

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOMENICI. Mr. President, on behalf of myself and with the concurrence of the minority leader, I ask unanimous consent that during the consideration of the energy and water appropriations bill on Wednesday, it be in order for the minority leader, or his designee, to offer an amendment to strike relating to the Missouri River. I further ask consent that there be 3 hours for debate equally divided in the usual form on that amendment, and further, no amendments be in order to the language proposed to be stricken by a vote.

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

Mr. REID. Mr. President, as soon as there is a unanimous consent agreement, it is my understanding that what we are going to try to do—there appear to be no more amendments tonight. As soon as there is something from the staff putting us out tonight, I will withhold.

Mr. DOMENICI. The Senator is correct.

MORNING BUSINESS

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

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

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

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

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

In the closing hours of the Senate before the August recess, the Senate considered the Religious Land Use and Institutionalized Persons Act, which is essentially an attempt to change the way the courts interpret the Free Exer-

cise Clause of the Constitution regarding prisons and land use regulations throughout the Nation. Ever since the Supreme Court held the Religious Liberty Protection Act unconstitutional as applied to the states, supporters of this legislation have tried to reverse that decision. Just as the Religious Liberty Protection Act has been held unconstitutional as applied to the states and its legality is still unclear regarding the federal government, there are legitimate issues regarding whether S. 2869 is constitutional. Moreover, there are serious questions about whether this bill is good public policy, especially as it relates to the prisons and jails across America.

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

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

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

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

One example of a successful prisoner lawsuit before R.F.R.A. was held unconstitutional concerns an inmate who refused to take a tuberculosis test in *Jolly v. Coughlin*. The New York prison system wished to prevent the spread of T.B. to staff and inmates, so it implemented a mandatory testing program

to screen inmates for T.B. so the disease could be treated before it became active and contagious. The plaintiff refused to take the test based on his religious beliefs, and won. The courts permitted the inmate to violate this very reasonable health policy. This is a clear interference with prison safety and security. There is no excuse for courts to allow inmates to tell authorities what health policies they will or will not follow.

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

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

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

Winning lawsuits will encourage inmates to challenge authority more and more often in day to day prison life, and S. 2869 will make it much more likely that they will win. However, even if a prisoner's claim fails, it costs the prison much time and money to defend, at a time when prison costs are rising. The new legal standard will make it much harder to get cases dismissed before trial, greatly increasing the diversion of time and resources.

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

Some have argued that the fact that S. 2869 must comply with the Prison Litigation Reform Act solves any problems regarding inmates. Unfortunately, as the National Association of Attorneys General has recognized, this is incorrect. It is true that the P.L.R.A. has limited the number of