difficult and more dangerous.

The Supreme Court under O'Lone and other cases set a reasonable standard for evaluating religious freedom claims in prison, balancing the needs of inmates and the institution. Then, in 1993, the Religious Freedom Restoration Act imposed a very difficult burden on correctional officials when prisoners made demands that they claimed were based on their religious faith. Although R.F.R.A. was held unconstitutional a few years later, the bill will again upset the balance.

Applying this legislation in prison has the real potential to undermine safety and security. Inmates have used religion as a cover to organize prison uprisings, get drugs into prison, promote gang activity, and interfere in important prison health regulations. Additional burdens on institutions will make it much harder for corrections officials to control these abuses of religious rights.

One example of a successful prisoner lawsuit before R.F.R.A. was held unconstitutional was the inmate who refused to take a tuberculosis test in Jolly v. Coughlin. The New York prison system wished to prevent the spread of T.B. to staff and inmates, so it implemented a mandatory testing program. But the Supreme Court ruled that the disease could be treated before it became active and contagious. The plaintiff refused to take the test based on his religious beliefs, and won. The courts permitted the inmate to violate this very reasonable health policy. This is a clear interference with prison safety and security. There is no excuse for courts to allow inmates to tell authorities what health policies they will or will not follow.

This case is just an example of how S. 2869 has the potential to put courts back in the business of second-guessing correctional officials and micromanaging state and local jails. There should be deference to the expertise and judgement of prison administrators. These professionals know what is needed to protect the safety and security of inmates, staff, and the public.

The possibilities for inmate demands for religious accommodation under S. 2869 are limited only by the criminal’s imagination. As the Attorney General of Ohio said in a letter last year, “We have seen inmates sue the states for the ‘right’ to burn Bibles, the ‘right’ to engage in animal sacrifices, the ‘right’ to burn candles for Satanist services, the ‘right’ to put on special diets, or the ‘right’ to distribute racist materials.”

There was a large increase in prisoner demands and a rise in lawsuits based on religious liberty while R.F.R.A. was in effect. The Solicitor of Ohio testified a few years ago that there were 254 inmate R.F.R.A. cases in the Lexis computer database during the three years the law applied to the states. This does not include cases that were not included in the database, and some of the cases listed actually included many inmates because the cases were class action suits.

Winning lawsuits will encourage inmates to challenge authority more and more often in day to day prison life, just as the National Association of Attorneys General has recognized, this is incorrect. It is true that the P.L.R.A. has limited the number of frivolous lawsuits inmates can bring. However, under this new legislation, successful lawsuits that formerly were frivolous now will have merit because this bill changes the legal standard under which religious claims are considered. Because S. 2869 makes it much easier for prisoners to win their lawsuits, the P.L.R.A. will be of little help.

Not all prisoners abuse the law. Indeed, it is clear that religion benefits prisoners. It helps rehabilitate them, making them less likely to commit crime after they are released. In fact, it is ironic that S. 2869 may actually diminish the quality and quantity of religious services inmates can receive. There is any indication, requests for religious accommodation will rise dramatically for bizarre, obscure or previously unknown religious claims. These types of claims divert the attention and resources of prison chaplains away from delivering religious services. The great majority of inmates who legitimately wish to practice their religious beliefs will be harmed by this law.

I am pleased that the General Accounting Office will be conducting a study regarding the impact of religious freedom legislation in the prison environment. We must continue to review this important issue very closely.

Additionally, I wish to discuss my concerns regarding the effect of religious rights legislation in the military. While S. 2869 does not directly impact the Armed Forces, the Administration considers it to be the successor to S. 2869, the Religious Freedom Restoration Act, to be constitutional and binding on all of the federal government.
including the military. I strongly believe that the military should be excluded from any legislation creating special statutory religious rights.

In discussing religious rights, it is important to note that the Free Exercise Clause of the Constitution has never provided individuals unlimited rights. The Free Exercise Clause must be balanced against the interests and needs of society in various circumstances.

Government interests are especially significant outside of general civilian life, and the military is the best example. Here, governmental interests are paramount for a variety of reasons that the courts have always recognized. The courts have always been tasked with balancing the rights of individuals against the interests of society. In this area, I believe the courts have struck a good balance.

In Goldman v. Weinberger, the key legal authority on this issue, the Supreme Court affirmed its long-standing position and made clear that courts must defer to the professional judgment of the military regarding the restrictions it places on religious practices. The military, not the courts, generally decide what is permitted and what is not permitted.

This does not mean that soldiers have no religious rights under the Constitution, but the courts generally must decide whether the professional judgment of the military regarding the denial of religious rights is in the interest of the military. This is essential because of the military’s need to foster discipline, unity, and respect in achieving its mission of protecting America’s national security.

As the court in Goldman explained, “The military is, by necessity, a special society separate from civilian society... The military must insist upon a respect for duty and a discipline without counterpart in civilian life... The military is a corporation, the service is the subordination of the desires and interest of the individual to the needs of the service.”

The R.F.R.A. entirely rejected this approach. It put the courts in the business of deciding what religious activities should be permitted in the military and what should not. It does this by establishing a very high legal standard, called the strict scrutiny test, that must be met before the government, including the military, may interfere with a person’s exercise of their religious rights. Under this test, a restriction on religious practices is permitted only if it is narrowly tailored to achieve a compelling governmental interest. This is a very difficult legal standard to meet and is an unrealistic and dangerous burden for the military. However, under this law, the courts must treat all requests for religious practice under the same standard, whether it’s the Army, Marine Corps, or any other service in society.

The R.F.R.A. does not in any way recognize the special circumstances of the military. This is a serious mistake. There is simply no reason why the courts should be in the business of second-guessing how the military handles these matters.

In the past, the Department of Defense has recognized this problem. A comprehensive Defense Department study of religion in the military in 1985 concluded that the “strict scrutiny” test should not apply to the military. It concluded that adopting this standard would allow for “wholly idiosyncratic application to the military.”

The Armed Forces today fully accommodate religious practices. In fact, I have concerns about whether the Department of Defense is too generous in what it is permitting on military bases today. For example, as reported last year in the Washington Post, Army soldiers wished to be members of the Church of Wicca and performed their rituals involving fire, hooded robes, and nine inch daggers. An Army chaplain is even present.

More recently, I read about an ongoing case where a Marine soldier disobeyed a direct order against leaving his military base because the date fell on the new moon, a holy day for Wiccans, and he said he needed to get copper sulfate to perform a ritual. This is just the type of case that a soldier could bring under R.F.R.A.

I do not believe that the Armed Forces should accommodate the practice of witchcraft at military facilities. This applies to the practices of other fringe groups such as Satanists and cultists. Racist groups could also claim religious protection. For the sake of the honor, prestige, and respect of our military, there should be no obligation to permit such activity.

Members of some groups, such as the Native American Church and Wiccans, use controlled substances in their religious ceremonies. The military today broadly allows the use of the drug peyote for soldiers who claim to be members of the Native American Church. Peyote, a controlled substance, is a hallucinogenic drug. According to a 1997 letter from the National Institute on Drug Abuse, peyote appears to cause an acute psychotic state for up to four hours after it is ingested. The long term effects of its use are significant and are not known, including the possibility of blackouts and mood instability. As part of the Authorization Bill for the Department of Defense, I am requiring that the Defense Department conduct a study on this drug. It simply has no legitimate place within our Armed Forces. This is an excellent example of the military going too far today in its efforts to accommodate religious practices.

Another problem from the military’s efforts to accommodate fringe groups is that it can harm recruitment. Last year, various religious organizations called for a boycott of the Armed Forces because of its accommodation of these fringe religious groups. The military is having significant difficulty today with recruitment for our all-volunteer force, and the accommodation of groups such as the Wiccans further complicates this problem.

Without R.F.R.A., it is clear that the military could severely limit or prevent practices such as these if it wished. It is less clear exactly what the military can impose under R.F.R.A., to the extent that the law is constitutional as applied to the Federal Government.

When I have raised concerns about these matters with Defense Department officials, I have been told that the military will not permit soldiers to practice beliefs that pose a threat to good order and discipline. Unfortunately, that is not the legal standard the Department is faced with under R.F.R.A. Under religious liberty laws, the courts make the decision based on whether the religious restriction is the least restrictive means to accomplish a compelling governmental interest, not whether the restriction is based on good order and discipline.

Religious liberty legislation could cause many problems for the military that have not been considered. Although there have been few claims under R.F.R.A. in the military to date, this could easily change in the future. For example, who among the thousands of people who adhere to various faiths, including many established religions, might make claims that violate important, well-established military policies. For example, soldiers who are Rastafarians or Satanists can claim protection to wear beards or dread-locks, and Native Americans can claim protection for long hair. Also, Rastafarians may claim an exemption from routine medical care that require injections, such as immunizations. Although it is my understanding that the military does not accommodate exemptions from grooming standards or receiving health care, soldiers could bring such claims and likely win. To date, inmates or guards in prisons have won cases similar to these in court, and there is little reason to expect that cases brought by soldiers would turn out any differently.

Soldiers brought lawsuits in the 1960s seeking exemptions from immunizations and exemptions from work on certain days of religious practices, but these claims failed under the deferential standard. However, under R.F.R.A., there are endless opportunities for religious practices to interfere
in important military policies and practices, and it is much more likely that such cases would be successful.

One such matter arose during the Persian Gulf War. At the time, the military imposed restrictions on Christian and Jewish personnel and the display of religious symbols for soldiers stationed in Saudi Arabia. This was important so that our troops would not violate the laws and religious decrees of the host nation. There was some talk of lawsuits against our military for these restrictions. Although this matter arose before R.F.R.A. was enacted, such a lawsuit is much more likely to be successful today.

In short, it is not in the best interest of our nation and national security for religious accommodation to be left to the military, not the courts.

I will continue to monitor this most serious matter. It is my sincere hope that the next administration will recognize the seriousness of this issue and support excluding the military from legislation that creates special religious rights.

VICTIMS OF GUN VIOLENCE

Mr. DURBIN. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read some of the names of those who lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session. In honor of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today.

September 5, 2000
André P. Bacon, 21, Chicago, IL;
Garon Berisha, 18, Miami, FL;
Mark Douglas, 34, Fort Wayne, IN;
Princeton L. Douglas, 18, Chicago, IL;
Willie Lassiter, 20, Atlanta, GA;
Denkrya McIntyre, 24, Chicago, IL;
Jerry Ojeda, 23, Houston, TX;
Roderick Prince, 18, Baltimore, MD;
Jarhonda Snow, 4, Miami, FL;
Unidentified Female, San Francisco, CA.

One of the gun violence victims I mentioned, 22-year-old Jerry Ojeda from Houston, was drinking with friends when they began taking turns shooting a 9-millimeter pistol into the air. After firing several shots, Jerry took the gun and turned it on himself. We because of these and allow such senseless gun violence to continue. The deaths of these people are a reminder to all of us that we need to enact sensible gun legislation now.

BUDGET SCOREKEEPING REPORT

Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under Section 308(b) and in aid of Section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the budget through July 26, 2000. The estimates of budget authority, outlays, and revenues are consistent with the economic and technical assumptions of the 2001 Concurrent Resolution on the Budget (H. Con. Res. 290), which replaced the 2000 Concurrent Resolution on the Budget (H. Con. Res. 68).

The estimates show that current level spending is above the budget resolution by $17.5 billion in budget authority and by $20.6 billion in outlays. Current level is $2.8 billion below the revenue floor in 2000.

Since my last report, dated June 20, 2000, the Congress has cleared, and the President has signed, the Military Construction Appropriations Act, fiscal year 2001 (P.L. 106-246). This action changed the 2000 current level of budget authority and outlays.

I ask unanimous consent to have a letter dated July 27, 2000 and its accompanying tables printed in the RECORD.

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


Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2000 budget and are current through July 26, 2000. This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 290, the Concurrent Resolution on the Budget for Fiscal Year 2001, which replaced H. Con. Res. 68, the Concurrent Resolution on the Budget for Fiscal Year 2000.

Since my last report, dated June 20, 2000, the Congress has cleared, and the President has signed, the Military Construction Appropriations Act, fiscal year 2001 (P.L. 106-246). This action changed budget authority and outlays.

Sincerely,

DAN L. CRIPPEN, Director.