Bell Atlantic-TCI, or AT&T-McCaw versus MCI-British Telecom, or CBS, Disney, or any other information company.

That vision can be achieved only if we agree that the old world technologies of telephone, television, radio, publishing, and video have been shattered by the blows of the new kids on the block: computer and fiber optics technology. Prior to development of the computer and fiber-optics the old technologies were easily and naturally divided. Voice was carried over the phone lines, radio and television signals through the air and text on paper. Before the advent of computer and fiber-optic technology, it made sense to divide our regulatory effort into common carrier, broadcast, and related ownership issues.

But today where I used to hear the dial tone and the sound of a friend's voice I now hear sound waves which were once the ones and zeros of a digital stream of information. Likewise, the video image on my television screen, the video tape in my VCR, the words on my newspaper or book, and the text on my computer are all encoded in the ones and zeros of the digital world.

The significance of this to me as a consumer is that all information—no matter how different its form and look—can and will be converted into the same code and will be transmitted in the same wired or wireless fashion.

There are those who see telephone and cable technologies converging and fear that it will create unfair competition, or unfair pricing. We must understand that the merger of Bell Atlantic and TCI is about a marriage of technologies born of science, not corporate greed. We should not attempt to force these technologies to compete. Their convergence is inevitable. What we must do is see that those who provide this combined technology and the services associated with it compete fairly and aggressively.

In fact, Madam President, this so-called convergence presents an opportunity for more choice and more power for the consumer if we, in our capacity as the makers of regulation, do the right thing.

If we do the right thing, American consumers will no longer buy their dial tone from a phone company, video signals from broadcast or cable companies, content from production companies, sound from radio companies, or text from newspaper and publishing companies. Instead, American consumers will buy information from each of these and many more besides. Instead of being restricted by an old regulatory structure Americans will be able to buy according to their social, economic, entertainment and educational needs.

The right thing, Madam President, is to make certain that consumers have genuine choice and that real competition occurs in the marketplace. Our most recent experience in the long distance market shows that consumers need real choices. AT&T just raised its prices almost 4 percent, and so did MCI and Sprint. Follow-the-leader price competition does not benefit Americans' wallets. We obviously need to inject more competitors into this market—and the logical choice is AT&T's seven offspring.

However, we should not try to manage the competition between cable companies and telephone companies, nor between long distance telephone companies and local telephone companies, nor between networks and producers, nor between publishers and telephone companies. Instead, we should allow all of these and more to come directly to the customer and offer to provide some or all of the information needs of the American consumer.

Our role—particularly as we transform from the monopolistic model to a competitive model—should be to ensure that competition exists. The best way to create real competition is to allow the so-called big guys to have at each other as quickly as possible. Efforts to control the pace will merely preserve the heavy cash advantages these monopolies currently enjoy.

There are four other areas where a public interest exists and where we should direct our attention. I will mention each briefly:

1. EDUCATION

We should challenge the information industry to deliver a plan which will provide every American classroom with affordable access to the Internet. This access could be wired or wireless, but it cannot be funded with property, sales or income taxes. Local schools cannot fight this battle alone. Unless we address the problem faced by the all of America's 100,000 schools as a group, education will enter the age of information too slowly.

We should also consider creating a communication technology fund for our schools so that work stations and software do not become cost-prohibitive for all but our wealthiest schools. Perhaps we should dedicate a portion of the proceeds from the 160 mHz auction which will begin next year for personal communications systems.

2. RURAL ACCESS

We are at a crossroads for enhanced rural service. As we steer onto a path which will provide rural American homes and businesses with enhanced service, I prefer to use direct spending subsidies instead of regulatory restrictions.

3. PRIVACY

We must remain ever-mindful of the easy invasion of privacy which can occur once a connection is made to our homes. The idea of privacy should not be abandoned in the electronic age.

4. CONTROL

Simply put, we should not allow any owner of infrastructure to use the advantage gained as a consequence of having been granted a monopoly franchise to use this power to strangle innovative and entrepreneurial information services.

5. CONTENT

Pornographic and violent content must be easily excluded if the consumer does not want such content entering their home.

Madam President, those who sense that this merger signals a need for government to do things differently in order to avoid an abuse of power are correct. My hope is that we do not react with a regulatory model designed for a technological world which no longer exists. American jobs, American culture, and our capacity to govern ourselves all depend on our actions.

Madam President, I appreciate the time. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RELIGIOUS FREEDOM RESTORATION ACT OF 1993

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 578, which the clerk will report.

The bill clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

Reid Amendment No. 1083, 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.

AMENDMENT NO. 1083

The PRESIDING OFFICER. The time between now and 10 o'clock is evenly divided, and the time will be controlled by Senators KENNEDY and REID.

Mr. KENNEDY. Madam President, I yield 4 minutes to the Senator from Connecticut.

Mr. LIEBERMAN. I thank the Senator from Massachusetts.

Madam President, I rise in opposition to the amendment offered by my colleague from Nevada which would exempt prisoners from the Religious Freedom Restoration Act of 1993. I do so not only as a Member of the Senate but as a former attorney general of the State of Connecticut who dealt with prisoner litigation.

Madam President, the overall act aims to restore a standard that existed prior to the Supreme Court holding in Oregon v. Smith which was both protective of the people's religious freedom and also gave prison officials the opportunity to protect the security and indeed to pursue the most cost-efficient manner of operating the prisons.

I understand the intuitive appeal of this amendment. It is intended to re-

spond to concerns about the cost, security, and manipulation and, indeed, abuse by prisoners. None of us wants to see taxpayers' dollars wasted or jails made more dangerous or the difficult jobs of correction officers made more difficult. But I will tell you that this amendment will create many more problems than it will solve.

RFRA does not create a new legal standard. And that is important to say. The main bill before us returns to us to a standard that existed in a majority of judicial circuits prior to 1987. It establishes a balancing test between the Government's interests, which includes saving money and providing security, and an individual's religious rights, which are neither expensive nor dangerous to accommodate.

The compelling and least burdensome test that existed prior to the court ruling in 1987 simply was not used to cost prison officials a lot of money or put them under pressure to endanger security within the prisons.

Madam President, the proponents of this amendment, I say respectfully, have not pointed to a single incident of excessive expense incurred through the use of this standard. In fact, this standard—which, again, existed prior to 1987, so we have a track record as to how it will affect the conduct in the prisons—has been applied to restrict religious claims on the basis of cost or security.

For example, the law in some circuits already requires prisons to accommodate the religious dietary needs of prisoners. The RFRA standard, the underlying standard in this act, has been applied to restrict this law when compliance creates too great an expense.

I say again, respectfully, that the proponents of the amendment have not offered evidence of a single security incident that has arisen from application of the standard that the underlying act would put back into place.

As an example, the Seventh Circuit applied the standard that this amendment would eliminate to deny a prisoner access to satanic religious services and articles because of security concerns. In fact, of all the examples that the proponents of the amendment have cited that are outrageous and excessive—of prisoners demanding chateaubriand on religious grounds or demanding marijuana or demanding nothing to eat but steak—each one of those examples resulted in a decision in favor of prison officials under the standard that will now be restored by the basic RFRA legislation, not a decision in favor of the prisoners making these outrageous claims.

Courts, however, on the other side, have used the standard established by the Supreme Court in Oregon v. Smith that the underlying law would overturn, that this amendment would restore, to go to the other extreme, and unnecessarily clamp down on harmless religious practices.

The PRESIDING OFFICER. The Senator has used his time.

Mr. LIEBERMAN. I ask unanimous consent for one additional minute to finish the statement.

Mr. REID. Madam President, the problem is the majority leader has ordered a 10 o'clock vote and we have a limited amount of time. I am not sure we can do that. We have a number of speakers.

Mr. LIEBERMAN. I would just ask for 10 seconds.

Mr. KENNEDY. I yield the Senator 10 seconds.

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

Mr. LIEBERMAN. An example of how the current standard has affected people, Oregon v. Smith has been applied to deny Episcopalian prisoners the right to tiny amounts of wine for communion.

That is just one concern we have why this amendment should be defeated.

Proponents of this amendment have not proven their claim that RFRA will open the floodgates for prisoner's religion-based claims. Before Smith, prisoners' religion-based suits were not clogging up our courts. Because religion-based suits cannot win a prisoner his or her freedom, they represent only 2 percent of all prisoner's claims. It has always been 2 percent: before Oregon versus Smith and after Oregon versus Smith. Out of that 2 percent, the same, tiny percentage of claims are legitimate as are legitimate in other areas of prisoner's litigation; the rest are simply dismissed. Speaking as a former attorney general, the resources of State attorneys general are not stretched to the breaking point by prisoner's spurious legal claims based on religion. The Government will spend the same small amount enforcing RFRA as it did enforcing Oregon versus Smith. In fact, for all its proponent's arguments that this is a cost-saving amendment, no one has presented evidence that Oregon versus Smith has saved money.

While the problems this amendment's supporters have with RFRA are unfounded, the problems with this amendment are of concern. This amendment is that proposes that this body create two separate standards for the protection of religious freedoms: protections afforded citizens out of jail and protections afforded incarcerated citizens. This is a dramatic proposal. As it stands now, all prisoners receive the same Bill of Rights protections as do ordinary citizens, with three obvious exceptions. Prisoners have restricted ability to assemble, they are subject to searches without warrant, and they cannot possess weapons. These exceptions draw a bright line between those rights whose exercise a prisoner cannot be afforded and those rights whose exercise might cost money and bother but cannot be denied. The rationale behind the law prior to Oregon versus Smith was that religion belongs in this latter group. Why? Because, in a prison, unlike the right to assemble, religion is not dangerous; unlike the right to be secure in one's possessions, religion cannot hide weapons; unlike the right to bear arms, religion cannot kill.

What is the harm free exercise of religion in prison presents? RFRA will not guarantee that drugs and alcohol are distributed to prisoners. RFRA means that a religious prisoner may have access to wine for sacramental purposes. RFRA means that a prisoner might be allowed to possess a prayer book. RFRA means that a prisoner might have access to certain clothing or specific foods. RFRA means that a legitimately religious persons will be allowed to keep practicing their religion in jail. Are these great harms?

On the other hand, what are the benefits to RFRA passing unmended? That prisoners, those members of our society in greatest need of moral guidance and healing, be taught that such is available to them. Religion is often the only moral structure that permeates prison cells. It has helped countless prisoners rehabilitate themselves. By leaving RFRA unamended, we symbolically and practically show prisoners that morality and religion are avenues available to them. By leaving prisoners with the bare protection RFRA offers, we not only offer them the means to find redemption, we show prisoners that a civilized society treats even its miscreants with respect and decency. Treating prisoners honorably helps infuse them with the self-esteem necessary to alter what at times are lifetime patterns of criminal behavior.

In closing, I offer as an example "We Care," a program dedicated to Christian-based outreach in a Connecticut prison. Prisoners participating in "We Care" donates time to a Hartford soup kitchen and are helping develop a rooming house for the homeless. The organization is funded by members' donations and from the sale of inmates' artwork and crafts. It was founded by Raymond Outlaw, a Webster Community Correctional Center inmate in Cheshire. This is just one instance of religion inspiring a positive program for inmates. This is one more reason not to deprive prisoners of the harmless and inexpensive constitutional right to exercise their religion.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, my understanding is the only time remaining is that that I control, is that right?

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes and 12 seconds, and the Senator from Nevada has 7 minutes and 54 seconds.

Mr. REID. Did we have time running with the quorum? Is that why we have only 7 minutes? Because we have not spoken.

The PRESIDING OFFICER. The Senate proceeded to deliberate on this 4 minutes late and there is a rollcall scheduled for 10 o'clock.

Mr. REID. I would not have objected to the Senator from Connecticut's request for additional time had I known there was more time controlled by the Senator from Massachusetts.

I yield 3½ minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 3½ minutes.

Mr. SIMPSON. Madam President, it is too bad so many of our colleagues missed the debate. It was a good debate last night, and we knew the vote would be today. As is often the case, it is difficult to summarize too much in 3½ minutes, but I do want to commend my colleague from Nevada.

There is a not a single thing that has come up in this debate that should lead anyone to believe anything other than that we all believe in religious freedom for everybody. It is absurd, to describe any person who would deign to vote against this bill as being bigoted, or having some great prejudice, or some horrid antireligious feeling. Although, I have had some of that characterization from some of the local media clowns in Wyoming, at least in Casper. So I know what that is. And it is unfortunate.

So we should just clean that out, and then just realize that our focus is purely on this amendment. This amendment would exempt prisons and prisoners to avoid the extraordinary creativity of people who spend their time figuring out how to concoct a new religion and misuse the compassion, care, and sensitive feelings that we have for those who are struggling who are in prison and who need religion as a stabilizer, a personal gyroscope. The sponsors of this amendment are not talking about discouraging the practice of religion. This amendment simply avoids having a standard of evidence which would be absolutely absurd.

I have heard many of my colleagues say that "All we should do is go back to the law as it was before the Supreme Court decision." I would be the first one to do that. The Supreme Court decision was 6 to 3. It had to do with a couple of guys doing peyote in Oregon. It was not a case involving the great fabric of our society, or any such thing. They were not supposed to use controlled substances or drugs. They did. They got canned. They went through the unemployment system to get benefits and the case that they brought to assert their rights ultimately went to the Supreme Court.

The Supreme Court made a decision, 6 to 3. It was not the liberals versus the conservatives, or the "in's" versus the "out's." It was a sensible decision. And now most of us agree to go back to where the law was—but this bill does not go back to that point. As is typical in these situations, we have gone too far. If we remove this evidentiary standard of "reasonableness," we will have tons of problems in some of the worst places. These are not social places for social engineering—These are prisons. You put people in the "clink" and you keep them there. This is to avoid terrible evidentiary burdens placed upon prison administrators and attorneys general. That is what the amendment is all about.

How ironic that today is "National Unfunded Mandate Day." Legislation addressing "unfunded mandates" now has 47 cosponsors. Yet today we are considering a bill—the Religious Freedom Restoration Act—which is an unfunded Federal mandate requiring the State and local governments to pay for more frequent, expensive, and protracted prisoner suits in the name of religious freedom. The taxpayer will lose again.

At a time when every State and Federal jurisdiction in the country is faced with overcrowded prison facilities and more lawsuits brought by prisoners than are brought against criminals, this bill will allow prison inmates to sue prison administrators with greater frequency and success. Corrections administrators and their attorneys state that this bill will make it extremely difficult to quickly dismiss frivolous or undeserving inmate challenges—the inmates will use religious freedom claims to manipulate the system. Frivolous challenges will no longer be resolved swiftly by summary judgment motions but will require full-blown evidentiary hearings—a much more expensive and time-consuming process.

This amendment exempts prisons from the bill's application, allowing the actions of prison administrators to be judged by a reasonableness standard. While I agree that prisoners do and must have first amendment rights, including the right to exercise their religion, I believe, as the Supreme Court does, that there are sensible and reasonable limits to those rights. Pursuant to the amendment, prison interests would—and should—be given considerable deference. Prison authorities would not be required to accommodate practices which significantly interfere with the security and operation of the prisons.

Numerous State attorneys general, the correctional directors of all 50 States, Norman Carlson, the former Director of the Federal Bureau of Prisons, J. Michael Quinlan, former Director of the Federal Bureau of Prisons—both representing 22 years of experience as the head of the Federal prison system, 1970–92—the American Federation of State, County and Municipal Employees [AFSCME], which represents corrections officers and other prison personnel, and the National Sheriffs' Association support this amendment to exempt prisons. These are the people who will have to deal with the consequences of our vote on this amendment today. They are the people in the trenches with the thankless job of operating and managing our State and Federal prison system.

This bill is a Leave-it-to-the-Courts Act. The proponents of this bill are intentionally throwing the management of the prisons to the courts—a move which will result in second-guessing the State and Federal legislatures, the attorneys general, and the prison administrators. On this issue, Justice O'Connor, in her opinion in *Turner* v. *Safley*, 482 U.S. 76 (1987) said:

> 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 prison administration. The rule would distort the decision-making 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. Court inevitably would become the primary arbiter of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration."

I agree with Justice O'Connor.

My colleagues argue that prisoners will bring frivolous claims no matter what standard is used. Mr. President, the standard does matter. In the committee report the proponents cite the case of Green versus White—which uses the compelling interest standard "restored" in the bill—a perfect example of a prisoner abusing the system in endless appeals of a frivolous claim. In Green, the claim was heard before a trial court, an appeal to the Eighth Circuit Court of Appeals, a remand to the trial court, another appeal to the eighth circuit, and a subsequent remand—seven separate appearances before the Federal courts. On the final remand, the trial court judge said:

> The time and resources expended by State and Federal officials in coping with plaintiff's litigation barrage is enormous. At the evidentiary hearing, plaintiff gloated over this fact. He proudly announced that he has suits pending in every prison system in the country. He estimated that he has filed close to one thousand lawsuits on his own behalf of others in the past 10 years.

After this judge made his views known, the inmate appealed yet again and then appealed to the Supreme Court. Under the Supreme Court's current reasonableness standard which this amendment would retain, this case could have been more easily and swiftly disposed of by summary judgment motion.

Pursuant to this bill, not only do prison administrators have to demonstrate a compelling State interest, but courts must 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. Under the bill, if the prison could accommodate a prisoner's ac-

tivities—even if it required 100 more prison guards or building new facilities—the prison could be required to do so—more unfunded mandates. 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.

I urge my colleagues not to impose additional unfunded mandates on our Federal, State, and local prison administrators and support the amendment to exempt prisons from this bill.

The PRESIDING OFFICER. Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. I yield 1 minute 15 seconds to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 1 minute and 15 seconds.

Mr. COATS. Madam President, I am pleased the Senate today is moving toward restoration of religious freedom for all Americans. Freedom of religion, freedom of conscience, and freedom of worship are the most fundamental safeguards of the liberty all Americans cherish.

I will first submit a letter which I received from Charles Colson, who has dedicated 17 years of his life, visited 60 prisons, and has an organization with 50,000 volunteers working with prisoners with some remarkable results. This letter is dated October 20, 1993, and I ask unanimous consent it be printed in the RECORD.

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

OCTOBER 20, 1993.

Three years ago in Employment Division v. Smith, the Supreme Court took away what many Americans consider their most treasured basic freedom—the right to worship God as they saw fit without interference from the government. The decision removed the requirement that government show a compelling interest before imposing restrictions on religious exercise and that it employ the least intrusive means possible. The Court has effectively turned religious Americans into second class citizens.

With the enactment of the Religious Freedom Restoration Act, we will give back what the Court took away. With the enactment of RFRA we will restore full citizenship to millions of Americans for whom their faith is the most important aspect of their lives.

But, this will only happen if we restore religious freedom to all Americans. That is why I oppose the proposed amendment. Excluding prisoners is both bad policy and sets a dangerous precedent.

It is bad policy because religion can be a catalyst in rehabilitating an offender. We know that most men and women in prison—94 percent, in fact—were previously convicted of another crime. Studies sponsored by groups as diverse as Prison Fellowship and the National Council on Crime & Delinquency attest to the positive influence of religious programming.

For both constitutional and practical reasons, the state cannot be the only or even the primary source of religious programming. It must depend on volunteers who are willing to give both time and money to provide prisoners with what may be their last, best hope for rehabilitation.

The proposed amendment threatens the ability of organizations and volunteers to do this important work. By preserving the status quo, the amendment makes it possible for officials to bar all but minimum religious activity without having to explain their actions to anyone.

The amendment also sets a dangerous precedent. It's easy to think of inmates as second class citizens who have forfeited some of their rights. But, if we can carve out exceptions for one class of citizens, what is to keep us from exempting, say, students or anyone else whose religious freedom may be a little inconvenient to accommodate? Religious freedom is possibly the most fundamental human right. It is too important to be sacrificed on the altar of administrative convenience.

Freedom of religion is a right that should belong to all Americans. God didn't create second-class children. We shouldn't create second-class citizens. Thank you.

CHARLES W. COLSON.

Mr. COATS. Mr. President, I rise to oppose the proposed amendment to the Religious Freedom Restoration Act. First, the amendment is unneeded by prison wardens; second, it is counterproductive to the rehabilitation goals of our penal system; and third, it will trample on one of our most cherished freedoms, the freedom to practice religion.

True, some prison inmates file frivolous lawsuits as a means of retaliating against the system. But this amendment cannot stop a single one of those suits; inmates can and will continue to file them. The point is that RFRA will not give inmates a new legal theory on which to base additional claims. Neither are religious claims a significant problem for the penal system. Prisoner religious exercise suits were less than 1 percent of all prisoner civil rights cases in Ohio when RFRA's higher standard of review was in force in those States.

Moreover, under RFRA as currently drafted, prison wardens will continue to prevail in the vast majority of religious cases brought by inmates. Under the legal standard that would be restored by RFRA, prisons had no difficulty winning on summary judgment. Courts have always given substantial deference to the special needs of prison wardens, holding that burdens they place on inmate religious exercise are usually outweighed by the Government's compelling interest in prison safety, health, discipline, and financial constraints.

Furthermore, we cannot afford the high cost of this amendment. Religious influence is proven to be the most effective means of reducing recidivism among inmates. Yet this proposal seeks to give prison officials total discretion to deny prisoners all religious rights, unless prisoners can prove that prison officials are expressly targeting religion. Prison wardens have near absolute power over every aspect of prisoner life. And in a small but important number of cases, prison wardens act arbitrarily toward inmate religious needs. They do so in ways that cost, rather than save society money and security because they set aside the most positive influence on inmate rehabilitation.

Most of us are familiar with Charles Colson. We know his story—the years he spent in prison, and we know of his commitment to prison issues. Seventeen years ago, Chuck Colson founded the Prison Fellowship, an organization of over 50,000 volunteers who are working in hundreds of prisons to assist prisoners in adopting the responsible lifestyle that will keep them out of prison once they are released.

Chuck Colson has personally visited over 600 prisons in nearly 30 countries. Based on this knowledge and experience, he has urged us to oppose the Reid amendment. He speaks with authority on this issue, so I would like to take a few minutes to read excerpts from a letter every Senate office should have received dated September 13.

Mr. Colson writes:

It is clear that America has a crime problem. What is not as clear to many people is that the problem isn't in a lack of law enforcement or sound corrections policy. It is a poverty of values. In our violent, inner-city *neighborhoods* and in our formerly peaceful suburbs, people are crying for the order that grows only out of moral character and moral courage.

Crime, after all, is the result of a moral failure—either of a failure to discern right from wrong, or of a deliberate choice of wrong over right. Crime is a mirror of a community's moral state. Today that mirror reflects a broken consensus. A set of traditional beliefs that defined the content of our character has been shattered like glass. Americans are left to pick their way among the jagged pieces.

In their 1977 book, "The Criminal Personality," psychologist Stanton Samenow and the late psychiatrist Samuel Yochelson argued that the cause of crime cannot be traced to environment, poverty, or oppression. Instead, crime is the result of individuals making, as they put it, wrong moral choices. Samenow and Yochelson concluded that the answer to crime is a conversion of the wrong-doer to a more responsible lifestyle.

And traditional efforts at rehabilitation, however, well-intentioned, have done little to help the wrong-doer choose that more responsible lifestyle. Over sixty percent of all inmates released from prison are re-arrested within three years. Ninety-four percent of all prison inmates are repeat offenders. Something else is needed.

Mr. Colson is right. Something else is needed. And groups like Prison Fellowship, in my opinion, have the answer for many in our prison population. Programs like these work. Yet, under the Reid amendment, they could be barred simply because of the indifference of a prison official.

A 1990 study conducted by the Institute for Religious Research at Loyola College in Maryland compared two groups of ex-offenders. They were similar in terms of crimes committed, age, gender, and race. The only difference between them was that one group had participated in Prison Fellowship programs and the other had not.

The study found that, overall, offenders who had taken part in the program were nearly 22 percent less likely to be re-arrested than those who had not. Among women, the difference was even more notable. Women who attended Prison Fellowship seminars were 60 percent less likely to be arrested. And, those who were re-arrested were charged with less serious offenses.

Mr. Colson believes, and I agree that if the Reid/Simpson amendment becomes law, programs such as those operated by Prison Fellowship can and will be cut off at the discretion of prison officials without any compelling reason. And for that reason, I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 1 minute to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

Mr. HATCH. Madam President, religious freedom is a fundamental right. It is the first fundamental right explicitly mentioned in the Constitution. The Smith case is wrong. It ought to be overruled. Prison administrators have an interest in order, safety, discipline, and other types of controls over the prisons. This amendment will not interfere with their rights to do that. In fact, they will be able to show in almost every instance a compelling interest to enforce their discipline.

There is nothing wrong, however, in protecting prisoners' rights. They are not total animals. They should have some rights protected.

Madam President, I ask unanimous consent to have printed in the RECORD a letter from a number of attorneys general of the United States who support our position.

There being no objection, the letter was 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 Supreme Court decisions were substantially changing the applicable legal standard.

We concur with U.S. Attorney General Janet Reno to 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.

Mr. HATCH. Madam President, there are seven points I would like to stress in opposition to the Reid amendment.

First, religious liberty is a fundamental right. For almost 200 years of this Nation's history that right has remained fundamental. There is no exemption in the first amendment's guarantee of religious liberty. There should be no exemption in this religious liberty statue we are about to enact.

Second, exposure to religion is the best hope we have for rehabilitation of a prisoner. Most prisoners, like it or not, will eventually be returning to our communities. I want to see a prisoner exposed to religion while in prison. We should accommodate efforts to bring religion to prisoners.

Third, the compelling State interest test outlined in RFRA is an appropriate test for challenges to religious liberties. It has proven to be a workable balance between the interests of prison administrators and the more limited rights of prisoners. Contrary to what some have suggested, prison officials clearly have a compelling interest in maintaining order, safety, security, and discipline. The sponsors of this bill have emphasized this point repeatedly.

Fourth, the claims of increased prisoner litigation are a red herring. The litigious prisoner will litigate his claims regardless of this amendment. The Reid amendment will do absolutely nothing to reduce the number of lawsuits filed by prisoners.

Fifth, the cost of religious accommodation is a consideration under the compelling State interest test. The courts have recognized the budgetary limitations of prison administrators and will continue to consider the cost of religious accommodation under RFRA.

Sixth, the courts are well suited to identify sham religions which mock established religion. Claims that prisoners will successfully extract special privileges by forming their own religions will be easily detected.

Finally, let me point out that this amendment sets a dangerous precedent for religious liberty. The real danger lies not so much in the exemption of prisoners, but in the choice we are making about exempting anyone from the principle of the free exercise of religion. Today we are asked only to exempt prisoners. Tomorrow, however, we will be asked to exempt others. Ultimately, we may be asked to exempt certain religions which are, arguably, out of the mainstream of American culture. How far we will venture is a legitimate unanswered question.

By supporting the Reid amendment we embark on a journey down the most dangerous of paths. Religion truly deserves more protection than offered by the Reid amendment. I ask you to help us restore religious liberty to our nation. I ask you to defeat the Reid amendment.

Mr. DOLE. Mr. President, I want to take a few moments to express my support for the Religious Freedom Restoration Act.

In one sense, tonight's debate can be described as a battle between two competing legal standards: should Congress endorse the standard in the Supreme Court's Smith decision, upholding laws that interfere with religious practices, if the law is rationally related to a legitimate government objective? Or should we go back to the higher standard that existed before the Smith decision—that laws interfering with religious practices should only be upheld if they are necessary to achieve a compelling government objective?

These are important questions, questions whose answers have real-life consequences.

But perhaps the most important issue raised by this debate is not strictly a legal one, but rather the proper relationship between Government and religion in our society.

For, in the America of 1993, Government too often views religion with deep skepticism and our popular culture too often treats religious belief with contempt.

We seem to have forgotten that the very first sentence of the first amendment to the Constitution guarantees not freedom of speech or assembly, or even freedom of the press.

The first freedom of our Bill of Rights is the freedom of religious expression, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

These words—direct, but all too often misunderstood—were not designed to protect a defenseless Government from the encroachments of religion, but rather to protect religion from an overreaching Government.

And there is a good reason for this: religion is perhaps the most powerful competitor to Government. Government's greatest threat. It's no surprise that when the Communists took over Eastern Europe, they tried to destroy the one institution that could serve as an agent of social change—the church.

And we have seen the church act as an agent of change here in America: the civil rights movement of the 1950's and 1960's was, at its core, a religiously inspired mass movement. The Rev.

Martin Luther King, Jr., and other civil rights leaders were called to secular action by a deep and rich religious faith and America is a better place for it.

So, the time has come to put an end to the motivations blame game that seems to have become the fashion in this country. All too often, our society dismisses out-of-hand those who admit a religious motivation. The term "religious fanatic" is so overused—and misused—that anyone who seeks to translate religious belief into political action is demonized as a fanatic.

When a person or group seeks to participate in the public debate, it is irrelevant whether that participation is motivated by religious belief. What is relevant is the quality of the participation. Are the ends being sought worthy of secular support? Is the argument persuasive?

And that's what the Religious Freedom Restoration Act is all about—allowing people with sincere religious beliefs to act upon those beliefs, to participate in the public debate without having to run the gauntlet of unnecessarily large Government roadblocks.

Finally, Mr. President, I intend to vote against the amendment that would exempt prisons from coverage under the act. It is not too often that I disagree with my distinguished colleague and friend from Wyoming, Senator SIMPSON, but in my view, this amendment is not necessary.

The Religious Freedom Restoration Act will not prevent prison officials from implementing rules designed to enforce prison discipline. If a disciplinary rule interferes with an inmate's religious practices, that rule will still remain valid if it serves a compelling interest of the Government. That was the standard before the Smith decision and that is what the standard should be today.

With the crime epidemic sweeping across our country, the American people are demanding solutions and, when all is said and done, the best solution to crime is not more police or a prison cell, but that little inner voice called conscience.

Down through the ages, people have developed conscience through the family and the schools, and through the religious training offered by our churches.

And if religion can help just a handful of prison inmates get back on track, then the inconvenience of accommodating their religious beliefs is a very small price to pay.

Mr. HATFIELD. Mr. President, the Religious Freedom Restoration Act returns the state of the law to that prior to the Supreme Court case, Oregon Employment Division versus Smith. This is a much needed change because the Smith decision—along with two cases specific to prisons, O'Lone and Turner—has severely limited the first amendment's protection of the right to exercise our religious beliefs by holding that the Government no longer needs a compelling interest to infringe on this right.

This bill should be passed without an amendment to exempt prisons. To reinstate the compelling interest test but specifically exempt prisons would be to jeopardize this fundamental right in a place where it can do the most good.

Religious practice is the one right prisoners have that maintains their dignity and self-worth. While prisoners justifiably lose many of their rights when they go behind bars, religious freedom has long been acknowledged as a special case because of the extremely personal nature of religious faith and because of its rehabilitative attributes.

We are very worried about the increasing cost of our prison system. But, costs grow exponentially when we incarcerate the same individuals three of four times. Why is there such a high recidivism rate? Because, as Chuck Colson, chairman of the Prison Fellowship Program explains, "Crime is a mirror of a community's moral state." Enforcement and punishment has little effect if an excon does not possess a value system that rejects the lure of repeated criminal activity in the future.

In addition, I understand that Mr. Colson's prison ministries group, which has successfully rehabilitated many prisoners, has been denied access to prisoners in Maryland who upon admission to prisoners who did not identify themselves as protestants. I also understand that a Colorado prison presently denies prisoners rights to take communion. These are examples of the need for us to pass this bill without this amendment.

Attorney General Reno, overseeing the Nation's largest prison system, urged the adoption of this bill in committee without amendment. She stated that an amendment exempting prisons was unnecessary and reinstitution of pre-Smith law would not pose an undue burden on the operation of prisons.

Many State attorneys general and directors of prison systems are concerned about changing the standard of review for cases in prisons. This is understandable. In Oregon, prison and jail officials have gone to some length to provide adequate deference to religious practice. These corrections officials generally respect the need to protect the free exercise of religion, but are concerned about the costs and time involved with litigation on these cases.

But, as Attorney General Reno wrote in a letter to the Judiciary Committee, some prisoners attempted to gain privileges based on fabricated free exercise claims before the current standard was in place, these claims have continued under the current standard, and "they will doubtless continue whether S. 578 becomes law or not." Further, free exercise claims are a small percentage of the cases that are filed. The New York attorney general's office found that, regardless of the standard used, religious freedom cases are less than 1 percent of all prison cases. In Ohio, they were less than 2 percent.

Finally, this amendment is not necessary for the security of prisons. In fact it could even be detrimental to security by setting back the rehabilitative process and by furthering alienation and discontent in the prison setting. Activities that are dangerous or jeopardize discipline would still be subject to restriction under the compelling interest standard implemented in this bill.

The courts recognize the compelling interests inherent in prison operations. As the committee report on this bill states:

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

I will vote against this amendment because it is simply not necessary and is contradictory to the purpose of the entire bill: protection of an individual's right to free exercise of religion.

Mr. DANFORTH. Mr. President, I have decided to vote against the Reid amendment to the Religious Freedom Restoration Act [RFRA]. As I understand it, the Reid amendment would create an exception in RFRA so that prisons would not have to show that they have a compelling interest for restricting a prisoner's religious liberty. The reason for making this exception is to curtail inevitable, self-serving, often frivolous prison free exercise lawsuits.

I am extremely sympathetic to Senator REID's aims. Before coming to the Senate, I was Missouri's State attorney general. So I know very well that there is a problem with frivolous prison lawsuits. Some, maybe 1 or 2 percent, are based on religion. Most are not. I agree with the Senator from Nevada that we should do something to curtail absurd prisoner claims. Perhaps we should consider amending section 1983 to curb all frivolous section 1983 suits. I would be very interested in exploring such an option. But to summarily cut off religious free exercise for an entire group cannot be the answer.

It cannot be the answer for several reasons. First, because it is too broad. The freedom to practice religion is one of our most precious fundamental rights. And Congress should not codify group exceptions to fundamental freedoms. Many of the arguments in favor of this amendment could be made to curtail free exercise in the public schools and other arenas as well. Before we deny anyone the right to practice his faith, prisoner or schoolchild, the Government should scrutinize his individual claim.

Legitimate free exercise claims must be protected. This amendment would grant prison officials almost unbridled discretion to deny rights. And prison officials do not have a good track

record for respecting legitimate religious needs. There are already cases illustrating this which were decided under the standard the Reid amendment would retain. For example, in 1991, in the case of Young versus Lane, an Illinois prison denied Jewish inmates' requests to wear yarmulkes based on the silly assertion that the Jewish inmates might wear the yarmulkes as a means of gang identification.

In Friend versus Kolodzeiczak, also in 1991, an Alameda County jail refused Catholic inmates the right to keep rosary beads and scapulars in their cells. The court, finding for the prison, relied on the defendants' argument—available in virtually every free exercise case—that accommodating the prisoners' request to practice his religion would create an impression of favoritism.

A Colorado prison now denies inmates the right to take communion. Surely these were not capricious or frivolous requests. Surely they could have been accommodated to some extent. But under the present standard, the standard of the Reid amendment, they will not be accommodated.

Now, I understand that it is not always easy to accommodate even a sincere religious individual or group. Even before Oregon versus Smith, courts took costs into account and denied claims on that basis. And they will continue to do this under the RFRA standard. But now some prisons deny inmates with religious dietary restrictions the right to appropriate food—even where there is no additional cost. Even where members of the community offer to provide the food for free. This cannot continue.

And, while these and other legitimate religious claims are being ignored, I am not aware of even one decision in which a bizarre claim was upheld under the RFRA standard.

In fact, and this is another reason I am voting against the amendment, courts have generally been extremely deferential to prison authorities. Courts have long recognized that safety and order in prisons are compelling State interests. Courts have accepted the expertise of prison administrators as to how to achieve these goals. RFRA mandates a uniform test, not a uniform result. Prisons by their nature differ from other settings. That is taken into account under RFRA. I am also satisfied that these principles are clearly spelled out in RFRA's legislative history.

Mr. President, I have long supported measures to reduce the amount of litigation in this country. I am obviously concerned by the prospect of any increase. But there is no evidence that frivolous claims will proliferate under RFRA. On the contrary. RFRA reestablishes a standard that existed for 30 years. The only reason to suspect a new explosion of litigation would be if there had been a precipitous decrease after the Smith decision. But since Smith, the amount of prisoner religious litigation has not decreased. I see no reason to suspect a sudden increase now.

Finally, as has been pointed out by several of my colleagues, far from discouraging religious practice in prison, we should invite it. Under the current standard, Chuck Colson's Prison Ministries, which has an extremely positive effect on prisoners, has already been excluded from prisons in Maryland. The evidence is overwhelming that inmates who join religious outreach groups have far lower recidivism rates. Isn't that part of what we hope to accomplish in prisons.

Mr. President, I suppose that there will inevitably be a few dozen of these silly steak and sherry cases wasting our time every year. The courts will see them for what they are. Perhaps RFRA will even add a few to that number. We really cannot afford them. But we can afford even less the result under this amendment. We can afford even less the loss of legitimate religious exercise by prisoners under government control.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself the last remaining moment.

Today Members of the Senate have the opportunity to cast a historic vote for religious liberty. The Religious Freedom Restoration Act will assure all Americans the right to follow the teaching of their faiths, free from Government interference.

As we vote today to restore the broad protection for religious freedom envisioned by the Framers of the Constitution, let us not deny this fundamental right to persons in prison.

In a famous passage in the Book of Matthew, Jesus says to the righteous ones "I was in prison and you visited me." And the righteous asked Him, "when did we ever see you in prison and visit you?" And Jesus responded, "I tell you whenever you did this for the least of your brothers, you did it for me."

There is no doubt that those who are in prison are among the least among us. But they are entitled to practice their religions, and we should encourage them to do so.

The Attorney General of the United States and 13 State attorney generals oppose the Reid amendment, because it is unnecessary and inappropriate to deny prisoners the same religious rights the act will guarantee to all Americans. They know that the Religious Freedom Restoration Act will not undermine prison security or increase frivolous prisoner litigation; but it will protect the religious rights of all Americans.

I urge my colleagues to support religious liberty by voting to reject the pending amendment and to support the Religious Freedom Restoration Act.

ANIMAL CRUELTY

Concerns have been raised as to whether RFRA will limit a State's ability enforce laws banning animal cruelty. I want to assure my colleagues that these concerns are unfounded.

This question arose following the Supreme Court's decision last summer in *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, [61 U.S.L.W. 4587, No. 91-948 (U.S. June 11, 1993)], which arose when persons practicing the Santeria religion, which practices animal sacrifice, challenged a Hialeah city ordinance outlawing religious ritual animal slaughter while permitting the killing of animals in other circumstances. The Supreme Court ruled that the Constitution's Free Exercise Clause barred a government from singling out for prohibition religiously motivated killing of animals while permitting such killings motivated for other purposes.

The Court noted that under the statute at issue, "few if any killings of animals are prohibited other than Santeria sacrifice * * * [A]though Santeria sacrifice is prohibited, killings that are no more necessary or humane in almost all other circumstances are unpunished." Reviewing the events that led to the enactment of the ordinance, the Court concluded that the provision had been passed to suppress religious activity, and that it unconstitutionally discriminated against religion in violation of the first amendment.

The Santeria case thus dealt only with laws that single out religious animal sacrifice while allowing other kinds of killing of animals. In contrast, RFRA is intended to deal with statutes of general applicability, not those that single out religious activity.

RFRA requires that statutes of general applicability that substantially burden free exercise of religion must be necessary to achieve a compelling Government interest. The Court in the Hialeah case did not address the question whether a nondiscriminatory ban on animal killing would meet this compelling interest standard. But in my view there clearly is a compelling Government interest in avoiding the needless slaughter of animals.

Our country has a long history of protecting animals from cruelty through the enactment and enforcement of general anticruelty statutes. In fact, the Massachusetts Bay Colony enacted the first statutory legislation to protect animals from cruel treatment in 1641. Today, virtually every State in the Nation has an anticruelty law that protects animals from unnecessary torture, abuse, or killing.

The Federal Government passed a humane slaughter law in 1960 and currently 26 States have enacted State humane slaughter statues. It is certainly not the intent of Congress to stifle the enforcement of religious-neutral laws that protect animals.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, as indicated by the Senator from Utah, it is not the SMITH case that is the controlling aspect of the matter before us. It

is the O'Lone case. We do nothing to affect a person's religious liberty. I am a cosponsor of this bill. I hope the bill passes. But the bill should pass with the amendment offered by me and Senator SIMPSON because it would make a better bill. We simply maintain the same standards that have been in effect in this country for many years.

Last year, 48,536 criminal cases were brought in Federal court. During the same period, inmates in Federal and State systems filed almost 50,000 civil lawsuits against the Government in the same court system. The criminals are winning by almost 1,500. The criminals are tying up our court system with suits just for the sake of doing it, and it costs enormous amounts of money every year. It costs the State of Nevada millions and other States far more.

All the amendment does is maintain the current standard for reviewing inmates' religious claims. Under this Supreme Court standard, a prisoner's free exercise may be burdened if it is reasonably related to prison interests. Under RFRA the standard could be changed so the State would have to have a compelling interest and the alternative would have to be the least restrictive means.

What this means is that prisoners who sue the Government to receive pornographic material, knives to perform animal sacrifice, women to dance with in the moonlight in religious ceremonies—and there are reams of cases like these I mentioned—are going to be able to tie up the courts even more and their cases are going to be even more winnable. Far over half the attorneys general favor this amendment. Every prison administrator in this country favors this amendment. Judges will no longer be able to dismiss cases by summary judgment if this standard is not adopted by this amendment.

Full evidentiary hearings will be necessary in all these ridiculous claims by prisoners. We cannot afford to impose upon the States another unfunded mandate, and that is what this would be. The opponents of our amendment claim we are trying to take away a prisoner's religious rights. That is poppycock. Nothing is further from the truth. We maintain all the rights prisoners currently have, and, believe me, they have a lot of rights, far more than most people even outside prisons in some instances.

I appreciate the Biblical quotation, but we are not taking any Bibles away from anyone. We are taking no religious freedom away from any prisoners. I repeat, all this amendment does is maintain the current standard in the prisons for reviewing a prisoner's religious rights. It is a standard long established by the Supreme Court and one supported by all 50 State prison directors, a majority of State attorneys general, the National Sheriffs Association, the American Federation of State, County, and Municipal Employees, and many Governors, and, I respectfully submit, common sense.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent it be in order to request the yeas and nays on the passage of H.R. 1308.

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

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nevada. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from West Virginia (Mr. ROCKEFELLER), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 41, nays 58, as follows:

[Rollcall Vote No. 330 Leg.]

YEAS—41

Baucus	Faircloth	Murkowski
Bond	Feinstein	Nickles
Breaux	Gorton	Nunn
Brown	Graham	Pressler
Bryan	Gramm	Reid
Burns	Helms	Roth
Byrd	Hollings	Sasser
Cochran	Hutchison	Shelby
Cohen	Johnston	Simpson
Conrad	Kerrey	Smith
Coverdell	Lott	Stevens
Daschle	Mack	Thurmond
Dorgan	Mathews	Wallop
Exon	McCain	

NAYS—58

Akaka	Ford	McConnell
Bennett	Glenn	Metzenbaum
Biden	Grassley	Mikulski
Bingaman	Gregg	Mitchell
Boren	Harkin	Moseley-Braun
Boxer	Hatch	Moynihan
Bradley	Hatfield	Murray
Bumpers	Heflin	Packwood
Campbell	Inouye	Pell
Chafee	Jeffords	Pryor
Coats	Kassebaum	Riegle
Craig	Kempthorne	Robb
D'Amato	Kennedy	Sarbanes
Danforth	Kerry	Simon
DeConcini	Kohl	Specter
Dodd	Lautenberg	Warner
Dole	Leahy	Wellstone
Domenici	Levin	Wofford
Durenberger	Lieberman	
Feingold	Lugar	

NOT VOTING—1

Rockefeller

So the amendment (No. 1083) was rejected.

• Mr. FEINGOLD. Mr. President, I rise today as an original cosponsor and strong supporter of S. 578, the Religious Freedom and Restoration Act of 1993. I want to emphasize, Mr. President, that I support the bill unamended and in its current form.

S. 578 is designed to reverse the results of two Supreme Court cases and codify the Free Exercise Exemptions Doctrine established in Sherbert versus Verner, 374 U.S. 398 (1963). The Supreme Court in Sherbert established a standard of review requiring any government to show a compelling interest in order to substantially burden or restrict religious practice, and that if a compelling interest is shown, the Government can only burden or restrict religious practice by the least restrictive means available.

For nearly 20 years the compelling interest standard has proved to be sufficiently flexible to strike an appropriate balance between the free exercise of religion and the functions of Government—even those functions related to safety and security. However, the Court reversed the compelling interest standard, first in O'Lone versus Estate of Shabazz, 482 U.S. 342 (1987), where the Court afford[ed] appropriate deference to prison officials, in declaring prison regulations to be judged under a reasonableness test, and later in Employment Division versus Smith, 494 U.S. 872 (1990), in which religious protections were weakened for the general public as well. Congressional action is needed in order to enforce the first amendment's religious liberty protections. Under the fourteenth amendment Congress has the authority to enact legislation providing greater protection to religious freedom than has been granted by the Court.

I am aware that many prison officials and attorneys general in the States oppose the legislation in its current form. They would amend the act to exempt prisons and prisoners claims from the application of the compelling interest standard. They have maintained that requiring States to show a compelling interest in restricting the free exercise of a prisoner's religion will result in an overwhelming avalanche of prisoner claims and demands for special meals, release from a variety of prison rules, access to drugs and other contraband, refusal of medical treatment for communicable diseases, access to religious materials that spread racial hate and other rights seen as a threat to the safety and security of the prisons. Additionally, the attorneys general contend, litigation costs to defend the State against such claims will sky rocket. But in the face of these claims, stands the empirical evidence to flatly rebut these assertions.

In the years preceding O'Lone, and Smith, when the courts applied the compelling interest standard in all cases of religious freedom, first amendment jurisprudence has always respected the compelling need for prisons to maintain safety, order, and discipline. In fact, prisoner religious rights claims have never been more than 1 percent of all prisoner com-

plaint cases nationally. The same is true in my home State of Wisconsin, where not only have prisoner's religious rights cases never exceeded 1 percent, but the proportion of these cases has actually decreased from a height of .7 percent in 1987, the year of the O'Long ruling, to one-half of 1 percent currently. What has happened, however, to increase litigation costs to States in relation to prisoner claims, is the tremendous increase in the number of prisons built, and the number of prisoners States have warehoused in their prison systems. This fact is more likely to have had an affect on costs associated with litigation, prison security, safety, order and discipline than the religious claims of the prisoners themselves.

Simply stated, Mr. President, the religious Freedom and Restoration Act as introduced would recognize the constitutional importance of religious liberty in the prison context, and restore the societal benefits flowing from religious exercise by prisoners. However, it would not do so at the expense of security, discipline, and institutional order, or substantially increased cost. The bill does not enact a revolutionary legal standard for prisoner free exercise claims. It restores a standard that proved workable and balanced in securing the freedoms granted by the first amendment and safety in the conduct of Government functions.

Mr. President, the religious freedom provisions of the first amendment to the Constitution are integral parts of the Bill of Rights, and the fundamental civil liberties of every American of every faith and religion. For more than 200 years, our society has functioned under the principle that the free exercise of religious beliefs is a fundamental right that Government cannot restrict except under the most compelling circumstances, and then only in the most narrow manner so a to not interfere with the exercise of these rights. This legislation would reestablish these protections, which were weakened by these recent decisions. I am pleased to cosponsor and strongly support this important legislation.•

Mr. BRADLEY. Mr. President, I rise today in strong support of the Religious Freedom Restoration Act [RFRA], arguably one of the most important pieces of legislation concerning religious freedom in our lifetime.

Our nation's commitment to individual religious liberty is as old as our Nation itself—indeed, older. This long tradition of upholding the right to practice one's religion freely, without the unnecessary interference of Government, remains a core element of our national heritage. Since colonial times, millions of people have left their homelands in search of a safe harbor from persecution to arrive at our shores secure in the fact that this land is a land of liberty. Religious freedom has remained a bedrock in our societal framework. Because our Nation has guaranteed religious freedom, we have all been enriched by a diverse tradition of religious experience—one that has flourished, in large part, because of the free exercise clause. Far from a luxury, religious freedom is a right without which we would be all the poorer.

The right to be allowed to practice one's religion unburdened by the Government has been enshrined in the free exercise clause of the first amendment. This amendment provides that "Congress shall make no law * * * prohibiting the free exercise [of religion]." Our modern day jurisprudence on the free exercise clause can be traced back 30 years, when in 1963 the Supreme Court issued its landmark decision, Sherbert versus Verner. In his opinion for the Court, Justice Brennan held that in instances where governmental laws or actions place a substantial burden upon the free exercise of religion, the Government must demonstrate that by doing so it is using the least restrictive means to achieve a compelling governmental interest. This standard has come to be known as the compelling interest test. And for 27 years following Sherbert, the courts, in large part, employed the compelling interest standard in its free exercise analysis.

To the surprise of the legal world, however, the Supreme Court introduced a new standard in its 1990 decision, Employment Division versus Smith. In Smith, a divided Court abruptly abandoned the compelling interest standard and dramatically weakened the constitutional protection for freedom of religion. Smith declared that a law of general applicability that operates to burden religious practices does not violate the first amendment so long as that law is rationally related to a legitimate governmental interest. This rational relation standard brings the level of scrutiny down to a far lower level. Most importantly, Smith has in essence, removed any real or significant constitutional protection for the free exercise of religion. It has, in effect, gutted the free exercise clause.

Mr. President, I believe this bill breathes new life into the protections we give for the free exercise of religion and ensures that, like freedom of speech and freedom from discrimination, freedom of religion will again be restored as a constitutional norm, not an anomaly. This bill ensures that religious liberty will once again be given its proper place among our most valued liberties.

RFRA bolsters the free exercise of religion by restoring the legal standard that was applied to the decisions which preceded Smith, the compelling interest standard. RFRA simply insures that courts will protect the fundamental right to freely exercise one's religion at an appropriate level of scrutiny. RFRA does not dictate the outcome of any particular case; rather, it allows each case to be judged on its merits within the proper framework.

It is a testament to the importance of RFRA that virtually every religious group, spanning the entire spectrum, has voiced its support for this bill. It is a rare thing when such a diverse coalition joins in wholehearted agreement. Like this large and diverse coalition, I urge my colleagues to support this bill.

Mr. GRASSLEY. Mr. President, I intend to support this bill, as I did in the Judiciary Committee. Like the sponsors, I am not confident that the Supreme Court's decision in Oregon versus Smith gives sufficient protection to the freedom of worship. After all, freedom of worship is one of the fundamental rights on which our Nation was founded—perhaps the most fundamental. It is important that we put the burden on Government to justify itself when it wishes to hinder the free exercise of religion.

I should note that I have had some reservations about the bill. Congress must tread very carefully when legislating standards for the freedom of religion. When we considered the bill in the Judiciary Committee, I raised concerns about Congress' constitutional authority to enact legislation dictating to the Supreme Court what standards it must employ in free exercise cases, and about the wisdom of mandating a compelling interest standard in all cases. Fortunately, the Senator from Utah was able to alleviate many of these objections. I ask unanimous consent that my colloquy with Senator HATCH be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. GRASSLEY. Mr. President, I would like to congratulate the outside supporters of this bill for their persistence in fighting for passage of a bill which they consider necessary to secure the religious liberty of their diverse parishioners. It has been nice to see people of so many different faiths uniting behind a common cause. When you see Mike Farris and the ACLU working together on a first-amendment issue, you know something special is going on.

I would also congratulate the Senator from Utah for his persistence. I am quite confident this bill would not be before us today were it not for his strong support. I admire the commitment to religious freedom that generates such tenacity.

I share the concerns of the Senator from Nevada and the Senator from Wyoming that the bill not establish a new, liberal standard for first-amendment claims by prisoners. Indeed, I raised these concerns during full committee consideration of the bill. But I think those concerns have been satisfactorily addressed by the sponsors.

As Senator HATCH explained to me in the Judiciary Committee markup of the bill, and as the committee explains in the report, the bill is to be read by the courts as recognizing the inherently compelling interest prison administrators have in maintaining prison order. But given the importance of religion as a tool for rehabilitation,

and the importance of prison as a place for people of faith to try to save the most desperate and lost members of our society, we should require prison administrators to at least put forward a justification for restrictions placed on worship by prisoners.

I am also satisfied the bill will not create a new flood of prisoner litigation. And I think the problem of frivolous prisoner litigation must be dealt with generically, not by restricting discreet classes of claims. I hope the proponents of the amendment will support my efforts to the Judiciary Committee to establish additional requirements for prisoner exhaustion of administrative remedies prior to filing suit. Prisoner litigation is a serious problem, and we should deal with it. But we shouldn't start by restricting prisoners' right to worship.

EXHIBIT 1

COLLOQUY OF SENATORS HATCH AND GRASSLEY, SENATE JUDICIARY COMMITTEE, MAY 6, 1993

Mr. GRASSLEY. What is the basis for congressional power to enact this bill? Do we have authority to prescribe a specific standard for the Supreme Court?

Mr. HATCH. In my view there is congressional authority to defend the first amendment's protection of our religious freedom. Congress has the power to regulate state action under section 5 of the 14th amendment to the Constitution. The due process clause of the 14th amendment provides that authority and it has consistently been held to incorporate and apply the First Amendment to the States. Constitutional scholars, including professor Douglas Laycock of the University of Texas, have testified before our Committee to this effect.

Mr. GRASSLEY. How does the bill apply to the military and prisons—where I believe—and the court has stated—the government has a very strong interest in order and discipline?

Mr. HATCH. I believe the United States military will certainly be able to maintain good order, discipline, and security under this bill. The courts have always recognized the compelling nature of our military's interest in order, discipline, and security in the regulation of our armed forces and have always extended to them significant deference. I would expect this deference to continue under the bill.

With respect to prisons, the bottomline is that prison administrator's interest in order, safety, security, and discipline are going to be deemed compelling, and that is certainly my intention.

As a practical matter, I should emphasize, prison administrators will have to articulate their security concerns and demonstrate the connection between their legitimate concern and the regulations. I do not think that is too much to ask on behalf of the free exercise of religion, even for prisoners. Indeed, prisoners are especially needful of the influence of religion. 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 collides with the need to maintain order and security, the prison administrators will win their case under this bill.

Mr. GRASSLEY. How will this bill apply in cases the courts have decided on the basis of the need to conduct the internal affairs of the government? In one case—*Bowen* v. *Roy*—the Court denied a free exercise challenge to the government's use of Social Security numbers for internal management. In another case, *Lyng* v. *Northwest Indian Cemetery Protective Association*, the Court rejected a free exercise challenge to the government's use of government's lands. Instead of using the compelling interest test, the Court in these cases found that the religious claims of particular citizens were outweighed by the government's need to conduct internal affairs. Are these cases essentially overruled by this bill?

Mr. HATCH. 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 demonstrated. RFRA language intentionally includes terminology requiring a "burden" on one's exercise of religion.

RFRA also 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, like *Bowen* v. *Roy*, the incidental impact on a religious practice does not "burden" 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 impose a burden on religious exercise. Unless a burden is demonstrated, there can be no free exercise violation.

Mr. GRASSLEY. Does this bill change the way courts assess a "compelling state interest"? Will it still be up to the judge—who will look at all the factors in the case—to say whether there is a compelling interest? In other words, this bill does not purport to legislate a definition of compelling interest, does it?

Mr. HATCH. RFRA reestablishes a very familiar and traditional standard of review that the courts have been applying since the 1963 decision *Sherbert* v. *Verner*. That is why we do not attempt to define the standard in the bill. This bill does not dictate the proper result in a particular free exercise case nor does it identify specific governmental interests that are compelling. The courts will continue to determine whether burdens on religious exercise are justified based upon a consideration and weighing of all relevant facts and circumstances. Historically, the courts have had little difficulty identifying important governmental interests. For example, the courts have found eradication of racial discrimination to be compelling governmental interest.

Mr. INOUYE. Mr. President, I rise to commend my colleagues and sponsors of the Religious Freedom Restoration Act for their perseverance in securing Senate action on this very important measure. Today, we take a historic first step in assuring that the protections of the first amendment to the U.S. Constitution will not be diminished. Unfortunately, today's action will not bring to a close the religious freedom crisis in this country for one very important group of Americans—this Nation's first American.

On May 25, 1993, a number of my colleagues joined me in cosponsoring the Native American Free Exercise of Religion Act, S. 1021. If enacted, this bill will accomplish what the Religious Freedom Restoration Act did not address—namely, the circumstance in which Government action on public and Indian lands directly infringes upon the free exercise of a native American religion.

There is language in the Supreme Court's ruling in Lying versus Northwest Indian Cemetery Protective Association and the Senate committee report accompanying the Religious Freedom Restoration Act which indicates that native American worship at sacred sites on Federal land will not be protected by the act in light of language which provides that the Government's use of its own property does not impose a burden on the exercise of one's religion and, therefore, the compelling State interest test might not apply to those sacred and religious sites of native Americans that are located on Federal lands.

It is not well known that by virtue of numerous Federal laws, there was a period in our history that the exercise of religion and culture by the native peoples of the United States was prohibited. Children were punished for speaking in their native language. Native people were imprisoned for practicing their religion. Accordingly, we have a long history of Government oppression to correct when it comes to the religious freedom of native Americans.

We have been meeting with the Federal agencies that administer the public and Indian lands, and I am pleased to report that they fully support the policy and the objectives of the Native American Free Exercise of Religion Act. Our task is now to work out the details of how we can most effectively balance the protection of native religions with the management of Federal lands. I am confident that we can strike such a balance.

In the interim, I would hope that we may consider the Religious Freedom Restoration Act as an important building block—resting upon the foundation of the first amendment—and supporting the extension of religious freedom protections for all citizens of this great society, including the native people of the United States—this Nation's first Americans.

The PRESIDING OFFICER. Under the previous order, the bill is deemed read a third time. The Senate will now proceed to the immediate consideration H.R. 1308, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 1308) to protect the free exercise of religion.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken. The text of S. 578, as amended, is inserted in lieu thereof. Under the previous order, the bill is deemed read a third time. The question is on the passage of the bill, as amended. The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 97, nays 3, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—97

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Bennett	Ford	Mitchell
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Boren	Gramm	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Packwood
Brown	Hatch	Pell
Bryan	Hatfield	Pressler
Bumpers	Heflin	Pryor
Burns	Hollings	Reid
Campbell	Hutchison	Riegle
Chafee	Inouye	Robb
Coats	Jeffords	Rockefeller
Cochran	Johnston	Roth
Cohen	Kassebaum	Sanbanes
Conrad	Kempthorne	Sasser
Coverdell	Kennedy	Shelby
Craig	Kerrey	Simon
D'Amato	Kerry	Simpson
Danforth	Kohl	Smith
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dodd	Levin	Thurmond
Dole	Lieberman	Wallop
Domenici	Lott	Warner
Dorgan	Lugar	Wellstone
Durenberger	Mack	Wofford
Exon	McCain	
Fairclotb	McConnell	

NAYS—3

Byrd	Helms	Mathews

So the bill (H.R. 1308), as amended, was passed.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed and move to lay that on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, at this historic moment I want to extend my thanks to all of those who worked so hard to make this day possible, including: Rev. Oliver S. Thomas, and J. Brent Walker of the Baptist Joint Committee on Public Affairs; Rabbi David Saperstein of the Religious Action Center of Reform Judiasm; Forest Montgomery of the National Association of Evangelicals; Robert Peck of the American Civil Liberties Union; Steven T. McFarland of the Christian Legal Society; Leslie Harris and Jim Halpert of People for the American Way; and Richard Foltin of the American Jewish Committee.

All Americans committed to religious liberty owe them our thanks for their exhausting efforts.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ON H.R. 2445

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that at 1:10 p.m. today, the Chair lay before the Senate the conference report accompanying H.R. 2445, the energy and water appropriations bill; that there be 20 minutes for debate on the conference report with the time equally divided and controlled between Senators JOHNSTON and HATFIELD; that upon disposition of the conference report, the motion to reconsider be laid upon the table; that the Senate then concur, en bloc, in the amendments of the House to the amendments of the Senate; and that the motions to reconsider be laid upon the table, en bloc, with all of the above occurring without intervening action or debate.

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

Mr. FORD. Mr. President, on behalf of the majority leader, I now ask unanimous consent that it be in order to request the yeas and nays on adoption of the conference report.

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

Mr. FORD. Mr. President, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

100TH ANNIVERSARY OF THE OVERTHROW OF THE KINGDOM OF HAWAII

Mr. FORD. Mr. President, under the authority granted to the majority leader regarding S.J. Res. 19, and following consultation with the Republican leader, I now announce that the Senate will proceed to consideration of S.J. Res. 19 at 1:30 p.m. today.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. FORD. Mr. President, on behalf of the majority leader, I now ask unanimous consent that the vote on adoption of the conference report occur following the vote on passage of S.J. Res. 19, a joint resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii.

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

RECESS UNTIL 1 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 1 p.m. today.

Thereupon, the Senate, at 10:47 p.m., recessed until 1 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KERRY).

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak for several minutes as if in morning business.

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

Mr. SPECTER. Mr. President, I thank the Chair.

HEALTH CARE

Mr. SPECTER. Mr. President, now that the President has submitted the legislation on health care reform, there will be an opportunity for Members of Congress to examine it in some detail.

I think that most of us, and certainly I am committed to health care reform for all Americans, to see that health care is extended to the 37 million Americans who are now not covered; to see that the individuals who may change jobs are covered when they move from one job to another; to see that health care services are provided in rural areas; that an increase in the number of family practitioners is encouraged; and that there will be more preventative care services.

One of the concerns which I think we have to be very careful about is the creation of big Government and the creation of an unwieldy Federal bureaucracy which could conceivably overwhelm the health care delivery system that today serves effectively some 86 percent of all Americans.

In reviewing the President's preliminary outline of some 239 pages, which he submitted last month, I was concerned about the creation of many new boards and agencies. My staff and I have prepared a chart which depicts only in part the complexities of the new administrative bureaucracy.

The 239-page report, which the President has outlined, has some 77 new agencies, boards and commissions. They are outlined in red on this chart starting with the National Health Board and moving through a total of 77 advisory boards, commissions, and agencies. The boxes depicted in green represent the existing agencies, which are given new jobs, responsibilities, and functions totaling some 54.

Within the confines of this relatively small chart we have 131 new boards, agencies and commissions, including 77 new ones and some 54 existing ones where new tasks and responsibilities have been assigned.

As I reviewed the President's 239-page summary—and we have to compare it now with the proposed legislation, which I am told numbers in excess of 1,300 pages—the concern has to be that we do not allow big Government to overwhelm the delivery of health care services in this country.

During my 12½ years in the Senate I have served on the Appropriations Subcommittee on Health and Human Services. It has been a struggle to find sufficient funding within that subcommittee to take care of funding for the National Institutes of Health, to fund research on heart disease, on diabetes, on cancer research, prostate cancer, breast cancer, and the many other functions where the Federal Government expends moneys. The concern is an obvious one; we should not have such an overwhelming bureaucratic maze and big Government, which will take substantial funds, so as to deprive the health care delivery system from actually reaching American citizens.

When I prepared this chart, frankly, it surprised me. As my colleagues have had the opportunity to see the chart, I have had many comments of surprise