did, neither do I. That is precisely the point.

The Babbitt-Reid proposal represents a sweeping change in Federal policy governing public lands, and yet there has not been a single hearing on the issue in this body. There is no committee report, no testimony, and no legislative history. Members of this body have had no opportunity to offer amendments or clarify particular provisions. This proposal was instead negotiated by the administration with a small, exclusive group of Members and presented to the Senate as a fait accompli. I would remind my colleagues that this provision appeared in neither the House nor the Senate bill.

There are a number of reasons why this Senator wants a more thorough hearing of this measure. First, I am very concerned about the potential impacts of the water rights language in the Babbitt-Reid proposal. Particularly worrisome is the provision in the bill that directs the United States to "assert its claims and exercise its rights to water developed on public lands to benefit the public lands and resources thereon." Rarely have I seen such a deceptively expansive sentence in a piece of legislation.

This and other provisions in the bill could impact all manner of development, and even prevent use of water derived from public lands. The Energy Committee has provided a partial list of just the hydroelectric projects that could be affected, and I note that the list includes two projects in Washington State. One of these projects, the Rock Island Dam on the Columbia River, is a massive 600-plus-megawatt facility that contributes a great deal of nonpolluting, renewable energy for the Northwest region. I would like to think I could trust the Interior Department not to use provisions of the Babbitt-Reid proposal to impose operating conditions on the Rock Island project, but I can not. I have the greatest respect for Bruce Babbitt, but it is clear that we view public land use issues differently. It is also clear that there will be many other Interior Secretaries after Mr. Babbitt, and that neither the proponents nor opponents of this legislation know how future administrations may interpret this language.

Mr. President, if we are given the chance to consider this issue in the proper legislative process, we will have the opportunity to seek answers to these questions. We will have an opportunity to clearly establish congressional intent, and can avoid the endless stream of lawsuits that will result from the Babbitt-Reid proposal if it is adopted.

This is not gridlock, Mr. President. This is a bipartisan group of concerned Senators that is insisting that Congress do its job properly. I do not generally have an objection to including authorizing language in appropriations bills when necessary, but it is absurd to include some 19 pages of such language without any compelling reason.

Proponents of the Babbitt-Reid language have argued that we do not have any choice but to accept the conference report, and that to refuse to invoke cloture is to endanger funding for any number of important items included elsewhere in the bill. Mr. President, this is nonsense. Particularly offensive is the notion that we are somehow compelled to accept the position of the House authorizing committee, despite the fact that the House itself has been roundly chastising this body all year long for including any authorizing language in appropriations bills.

If we fail to pass this bill, it will be the fault of those who are so doggedly insisting upon including all 19 pages of the Babbitt-Reid compromise. We have already had two cloture votes on this bill, and it is clear that it is going nowhere unless the Babbitt-Reid language is dropped. In this case, the "guardians of gridlock" are those who insist that the language be maintained.

I have every confidence that if concerned parties begin earnest negotiations aimed at giving the authorizing committees an opportunity to consider the administration's rangeland reform proposal, we can pass the conference report by Thursday evening. If we fail to do so, the blame will lie not with those Senators opposing cloture, but with those who insist upon ramrodding this provision through Congress on this appropriations bill.

ORDER OF PROCEDURE

Mr. KENNEDY. Madam President, I understand that the majority leader will be here momentarily to place before the Senate the Religious Freedom Restoration Act. When he does, as I understand it, the only amendments in order will be the Kennedy-Hatch clarifying technical amendments on which there will be a time limitation of 10 minutes; a Reid amendment on exempting prisons from the bill's provisions, 2½ hours. There will be 30 minutes for debate on the bill, with all time to be equally divided and controlled in the usual form; and that at the disposition of the aforementioned amendments and the use or yielding back of the time, the bill, as amended, if amended, be advanced to third reading.

That, as I understand it, is the current situation. We look forward to the opportunity to begin this extremely important and significant debate on one of the most basic and fundamental rights and liberties of our country. I see the majority leader on the floor.

I yield the floor.

RELIGIOUS FREEDOM RESTORATION ACT OF 1993

Mr. MITCHELL. Madam President, pursuant to the authority vested in me under order No. 163, regarding S. 578, I now ask the chair to lay before the Senate S. 578, the Religious Freedom Restoration Act, subject to the terms as set forth in that order.

The PRESIDING OFFICER. Under the previous order, the clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 578) a bill to protect the free exercise of religion.

The Senate proceeded to consider the bill.

Mr. MITCHELL. Madam President, I understand that there are likely to be two votes as a result of the consideration of this measure, pursuant to this order.

I now state that there will be no further rollcall votes this evening, and that the two votes on this measure will occur no earlier than 10 a.m. tomorrow. And I expect they will be at 10 a.m., but I will consult with the staffs, both Democratic and Republican, with respect to setting that precise time, and I will have an announcement on that shortly, either directly or through the managers.

So there will be no further votes this evening. I am advised that a request has been made by our colleagues that the vote tomorrow morning occur at 10. I want to check that with the staffs, and I will announce that shortly.

Mr. KENNEDY. Madam President, I yield myself 10 minutes.

Mr. KENNEDY. Madam President, many of the first settlers in America fled persecution abroad in search of religious freedom. The Nation founded by those courageous pioneers holds as one of its most basic rights the guarantee of that freedom.

Freedom of religion is the first right protected by the first amendment. Even before freedom of speech or freedom of the press, the first amendment prohibits government itself from establishing any form of state religion, or from interfering with any citizen's free exercise of religion.

The Supreme Court's 1990 decision in Oregon Employment Division versus Smith dealt a serious setback to this first amendment freedom. Before that decision, under long-established doctrines of constitutional law, actions by Federal, State, or local governments that interfered with a citizen's ability to practice religion were prohibited, unless the restriction met a strict two-part test—first, that it was necessary to achieve a compelling governmental interest; and second, that there was no less burdensome way to accomplish the goal.

The compelling interest test has been the prevailing legal standard protecting the free exercise of religion for nearly 30 years, and the standard had worked well. Yet, the Court in the Smith case saw fit to overrule that test. Instead, it declared that there is no special constitutional protection for religious liberty, as long as the law in question is neutral on its face as to religion and is a law of general application.

It is clear, however, that some general laws can burden the exercise of religion every bit as much as laws that

are directed specifically at religious activity. As Justice Sandra Day O'Connor stated in her separate opinion in the Smith case, which sharply criticized the Court's ruling:

[F]ew States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such. Our free exercise cases have all concerned generally applicable laws that had the effect of significantly burdening a religious practice. If the First Amendment is to have any vitality, it ought not to be construed to cover only the extreme and hypothetical situation in which a State directly targets a religious practice.

The reasoning of the Smith decision was also sharply criticized by Justice Souter in his concurring opinion last June in Church of Lukumi Babalu Aye versus Hialeah. Justice Souter urged the Court to reconsider the Smith rule, stating:

"Neutral, generally applicable" laws, drafted as they are from the perspective of the non-adherent, have the unavoidable potential of putting the believer to a choice between God and government.

In other words, a church denied the right to use wine in a communion service is just as adversely affected if the restriction is brought about by a general prohibition on alcohol consumption as by a specific law banning alcohol in religious services.

The Smith decision has created a climate in which the free exercise of religion is jeopardized. At the Judiciary Committee hearings on this legislation, the Reverend Oliver S. Thomas, appearing on behalf of the Baptist Joint Committee on Public Affairs and the American Jewish Committee, testified as follows:

Since Smith was decided, governments throughout the U.S. have run roughshod over religious conviction. Churches have been zoned even out of commercial areas. Jews have been subjected to autopsies in violation of their families' faith. * * * In time, every religion in America will suffer.

The Religious Freedom Restoration Act is designed to restore the compelling interest test for deciding free exercise claims. It does so by establishing a statutory right that adopts the standard previously used by the Supreme Court. In essence, the act codifies the requirement for the Government to demonstrate that any law burdening the free exercise of religion furthers a compelling governmental interest, and is the least restrictive means of achieving that goal.

The act creates no new rights for any religious practice or for any potential litigant. Not every free exercise claim will prevail, just as not every claim prevailed prior to the Smith decision. The bill simply restores the long-established standard of review that had worked well for many years, and that requires courts to weight free exercise claims against the compelling-state-interest test.

The act is supported by a broad coalition of organizations with differing views on many issues of our day, including the National Association of Evangelicals, the Baptist Joint Committee on Public Affairs, the American Civil Liberties Union, Concerned Women for America, People for the American Way, the American Jewish Committee, and the U.S. Catholic Conference. These organizations don't agree on much—but they do agree on the need to pass the Religious Freedom Restoration Act.

I commend my colleague Senator HATCH for his leadership and his commitment to this legislation. We are pleased to be joined by 59 of our colleagues in sponsoring this bill.

President Clinton has endorsed the legislation, and Attorney General Reno has written to express her strong support. The House of Representatives passed the bill by voice vote on the Suspension Calendar in May. I urge my colleagues to support this important and needed legislation.

Madam President, just before we begin the debate of our friend and colleague, Senator REID, on an important provision relating to prisons, I would like to make just some comments on that matter which we will have further opportunity to discuss this evening and perhaps for a brief time tomorrow before the vote.

The guarantee of freedom of religion protected by the first amendment contains no exemptions, and this legislation should contain no exemptions. We would encourage prisoners to be religious. There is every reason to believe that doing so will increase the likelihood that a prisoner will be rehabilitation.

The U.S. Department of Justice through the Bureau of Prisons operates 73 correctional facilities which house more than 84,000 inmates.

Attorney General Reno wrote to the Judiciary Committee to state that an amendment would be unwarranted and that the Senate should approve the bill without an amendment to exempt prisons from the legislation. I would like to read from that letter from the Attorney General:

Concerns have been expressed that the standard of review of S. 578 will unduly burden the operation of prisons and that the bill should be amended to adopt a standard more favorable to prison administrators when confronted with the religious claims of prisoners. These concerns have been presented by knowledgeable and sincere individuals for whom I have great respect, but I respectfully disagree with their position and urge the committee to approve the bill without amendment.

Prior to 1987, the Supreme Court had not distinguished explicitly between the standard of review applicable to the religious claims of prisoners and those of others. In that year, for the first time, it held that a prison regulation that impinges on an inmate's right of free exercise "is valid if it is reasonably related to legitimate penological interests." *O'Lone* v. *Estate of Shabazz*, 482 U.S. 342, 349 (1987), quoting *Turner* v. *Safley*, 482 U.S. 78, 89 (1987). Thus, the Court had abandoned the compelling interest standard regarding inmate claims only a few years prior to doing so for the general population in *Smith*

Prisons had operated under Sherbert for a number of years before O'Lone and Turner adopted a standard that is plainly less accommodating to the prisoners' exercise of religious rights. During that period, prisoners attempted to gain privileges based on fabricated free exercise claims. Not surprisingly, those types of claims have continued even under the standard of O'Lone and Turner. They will doubtless continue whether S. 578 becomes law or not.

In my view, the four dissenters in O'Lone had the better of the argument. They would have required prison administrators to demonstrate that the restrictions imposed in that case—preventing certain Muslims from attending a religious service central to their faith—furthered a compelling government interest and were no greater than necessary to achieve legitimate penological objectives. This standard parallels that incorporated in S. 578.

Certainly, the strong interest that prison administrators and society in general have in preserving security, order, and discipline in prison will receive great weight in the determination whether the government meets the compelling interest test when there is a claim that exercise of religious rights is burdened and whether it has pursued the least restrictive means of doing so. Activities that are presumptively dangerous or carry a demonstrable likelihood of jeopardizing discipline within a prison will continue to be subject to regulation after enactment of S. 578.

Likewise, prison administrators will retain authority, in many instances, to regulate the time, place, and manner of an inmate's exercise of religion. Restriotions that do not deny inmates the opportunity to engage in otherwise permissible religious practice, but merely require them to pursue such activities within the context of prison life, likely will not substantially burden inmates' free exercise rights and will be permissible.

This is the essential part of the Attorney General's letter—

I, therefore, strongly urge the Committee to approve S. 578 without amendment.

Similarly a total of 13 State attorneys general have signed a letter expressing the opposition to the Reid amendment.

I ask unanimous consent that that letter be printed at the appropriate place in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF NEW YORK,
DEPARTMENT OF LAW,
New York, NY, October 19, 1993.

DEAR SENATOR: The undersigned Attorneys General support the passage of the Religious Freedom Restoration Act ("RFRA"), S. 578, without amendment.

We oppose Senator Reid's amendment exempting prisons from RFRA and believe that the Senate Judiciary Committee's report language regarding RFRA's effect on prisoner claims strikes a proper balance between the right of free religious expression and the critical need for cost effective security and order in our nation's penal institutions.

Based on past experience with RFRA's legal standard, the bill will neither jeopardize prison security nor produce significant increases in costs. Although prisoner litigation is indeed an enormous and growing problem, free exercise of religion claims are made in only a tiny fraction of these cases. In New York, for example, only 1% of all cases involve free exercise claims, and the percentage of such cases has remained essentially constant in recent years even as Su-

preme Court decisions were substantially changing the applicable legal standard.

We concur with U.S. Attorney General Janet Reno in advocating adoption of RFRA without amendment.

Sincerely,

Robert Abrams, Attorney General of New York; Hubert H. Humphrey III, Attorney General of Minnesota; James E. Doyle, Attorney General of Wisconsin; Scott Harshbarger, Attorney General of Massachusetts; Larry EchoHawk, Attorney General of Idaho; Roland W. Burris, Attorney General of Illinois; John Payton, Corporation Counsel, District of Columbia; Michael E. Carpenter, Attorney General of Maine; Winston Bryant, Attorney General of Arkansas; Richard Blumenthal, Attorney General of Connecticut; J. Joseph Curran, Jr., Attorney General of Maryland; Dan Morales, Attorney General of Texas; Jeffrey B. Pine, Attorney General of Rhode Island.

STATE OF NEW YORK,
DEPARTMENT OF LAW,
New York, NY September 13, 1993.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

Hon. ORRIN G. HATCH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS KENNEDY AND HATCH: I write to express my support for passage of the Religious Freedom Restoration Act ["RFRA"] without amendment. I applaud your efforts for passage of this important legislation.

The bill you drafted promises to restore religious freedom to its proper place as a cornerstone of our country's best traditions of liberty, equality and faith. In addition, the Senate Judiciary Committee report language regarding RFRA's effect on prisoner claims strikes a proper balance between interests of religious liberty and religious rehabilitation of prisoners, on the one hand, and prison administration, on the other.

The principal assertion advanced by proponents of a prison amendment is that RFRA will lead to a significant expansion of prisoner litigation. This is a serious charge. As Attorney General of New York, the second largest state, I defend prisoner claims against one of the largest and most diverse prison systems in our nation. Prisoner litigation as a whole is a drain on the resources of attorney general's offices, and prisoners bring a significant number of frivolous claims. We would certainly be concerned about a large-scale expansion of such claims.

However, the significant increase in the number of prisoner cases in recent years has not been due to the standard that RFRA seeks to restore. While I believe that something must be done to address the serious problems caused by the explosion of prisoner litigation, this bill will, in fact, have little impact on the number of prisoner claims. Claims dealing with religious exercise constitute only about one percent of all prisoner claims in New York State.

I cannot speak directly for other State Attorneys General, but I am aware that a number of those who signed a May 5 letter endorsing a prison amendment have subsequently indicated, either privately or publicly, that the letter no longer represents their point of view on the issue. I would also point out that, at its Summer Meeting in July, the National Association of Attorneys General considered, but declined to adopt, a resolution endorsing a prison amendment to RFRA. Also, as you know, U.S. Attorney General Janet Reno, whose department administers the Federal prison system and handles all related litigation, has advocated adoption of RFRA without amendment.

I have the greatest respect for the men and women who face the unique difficulties and pressures associated with managing a prison. I also share your conviction in the central importance of religious liberty in our constitutional system. Because I believe that RFRA strikes the right balance between both interests, I applaud your efforts and hope that the Senate acts promptly to pass RFRA without a prison amendment.

Sincerely,

ROBERT ABRAMS.

Mr. KENNEDY. Madam President, I point out there are a number of State attorneys general who feel the other way.

Madam President, if I could yield myself just 3 minutes on the clarifying amendment.

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. KENNEDY. I think there is a designated 10 minutes on that, and I would like to yield myself from that time.

The PRESIDING OFFICER. The Senator has 10 minutes on the amendment. If there is no objection, the Senator can use his time.

Mr. KENNEDY. I will proceed for 3 minutes. I thank the Chair.

Madam President, this amendment I will offer on behalf of Senator HATCH and myself is intended to make it clear that the compelling interest standards set forth in the act provides only to Government actions to place a substantial burden on the exercise of substantial liberty. Pre-Smith case law which makes it clear governmental action places a substantial burden on the exercise of religion and must meet the compelling interest test set out in the act.

The act would not require such a justification for every governmental actions that have an incidental effect on religious institutions. The amendment we will offer today is intended to make it clear that the pre-Smith law is applied under the RFRA in determining whether Government action burden under the freedom of religion must meet the test.

Mr. President, I ask unanimous consent that it be in order to consider that clarifying amendment at the present time.

The PRESIDING OFFICER (Mr. CAMPBELL). Without objection, it is so ordered.

AMENDMENT NO. 1082

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mr. HATCH, proposes an amendment numbered 1082.

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, line 14, insert "substantially" before "burden".

On page 3, line 5, insert "substantially" before "burdened".

On page 3, line 7, insert "substantially" before "burdened".

On page 3, line 9, insert "substantially" before "burden".

On page 3, line 13, insert "substantially" before "burden".

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me say a few words about the technical amendment, and if I could talk about the bill itself I would appreciate it.

The distinguished Senator from Massachusetts has said the technical amendment is intended to clarify the compelling interest required by the Religious Freedom Act applies only where there is a substantial burden placed on the individual free exercise of religion.

This is consistent with the case law developed by the Court prior to the Smith decision, as thus stated in the committee report.

It does not require the Government to justify every action that has some effect on religious exercise. Only action that places a substantial burden on the exercise of religion must meet the compelling State interest set forth in the Religious Freedom Restoration Act.

With the permission of the distinguished Senator from Massachusetts, I urge adoption of the amendment.

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

Mr. HATCH. I yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1082) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah is recognized for 15 minutes under his control.

Mr. HATCH. Mr. President, I am pleased to join Senator KENNEDY as principal sponsor of the Religious Freedom Restoration Act of 1993. I urge its adoption without amendment.

The Religious Freedom Restoration Act restores to all Americans a fundamental right guaranteed by the first amendment: the free exercise of religion. This act is one of the most significant pieces of legislation in support of religious freedom to every come before Congress. It has the backing of one of the broadest coalitions ever assembled to support a bill before Congress. This coalition encompasses a wide range of religious faiths and an ideological spectrum ranging from the American Civil Liberties Union to the Coalitions for America.

Our Nation was founded, in large part, by individuals fleeing religious persecution and seeking tolerance,

safety, and protection in the exercise of their religion. Through the wisdom and foresight of the Founding Fathers, the Bill of Rights was drafted and ratified in the first Congress to protect the rights of individuals in our newly formed Republic.

Our forefathers fully understood the need to protect religious minorities. In the very first amendment to the Constitution, they choose to limit the power of Government and the will of the majority from unnecessarily burdening an individual. The first amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Recently, in Employment Division versus Smith, the Court departed from well established principles embodied in the first amendment when the Court ruled that any valid State interest would supersede an individual's right of free exercise of religion. In a practical sense, the decision eliminated any real protection for religious exercise whenever a law of general applicability burdens such exercise. In my view, the Smith decision does not adequately protect the religious privileges envisioned by our founding fathers and embodied in the first amendment.

The elimination of the compelling interest standard has led to a string of lower court decisions eroding freedom of religion in a wide variety of areas. To date, the lower courts, relying on Smith, have overridden religious liberty interests in over 60 cases.

For example, in a Minnesota case, *Matter of Welfare of T.K.*, 475 N.W.2d 88 (Minn. App. 1991), county government officials were comfortable in seeking the removal of two minor children from their homes and parents when the minors' parents refused to allow their children to take a standardized test in violation of their religious beliefs. The childrens' mother had been home teaching her children in several subjects including reading, writing, literature, fine arts, mathematics, science, history, geography, health, and physical education. The county government, however, sought and won court approval to remove the children relying on neutral State laws permitting the removal of children determined to be in need of the Government's protection.

In another case, *Greater New York Health Care Facilities* v. *Axelrod*, 770 F.Supp. 183 (S.D.N.Y. 1991), the court summarily rejected challenges to health regulations limiting the service of volunteers in nursing homes despite the fact the services represented a fulfillment of Biblical commandments to honor one's father and mother. Thus, an individual who, because of his strong religious beliefs, desires to volunteer his service to his convalescent parents can be prohibited from doing so. More important, if this legislation is not enacted, an individual would have no basis to challenge Government regulations which infringe on the rights to the free exercise of religion.

This is really an important bill.

In still another case, *Cornerstone Bible Church* v. *City of Hastings*, 948 F.2d 464 (8th Cir. 1991), a court upheld zoning laws excluding all religious organizations from engaging in church-related activities in a city's central business district. The churches' claims which relied on the free exercise clause were summarily dismissed, reaffirming that this clause in the first amendment has been seriously eroded after the Smith decision.

In yet another example of the devastation Smith continues to spread on those dependent on the free exercise of religion, Mr. You Vang Yang suffered a terrible experience when State government officials performed an autopsy on his son despite his deeply held religious beliefs prohibiting the mutilation of the body through an autopsy. Government officials, acting primarily out of medical curiosity, callously ignored the decedent's and his family's firmly held religious beliefs. Once again, after the Smith decision, the victims were left without recourse to challenge effectively the presumptively valid governmental regulations.

Originally, senior district court Judge Pettine ruled in favor of Mr. Yang. In his subsequent opinion, senior district court Judge Pettine explained how the Smith decision left him powerless to protect those asserting their religious liberty. He expressed his deep regret that the Employment Division case mandated the recall of his prior opinion. He stated:

My regret stems from the fact that I have the deepest sympathy for the Yangs. I was moved by their tearful outburst in the courtroom during the hearing on damages. I have seldom in twenty-four years on the bench, seen such a sincere instance of emotion displayed. I could not help but also notice the reaction of a large number of Hmongs who had gathered to witness the hearing. The silent tears shed in the still courtroom as they heard the Yangs testimony provided stark support for the depth of the Yangs' grief.

That is a judge speaking, who had no choice, because of the Smith decision, other than to rule the way he did in his opinion.

This bill is important to our country because it restores to every American the precious balance conceived by our Founding Fathers between the interests of our government and the religious liberties of our citizens. It is important because it restores protection to individuals like the Yangs and others who have suffered needlessly. This bill will restore religious freedom to every American whose free exercise of religion has been infringed upon unnecessarily by our Government.

Mr. President, this is an important bill. This bill involves the rights of every American citizen.

The Smith case was wrongly decided and the only way to change it is with this legislation.

Mr. President, I hope this legislation is not amended in any way, because religious freedom ought to be encouraged in this country. It is the first freedom mentioned in the Bill of Rights. And, frankly, that is what Senator KENNEDY and I are arguing for here today with a wide, vast coalition across the country that believes in restoring religious freedom to the point where it was before the Supreme Court decision in Smith.

Mr. President, I reserve the remainder of our time. We are prepared to move to the amendment of the distinguished Senator from Nevada.

Mr. REID. Mr. President, how much time do the proponents of the bill have?

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes 56 seconds, and the Senator from Utah has 7 minutes and 12 seconds.

There are 2½ hours on the Reid amendment.

AMENDMENT NO. 1063

(Purpose: To prohibit the application of this Act, or any amendment made by this Act, to an individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility)

Mr. REID. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself, Mr. SIMPSON, Mr. BRYAN, Mr. SASSER, Mr. MATHEWS, Mr. BURNS, and Mr. HELMS, proposes an amendment numbered 1063.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill, add the following:

SEC. . CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act or any amendment made by this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment regarding laws prohibiting the free exercise of religion, with respect to any individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility (including any correctional, detention, or penal facility that is operated by a private entity under a contract with a government).

Mr. REID. Mr. President, this amendment is being offered on my behalf, that of Senator SIMPSON, Senator BRYAN, Senator SASSER, Senator MATHEWS, Senator BURNS, and Senator HELMS.

First, let me say I am proud to be a cosponsor of this important legislation. I congratulate the authors and the committee for creating a fine bill. This bill will reestablish the judicial test regarding any Federal or State law impacting the freedom of religion. That test is that the Government must put forth a compelling interest, narrowly tailored, regarding any rule, regulation of law impacting the free exercise of religion.

The Government must also show that this rule is the least restrictive alternative. In society at large, this is as it should be.

I am concerned, however, because I have come to realize last year in our federal system we had 48,538 criminal cases filed. I also learned that in that same Federal system we had 49,939 civil cases brought by prisoners. We had more cases filed by prisoners than the Government filed cases against criminals. I am concerned the criminals are ahead in our Federal court system by 1,401 cases.

What my amendment would do is recognize that the situation in prisons is different. Prisoners should be treated differently.

I have become concerned with what this bill will mean in a prison setting. Putting prisons under the compelling State interest test would permit the courts to second guess prison officials on virtually every decision of prison administration—virtually every decision. The prisoners brag about how many lawsuits they file. There are some jailhouse lawyers who have filed hundreds and hundreds of these cases.

Inmates are litigious by nature, especially with the new rules. They have to be supplied with law libraries with the ability to perform legal services. So applying the compelling State interest test would only exacerbate an already, I believe, deplorable situation. Prisoners would challenge every aspect of their incarceration by merely stating their desires are part of their religious expression, and the lawsuits will be more easily won than in the past.

Courts will no longer be able to dismiss cases by summary procedures, for example, a motion for summary judgment. Rather, there will have to be full-blown evidentiary hearings to determine whether the prisons have any other means available to accommodate the inmate.

This is going to cause significant financial hardship to a State like Nevada, a State like Colorado, a State like New Hampshire—any State. Already prisoner litigation is the most rapidly increasing type of litigation in our whole country and makes up as much as 40 percent of the docket of some Federal district courts.

Let me give a few examples to the Senate to illustrate some of the problems faced by prison administrators when religion is used as a means of obtaining special privileges or exemptions from the requirement of neutral prison facilities and regulations.

Mr. President, I ask I be advised when I have used 30 minutes.

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mr. REID. In the case of Lawson versus Dugger, the "Temple of Love," founded by Yahweh Ben Yahweh—he was recently convicted of conspiracy to commit murder and racketeering. He attempted to send this Temple of Love's racially inflammatory literature into the State prison system by asserting it was religious material, protected by the first amendment. There were gruesome cartoon illustrations of African-Americans being mutilated, tortured, and generally oppressed by whites. And what accompanied this was a text preaching racial hatred and the need for separation, which formed the basis of the religious tracts contained in this material.

The U.S. District Court for the Southern District of Florida, applying the compelling State interest test and the strict scrutiny analysis, ordered Florida to provide this literature to the inmate population.

Hard to comprehend, but true. The final outcome of this case is still pending because it is on appeal. Obviously the passage of this bill, without my amendment and that of Senator SIMPSON and others, will affect the final outcome.

In Indiana a religious group, at Westville Correctional Center, has demanded to meet in groups combining inmates who have been separated for security reasons. Though in an ideal world we would say the congregations should be able to worship together, there are certain very bad people in prisons that should not be in the same room together.

I had a case once—I can still remember the name of it—involving a murder-by-hire case. In that case we brought inmates from the Nevada State prison, from Carson City, to Las Vegas to testify. There were two of them, so bad that they had to testify on the witness stand shackled, arms and legs.

There are certain people in our prison system that for lack of a better word are just bad people. This religious group wanted to meet in groups saying they had no right to separate inmates for security reasons. It is just a fact of prison life; RFRA will create this dangerous situation unless we amend this bill.

In Tennessee, four white inmates convinced prison officials that they were converted Moslems, thereby gaining assignment to a special scheduled labor line the prison had created just to accommodate Moslems. This allowed outside accomplices to place guns at the work site, which allowed the inmates to escape, where they killed a nearby resident.

I am going to talk about a couple of cases here involving the Moslem religion. Having done this, I am only doing this because these are some of the reported cases. I want the record to be spread—I have the highest regard for those who follow that faith. My manager of my Las Vegas office until just a short time ago was a Moslem, a man who is devoutly religious, a tremendous family man, a person whom we could all learn a lot from as to morality. He left my office and went to the State to be its drug czar and now has a very important job with the State in a labor program.

So, even though I mention a number of reported cases dealing with people who practice the Moslem religion, it has nothing to do with my thinking that the religion is not a good one. I believe it is a wonderful religion.

Recently we watched the life threatening situation in Lucasville, OH, where some Moslem inmates demanded, as a condition to the release of their hostages, an exemption from the requirement they be tested for tuberculosis, asserting religious reasons. We cannot allow that to happen. Prison is a closed society with prisoners living very close. They must be tested for contagious disease. Testing is absolutely, unequivocally necessary. Such a group might win a case like this if this bill is adopted without my amendment.

All I am saying is we have to treat prisoners differently than the general populous. I do not think that is really out of line.

Under the least restrictive means clause of RFRA, such a group might be able to win other costly arrangements to separate them from the rest of the prison population. Not only would that be costly to the State, but creates a dangerous situation with jealous prisoners seeing others get special privileges. It is the prisoner who can think up the religion of the week or the day that gets treated the best.

I could go on and on with all kinds of other cases. The cases only get more bizarre, and under RFRA they would become even more bizarre and more winnable by the inmates. We have had all kinds of cases in Nevada.

The one I think I should report to the Senate is, some man said he was in prison for child abuse but he should not be because it was his religion. He believed in abusing children. That was his religion and they should leave him alone.

Suits brought by prisoners in my State have already cost our State over $1 million a year and the price is going up. These are only the cases dealing with religion.

Passage of this bill without my amendment would increase the cost across this country. Prisons already do a good job of accommodating Jewish and Moslem prisoners by providing pork-free meals, and other accommodations similar to this have been made. For example, several prisons have built sweat lodges for Native American inmates. The reason for that is they can do it; it is felt it is the right thing to do. So we have, especially in the western part of the United States, a number of prisons that have sweat lodges which is part of the exercise of religion of some Native Americans.

A case in 1989, when an orthodox Jewish leader was put in jail in Rochester, MN, demonstrates how far prison systems will go to accommodate religious practice. Talmudic law, according to this Jewish leader who was in prison, forbids carrying anything outside the home on the Sabbath, including toiletries and food. So prison officials sold part of the prison to this Jewish inmate for $1, making it technically

his home and allowing him to carry his toiletries to his restroom.

This is how far prison officials have gone to accommodate people's religion. but where do we draw the line? Is every prisoner thereafter entitled to his own room that he purchases? Where do we draw the line? I do not believe that the test should be whether the request is reasonable or not. I do not believe the authors of this bill intend the consequences that I have outlined briefly.

The courts, for the most part, have long given great deference to prison officials when it comes to constitutional rights of prisoners. My amendment is supported by every warden, every prison director in every State in the Union. I ask unanimous consent that a letter signed by all 50, including those from the Virgin Islands, all 50 State prison directors be printed in the RECORD in support of this amendment.

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

ILLINOIS DEPARTMENT
OF CORRECTIONS,
Chicago, September 17, 1993.

Hon. HARRY REID,
U.S. Senate, Washington, DC.

DEAR SENATOR REID: As directors and commissioners of every state prison in the United States, the District of Columbia, the United States Virgin Islands, and various jail systems throughout the country, as well as Norman Carlson, former Director of the Federal Bureau of Prisons for seventeen years and J. Michael Quinlan, Director from 1987–1992, we are writing to thank you for proposing the amendment of Senate Bill 578 (the Religious Freedom Restoration Act, RFRA). The undersigned prison and jail officials represent systems which employ over 305,000 people and have custody of nearly 834,000 incarcerated persons.

This bill will have a devastating affect on prison safety and security at an enormous fiscal price, unless the Reid amendment is adopted. Rather than a "restoration," RFRA would dramatically change the law with respect to free exercise claims brought to challenge prison regulations. A dramatic change in the legal standard applied in prison litigation will necessarily result in a dramatic increase in the amount and cost of litigation and will have a deleterious impact on security and limited prison resources.

During consideration of this bill in committee, not one single prison administrator was given an opportunity to testify as to the substantial negative impacts of imposing a "compelling state interest" standard and "least restrictive means" test on local, state and federal correctional and detention facilities. Some proponents of the bill argue that the "compelling state interest" standard will not be a difficult standard for prison officials to meet. In the absence of any testimony from individuals with experience in this area, it is difficult to imagine how these proponents can reach this conclusion.

More importantly, this argument ignores the fact that imposition of the "least restrictive means" test will subject the day-to-day judgment of prison officials to an inflexible strict scrutiny analysis by federal courts which are ill-equipped to administer the security of our prisons and jails. This test does not allow for a balancing of individual rights and institutional needs. Rather, it elevates asserted individual inmate rights over the operational needs of prisons and the rights of the inmate population as a whole. In addition, litigation under this test will impose unnecessary costs on the taxpayers of our states and ignores the realities of prison management.

While we applaud your efforts to extend protection to legitimate religious groups in society at large, we ask that you recognize the unique nature of the closed society of prisons, as the United States Supreme Court has long done. The legal standards promulgated by the Supreme Court in the prison context should be preserved. The existing standard requires prison administrators to accommodate the religious practices of inmates in our care and custody. However, it permits individual rights to be balanced against the needs of the prison community as a whole and the overriding need for security and order.

Leaders of illicit prison organizations are sophisticated individuals who will readily manipulate the new standards RFRA would create to perpetuate illegal and dangerous activities under the guise of "religion."

Because of our responsibilities and experience as prison administrators, we are aware that there are thousands of gangs and racial supremacist groups housed in this country's prisons, who claim to be members of religious organizations. Often, we have faced attempts to spread racial hatred and incite racial violence through "religious" materials. Further, religious claims have been used to attempt to gain special privileges. Inmates even have devised their own new religions with tenets tailored to obtain special favors and circumvent security regulations. However, courts are extremely loathe to find that a group claiming to be a religion is, in fact, not a religion. Courts have found that the Church of the New Song (CONS for short), the El Rukns, Satanic cults, and other groups are "religious." Thus, each restriction on their activities will need to be the "least restrictive" and supported by compelling reasons.

If prisons are not exempted from RFRA and the existing legal standard preserved, such groups will be able to conduct congregate services, distribute hate literature, organize, and conduct and promote activities which are now banned. Activities including drug trafficking, racial violence, and gang organizing would be made easier under RFRA. These activities negatively impact on prison order as well as the free community.

Correctional facilities are operating with diminished economic resources and the inmate population is exploding. Prison litigation is already placing a tremendous drain on those limited resources. While inmates litigate at no or little cost to themselves, taxpayers are required to subsidize the filing fees of inmates, pay for paper, law books, legal assistance, postage, Xeroxing, and witness production for prisoners' suits. Out of already strained prison budgets, we must pay for transportation of witnesses, additional security and transportation of inmates to court appearances, legal assistance for correctional officers, and significant amounts of lost staff time spent responding to inmate claims, most of which are spurious. Prison officials cannot afford to divert limited resources to litigate the staggering number of inmate cases which would be spawned by creating a new cause of action, under a more stringent standard, as RFRA proposes to do. In addition, we may be forced to re-litigate all of the cases in which we have already prevailed under the existing constitutional standard.

RFRA would provide inmates with rights even greater than the Constitution guarantees. RFRA would be used by inmates to cripple correctional authorities' efforts to contain illegitimate organizations and to restrict their nefarious activities. Because of the tremendous impact on security and state and local governments' finances, we urge you to support the Reid amendment and preserve the existing legal standards enunciated by the Supreme Court in the prison area.

Sincerely,

Norm Carlson, Director, Federal Bureau of Prisons (Ret.), 1970–1987.

J. Michael Quinlan, Director, Federal Bureau of Prisons (Ret.), 1987–1992.

Howard A. Peters III, Director, Illinois Dept. of Corrections Inmate population: 33,500.

James H. Gomez, Director, California Department of Corrections. Inmate population: 116,200.

Larry Norris, Acting Director, Arkansas Dept. of Corrections. Inmate population: 7,900.

Thomas A. Coughlin, Commissioner, New York Department of Corr. Services. Inmate population: 64,500.

Kenneth L. McGinnis, Director, Michigan Dept. of Corrections. Inmate population: 39,300.

Harry Singletary, Secretary, Florida Dept. of Corrections. Inmate population: 51,500.

Andy Collins, Director, Texas Institutional Division—TDCJ. Inmate population: 60,400.

Allen L. Ault, Commissioner, Georgia Dept. of Corrections. Inmate population: 28,000.

Reginald Wilkinson, Director, Ohio Dept. of Rehabilitation and Corrections. Inmate population: 39,400.

Joseph D. Lehman, Commissioner, Pennsylvania Dept. of Corrections. Inmate population: 25,800.

Franklin Freeman, Secretary, North Carolina Dept. of Corrections. Inmate population: 21,100.

Richard A. Lanham, Sr., Commissioner, Maryland Division of Corrections. Inmate population: 19,900.

Edward W. Murray, Director, Virginia Dept. of Corrections. Inmate population: 17,000.

William H. Fauvar, Commissioner, New Jersey Dept. of Corrections. Inmate population: 23,700.

Thomas Herring, Commissioner, Alabama Dept. of Corrections. Inmate population: 18,238.

Samuel A. Lewis, Director, Arizona Dept. of Corrections. Inmate population: 17,200.

Parker Evatt, Commissioner, South Carolina Dept. of Corrections. Inmate population: 17,100.

Richard Stalder, Secretary, Louisiana Dept. of Public Safety & Corrections. Inmate population: 16,500.

H. Christian DeBruyn, Commissioner, Indiana Dept. of Corrections. Inmate population: 14,800.

Christine Bradley, Commissioner, Tennessee Dept. of Corrections. Inmate population: 11,350.

Chase Riveland, Secretary, Washington Dept. of Corrections. Inmate population: 10,000.

Dora Schriro, Director, Missouri Dept. of Corrections. Inmate population: 16,337.

Walter B. Ridley, Director, Washington, D.C., Dept. of Corrections. Inmate population: 12,000.

Larry DuBois, Commissioner, Massachusetts Dept. of Corrections. Inmate population: 10,000.

Jack Lewis, Commissioner, Kentucky Dept. of Corrections. Inmate population: 10,000.

Eddie Lucas, Commissioner, Mississippi Dept. of Corrections. Inmate population: 9,670.

Frank Hall, Director, Oregon Dept. of Corrections. Inmate population: 6,500.

Ron Angelone, Director, Nevada Dept. of Prisons. Inmate population: 6,400.

Sally Chandler Halford, Director, Iowa Dept. of Corrections. Inmate population: 4,700.

Patrick Fiedler, Secretary, Wisconsin Dept. of Corrections. Inmate population: 8,500.

Gary Stotts, Secretary, Kansas Dept. of Corrections. Inmate population: 6,200.

J. Patrick Gallagher, Commissioner, Philadelphia Prison System. Inmate population: 4,900.

Robert J. Watson, Commissioner, Delaware Dept. of Corrections. Inmate population: 4,300.

J.W. Fairman, Executive Director, Cook County Dept. of Corrections. Inmate population: 9,141.

Eloy Mondragon, Secretary, New Mexico Corrections Department. Inmate population: 3,500.

George ——, Director, Hawaii Department of Public Safety. Inmate population: 2,674.

Ari Zavaras, Executive Director, Colorado Dept. of Corrections. Inmate population: 7,535.

James Gamble, Administrator, Montana Corrections Division. Inmate population: 1,521.

O.L. McCottar, Director, Utah Dept. of Corrections. Inmate population: 2,110.

Larry Fields, Director, Oklahoma Dept. of Corrections. Inmate population.

Orville B. Pung, Commissioner, Minnesota Dept. of Corrections. Inmate population: 4,000.

George A. Vose, Jr., Director, Rhode Island Dept. of Corrections. Inmate population: 3,000.

Harold Clarke, Director, Nebraska Dept. of Corrections. Inmate population: 2,700.

N.E. Pishon, Acting Commissioner, New Hampshire Dept. of Corrections. Inmate population: 1,700.

Richard A. Vernon, Director, Idaho Dept. of Corrections. Inmate population: 2,400.

J. Frank Prewitt, Jr., Commissioner, Alaska Department of Corrections. Inmate population: 2,878.

Nicholas Thin, Commissioner, West Virginia Department of Corrections. Inmate population: 2,000.

Elaine Little, Director, North Dakota Dept. of Corrections. Inmate population: 1,500.

Lynne DeLano, Secretary, South Dakota Dept. of Corrections. Inmate population: 1,550.

Judith Uphoff, Director, Wyoming Dept. of Corrections. Inmate population: 900.

John Gorczyk, Commissioner, Vermont Dept. of Corrections. Inmate population: 900.

Larry R. Meachum, Commissioner, Connecticut Dept. of Corrections. Inmate population: 12,200.

Donald L. Allen, Commissioner, Maine Dept. of Corrections. Inmate population: 1,519.

James E. Aiken, Director, U.S. Virgin Islands. Inmate population: 502 local, 144 mainland; Total 646

Mr. REID. Mr. President, as I said, the courts have long given great deference to prison officials when it comes to constitutional rights of prisoners. There are three cases that provide the test currently applied to the prison situation: The Turner case, the O'Lone case, and the Thornburgh case. All this amendment does is make these cases the law of the land. Prisoners still have rights. They still can exercise their religion, but the standard set is now one already in law. What the bill would do is have that evaporate, start all over, and that is wrong. We should go with what we already have.

These cases establish a four-part test for evaluation of prison regulations which allegedly infringe upon inmates' constitutional rights. They are:

First, a logical connection between the correctional institution's regulation and the legitimate Government interest asserted as justification for the regulation.

Second, if alternative means of exercising the right are available, more deference is owed to prison officials when gauging the validity of the regulation than to the prisoners.

Third, consideration must be given to the impact that accommodation will have on prison personnel, other inmates, and on allocation of prison resources.

And fourth, the absence of ready alternative means to fully accommodate inmates' asserted constitutional rights is evidence of the reasonableness of the regulation.

Four simple standards, and that is all this amendment does is maintain these four standards. I am at a loss as to why the authors of this bill will not accept this amendment. Senator SIMPSON filed a minority report which I think was very lucid and pointed, and I think the committee should have followed him. I think this amendment will be adopted by the Senate because it is the right thing to do.

This standard that I have established in my statement to the Senate tonight and also the amendment I offered gives prison officials clear guidelines on which to base regulations. Under these guidelines, prison regulations which impact on the exercise of first amendment rights will pass constitutional muster if they are—and this is a key phrase—"reasonably related to legitimate penological interests." Very simple.

If these Supreme Court decisions are overturned by this legislation—and this is the stated purpose in the committee report—these clearly stated guidelines will no longer exist. My amendment contains these clearly articulated guidelines in the prison situation by stating that it is not the intent of this legislation to overturn the three Supreme Court cases I have mentioned.

The "reasonably related to penological interests standard," which my amendment maintains, is appropriate in the prison context, due to the closed nature of a society where prisoners live. In prison, the balance between the State's interest and the individual's rights must consider factors far different than those considered in society at large. For instance, drugs, violent behavior, gangs, racism, and bigotry are much more pernicious in prison. Inmates are unable to walk away or avoid offensive conduct. Jews, Catholics, Muslims, white supremacists, Protestants, cultists of all kinds are packed together in close quarters, very close quarters.

An incident that happened in a prison in Tallahassee, FL, demonstrates how heated religious issues can get in close quarters of a prison. Mr. President, a group of inmates formed a pagan religious group which worshipped the Sun and Moon and held elaborate rituals at the vernal and autumnal equinox. They requested a round wooden altar, a sword, and a naked woman to dance in the moonlight.

You will have to admit this religion is interesting, to say the least. Prison officials refused the sword and the woman, but they agreed to the altar and had the prisoners in the woodshop build it. But it turned out that the inmates building the altars were fundamentalist Christians, who decided to hide a Bible in the altar's base. After several rituals, the pagans discovered the Bible and a riot ensued.

This shows that inmates' individual rights must be balanced against those of the prison community as a whole and must yield where security and order reasonably demand.

In Turner, one of the cases my amendment maintains, the Supreme Court summarized the impact of holding corrections to the "compelling State interest" test and the "least restrictive means" standard:

> Subjecting the day-to-day judgments of prison officials to an inflexible, strict security analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbitrators of what constitutes the best solution to every administrative problem, thereby unnecessarily perpetuating the involvement of the Federal courts in the affairs of prison administration.

RFRA establishes the same standard for everyone, including prisoners. That is what I object to, and that is what my amendment would resolve. Though incarceration does not terminate the free exercise of religion, it is necessarily restricted. That is not asking too much. According to O'Lone, another of the cases my amendment maintains, these restrictions arise from incarceration itself and from valid penal objectives, including deterrence of crime, rehabilitation of prisoners, and institutional security. The committee report clearly states that it intends to overturn the O'Lone case. I object to that. My amendment would correct that. Remember, we are talking about last year the prisoners being ahead. They are ahead by 1,401 cases. We have 48,538 cases filed against prisoners, against criminals, but the prisoners beat us. They filed 49,939 civil cases in the Federal court system. We have to put a limit to this and give the court some direction and guidelines.

According to the standards of O'Lone, we know what they are, we can

follow what they are, and it should be maintained in law.

In 1940, the Supreme Court held in Cantwell that although the first amendment guarantee of free religious belief is absolute, the free exercise of religion is necessarily subject to regulation for the protection of society. There can be no better illustration of this than the prison situation.

Again, in O'Lone, the Supreme Court stated that the right to free exercise of religion does not terminate at the prison gates but is necessarily restricted due to one's incarceration.

As stated by Mary Schnabel in an article in the Willamette Law Review, subjecting prison regulations to the same high standard of review as the laws generally applicable outside correctional institutions is impractical and contrary to two decades of case law.

I could not agree more with this Law Review article.

So I am asking the Senate tonight to not do that. We must recognize incarceration is a special situation. We must keep in mind that my amendment does not take away from prisoners the right to free exercise of religion. It merely maintains the status quo which has been long established by case law.

The intent of the amendment is to head off the rapid increase in religion-related litigation that prisoners will bring if the bill passes without amendment. Whether the suits are frivolous or not, they still take up the court's time and cost the taxpayers money. This amendment is supported by all 50 State prison directors. It is supported by a majority of the State attorneys general. It is supported by the American Federation of State, County, and Municipal Employees, and it is supported by many, many Governors.

Mr. President, why send an invitation to prisoners for more suits? Passing RFRA without my amendment would just be another unfunded mandate for the States.

I reserve the remainder of my time. Prior to doing so, though, I would like to commend and congratulate and applaud the Senator from Wyoming, who is a member of the Judiciary Committee.

As I indicated before he came to the floor, the minority report which was filed out of the Judiciary Committee was a very fine piece of work, an I am proud to join with the Senator from Wyoming in sponsoring this amendment.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming, Mr. [SIMPSON] is recognized.

Mr. SIMPSON. Mr. President, now the item of business before the floor is the amendment of the Senator from Nevada.

The PRESIDING OFFICER. That is correct.

Mr. SIMPSON. I am a cosponsor of that amendment with the Senator from Nevada and I will now speak on that amendment.

Mr. President, this is very interesting business, this issue of the restoration of the religious freedom. The Religious Freedom Restoration Act—with a name like that, how can you possibly turn your back on it?

I had serious concerns on it when it came before the Judiciary Committee. I continue to have the most grave concerns about both the bill's scope and its potential breadth, and its impact, if it is enacted into law. I commend my friend from Nevada on his amendment. This is a fascinating place, we are adversaries one day, and allies the next. That is what makes it such a unique and remarkable institution. I do not think laymen understand that. But certainly anyone who has legislated understands that. That is why it is a pleasure to work with my colleague, Senator REID, and to join him on this amendment.

I hear clearly the arguments about this bill. But I am still not convinced in any way that Congress should properly be inserting itself into the process of judicial review of constitutional challenges to State criminal laws even in an area as vital to our way of life as the freedom to exercise our religion.

There are a couple of important points to discuss. I hope someone out there will hear me. I think my colleagues are perhaps not attentively listening to the remarks on the floor at the present time.

Let us remember that the underlying issue of the Smith decision which created the Supreme Court decision was Oregon's criminal law, which prohibited the possession and use of peyote, with no exception for legitimate religious use—even possession by members of the Native American church.

I would add that I have notified my fine Native American constituents, the Shoshone Tribe, and the Arapaho Tribes of Wyoming, that I would indeed support a statute properly constructed creating an exemption for the religious use of peyote.

I am sensitive to their concerns on that issue, always have been. I am ready to support such an appropriate bill. I have relatives who worked on the Shoshone reservation, my grandmother's brother married a full-blooded Shoshone. In my family, Richard Brunett, a Native American, and I share a common great grandfather. These are very sensitive things to me. But we are not talking about that here.

The strangest part of our work here is that we do things, you either kill or pass a bill based on a death blend—I have said this about 150 times—a death blend of emotion, fear, guilt, or racism. What a poor way to do the Nation's business.

I support religious freedom. Who does not? I always have. Any thoughtful person does. Yet, I have serious doubts about this bill.

So now not only do we have a death blend of guilt, fear, emotion, and racism, now we can add the misuse of religion to the list.

The Religious Freedom Restoration Act, RFRA—despite its lofty title—has much less to do with the historical and constitutional concepts of religious freedom than with the creation of new rights—ones that could prove particularly helpful and useful to hardened criminals and prisoners. It would, therefore, deeply frustrate prison officials, prison discipline, and the courts.

Rather than protecting religious freedom, RFRA would create another series of rights, private rights that would ignore generally applicable criminal law and otherwise reasonable restrictions on behavior in the prison environment.

For example: Under the proposed legislation prisoners may be able to conduct animal sacrifices in the name of religious freedom. We are beginning now to hear from the animal rights people. They have finally entered the realm of recognition in what we are doing here. We certainly have heard from the prison administrators who have been fully aware of what is happening here.

If I am totally over the wall on this one, then six Justices of the U.S. Supreme Court must be just as wrong-headed and misguided as I am. For that was the vote in the Smith decision, 6 to 3.

Key law enforcement personnel, whose duty it is to be sensitive to prisons, share my concerns about this law. Half of the attorneys general of the United States, including Wyoming's own fine attorney general, Joe Meyer, a Democrat, not of my particular political faith, but a man for whom I have great respect and regard, sent me a letter outlining their fears.

I heeded their views in my vote. So it is a great pleasure to join with Senators REID, BRYAN, SASSER, MATHEWS, and BURNS, to exempt State and Federal prisons from the bill's application. That will remove a very significant budget and prison security impact on our Federal, State, and local criminal justice systems imposed by the bill. Pursuant to the amendment, I expect that other uses of rituals disruptive to prison management will not be allowed in prisons, and the courts will not overrule the prison administrator's prohibition on such behavior.

I think we want to remember that what we are talking about here is a very narrow issue. We are talking about legislation which will make it possible for litigants of many different religious beliefs to challenge these State and Federal laws that somehow burden some of the acts that are engaged in as part of their unique and individual religious beliefs. We must always be mindful that we are not concerned in any way here with the Supreme Court ruling addressing restrictions or regulation of beliefs. We are talking about acts. That is a crucial distinction that was missed in Judiciary, and it was obviously missed on

this floor in many other issues raised by the legislation.

I have many, many questions. In committee, I did not delay action, but I am certainly opposed to it. I was the only one that voted against it in Judiciary, and since then, people around the country have awakened from their slumbers with regard to at least this amendment.

We have an extraordinary array of State attorneys general and prison administrators, who were never consulted nor present at the single hearing—that is all there was, a single hearing. While I am not aware of whether any of these prison officials had the opportunity to give testimony. I do not believe the prison officials really were allowed to be involved in the issue. I do not think people had the benefit of their thoughtful views. I said at the time in the Judiciary Committee that I thought another hearing was in order. But remember the distraction here—the Smith case involved a law which prohibited an act not a belief, and that prohibition burdened the exercise of a religion.

If the intent of this legislation was to require strict scrutiny—an almost insurmountable burden of proof—of laws which prohibit acts in furtherance of a religious belief, why does the legislation not say that? It occurs to me that this language—the burdening of the exercise of religion—would serve to elevate an act, even a repugnant act, to that of a protected belief or a thought. That is certainly a far, far ranging and weird interpretation. But there are other religious followers who have acts as part of their rituals which are considered equally important.

Consider, if you will, a group of people who happen to practice Satanism and believe they can only communicate with their deity through animal sacrifice. It occurs to me that a law of general applicability prohibiting cruelty to animals would be easily challenged under this legislation. I think it would, without question. Either that, or there would have to be an exception written into those laws for satanic practice.

It is easy to envision a great many situations where regulations that our society has always accepted could be called into question under this legislation. Prisoners could demand such things as specially prepared food; the right to pray three times a day; certain types of clothing—indeed the list is endless. Likewise, the military could be challenged to adopt special practices for preparation of food, opportunities to pray on various different sabbaths, clothing, not to mention the extreme situation of an individual, for whatever reason, who wanted to engage in a practice involving a ritual—an act—that would be repugnant offensive, or disruptive to a majority of observers.

So I shared those views, and I thought—and still think—we should proceed very carefully and, of course, the arguments for the passage of the bill are sometimes often so shrill—that indeed we must correct this hideous and extraordinary thing "in the interest of justice" and so on.

But let us just take a quick review of the history. Fifty years ago, the U.S. Supreme Court ruled that the Government could restrict a prison's inmate's acts in furtherance of a religious belief if the Government regulation served a legitimate prison interest. The RFRA would overrule this clear directive and elevate this inmate's claim to the much higher standard of review of "compelling State interest and least restrictive means." This sounds to the laymen like head-of-the-pin stuff, and it should because it is bizarre.

This means that prison administrators would be required to adjust current practices in order to accommodate disruptive and even totally bizarre activities by inmates if these "acts" were couched in terms of a religious exercise.

There are so many examples of what happened in prisoner litigation, when the RFRA type standard review has been applied. Here are a couple. In Florida —do not miss this one—an inmate convicted of racketeering and conspiracy to commit murder sued the prison to permit him to distribute racially inflammatory literature within the State prison system. I think my good colleague from Nevada touched on this. He presented this as a religious expression by the Temple of Love, which he had founded. His literature included gruesome cartoons of African-Americans being mutilated, tortured and oppressed by whites. Using the standard of review that this remarkable piece of legislation would now require, the Florida District Court ruled that this material was protected as religious speech.

In other States, prisoners have sued prison officials under the cloak of religious freedom in order to promote activities such as racial and ethnic genocide, witchcraft, Satanism. I understand that followers of both witchcraft and Satanism engage in animal sacrifice. I am not totally aware of some of the aspects of that religion, but I have gathered that.

In Wyoming, an inmate of Asian ancestry—do not miss this one—in the Wyoming penitentiary, who is considered by prison officials to be one of the highest escape risk prisoners at Rawlins, WY, claimed to be a member of an American Indian religion and demands a religious right to participate in a sweat lodge ceremony outside of his maximum security confines. There is a reason for that. The sweat lodge is located at the fringes of the penitentiary. That is just where this person would like to be—near the fringes—because he has already had eight violent escape attempts to his credit. Some escapes were from the Federal facilities at Marion and Levenworth.

There are others in Rawlings, WY, who are claimed to be Odinists. I am not familiar with the Odinists' religion, but that is a right to firepits, sheepskins, and lances.

These are not fanciful or imagined worst case scenarios, but rather are factual cases that have been filed by inmates and considered by the courts and by prison administrators. I became very concerned that RFRA will add even greater credibility and likely constitutional sanction to these types of claims.

So all may understand, so that you do not miss how we got here and what the Supreme Court did by a 6-3 decision, remember that this bill, this misguided bill, was drafted solely to overrule the U.S. Supreme Court decision in a case which held—do not miss these facts, because it was narrow—that unemployment benefits could be denied to two individuals in Oregon named Smith and Black. The two were dismissed from their jobs with a nonprofit drug rehabilitation organization because they took part in a peyote ceremony with a native American church of which they are a member. This was a violation of the written terms of their employment—that they would abstain from the use of drugs or alcohol. There was no Oregon State criminal law exemption for religious use and possession of peyote. If you do it, you are guilty. So they were fired and then they applied for unemployment compensation benefits.

Their claim was denied by the State. They appealed that decision to the Oregon Court of Appeals, which ruled in their favor. The State of Oregon then appealed that decision to the state Supreme Court where Smith and Black won again, and that State appealed the decision to the U.S. Supreme Court in which a 6-to-3 decision in 1990 ruled in the State's favor and against Smith and Black. And in the wake of that action RFRA was born.

I will stick with the U.S. Supreme Court.

So these are some of the things I wanted to share with you with regard to this measure.

I join with my colleague from Nevada. I think the amendment, which exempts prisoners from the bill's application, removes the significant budget and prison security impacts on the Federal, State, and local criminal justice systems imposed by the bill.

Who would not agree that prisoners do and must have first amendment rights, including the right to exercise their religion. But there are limits to those rights. Numerous State attorneys general, including Wyoming's own, the correctional directors of all 50 States, Norman Carlson, the former Director of the Federal Bureau of Prisons; J. Michael Quinlan, the former Director of the Federal Bureau of Prisons; the American Federation of State, County, and Municipal Employees, which represents correctional officers and other prison personnel, and the National Sheriffs' Association support totally this amendment to exempt pris-

oners. Prison interests should be given considerable deference. My friend from Nevada touched on that. Prison authority should not be required to accommodate practices which significantly interfere with the security and operation of the prisons.

At a time when each State and Federal jurisdiction in the country is faced with overcrowded prison facilities and an unrelenting barrage of inmate lawsuits, this bill would allow prison inmates to sue prison administrators with greater frequency and, obviously, greater success. Corrections administrators state that prisoners who hear that the standard now will be lowered will use the opportunity to bring lawsuits to manipulate the system to get special benefits.

Mr. President, I ask unanimous consent that a letter from the Utah Department of Corrections, dated August 5—and that is in there for the benefit of my colleague, the Senator from Utah—and a letter from Frederick Hess, former U.S. attorney for the Southern District of Illinois—for my other colleague on the Judiciary Committee—be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

LEWIS, RICE & FINGERSH,
Belleville, IL, September 7, 1993.

Hon. ROBERT MICHEL,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN MICHEL: Under current law, a unit of local, state, or federal government can infringe upon a person's exercise of religion if such infringement bears a rational relationship to furthering a governmental interest. S. 578 would allow a unit of government to infringe upon a person's exercise of religion only if such infringement furthers a "compelling government interest" and is the "least restrictive means" of furthering that interest.

Attorney General Reno supports S. 578 to overturn *Employment* v. *Smith*, 110 S.Ct. 1595 (1990) which held that application of a neutral law of general applicability—even if it has the effect of burdening religious practice—does not run afoul of the Free Exercise Clause of the First Amendment.

We seem to have come full circle in the Justice Department back to the seventies as we prepare to expand the judiciary and relax norms accompanied by social engineering. It took more than a decade to protect the strong interest which society and prison administrators have in preserving security, order and discipline in prison. While I hope the government/prison administrator will prove "compelling interest", I am sure the additional "least restrictive means" test is joined to undermine the clear meaning for the former.

S. 578 will subject prisons to the precise result the Supreme Court sought to avoid in its earlier rulings in prison cases, by providing inmates far greater latitude to attack and undermine legitimate prison authority, necessary to maintain security and order. The risk and expense of litigation under this Act will leave governments vulnerable to manipulaton by inmates. Pro se prisoner litigation is already the most rapidly increasing type of litigation in our country and makes up more than a third of the docket of some federal district courts. The increase in cases resulting from the creation of this new cause of action under RFRA would only add to the crippling impact of prisoner litigation on our criminal justice system and further erode our courts' ability to deal with more urgent issues of crime.

Last year, 48,538 criminal cases were brought in federal court. During the same period, inmates in federal, state and local detention facilities filed 49,939 civil suits against the government in the same court system. While civil filings dropped by 5 percent overall, there was a 16.2 percent increase in inmate petitions.

Perspective into this explosion of inmate litigation can be found by looking at the historic rise in this type of litigation over the past 27 years. In 1966, 218 civil rights petitions were filed by prisoners in federal courts. In 1964, there were 18,034 such suits filed. In 1992, there were 31,580 filed. Surely, no one could reasonably argue that conditions in our prisons and jails were better in 1966 than today. Rather, as federal courts across this nation have repeatedly observed, this rise in filing is attributable to inmates abusing the rights afforded them by the Constitution. Litigation has provided them a vehicle to manipulate those charged with their lawful incarceration, at taxpayer expense.

The current legal standards mandate that prison administrators reasonably accommodate the fee exercise rights of individual inmates, but permits a balance to be struck between such individual rights and institutional needs. S. 578 would not permit these interests to be balanced; rather, it would elevate asserted individual inmate rights over the operational needs of prisons. This is not the time to impose additional and unnecessary costs for incarcerating felons on a crime weary public by imposing additional, heavy burdens on the professionals on whom we depend to operate our prisons. Nor is it time to increase the burden on our courts.

The Congressional Budget Officer should acknowledge that the enhanced test and standard for religious cases would increase the time and process necessary to defend against cases in which a religious claim is raised. Specifically, the ability to obtain a judgment by summary judgment motion would be reduced and the need for jury trials will be substantially increased. This would have a significant impact on the percent of judicial time consumed by review of inmate cases and would create a need for more law clerks, magistrate judges, district judges, and circuit judges to address the increased number of these more complex and time-consuming cases. U.S. Attorneys would have to hire additional assistants to deal with the increase of religious suits brought by the rapidly increasing federal inmate population. The Bureau of Prisons would have many additional costs associated with accommodation of idiosyncratic religious tenets. At the state and local level, taxpayers would have to bear the burden of additional litigation costs. Attorneys would be required to expend additional time litigating each case currently pending under the new heightened standard and to respond to the new barrage of litigation under this new cause of action.

While one must applaud efforts to extend protection to legitimate religious groups in society at large, please recognize the unique nature of the closed society of prisons, as the United States Supreme Court has long done. The legal standards promulgated by the Supreme Court in the prison context should be preserved. The existing standard requires prison administrators to accommodate the religious practices of inmates in their care and custody; however, it permits individual rights to be balanced against the needs of the prison community as a whole and the overriding need for security and order. The Supreme Court has not also required that it be done by "the least restrictive means" and Congress should not permit this social engineering sought by the executive.

Inmates who lead illicit prison gangs and organizations are sophisticated and will manipulate S. 578 with its new standard to facilitate this illegal activity under the guise of "religion". Racial hatred in the prison setting is often spread and violence incited through "religious" materials.

Further, religious claims have been used to attempt to gain special privileges. Inmates even have devised their own new religions with tenets tailored to obtain special favors and circumvent security regulations. However, courts are extremely loathe to find that a group claiming to be a religion is, in fact, not a religion. Courts have found that the Church of the New Song (CONS for short), the El Rukns, Satanic cults, and other groups are "religions". Thus, each restriction on their activities will now need to be the "least restrictive" and supported by compelling reasons.

If prisons are not exempted from S. 578 and the existing legal standard preserved, such groups will be able to conduct congregate services, distribute hate literature, organise, and conduct and promote activities which are now banned. Activities including drug trafficking, racial violence, and gang organizing would be made easier under RFRA. These activities negatively impact on prison order as well as the free community while these disputes consume court time and costs of administration of our prisons rise.

Correctional facilities are operating with diminished economic resources and the inmate population is exploding. Prison litigation is already placing a tremendous drain on those limited resources. While inmates litigate at no or little cost to themselves, taxpayers are required to subsidise the filing fees of inmates, pay for paper, law books, legal assistance postage, Xeroxing, and witness production for prisoners' suits. Out of already strained prison budgets, we must pay for transportation of witnesses, additional security and transportation of inmates to court appearances, legal assistance for correctional officers, and significant amounts of lost staff time spent responding to inmate claims, most of which are spurious. Prison officials cannot afford to divert limited resources to litigate the staggering number of inmate cases which would be spawned by creating a new cause of action, under a more stringent standard, as RFRA purposes to do; and to re-litigate all of the cases in which we have already prevailed under the existing constitutional standard.

At a time when Congress is grappling with habeas corpus reform and ways to reduce frivolous inmate litigation, with its toll on our state and federal justice systems, it seems inconceivable that anyone would endorse the creation of a new cause of action for inmates which provides rights even greater than the constitutional protections they already enjoy.

Sincerely,

FREDERICK J. HESS.

STATE OF UTAH,
DEPARTMENT OF CORRECTIONS,
Murray, UT, August 5, 1993.

Hon. ALAN K. SIMPSON,
U.S. Senator, Senate Office Building,
Washington, DC.

DEAR SENATOR SIMPSON: As Director of the Utah Department of Corrections, I am writing to express concern regarding S. 578. Although I support the general principles of the Bill, the broad language raises some substantial concerns for correctional facilities. If passed, a plethora of litigation will follow, substantial management problems will arise, and safety and security will be jeopardized. I

encourage amending the legislation to exclude correctional facilities from S. 578.

Case law currently allows a correctional institution to restrict an inmate's constitutional rights if the restriction is reasonably related to a legitimate penological interest. The proposed legislation will heighten the standard of review from a "reasonable relation" to a "compelling interest" standard. As Director of Corrections, I am responsible for managing efficiently operated state institutions. A significant portion of Corrections' budget goes toward litigation initiated by inmates. If this legislation passes, without change, the Department will likely have to relitigate cases that have already been decided. Litigious inmates will challenge the previously established case law pursuant to S. 578. Consequently, the overall budget of Corrections will suffer.

Religion plays an important role in managing a correctional institution. The positive effect that religion can have on an inmate is immeasurable. However, some inmates will use any opportunity to manipulate the system, thereby, creating management problems. Take for example an inmate whose religious beliefs require a variance from recognized grooming standards. Other inmates have proffered religious beliefs that require a special attire that deviate from recognized dress standards. In the case of the Church of the New Song ("CONS") their religion required a special diet of Porterhouse steak and Bristol Cream Sherry. These are the types of management problems that arise frequently in a prison setting. If the legislation passes as drafted, inmates will take the religious freedom argument to a new pinnacle, causing substantial management problems.

In addition, safety and security will be jeopardized. If inmate dress standards are altered due to religious claims, creative inmates will use the variance to smuggle contraband into correctional institutions. A variance in grooming standards will facilitate an inmate to alter his appearance, making escape easier. Furthermore, if litigation ensues and inmates are transported to and from court the possibility of escape is enhanced. Communities across the country depend on the safety and security of correctional institutions. I strongly oppose any legislation that would jeopardize the safety and security of a correctional institution or the community at large.

As Director of the Department of Corrections I would be remiss in my responsibilities if I did not express my concerns. I recognize that amending legislation can be a tremendous task. However, it has come to my attention that Senator Simpson of Wyoming has agreed to offer an amendment that will exempt prisoners from the act. Congressman Hansen's office has faxed a copy of the proposed amendment for my review. I respectfully request that you support the Simpson amendment on the Senate floor.

Sincerely,

O. LANE MCCOTTER,
Executive Director,
Utah Department of Corrections.

P.S.—I have just returned from the annual congress of the American Correctional Association and the Association of State Correctional Administrators. This issue is a major concern for all 50 states. A report has been compiled for the Congress and the US Attorney General which points out all our major problems and concerns if corrections is not exempted by amendment to the act. It will, no doubt, cost us millions in litigation if not amended. Thanks for your support.

Mr. SIMPSON. Mr. President, not only will the raw number of lawsuits increase, the Religious Freedom Restoration Act, a marvelous phrase, will make it extremely difficult to quickly dismiss frivolous or undeserving inmate challenges. Frivolous challenges will no longer be resolved by summary judgment motions but will require full-blown evidentiary hearings, a much more expensive and time-consuming process.

The Congressional Budget Office issued a letter on May 7—which was not delivered until over a month later—which stated that the bill "would result in no significant cost to the Federal or to State or local governments." In response to the CBO conclusion, several States communicated with the CBO stating that there was a very significant impact on their budgets, both in litigation costs and in facilitating religious activities. The CBO, at last check, was reevaluating their letter to include costs to the States caused by this bill.

In a July 30 letter Attorneys General Lungren of California and Del Papa of Nevada state: "* * * CBO would be hard-pressed to find a single corrections professional who would agree with this position," being that no significant cost would result to State governments.

On September 7, Frederick Hess, a former U.S. attorney for 11 years, wrote that inmate litigation will increase, unmerited litigation will be more difficult to resolve quickly, and costs to the taxpayers will escalate. He wrote:

S. 578 will subject prisons to the precise result the Supreme Court sought to avoid in its earlier rulings in prison cases, by providing inmates far greater latitude to attack and undermine legitimate prison authority, necessary to maintain security and order. The risk and expense of litigation under this act will leave governments vulnerable to manipulation by inmates. Pro se prisoner litigation is already the most rapidly increasing type of litigation in our country and makes up more than a third of the docket of some Federal district courts. The increase in cases resulting from the creation of this new cause of action under RFRA would only add to the crippling impact of prisoner litigation on our criminal justice system and further erode our courts' ability to deal with more urgent issues of crime.

We are going to be working on a crime bill soon, and one of the greatest dangers in the criminal justice system is in prisoners cranking out lawsuits by the metric ton—habeas corpus, delays of all types, lockerroom lawyers, litigious luggerheads—and that is what taxpayers are paying for. A third of the docket—imagine what this bill will do for the other two-thirds of the docket.

The increase in cases resulting from the creation of this new cause of action under RFRA would only add to the crippling impact of prisoner litigation on our criminal justice system and further erode our courts' ability to deal with more urgent issues of crime.

That is the part of the commentary of the gentleman that I quote.

This bill effectively overturns two Supreme Court cases on the subject of free exercise-of-religion claims, the Smith case and the case of O'Lone versus Estate of Shabazz.

In overturning those two cases, the bill's sponsors tell us, they intend to reinstate the standard by which freedom-of-religion claims are evaluated prior to these decisions.

Oh, were that the case. I have been here 14 years, and I have seen so many pieces of legislation that just said all we are doing is taking this case back to where it was before the Supreme Court changed something. We did that on civil rights. We do it on everything. And then we get into the grinder of emotion, fear, guilt, and racism. I know the groups that are out cranking it up on this one. Some have less than charitable things to say, even though they represent religious concerns.

However, unfortunately, the standard prior to the O'Lone case—which addressed prison free-exercise claims—depends on the court in which the claim is brought. At least seven different standards existed before the Supreme Court decided the O'Lone case in 1986.

For anyone who wants to go back to the seven previous standards, that is how it came about.

So, specifically, the bill that is presented to us with such highly laudatory spirit requires that the government shall not burden a person's exercise of religion." The only way that a Federal, State, or local government, including prison administrators—will be permitted to burden an individual's exercise of religion is: First, if it has a compelling governmental interest; and second, if its actions are the "least restrictive means of furthering that compelling governmental interest."

Practically speaking, and getting all the legal jumbo out of there, what does this mean? First, for prisons, if a prison institutes a measure which affects religion, an individual may sue the government for burdening his or her ability to freely exercise his or her religion. The measure does not have to expressly or indirectly prohibit religious activity, it merely has to affect the activity. The more significant the burden on religious activities, the stronger an individual's claim will be.

Second, the court must determine whether the prison has a compelling governmental interest in taking its measure. This is the most difficult test that the courts use to evaluate the government's laws or actions. In general, it is very difficult for a government to meet this test.

Prof. Laurence Tribe is a man whom I regard highly—even though I have challenged him severely in some of his activities in nominations before the Judiciary Committee. He is a fine legal mind, just as Robert Bork was a fine legal mind. Professor Tribe recognizes that regulations burdening constitutional liberties rarely survive strict scrutiny analysis—the standard which the bill will place on prison administrators. Professor Tribe noted, "The Supreme Court rarely finds such com-

pelling necessity, so the choice of which test to apply usually resolves the case." (Tribe, "Abortion: The Clash of Absolutes," page 11, 1990.)

Third, pursuant to this bill, a court must look at all free exercise claims and determine whether or not the prison used the least restrictive means to achieve its goal. In other words, was there another way to achieve the goal that does not burden religious activity? When applying the least restrictive means standard, the courts are not required to look at the cost of the alternatives.

For prison administrators, in many cases alternatives are available but at great cost to the State government. In other cases, the least restrictive means can disrupt the security and order of the prisons and do it in a grotesque way. Under the bill, if the prison could accommodate a prisoner's activities—even if it required 100 more prison guards or building new facilities—the prison could be required to do so.

I agree with the Supreme Court when it expressly rejected the idea that "prison officials * * * have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint," (*Turner* v. *Safley*, 482 U.S. 76 (1987)). That is the very standard, the "least restrictive means," which the bill applies. "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." (Turner, at 84–85.)

This amendment specifically exempts prisons from this change in the standard for evaluating governmental actions. The courts, especially the Supreme Court, have recognized the need to give great deference to prison administrators, due to need of prisons to maintain order, security, and discipline. By exempting the prisons, the amendment would allow the courts to use the current Supreme Court standard, as stated in O'Lone—which evaluates prison practices with a reasonableness standard. Under a reasonableness test, incidental burdens on the free exercise of religion of prisoners are legitimate, so long as the regulations are reasonably related to legitimate prison interests.

The reasonableness standard has been applied by the Supreme Court in the prison context for all other first amendment challenges. In each case, the Court has refused to apply the very standard which this bill seeks to apply, and has instead adopted a reasonableness standard. Without this amendment, this bill would require a higher standard for prisons than the Supreme Court has said is required by the Constitution.

Prisons today are not like prisons 30 years ago or 40 years ago. Today, prisons have chapels, special meals, recreation areas—some of the prisons in the West have built sweat lodges for native American religious services. At least one prison has two sweat lodges—one that faces east and one that faces west—to accommodate differing religious views.

Those are very valid views. I have talked about those views with my Native American constituents.

But prisons today are also overcrowded. They are unruly. There are people in prison who are vicious and uncaring of their fellow man and woman, making order and safety more difficult to maintain.

The challenges of prison administrators are extreme. If one group of inmates is perceived by others as getting special benefits, even if they are religious in nature, then others want special benefits.

I remember when I practiced law, several of my clients went to the penitentiary. That is quite a testimonial, I realize. When I went to the pen to visit with the warden and some others, they said, "Don't go in there, because if the people you represented at one time who got short sentences see you and say hello, the other prisoners will really take it out on them."

So I had to creep through the complex—which is difficult when you are 6 foot 7—and they would say, "Hey, Al, how are you?" And I would ignore them because then the other prisoners would say, "Aha, you're getting special favors."

Do not think that anyone who is given an extraordinary benefit of some special favor does not keep a list.

Prisoners manufacture religions, just to see what they can get. I would too. I could be wholly creative in manufacturing a religion.

Many have heard of the case of the prisoners beginning a religion called Church of the New Song. Its followers requested chateaubriand and wine, among other things, as part of their ceremonial activity. While the prisoners did not prevail in this case, the State spent thousands of dollars defending the denial of these items to the prisoners. If the prisons are not exempted from this bill, it will be even more difficult to quickly dismiss such frivolous cases.

I ask my colleagues to recognize the unique and precarious situation that prisons are in and support an exemption for prisons from this bill.

That is what the Reid amendment does. I am very proud to be a cosponsor of it. I urge our colleagues to support the amendment.

I thank the Chair.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Utah.

Mr. HATCH. Mr. President, I have enjoyed listening to my two colleagues, both from Nevada and Wyoming. They are very thoughtful, reflective people. I have a great deal of respect for both of them and I understand their arguments.

I appreciate the concern about how this act will impact the administration of prisons. Let me initially point out, as Senator SIMPSON mentioned in his additional views to the committee report, a long series of cases has recognized that prisoners are entitled to first amendment protection, including the right to the free exercise of their religion. While we agree that prisoner's are entitled to first amendment rights, we differ on the applicable standard of review where a prisoner's limited rights collides with the responsibility of a prison administrator to maintain order and security in the prison.

In my view, this act carefully balances these religious free exercise rights against the compelling interests of prison administrators. The first amendment should protect the rights of every citizen, including prisoners, to practice their faith. Let us all be mindful of exactly what we are seeking to protect in this act. We are seeking to protect the right to exercise one's faith as a Baptist, Catholic, Episcopalian, Jew, Lutheran, Methodist, Mormon, Moslem, Presbyterian, Protestant, and other of the diverse religions practiced in our society.

It is clearly not our intention, as some might suggest, to protect the desires of those prisoners seeking everything and anything imaginable, like prostitutes, nunchucks, or Harveys Bristol Cream, under the guise of the free exercise clause, and this bill does not create the right to any such things. We seek only a well-reasoned balance of this fundamental right to practice one's religion against the significant responsibility of our prison administrators in the supevision of our prisons. Because of the special circumstances of incarceration, and the unique interest the Government has in maintaining order and control in the prison environment, the Government will necessarily be able to show its interest is compelling far more readily than in the civilian arena, and I do not know how anybody could argue against that.

Supporters of an amendment insist this bill, without amendment, will raise havoc in our prisons. However, Attorney General Janet Reno, in a letter dated May 5, 1993, addressed to chairman of the committee confirmed her enactment without amendment. Attorney General Reno, who administers one of the largest prison systems in the country, wrote:

> Concerns have been expressed that the standard of review of S. 578 will unduly burden the operation of prisons and that the bill should be amended to adopt a standard more favorable to prison administrators when confronted with the religious claims of prisoners. These concerns have been presented by knowledgeable and sincere individuals for whom I have great respect, but I respectfully disagree with their position and urge the Committee to approve the bill without amendment.

The PRESIDING OFFICER. Will the Senator please yield?

Will the Senator indicate if his time is being charged against the amendment or against the bill?

Mr. HATCH. This will be charged against the bill—actually, no, this will be charged against the amendment—let us split it equally.

The PRESIDING OFFICER. On the time of Senator KENNEDY?

Mr. HATCH. Senator KENNEDY and I are one on this issue.

The PRESIDING OFFICER. On Senator KENNEDY's time.

Mr. HATCH. It is on both of our time.

Mr. SIMPSON. On the amendment.

Mr. HATCH. The bottom line is that prison administrators' interests in order, safety, security, and discipline are compelling, and the courts have certainly treated them as such, and have always done so. More important, the courts have a well-established history of evaluating these competing interests fairly under the compelling State interest standard.

This amendment, in essence, asks us to deny prisoners the ability to adhere to their faiths, a liberty we otherwise deem fundamental, and one that furthers the goal of prisoner rehabilitation. Recently, Charles Colson, the chairman of Prison Fellowship, a ministry involved with prisoners, wrote to me and reported that the Institute for Religious Research at Loyola College studied and compared two groups of ex-offenders. The study found that, overall, offenders who attended Prison Fellowship programs were less likely to be re-arrested than those who had not attended the ministry. Even more impressive, women who attended were 60 percent less likely to be re-arrested.

The importance of religion, especially in prisons, cannot be overstated. Rather than an across-the-board denial of religion, many courts prior to Smith proposed that prison administrators should outline their security concerns and demonstrate the connection between this concern and the regulations. I do not think this is too much to ask in protecting against unnecessary Government infringement on the free exercise of religion.

Indeed, I would rather have prisoners trying to practice their faith than learning how to become better criminals once released. Obviously, when the practice of religion conflicts with the need to maintain order, the prison administrator will prevail under this act.

I should also mention, recently I received letters from the Church of Jesus Christ of Latter-day Saints, American Baptist Churches, American Jewish Committee, Church of Brethren, Mennonite Central Committee, Presbyterian Church, Church of Scientology, American Jewish Congress, Christian Life Commission, Unitarian Universalist Association, Evangelical Lutheran Church, Friends Committee on National Legislation, Baptist Joint Committee, National Council of Jewish Women, Center for Law and Religious Freedom, American Civil Liberties Union, People for the American Way, expressing their strong opposition to any amendment to the Religious Freedom Restoration Act.

Finally, the Coalition for the Free Exercise of Religion, a diverse group of interested civil rights and religious organizations have also loudly voiced their opposition to the Reid Amendment. The coalition, which includes Agudath Israel of America, American Association of Christian Schools, American Civil Liberties Union, American Conference of Religious Movements, American Humanist Association, American Jewish Committee, American Jewish Congress, American Muslim Council, Americans for Democratic Action, Americans for Religious Liberty, Americans United for Separation of Church & State, Anti-Defamation League, Association of Christian Schools International, Association of American Indian Affairs, Concerned Women For America, Episcopal Church, Church of Scientology, Evangelical Lutheran Church, Conference of Seventh-day Adventists, Jesuit Social Ministries, Mennonite Central Committee, National Association of Evangelicals, Presbyterian Church, Traditional Values Coalition, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations, United Methodist Church, and 40 other member organizations have written to oppose an amendment to exempt prisons. It suffices to say, numerous religious institutions in America have reviewed and studied this issue and have overwhelmingly rejected this amendment.

I, too, urge my colleagues to reject this amendment because I believe it is the right thing to do, and I do not have the same fear as my two colleagues from Nevada and Wyoming have about the abuse of these privileges in prison.

By the way, do not tell me that they will not file just as many lawsuits even if the Reid amendment is enacted. They are going to do that anyway. People will know there is a distinction between lawsuits filed by people who have observed the laws and are not living in prison and lawsuits filed by those living in prison. Frankly, over the long run, I think we will save money by adopting the bill without the amendment.

SPECIAL PRIVILEGES AND BONA FIDE RELIGIOUS PRACTICES

Much has been said and written about the opportunities this act creates for abusive and litigious prisoners to extract special benefits from prison administrators. Some have suggested this act may even protect prisoners who form new religions to gain special treatment or privileges. While it is certainly possible some prisoners will attempt to abuse this act, nothing contained in the act will protect these deceptive efforts. To be perfectly clear, our courts are well suited to detect the abusive tendencies of our litigious prisoners.

I would add, the courts have traditionally denied first amendment protection for purported religious activity conceived by prisoners simply to gain special benefits. I trust the courts will continue to reject these abusive claims. The fifth circuit observed in a prison case:

> While it is difficult for the courts to establish precise standards by which the bona fides of a religion may be judged, such difficulties have proved to be no hinderance to denials of first amendment protections to so-called religions which tend to mock established institutions and are obviously shams and absurdities and whose members are patently devoid of religious sincerity. [*Theriault* v. *Carlson*, 495 F.2d 390, 395 (5th Cir.), *cert. denied*, 419 U.S. 1003 (1974) (footnote omitted).].

The courts' existing analytical tools are adequate to detect these unfounded religious demands and distinguished them from legitimate religious interests. The courts have, for example, rejected religious status, under the first amendment, for a number of prisoner-devised belief systems. (See. e.g., *Johnson* v. *PA. Bureau of Corrections*, 661 F. Supp. 425, 436-37 (M.D. Pa. 1987) (rejecting "The Spiritual Order of Universal Beings"); See also *Jacques* v. *Hilton*, 569 F. Supp. 730, 736 (D.N.J. 1983), aff'd, 738 F.2d 422 (3d Cir. 1984) (rejecting "United Church of Saint Dennis").) Moreover, when a prisoner attempted to object to participation in an anti-alcoholism program as compelling a belief because it referred to "the care of God as we understand him," a court had little difficulty in finding that the Chemical Dependency Recovery Program was not a religion. (*Stafford* v. *Harrison*, 766 F. Supp. 1014, 1017 (D. Kan. 1991).)

These tools are also adequate to uncover false religious claims that are actually attempts to gain special privileges or to disrupt prison life. For example, in *Green* v. *White*, [(525 F. Supp. 81, 83 (E.D. Mo. 1981), aff'd 693 F.2d 45 (8th Cir. 1982), cert. denied, 462 U.S. 1111 (1983),)] the courts rejected the claim that the Human Awareness Life Church was a religion and focused on the prisoner's demands, under a religious guise, for conjugal visits, banquets, and payment as a chaplain. (See also, *United States ex rel. Goings* v. *Aaron*, 350 F. Supp. 1 (D. Minn. 1972) (rejecting claim for religious rights that prisoners has never practiced before)). Indeed, courts have been blunt enough in their examinations to find that a claimed religion, such as the Church of the New Song, is, in reality, "a masquerade designed to obtain first amendment protection." (*Theriault* v. *Silber*, 453 F. Supp. 254, 260 (W.D. Tex. 1978), appeal dismissed, 579 F.2d 302 (5th Cir. 1978), cert. denied, 440 U.S. 917 (1979).)

The act has no effect on our settled jurisprudence with respect to prisoner-created efforts to seek special privileges, thus permitting the courts to make these assessments as they have in the past. Those cases most often cited as abusive requests by prisoners, including those listed in the additional views to the committee report have been routinely dismissed by the courts. I would expect the courts will continue to deny protection to prisoners involved in this deceitful activity.

I can say that I know that the prisoners will continue to make the claims regardless of whether this amendment is adopted or not. I think we have made clear that there is a different way of applying the compelling interest test in prison than there is in the lives of those who abide by the law.

The Religious Freedom Restoration Act does not disturb established jurisprudence as it relates to abusive prisoners. I have every confidence that Federal judges will continue to exercise their good judgment in discerning those abusive claims for special privileges from our legitimate religious practices.

INCREASE IN PRISONER LITIGATION

Let me address the concerns raised by those who argue an amendment is necessary to curb the endless prisoner litigation inundating our State and Federal courts. Those who favor this Reid-Simpson amendment suggest prisoner litigation will somehow miraculously decline or be curbed should we deprive prisoners of the right to challenge government action denying them their religious liberty. This amendment will hardly stop prisoner litigation. This amendment will not reduce the cost of defending our prison administrators. This amendment will probably not even curb prisoner litigation and we should not fool ourselves into believing it will. This amendment will deprive many prisoners of their religion in a misguided attempt to address the prisoner litigation crisis.

Proponents of this amendment have suggested this bill will greatly expand the number of prisoner lawsuits. They cite statistics showing the number of prisoner lawsuits is increasing at an alarming rate. What they fail to mention is that the increase in lawsuits is not a result of religious claims. Recently, New York attorney general pointed out that only 1 percent of all prisoner claims deal with religious exercise claims. Ironically, this reported increase in the raw numbers of prisoner lawsuits filed followed the 1990 Smith decision, where prisoners' rights to free exercise of religion were virtually eliminated. (Annual Report of the Director of the Administrative Office of the U.S. Courts.)

Based on information gathered from State attorneys generals offices from throughout this country, I concluded that prison officials were not really concerned with the ultimate result under the compelling State interest standard or its impact on prison administration and order, but with the prisoner litigation that they believe will result with a return to a compelling State interest standard. Thus, I am convinced, the real concern those offering this amendment are attempting to address is the exploding growth of prisoner litigation. Most officials my staff and I have consulted with agree, the genuine concern of prison officials is this act's impact on prisoner litigation, and not the compelling State interest standard itself.

I agree that prisoner litigation is a significant problem for prison administrators. I am not convinced, however, that this amendment adequately addresses this issue. I am surely not convinced that passing this amendment will reduce the number of cases brought by prisoners. In short, prisoners are going to institute a large number of lawsuits regardless of the standard of review applicable to prison lawsuits. Why? Because prisoners do not have many other things to do—they will always seek a way out of prison or a means to challenge authority. Thus, I have concluded, the prisoner litigation issue is one that we must address legislatively. I am currently undertaking efforts to review this serious problem and I welcome the recommendations of those attorneys general and prison administrators seeking to address their concerns. I believe, however, that we should not deprive those individuals most in need of religion their right to practice it because of the litigious practices of some prisoners.

ABSURD RESULTS OF THE PRISON EXEMPTION AMENDMENT

Let me also point out some of the absolutely absurd results which will follow this piecemeal approach to prisoner litigation reform, an approach embraced in this prisoner exemption amendment. Currently, prisoners can and do sue prison administrators for any reason. They sue because they received only one dinner roll, or because they disliked the shape of their cake, or because they are denied illegal drugs.

Nothing contained in this amendment will stop these lawsuits. The effect of this amendment is simply to preclude those prisoners with lawsuits asserting first amendment free exercise rights from advancing those rights. Thus, for example, the prisoner who sued prison administrators in Nevada for serving him creamy peanut butter rather than the chunky peanut butter he requested may still bring his case against prison administrators before a judge. That horror story is not precluded by the Reid amendment.

However, if this amendment is passed, the Catholic prisoner who may want to challenge the denial of communion would be given short shrift in contesting such an arbitrary prison policy in the courts. At best, the Catholic prisoner asserting the right to exercise a fundamental aspect of his or her faith is given no more consideration under the Reid amendment than the prisoners complaining about what kind of peanut butter is being served.

It is absurd to treat the religious claim so cavalierly. Likewise, the prisoner in Illinois who sued prison authorities for depriving him of the use of his jail cell for drug trafficking will still have standing to sue prison officials.

However, if this amendment is adopted, a Protestant or an Episcopalian who might want to challenge prison officials who are denying them the right to pray in their prison cell may well have their case quickly thrown out of court.

The inmate who files a frivolous lawsuit against his jailer because he does not like the color of his prison uniform can fully litigate his claim in the courts. In contrast, the Jewish inmate who may want to challenge the denial of his right to kosher meals, again, would be afforded no better a chance to prevail than the claimant making such a frivolous claim about the color of his clothing. Indeed, if the Reid amendment passes, the religious claimant may have less rights.

These cases clearly demonstrate the absurd results we would see as a consequence of this amendment.

Let me make my position on prisoner litigation very clear. Like all of you, I do not condone the stream of frivolous lawsuits currently being brought by many prisoners. To the contrary, I find most prisoner lawsuits to be petty, frivolous, and offensive. However, I am extremely concerned that this amendment allows our frustration in dealing with a prisoner litigation crisis dictate how we respond to prisoners whose legitimate religious beliefs may be seriously offended.

I have previously suggested that we need to overhaul thoroughly prisoner access to the courts.

Our approach must be comprehensive and well conceived. Simply depriving prisoners of a real right to advance their religious free exercise claims is not the way to go. More importantly, our approach must be equitable.

This amendment should fail because it is not fair to those prisoners who are deprived of their legitimate religious exercise and have no real recourse to challenge an arbitrary prison administrator who has abused his authority.

Once again, I ask you to oppose this exemption to first amendment free exercise rights we are restoring in this act. Those prisoners with legitimate religious claims are the only real losers if this amendment succeeds. The abusive and litigious prisoner will still bring his frivolous lawsuits.

COST OF RELIGIOUS ACCOMMODATION

Mr. President, we have heard some horror stories about what will happen if the Reid amendment is defeated. Some have argued that it would be too expensive for prison administrators to accommodate every religious practice. Others have suggested that the cost and expense associated with religious exercise is not a consideration under RFRA. I appreciate the concerns which have been expressed. I believe many of them will not remotely be realized and others are exaggerated.

I certainly do not claim that no prison in the country will incur an added cost under RFRA. I believe that such added cost, it occurs, will be far, far less than some supporters of the amendment are suggesting. Indeed, I do believe courts will continue to consider the costs of religious accommodation

in evaluating lawsuits. That is the intention of the principal sponsors of the bill.

While prison officials must reasonably accommodate a prisoner's exercise of religion, the cost associated with the accommodation is an important consideration. The courts have long recognized the budgetary limitations of prison administrators and have extended to them reasonable discretion. See for example, *Kahane* v. *Carlson*, 527 F.2d 492 (2d Cir. 1975), reaffirmed in *Boss* v. *Coughlin*, 800 F.Supp. 1066 (N.D. N.Y. 1991), affirmed, 976 F.2d 98 (2d Cir. 1992); *Walker* v. *Blackwell*, 411 F.2d 23, 26 (5th Cir. 1969).

Moreover, the committee report addresses the issue of costs directly at page 10, where the report states:

> Accordingly, the committee expects that the courts will continue the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.

But even assuming some added cost is imposed on prison administrators, I urge my colleagues to balance that cost against the interest being asserted. That interest, religious liberty, is the most fundamental liberty any human being can claim. Religious liberty is a cornerstone of the foundation of our country and its evolution into the greatest country on earth. Even the most scorned in our society, prison inmates, have a legitimate interest in religious liberty.

Is the Senate of the United States really prepared to say that a Jewish prisoner should always be denied kosher food solely because of its cost? Is the Senate of the United States really prepared to say that a Jewish prisoner or a Moslem prisoner must eat pork in violation of his or her faith or go hungry because the State government will not prepare pork-free food for such a prisoner? If so, vote for the Reid amendment.

Is the Senate of the United States really prepared to say that cost and administrative inconvenience should preclude a Catholic prisoner from the opportunity to see a priest other than at those times when the State, at its whim, decides to make a priest available? If that is the standard we wish to have, vote for the Reid amendment.

I believe that in striking the balance in such matters, the religious liberty interest of prisoners should count for more than the Reid amendment will permit.

COMPELLING STATE INTEREST STANDARD IS APPROPRIATE FOR PRISONERS' FREE EXERCISE CLAIMS

I appreciate the desire to restrict prisoners' religious exercise rights to a reasonableness standard. I do not agree, however, that this is the appropriate standard of review. As I understand prisoner's free exercise jurisprudence, the Supreme Court did not outline a definitive standard of review in this area before the late 1980's. In 1987, the Supreme Court addressed prisoners' free exercise claims in *O'Lone* v. *Estate of Shabazz*, 482 U.S. 340 (1987).

In O'Lone, the Court ruled that so long as a prison regulation "reasonably relates to legitimate penalogical interests" it will not offend the free exercise clause of the first amendment. Prior to O'Lone, some circuit courts basically applied the well recognized compelling State interest standard to test the constitutionality of prison regulations infringing on prisoners' free exercise rights. The compelling State interest standard is well understood and used by the courts in a variety of circumstances where fundamental rights are tested.

Some have expressed concern that prison administrators will find it difficult, if not impossible, to satisfy the compelling State interest standard of this act. I do not believe this to be the case. To the contrary, circuit courts have successfully applied the compelling State interest/least restrictive means test in appropriate cases to uphold prison regulations. For example, in *Walker* v. *Blackwell*, 411 F.2d 23 (5th Cir. 1969), the court denied requests for specified food items. In so ruling, the court wrote:

> [C]onsiderations of security and administrative expense outweigh whatever constitutional deprivation petitioners may claim. In this regard, the courts holds that the government has demonstrated a substantial and compelling interest, that of security, which compels the deprivation of these after-sunset meals. * * *

Further, just 8 days before the O'Lone decision, the eleven circuit, using a similar standard, the substantial government interest/least restrictive means test, ruled that a prisoner was not entitled to an exemption from the prison shaving and hair length regulations. (*Martinelli* v. *Dugger*, 817 F.2d 1499 (11th Cir., 1987).) It can fairly be said that the standard contained in this act does not impose an insurmountable burden on prison authorities. The test has proven to be a workable balance between compelling interests of prison administrators and the limited religious rights of prisoners.

A government operating a prison clearly has a compelling interest in maintaining order, safety, and discipline. *Walker* v. *Blackwell*, 411 F.2d 23, 24–25 (5th Cir., 1969); See also, e.g., *Barnett* v. *Rodgers*, 410 F.2d 995, 1000 (D.C. Cir., 1969), *Fortune Society* v. *McGinnis*, 319 F. Supp. 901, 904 (S.D.N.Y. 1970). The sponsors of this bill emphasized this point repeatedly during this bill's consideration. Moreover, as the committee report states:

> The committee expects that the courts will continue the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline consistent with consideration of costs and limited resources. (p. 10)

In my view, the compelling State interest standard is the traditionally applicable standard of review for first amendment claims. We feel the Supreme Court ruling in O'Lone departed from the generally acceptable standards of review where important constitutional rights were violated, even where the more limited constitutional rights of prisoners were infringed upon.

This act will reinstate a standard the Supreme Court has traditionally utilized in cases implicating fundamental constitutional rights. The act will return us to a sensible balance struck by a number of lower courts prior to O'Lone between one of our most cherished freedoms secured by the first amendment and the Government's compelling interests in security, order, safety, and discipline in the operation of our prisons. The imposition of the act's compelling State interest standard in prisoner free exercise cases strikes a sound and reasonable balance between these competing interests.

LEAST RESTRICTIVE MEANS TEST

Let me respond to the criticisms of the least restrictive means test. Some have argued that imposing the least restrictive means standard on prisons will force judges to second guess our prison administrators on every prison security issue and to establish their own vision of how prisons should be run. I do not believe the standard will lead us to this aberration.

The courts in many circuits have used this well recognized standard, the compelling interest standard. In applying the least restrictive alternative prong, the courts have uniformly given "wide-ranging deference to the expert judgment of prison administrators." (See, e.g., *Martinelli* v. *Dugger*, 817 F.2d 1499, 1506 (11th Cir. 1987).) Moreover, the courts have consistently recognized prison authorities' wide latitude to restrict religious liberties on the basis of probable, rather than actual or certain dangers. (*O'Malley* v. *Brierly*, 477 F.2d 785, 796 n. 10 (3rd Cir. 1973).) There is, in my view, absolutely no reason to believe the courts will become indifferent to the thoughtful expert opinion of those individuals ultimately responsible for the safety and security of our prisons.

The additional views to the committee report cites only one case, a case out of the California State Appeals Court, as reflective of how the least restrictive means test will be abused by the courts. The California trial court ruling is not reflective of the established deference our Federal courts have given to prison administrators. Moreover, the ruling was apparently also an aberration to the California Court of Appeals which reversed it on appeal.

ADEQUATE TIME TO STUDY ISSUES

Over 3 years have elapsed since we first introduced the Religious Freedom Restoration Act, in form and substance almost identical to the bill we are debating today. I strongly disagree with any suggestion we have not satisfactorily studied this bill.

We have thoroughly studied the Act's impact on prisons, and discussed these concerns of some attorneys general and prison administrators. Ultimately, based on the input of many concerned officials, many directly responsible for the administration of our prisons, others responsible for defending prison administrators being sued by prisoners, we formulated committee report language addressing their concerns.

Earlier this year, at the Judiciary Committee markup, some critics of the bill argued that the State attorneys general were not given adequate notice and opportunity to officially comment on the act's impact on prisons. At that time it was suggested we delay action on the bill until the National Association of Attorneys General, an organization concerned and impacted by the act, had the opportunity to study the act and make a recommendation at their annual meeting.

In July, in Chicago, at their annual meeting, the National Association of Attorneys General reviewed an amendment very similar to Senator REID'S. They also had the opportunity to review the proposed committee report language we drafted and circulated, in consultation with many experts, to alleviate their concerns regarding the act's application to prisons. While I cannot be certain of their reasoning in failing to request that our body enact a prison exemption amendment such as the one before us, the association did, in fact, decide to endorse such an amendment. This official action, I might add, was made subsequent to their letter of May 5, 1993, wherein some attorneys general had expressed concern about the act.

I also want to emphasize these same concerns raised about the need for a prisoner exemption amendment were presented to the National Association of Attorneys General Civil Rights Committee earlier this year. They too, declined to support an amendment strikingly similar to Senator REID'S amendment.

I have thoroughly studied the issues, consulted with numerous religious leaders and prison officials and am convinced a prison administration exemption is unnecessary. I ask my distinguished colleagues to reject this amendment.

PRISON FELLOWSHIP

Last week, at a Senate staff briefing I cosponsored along with Senator KENNEDY, Rick Templeton of Prison Fellowship offered some valuable insight into the Reid amendment. In his introduction Mr. Templeton noted that he served in a position very similar to many of staff members present. He observed that he invariably wrote the "tough on crime" speeches for his boss and considered himself a staunch law and order advocate. He still believes he serves the cause of law and order.

Mr. Templeton then went on to explain how he went to prison, and how his life was changed forever. It was in prison where he experienced firsthand the hopelessness shared by most prisoners. Most frustrating for him, pacifying an inmate with television was the most favored approach to rehabilitation.

Fortunately, prison also taught Rick Templeton a valuable lesson he had never fully known before and never expected to learn in prison. It was in prison that he truly found religion. He prayed frequently while incarcerated. As a result of his prison experience, he came to appropriate the role religion could play in his life. Equally important, he came to understand the role religion could play in the lives of fellow prisoners.

Once released, Mr. Templeton joined Prison Fellowship and has been reaching out to prisoners ever since. He continues to work with prisoners because religion is the only hope for salvation he sees for them. While many prsioners will never be saved, he has assisted many more who have turned their life around. He points out that 98 percent of the prisoner population will eventually be released into society. Like it or not, they will be returning to our communities. A point that is well taken. In my opinion, there is much comfort in knowing that a prisoner has been afforded the opportunity to receive Mr. Templeton's counsel, to share ideas about interpersonal relations and family, and hopefully, to learn more about religion while in prison. We should accommodate efforts to bring religion to prisoners in the hopes of turning some lives around, not stifle those efforts.

By supporting the Reid amendment we embark on a journey down the most dangerous path, the path that subjects the protection of our religious liberty to a double standard. Religion deserves a single standard. I ask you not to set a double standard for the protection of religion. I ask you to restore religious liberty. I ask you to defeat the Reid amendment.

VIOLENCE/CRIMINAL ACTS

RFRA neither permits nor invites the violation of our criminal laws. The State's interest in regulating criminal activity is a compelling interest and the courts have offered great deference to our criminal statutes.

It is inconceivable to me that RFRA will protect acts of violence, purportedly motivated by religion, under any circumstances. Our clear societal interest in protecting our public safety, even if the violence is purportedly religiously motivated, is by its very nature a compelling interest. Nothing contained in RFRA is intended to offer or extend any protection for this type of criminal activity and our governmental interest in combating this violence is undoubtedly superior.

INCIDENTAL IMPACT CASES LYNG CASE

RFRA does not effect *Lyng* v. *Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439 (1987), a case concerning the use and management of Government resources, because the incidental impact on a religious practice does not constitute a cognizable burden on anyone's free exercise of religion. In Lyng, the court ruled that the way in which Government manages its affairs and uses its own property does not constitute a burden on religious exercise. Thus, the construction of mining or timber roads over Government land, land sacred to native American religion, did not burden their free exercise rights. Unless a burden is demonstrated, there can be no free exercise violation. The statutory language in RFRA was drafted to include protection against laws which impose a burden on religious exercise.

INCIDENTAL IMPACT CASES BOWEN CASE

RFRA would have no effect on cases like *Bowen* v. *Roy*, 476 U.S. 673 (1986), involving the use of social security numbers, because the incidental impact on a religious practice does not constitute a cognizable burden on anyone's free exercise of religion. Unless such a burden is demonstrated, there can be no free exercise violation. Thus, a claimant never gets to the compelling interest test where there is no burden. RFRA language intentionally includes terminology requiring a burden on one's exercise of religion.

Both Lyng and Roy are burden cases and were not decided under either the compelling State interest test set forth in RFRA or even the reasonableness test announced in Smith. Under the act only governmental actions that place a substantial burden on the exercise of religion must meet the compelling interest test.

Mr. President, I do not want to keep my colleagues any longer this evening, but I think it is really important that we not buy off on this argument that it is going to be a lot rougher on the prisons if we do not adopt this amendment. The fact is the prison administrators' interest in order, security, and discipline will be found compelling in almost all of these cases. I do not think anybody really doubts that who knows about the State of the law prior to Smith or the State of the law if this bill passes without amendment. I hope our colleagues realize that.

One of the things we ought to be encouraging more than anything else is religious activity in the prisons. We ought to be encouraging these men and women and these young boys and girls to get involved in religious activity in the prisons. We ought to be encouraging religious influence in the prisons. After all, if we are going to rehabilitate these people, there is nothing better that would help them to be rehabilitated than religious beliefs.

So, Mr. President, I hope that our colleagues will defeat this amendment. This bill is very, very important. It involves our first amendment rights and privileges; it involves the first freedom mentioned in our first amendment rights and privileges. I do not think there is any call to be that concerned or that worried that this is really going to place an even greater burden on the prisons and prison administrators than is already placed there.

Mr. President, if the other side is willing to yield back the time, I am, too, otherwise I have a lot more I would like to say on this subject.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I will take less than 1 minute to say what I want to say. And that is basically no one, including sponsors of this amendment, intends or does the amendment cause anyone from practicing their religion in prison any reasonable way. We never claimed that this amendment would reduce lawsuits. We simply said that this legislation, unless it is amended, will increase claims and further burden the courts because they will find them more winnable, and that is what we do not want, is prisoners who file these specious lawsuits and win them.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, Senator HATCH tells us that the interests of security and discipline and safety are compelling interests and that we have nothing to fear here. Courts do not always find that prison interests are compelling interests. It depends upon the Court. That is how we got to the O'Lone decision: the Supreme Court decided to clarify the standard—at least seven decisions, were then available—confusing the interests of society.

Courts do not always find that the prison interests are compelling interests. It depends, as I say, on the Court. But the second part of the test, the least restrictive means test, would allow courts to look for alternatives to accommodate prisoners' requests. There are always alternatives: More guards can be hired; new facilities can be constructed. But at what cost? Does anybody answer that question? Certainly, the CBO did not.

Prison officials can allow satanists to draw pentagrams on the floor of their cells, but at what cost? Neo-Nazis can circulate racially inflammatory materials in the name of their religion, but at what cost to the prison system?

Those are very real questions. This is not some hobgoblin activity that we are involved in here.

Then the Senator has argued that no matter what the standard is, prisoners will always make claims. The standard does matter, and Justice O'Connor said that in Turner versus Safely. Here is what she said—I think this is a very apt description:

> Subjecting the day-to-day judgments of prison officials to an inflexible, strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of the prison administration. The compelling State interest rule would distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiter of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuating the involvement of the Federal courts in affairs of prison administration."

I certainly concur with Justice O'Connor in her comments there.

Then finally, Mr. President, this bill without the amendment will force the courts to determine which religions are good and noble and which religions are shams, certainly something which I do not wish the courts to do. And that is exactly what will have to happen under this. Senator REID and I have presented some absurd and bizarre "religions." Well, now, who is going to make that decision?

Think how many well-established religions would never have survived that type of scrutiny 40 years ago. There were religions 40 years ago that were made fun of in America, which now have huge memberships, headquarters, tracts that they distribute. Who is to decide whether they were sham or whether they were real at the time?

My colleague from Utah says that courts will see through sham religions. Do not believe it. How long will it take prison administrators to defend their position against these sham religions? Only you can guess.

The bill's change in standard will force prison administrators into long and costly evidentiary hearings and numerous appeals, instead of swift disposition by summary judgment motions, as is usually the case today.

As I heard the long list of those who support this bill, I thought to myself, I wonder how many members of the various organizations ever read the bill—I always say when everything else fails, why not read the bill.

When everything else fails, why not read the amendment that is being presented by my colleague, and of which I am the cosponsor.

Here is what it says. One paragraph:

> Notwithstanding any other provision of this Act, nothing in this Act or any amendment made by this Act, shall be construed to affect, interpret, or in any way address that portion of the First Amendment regarding laws prohibiting the free exercise of religion, with respect to any individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility—including any correctional, detention, or penal facility that is operated by a private entity under a contract with a government.

The amendment is not really too sinister, not one bit.

No wonder the religious groups write in, send mail by the metric ton—they are saying "you would not want to prevent the practice of religion in prison." That is not what this amendment does—it does not prohibit religion in the prisons. So do not listen to that one.

We are talking about people who have to go out and administer the prisons of the United States—which must be about the most thankless job in society—with a bunch of creative prisoners who, in many cases, become spoiled, who look upon the prison systems as their way of life now, who think of it as their society and really do not want to be released. They have nowhere to go—the temptations of society are too great for them.

If you put those types of people, the wasted of society, those who have given up society, and mix them up with a few creative prisoners who are deciding what kind of religion they can concoct to drive prison administrators goofy, Governors goofy, and the legislatures goofy, and the sky is the limit.

By challenging a bill that sounds so magnificent, you are noted as an evil, uncaring rascal of indescribable dimension.

The Supreme Court upheld by a 6-to-3 decision a totally isolated case of a couple of guys who were fired from their job because they broke their employment contract for doing peyote. That is all. And this bill is the result of it—a great big bill which is all out of context as to what we really should be doing if we wanted to put it back to where it was before.

I will stand here for 5 days without leaving the floor if you want to put it back to where it was before. But this bill is bizarre, absolutely bizarre—compelling interests and least restrictive means test. Someone made a mockery of putting the law back to where it was—this bill has overdone it and all in the name of religious freedom. No wonder the mail pours in.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I do not want to prolong this, but I do have to say, let us just be honest about this. Had the compelling interest test been in effect when the Smith case was decided, the compelling interest test would have upheld the final result in that case anyway. Justice O'Connor came out that way.

I remember a few years back when the military was not permitting members of the Jewish faith, sincere orthodox members to wear a yarmulke. I was one of the Senators who came to the floor and forced the military to let them be able to do that. We had to enact a statute. We had to enact a statute in order to provide for this simple expression of religious freedom.

Now, if there are sham religions that arise, that has to be determined with or without this bill. If this bill is not enacted, you would still have to determine that the religious action was a sham, or that the claimed religious belief was a sham, or that the religion they claimed to be following was a sham. That is before you even get into the question of a compelling interest test.

So in many, many cases these cases would be automatically thrown out as shams. So do not come and tell me that prisoners are somehow or other going to be able to gain privileges based on the sham nature of some prisoners' claims in Federal and State prisons.

The fact of the matter is courts are going to have to make that determina-

tion anyway. But to the extent that we deny anybody, including prisoners, their first amendment rights to worship freely, it would be a shame. That is what we are fighting for here; to establish once and for all that this is the first mentioned freedom in the Bill of Rights, and that it has been given short shrift by the Supreme Court and by one of my dear friends in the majority opinion, Justice Scalia. Short shrift.

We want to correct that. I have no doubt in my mind that almost all prison regulations will be held to be fulfilling the compelling interest test. But where they are not, as the distinguished colleague from Wyoming and very dear friend of mine says, where they uphold the compelling interest test and find the religious activity protected under the Constitution, by gosh, that is a good thing.

We want religion in the prisons. It is one of the best rehabilitative influences we can have. Just because they are prisoners does not mean all of their rights should go down the drain, their fundamental religious rights. And they are fundamental rights.

This amendment protects fundamental rights, fundamental constitutional rights. It says once and for all that the Supreme Court should not misconstrue the intent of Congress. It should not misconstrue the Constitution. This is a red herring amendment as far as I am concerned. I am not meaning to be critical of my colleagues because they are both thoughtful, both very sincere, and they are both very dear friends.

But in all honesty, these are important rights. And all of these groups supporting the bill and opposing this amendment have come together because they want these rights protected. And we as Senators ought to keep that in mind. We are talking about fundamental rights that should not be infringed. And, yes, even prisoners in institutions should have those fundamental rights.

But even in prisons, there has to be a different application of the compelling interest test and prison administrators will be upheld in most instances because of the nature of incarceration, the nature of the penal institution, and the nature of our governmental laws in trying to uphold the penal institutions, and their rules and regulations.

But if prison administrators are found to not meet the compelling interest test, then, by gosh, religious exercise should be upheld. And the fundamental rights of these prisoners should not be taken away. They are not animals. Nobody is any tougher on crime than I am around here, and I want toughness in prisons. But these are not animals. These are human beings, and we ought to consider their rights to religious exercise.

We could debate this for hours and hours. I think excellent remarks have been made by my colleagues. I just happen to disagree with them. I hope that tomorrow when we vote on this that the Senate will vote down this amendment and uphold these fundamental rights. There are a lot of Senators here who would uphold various fundamental rights. I think most would want to uphold all fundamental rights. But there is nothing more fundamental in my eyes than the religious freedoms mentioned in the first amendment of the Constitution.

I am prepared to yield back the remainder of my time if my colleagues are prepared to do so. I understand that there will be 20 minutes equally divided tomorrow morning. I would like to make that a half hour if we can because if Senator KENNEDY is here, I want to make sure there is enough time.

Mr. BRYAN. Mr. President, as an original cosponsor, I today join Senators REID, SIMPSON, BURNS, and SASSER in supporting the amendment to the Religious Freedom Restoration Act to exempt prisons from the act's application through establishment of a different legal standard for review of religious freedom cases brought by prison inmates.

I support the Religious Freedom Restoration Act, and its purpose to establish the compelling interest test as a statutory legal standard for evaluating free exercise of religion claims; the same legal standard that prevailed prior to the 1990 U.S. Supreme Court decision in Employment Division versus Smith.

One can sincerely only be amazed by the diversity of the religious and civil rights groups who have joined together as a coalition to strongly support this important legislation. However, I am very concerned about the possible impact of the Religious Freedom Act if an exception is not included for free exercise challenges to prison regulations.

As proposed, the Religious Freedom Restoration Act would require prison officials to justify any actions involving prisoner's exercise of their religious belief by showing there was a compelling governmental interest for the action, and that any action taken was the least restrictive alternative in burdening the prisoner's exercise of religion.

As a former Attorney General, I am well aware of the amount of prisoner generated litigation, oftentimes amounting to purely frivolous claims, that tie up our State and Federal legal resources. As a former Governor, I am also well aware of the difficult decisions facing our prison administrators day in and day out as they strive to maintain the security of their facilities, for both staff and inmates.

Also as a member of the Nevada State Prisons Board during my tenures as Governor and attorney general, I experienced first hand the burdens placed on State governments as a result of Federal court actions. These burdens impacted State governments' monetarily and administratively through increased costs, time, and effort to comply with required legal holdings.

This prison amendment will retain the current U.S. Supreme Court standard for the evaluation of prison actions affecting religious activities. That standard looks to whether prison officials, in light of security, discipline and safety concerns, have acted reasonably in the measures they have taken which may impact religious activities. In the past, the U.S. Supreme Court has required courts to give great deference to decisions made by prison officials regarding how their prisons are administered. Without this prison amendment, it is not clear such deference would be continued.

Many attorneys general supporting this prison amendment, including Nevada Attorney General Frankie Sue Del Papa, are concerned that without the amendment, the Religious Freedom Restoration Act will overturn standards that have existed for approximately 45 years for prison settings. The result not only increasing the number of prisoner generated lawsuits, but permitting courts to second guess prison administrators' decisionmaking by looking beyond concerns for security and conditions of confinement in the prisons. For example, the recent Santeria religion case upholding religious ritual animal sacrifices could create immense problems if such sacrifices were upheld in a prison setting.

I ask my colleagues to join with the cosponsors of this amendment to ensure our prisons and their administrators are allowed to exercise their judgment to maintain the security and of their facilities, and to have that judgment given due deference by our court system.

Mr. REID. Mr. President, if I could just make a very brief statement, I want the record to be spread of the facts that the amendment offered by Senators REID and SIMPSON does not change fundamental religious rights. It very simply maintains the present standard that the courts have used. And the courts have always given great deference to prison officials when it comes to constitutional rights of prisoners. We simply maintain those standards.

I will be happy if my friend from Wyoming would agree to yield back the reminder of our time tonight. It is my understanding that in the morning there is some morning business that starts at 8:30. They have already agreed to give those people an hour and 10 minutes. So we would only have 20 minutes in the morning evenly divided.

Mr. HATCH. Mr. President, that is fine with me. As I understand it, we will have debate between 9:45 and 10 o'clock. There will be a vote at 10 o'clock.

Mr. REID. It is my understanding it would be on this amendment.

Mr. HATCH. On this amendment. Then we will have some additional time before. We will vote on them back to back.

Mr. REID. Yes.

Mr. HATCH. I understand that is OK with Senator KENNEDY.

Mr. REID. With the permission of the Senator from Wyoming, I yield back the remainder of our time.

Mr. SIMPSON. Mr. President, what is the situation with regard to time?

The PRESIDING OFFICER. The Senator from Utah controls 52 minutes 18 seconds; the Senator from Nevada 7 minutes and 2 seconds.

Mr. SIMPSON. Mr. President, I will not use the entire 7 minutes. But I would like to respond to my friend from Utah. We do serve together on the Judiciary Committee and he has been a great help to me in my time in the Senate.

I regard him highly. Everything he said in his moving remarks I agree with, with the exception of how the courts should treat prisoner claims. Not one of us is challenging the precious right of religious freedom in a prison population, as long as you do not do it in a way which forces the State and Federal Governments to accommodate frivolous claims and sham religions. That is what we are talking about.

I do not want for force courts to decide for me what kind of religion is sham and what kind of religion is good. That is exactly what you are doing if you leave this bill as it is, without this amendment.

The Church of Scientology, where was that 30 years ago? Was that church real or a sham? We all know what has occurred in the last 30 years with regard to making these decisions.

There is no possible way to compare the free exercise of religion in the military and in the prisons. That comparison is a terribly inappropriate argument.

The difference between the military and the prison population is poles apart, night and day.

So I can hear the argument. Who does not agree that religion in prison is a good thing? It is a stabilizing influence. It is a rehabilitating influence. It is a social goal.

But that is not what we are talking about. That was not what the Supreme Court was talking about. If it had not been for a peculiar set of facts which led us to a peculiar situation right now, we may not have been here. But you cannot burden the prison systems of the United States with this kind of bill and then hide behind the first amendment—that it is just the exercise of religious freedom. That is how we pass a lot of stuff in this place, by using a deft blend of emotion, fear, guilt, or racism. I have been here 14 years. I know them all.

Thank you.

Mr. HATCH. Mr. President, the reason I brought up the Army is because the compelling interest test was not applicable in the military, that test was not considered applicable. Members of the Army, sincere Orthodox Jews, could not wear yarmulkes. There has been a recent case where although prisoners could wear baseball caps, sincere Orthodox Jews could not wear yarmulkes, precisely because of the standards that would be set by this amendment.

Look, there are going to be sham religious beliefs and sham religions no matter what we do here. And they are going to have to be reviewed by a court. A decision on those will have to be reached before you even get to the question of compelling interest which of course is important.

Let me also point out some of the absolutely absurd results which follow this piecemeal approach to prisoner litigation reform; an approach embraced by this prisoner exemption amendment.

Currently prisoners can and do sue prison administrations for any reason at all. They sue because they received only one dinner roll, or because they disliked the shape of their cake, or because they are denied illegal drugs. Nothing contained in this amendment is going to stop these frivolous lawsuits.

The effect of this amendment is simply to preclude those prisoners with lawsuits asserting first amendment free exercise of rights from advancing those rights. Thus, for example, the prisoner who sued the prison administrator in Nevada for serving him creamy peanut butter rather than the chunky peanut butter may still bring his case before a judge. That horror story is not precluded by the Reid amendment.

If this amendment is agreed to, the Catholic prisoner who may want to challenge the denial of communion would be given short shrift in contesting such an arbitrary prison policy in the courts. At best, the Catholic prisoner asserting the right to exercise a fundamental aspect of his faith is given no more consideration than the prisoner complaining about the peanut butter. It is absurd. Likewise, the prisoner in Illinois—depriving him the use of his jail cell for drug trafficking—will still have standing to sue prison officials.

However, if this amendment is passed, a Protestant or Episcopalian or Mormon who might want to challenge prison officials who are denying them the right to pray in their prison cell may have their case thrown out of court. The inmate who files a frivolous lawsuit against his jailer because he does not like the color of prison uniform can fully litigate his case in courts—and they will; a Jewish inmate who may want to challenge denial of his right to kosher meals again would be afforded no better a chance to prevail than the claimant making such a frivolous claim about the color of his clothing.

Indeed, if the Reid amendment passes, the religious claimant may have less rights. These claims clearly demonstrate the absurd results we see as a consequence of this amendment.

Let me make my position on prisoner litigation clear. Like all of you, I do not condone this stream of frivolous lawsuits currently being brought by many prisoners. To the contrary, I find most prisoner's lawsuits to be petty, frivolous, and offensive. However, I am extremely concerned that this amendment continues our frustration in dealing with the prisoner litigation crisis and dictates how we respond to prisoners whose legitimate religious beliefs may be seriously offended.

I previously suggested that we need to overhaul thoroughly prisoners' access to the courts. Our approach must be comprehensive and well conceived. Simply depriving prisoners of a real right to advance their religious free exercise claims is not the way to go.

More important, our approach must be equitable. This amendment should fail because it is not fair to those prisoners who are deprived of their legitimate exercise and have no real resource to challenge an arbitrary prison administrator who has abused his authority.

Once again, I have to ask our colleagues to oppose this exemption to first amendment free exercise rights, because in this act, we are restoring those first amendment rights. Those prisoners with legitimate religious claims are the only real losers if this amendment succeeds. The abusive and contentious prisoners will still bring frivolous lawsuits, and we are going to have them no matter what we do. If there are shams, that has to be decided in every instance before you can determine whether or not it applies.

It seems to me we ought to be very considerate of these first amendment rights and fundamental rights that we are talking about, even in the case of prisoners in prison—maybe in many instances, especially in the case of prisoners, who we are trying to rehabilitate with the best tools available, and there is nothing better than religious belief.

Well, Mr. President, I am prepared to yield the remainder of my time.

We both yield the remainder of our time.

The PRESIDING OFFICER (Mr. FEINGOLD). All time is yielded back.

Mr. HATCH. We are prepared to do the wrap-up.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes.

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

ENERGY SECRETARY O'LEARY

Mr. DOLE. Mr. President, it has been reported that the Secretary of Energy, Hazel O'Leary, has nearly signed a death sentence for the domestic independent oil and gas industry.