

from the staff putting us out tonight, I will withhold.

Mr. DOMENICI. The Senator is correct.

#### MORNING BUSINESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

Mr. THURMOND. I rise today to express reservations about S. 2869, the Religious Land Use and Institutionalized Persons Act of 2000, and the larger issue of the impact of religious liberty legislation in the context of prisons and the military.

One of the founding principles of our Nation involves the freedom to worship. I have always been a strong supporter of this most basic right. For example, for many years I have introduced a constitutional amendment to permit prayer in public schools, and I would be very pleased if we could pass that amendment.

In the closing hours of the Senate before the August recess, the Senate considered the Religious Land Use and Institutionalized Persons Act, which is essentially an attempt to change the way the courts interpret the Free Exercise Clause of the Constitution regarding prisons and land use regulations throughout the Nation. Ever since the Supreme Court held the Religious Liberty Protection Act unconstitutional as applied to the states, supporters of this legislation have tried to reverse that decision. Just as the Religious Liberty Protection Act has been held unconstitutional as applied to the states and its legality is still unclear regarding the federal government, there are legitimate issues regarding whether S. 2869 is constitutional. Moreover, there are serious questions about whether this bill is good public policy, especially as it relates to the prisons and jails across America.

I first wish to note what this bill is not. It is not directed at laws that intentionally discriminate against a particular religion or even all religions. We all recognize that laws that intentionally discriminate against religious groups cannot be tolerated, and the courts already routinely invalidate such laws. Rather, this bill is directed at laws that apply to everyone equally, but have the effect of burdening someone's exercise of his or her religion. It is this indirect impact that the supporters are trying to address. However, in the process, the bill is entirely inconsistent with the principles of federalism, and it creates significant problems in many areas.

I would like to specifically address prisons. 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 established 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 legal protections 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 concerns an 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 to screen inmates for T.B. so 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 certain 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, and S. 2869 will make it much more likely that they will win. However, even if a prisoner's claim fails, it costs the prison much time and money to defend, at a time when prison costs are rising. The new legal standard will make it much harder to get cases dismissed before trial, greatly increasing the diversion of time and resources.

As former Senator Alan Simpson said during the debate on R.F.R.A. in 1993, applying this legislation to prisons will impose "an unfunded Federal mandate requiring the State and local governments to pay for more frequent, expensive, and protracted prisoner suits in the name of religious freedom."

Some have argued that the fact that S. 2869 must comply with the Prison Litigation Reform Act solves any problems regarding inmates. Unfortunately, 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, 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 in prison. If R.F.R.A. 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 liberty 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 Services, the Administration considers the predecessor 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 reaffirmed 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 should 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 defer to the professional judgment of the military on applying these rights in 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 essence of military 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 enforce a law or regulation that interferes in any 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 is the Armed Forces or anywhere else 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 be a standing invitation to a wholesale civilian judicial review of internal military affairs. . . . It would invite use of the results in civilian cases as a model for the military context when, in fact, the differences between civilian and military society are fundamental. Adoption of the civilian 'strict scrutiny' standard poses grave dangers to military discipline and interferes with the ability of the military to perform its mission."

The Armed Forces today fully accommodates religious practices. In fact, I have concerns about whether the Defense Department is too generous in what it is permitting on military bases today. For example, as reported last year in the *Washington Post*, Army soldiers who consider themselves to be members of the Church of Wicca are carrying out their ceremonies at Fort Hood in Texas. The Wiccans practice witchcraft. At Fort Hood, they are permitted to build fires on Army property and perform 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 win under R.F.R.A.

I do not believe that the Armed Forces should accommodate the practice of witchcraft at military facilities. The same 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 Rastafarians, 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, especially its repeated use, are simply not known, including the possibility of flashbacks 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 limits 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. Soldiers who adhere to various faiths, including many established religions, could make claims that violate important, well-established military policies. For example, soldiers who are Rastafarian 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 based on 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 observances 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 because of 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 liberty legislation to apply to our Armed Forces. Decisions about religious accommodation should 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 the name 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, 1999:

Andre P. Bacon, 21, Chicago, IL;  
Agron Berisha, 18, Miami, FL;  
Mark Douglas, 34, Fort Wayne, IN;  
Princeton L. Douglas, 18, Chicago, IL;

Willie Lassiter, 20, Atlanta, GA;  
Denkyira McElroy, 24, Chicago, IL;  
Jerry Ojeda, 23, Houston, TX;  
Rodney Prince, 18, Baltimore, MD;  
Jarhonda Snow, 4, Miami, FL;  
Unidentified Female, San Francisco, CA.

One of the gun violence victims I mentioned, 23-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 cannot sit back 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 technical and economic 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 \$28 million 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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 27, 2000.

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

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, FY2001 (Public Law 106-246). This action changed budget authority and outlays.

Sincerely,

DAN L. CRIPPEN,  
Director.

Enclosures.

TABLE 1.—FISCAL YEAR 2000 SENATE CURRENT LEVEL REPORT, AS OF JULY 26, 2000  
(In billions of dollars)

	Budget resolution	Current level <sup>1</sup>	Current level over/under resolution
On-budget:			
Budget Authority .....	1,467.3	1,484.8	17.5

TABLE 1.—FISCAL YEAR 2000 SENATE CURRENT LEVEL REPORT, AS OF JULY 26, 2000—Continued  
(In billions of dollars)

	Budget resolution	Current level <sup>1</sup>	Current level over/under resolution
Outlays .....	1,441.1	1,461.7	20.6
Revenues .....	1,465.5	1,465.5	(?)
Debt Subject to Limit .....	5,628.3	5,584.5	-43.8
Off-budget:			
Social Security Outlays .....	326.5	326.5	0.0
Social Security Revenues .....	479.6	479.6	0.0

<sup>1</sup> Current level is the estimated revenue and direct spending effects of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest information from the U.S. Treasury.

<sup>2</sup> Less than \$50 million.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE FISCAL YEAR 2000 SENATE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES, AS OF JULY 26, 2000  
(In millions of dollars)

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues .....	n.a.	n.a.	1,465,480
Permanents and other spending legislation .....	876,140	836,751	n.a.
Appropriation legislation .....	869,318	889,756	n.a.
Offsetting receipts .....	-284,184	-284,184	n.a.
Total, enacted in previous sessions .....	1,461,274	1,442,323	1,465,480
Enacted this session:			
Omnibus Parks Technical Corrections Act of 1999 (P.L. 106-176) .....	7	3	0
Wendell H. Ford Aviation Investment and Reform Act (P.L. 106-181) .....	2,805	0	0
Trade and Development Act of 2000 (P.L. 106-200) .....	53	52	-8
Agricultural Risk Protection Act of 2000 (P.L. 106-224) .....	5,500	5,500	0
Military Construction Appropriations Act, FY 2001 (P.L. 106-246) .....	15,173	13,799	0
Total, enacted this session .....	223,538	19,354	-8
Entitlements and mandates: Adjustments to appropriated mandates to reflect baseline estimates .....	-35	0	n.a.
Total Current Level .....	1,484,777	1,461,677	1,465,472
Total Budget Resolution .....	1,467,300	1,441,100	1,465,500
Current Level Over Budget Resolution .....	17,477	20,577	n.a.
Current Level Under Budget Resolution .....	n.a.	n.a.	28
Memorandum: Emergency designations for bills enacted this session .....	11,163	2,078	0

Source: Congressional Budget Office.

Notes: P.L. = Public Law; n.a. = not applicable.

#### THE PROJECT ON GOVERNMENT OVERSIGHT

Mr. BINGAMAN. Mr. President, on July 24, the chairman of the Committee on Energy and Natural Resources, brought before the Senate a report on payments made by the Project on Government Oversight, a public interest group commonly called "POGO," to two federal employees. Unfortunately, the chairman referred to the report in his remarks as a "committee report." It is not, and I think we need to set the record straight on that point.

The rules of the Senate give the Committee on Energy and Natural Resources, like all our standing committees, broad authority to "make investigations into any matter within its jurisdiction." But the power to make investigations rests with the Committee