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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

VOTE TO WAIVE BUDGET ACT ON AMENDMENT NO. 1087

Mr. GRAMM. Mr. President, I move to waive the appropriate sections of the Budget Act for consideration of my amendment numbered 1087, and 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 motion to waive the Budget Act for consideration of amendment numbered 1087.

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Colorado [Mr. CAMPBELL] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO] and the Senator from Minnesota [Mr. DURENBERGER] are necessarily absent.

I further announce that, if present and voting, the Senator from New York [Mr. D'AMATO] would vote "yea."

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

The yeas and nays resulted—yeas 58, nays 39, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—58

Baucus	Faircloth	McCain
Bennett	Feingold	McConnell
Bond	Gorton	Murkowski
Bradley	Graham	Nickles
Brown	Gramm	Nunn
Bumpers	Grassley	Packwood
Burns	Gregg	Pressler
Chafee	Hatch	Robb
Coats	Helms	Roth
Cochran	Hutchison	Sasser
Cohen	Jeffords	Shelby
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kerrey	Specter
Danforth	Kohl	Thurmond
DeConcini	Lautenberg	Wallop
Dole	Lott	Warner
Domenici	Lugar	Wofford
Dorgan	Mack	
Exon	Mathews	

NAYS—39

Akaka	Harkin	Mitchell
Biden	Hatfield	Moseley-Braun
Bingaman	Heflin	Moynihan
Boren	Hollings	Murray
Boxer	Inouye	Pell
Breaux	Johnston	Pryor
Bryan	Kennedy	Reid
Byrd	Kerry	Riegle
Daschle	Leahy	Rockefeller
Dodd	Levin	Sarbanes
Feinstein	Lieberman	Simon
Ford	Metzenbaum	Stevens
Glenn	Mikulski	Wellstone

NOT VOTING—3

Campbell	D'Amato	Durenberger

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained. The amendment falls.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

VOTE MOTION TO WAIVE THE BUDGET ACT ON AMENDMENT NO. 1088

The PRESIDING OFFICER. The question now occurs on agreeing to the motion to waive the Congressional Budget Act for the consideration of the McCain amendment No. 1088.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Colorado [Mr. CAMPBELL] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO] and the Senator from Minnesota [Mr. DURENBERGER] are necessarily absent.

I further announce that, if present and voting, the Senator from New York [Mr. D'AMATO] would vote "yea."

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

The yeas and nays resulted—yeas 46, nays 51, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—46

Bennett	Grassley	McConnell
Bond	Gregg	Murkowski
Brown	Harkin	Nickles
Bryan	Hatch	Pressler
Burns	Heflin	Reid
Chafee	Helms	Roth
Coats	Hutchison	Shelby
Cochran	Jeffords	Smith
Cohen	Kassebaum	Specter
Craig	Kempthorne	Stevens
Danforth	Lautenberg	Thurmond
DeConcini	Lieberman	Wallop
Dole	Lott	Warner
Faircloth	Lugar	Wofford
Gorton	Mack	
Gramm	McCain	

NAYS—51

Akaka	Feingold	Mikulski
Baucus	Feinstein	Mitchell
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boren	Graham	Murray
Boxer	Hatfield	Nunn
Bradley	Hollings	Packwood
Breaux	Inouye	Pell
Bumpers	Johnston	Pryor
Byrd	Kennedy	Riegle
Conrad	Kerrey	Robb
Coverdell	Kerry	Rockefeller
Daschle	Kohl	Sarbanes
Dodd	Leahy	Sasser
Domenici	Levin	Simon
Dorgan	Mathews	Simpson
Exon	Metzenbaum	Wellstone

NOT VOTING—3

Campbell	D'Amato	Durenberger

The PRESIDING OFFICER (Mr. BRYAN). On this vote, the yeas are 46, and the nays are 51. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

The point of order is sustained, and the amendment No. 1088 falls.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

Mr. MITCHELL. 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.

RELIGIOUS FREEDOM RESTORATION ACT

Mr. CHAFEE. I am pleased that the Senate today considers the Religious Freedom Restoration Act, introduced by my colleagues Senator KENNEDY and Senator HATCH. If approved, this important legislation will restore the standard by which laws that burden one's free exercise of religion are judged; and as a nation whose beginnings are founded in great part on the principle of religious liberty, that standard is important indeed.

The case before the Supreme Court that caused a disruption in the established jurisprudence on the exercise of religion was that of Employment Division, Oregon Department of Human Resources versus Smith et al. It involved two Oregon men, fired from their jobs for ingesting peyote as part of a Native American religious ceremony, who sought to receive unemployment compensation but were disqualified on the grounds that under Oregon State law, their actions constituted misconduct. The question that eventually came before the Supreme Court was not so much the actions of these two men, but whether or not the Oregon law banning peyote regardless of use, violated the Constitution's free exercise of religion clause. Both Justice Scalia, who wrote the 1990 opinion, and Justice O'Connor, who wrote a partial dissent, found that the peyote ban did not violate the free exercise clause. However, the standards they used to reach the same conclusion were completely different; and that is what this proposed legislation addresses.

Justice Scalia argued that neutral and generally applicable laws—such as the Oregon law—that aren't specifically directed at acts taken while practicing a religion, and that just happen to burden the free exercise of religion in the course of their general application, do not violate the Free Exercise clause. According to Scalia, as long as the law meets the test of being neutral, and generally applicable, it may be safe from first amendment challenge. Only laws that specifically seek to ban religious acts would automatically be unconstitutional.

Justice O'Connor strongly disagreed with this analysis, saying that it "dramatically departs from well-settled First Amendment jurisprudence, ap-

pears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual liberty." O'Connor took issue with Scalia's contention that a law need only be neutral and "generally applicable" to be exempt from first amendment challenge. She argued that instead, the first amendment requires a case-by-case determination of the merits of each particular claim. O'Connor pointed out that the Court always has asked the government to demonstrate that not providing an exemption is "essential to accomplish an overriding governmental interest," or represents "the least restrictive means of achieving some compelling State interest."

The bill before the Senate today would, as O'Connor would say, restore the vitality of the first amendment by reinstating the "compelling government interest test" for laws that burden—willfully or inadvertently—religious acts.

This may sound dry and technical, but it is not. Ensuring that each American has the right to exercise his or her religious beliefs goes straight to the heart of what this Nation is all about, and as I mentioned, is one of the core principles upon which this Nation was founded. Without Congress acting to restore the compelling government interest standard, the neutral, generally applicable standard set by the 1990 Oregon case will continue to prevail. And that 1990 standard has caused considerable harm.

One case directly affected by the 1990 Oregon case took place in my State of Rhode Island, and involved the Yangs, a Hmong family in Providence. Neng Yang was admitted to RI Hospital for an unknown illness and died 1 week later. For religious reasons, the family asked that no autopsy be performed; and the doctors pledged that that request would be honored. I want to note that this request is of great important to those who are Hmong, for if Hmong cultural rites and traditions are not followed, the surviving family is believed to be cursed. But at the funeral home, when the Yangs went to carry out the traditional cultural dressing of the body, they were upset to find that an autopsy had in fact been performed.

The Yangs protested in court, and in January of 1990, U.S. District Court Judge Raymond Pettine ruled in their favor. In light of the Oregon case, however, in November Judge Pettine, with deep regret, recalled his original decision and reversed his ruling, agreeing with Justice Brennan that in the Oregon case, the Majority's decision "effectuates a wholesale overturning of settled law concerning the religion clauses of our Constitution."

Clearly the Yang family's religious beliefs were violated. But without congressional action to restore the pre-1990 standard, they and many, many others like them are and will remain helpless to prevent similar violations. If the 1990 standard stands untouched, Rhode Islanders and other Americans who are religious—be they Catholic, Moslem, Quaker, or Buddhist—may find themselves subject someday to apparently neutral government restrictions that nonetheless impair their ability to practice their religion.

Religious freedom has deep roots in my State, and in this Nation. It was to the members of the Touro Synagogue in Newport, R.I., that George Washington wrote his now-famous thank you letter, in which he affirmed that "happily, the Government of the United States * * * gives to bigotry no sanction [and] to persecution no assistance"—a direct reference to religious liberty, and at the time, words of reassurance to a Hebrew congregation uncertain of States' intentions on religious freedom.

And the ultimate pledge of protection from religious persecution was incorporated as part of the very first amendment to our Constitution: "Congress shall make no law respecting an establishment of religion, or the free exercise thereof * * *."

Mr. President, the legislation before the Senate today is critical to reaffirm this Nation's historical commitment to the religious freedom of its citizens. Similar legislation already has been approved by the House of Representatives; with decisive action today, the Senate can put this measure well on its way to becoming law. I urge our speedy action.

NATIONAL UNFUNDED MANDATES DAY

Mr. MACK. Mr. President, the arguments that are being made here today in opposition to unfunded Federal mandates need to be heard by all in Congress.

Our States and cities are being suffocated by these mandates. They not only force State and local tax increases on Americans increasingly unable to shoulder them, but they also limit local flexibility to respond to local priorities.

I have always been a strong supporter of both repealing mandates and stopping their proliferation. In fact, I sponsored the principal legislation in the previous Congress that would stop unfunded mandates.

I am therefore very pleased to see this effort here today—an effort that will indeed broaden the understanding of the detrimental effects of unfunded mandates. And I hope that we will have a chance to vote to limit unfunded Federal mandates before the year is out.

AMENDMENT NO. 1091, AS MODIFIED

Mr. MACK. Mr. President, I want to explain my vote against waiving the Budget Act for consideration of the amendment of the Senator from Arkansas.

This amendment would repeal the retroactive taxes passed in the recent reconciliation bill, and offset the revenue effects with elimination of the space station. I voted against waiving the Budget Act, which was, in effect, a vote against the amendment.

I did so despite my strong desire to get rid of the retroactive income and estate taxes. These taxes will not only punish the economy, they are fundamentally unfair. We ought to get rid of them just as soon as possible.

But trying to do so on this bill, and by tying it to elimination of the space station, both distorts the priorities of the American people and presents a false choice to them.

S. 578

Mr. HELMS. Mr. President, I believe my credentials are intact regarding my record of support for the religious liberties envisioned by our Founding Fathers. This Nation was created by men and women convinced that the right to observe one's faith, free from the heavy hand of Government, is the most cherished of individual freedoms.

Having said that, I am obliged to observe that the Religious Freedom Restoration Act (S. 578) purports to strengthen the religious protections afforded by the Constitution. In fact, with a name like the Religious Freedom Restoration Act how can anyone vote against it. Unfortunately, around this place you learn quickly that catchy names on bills do not tell what Paul Harvey calls "the rest of the story".

Mr. President, the Religious Freedom Restoration Act has been less to do with our legal and historical notions of religious liberties than it does with the creation of new rights and employment opportunities for the Nation's lawyers. This legislation when enacted will make it easier for litigants with many different and singular religious beliefs to attack, virtually all State and Federal laws that somehow burden acts that individuals engage in as part of their religious practice.

Mark my words, once again the courthouse doors are about to fly open as thousands will demand protection for religious practices as varied as the use of hallucinogenic drugs and animal sacrifice. Senator SIMPSON said it well last night:

> We must always be mindful that we are not concerned in any way here with the Supreme Court ruling addressing restrictions or regulation of beliefs. We are talking about cuts. That is the crucial distinction that was missed in the Judiciary Committee, and it was obviously missed on this floor in many other issues raised by this legislation.

I am particularly concerned that legislation designed to promote, the free exercise of religion, will create another series of legal rights to countermand generally applicable criminal law across the country and undermine otherwise reasonable restrictions on the behavior of those who are incarcerated in the Nation's prison systems.

Mr. President, earlier this year I received a package of information on this act from the North Carolina Department of Justice along with letters opposing this bill from three former directors of the Federal Bureau of Prisons, 20 state attorneys general and the directors of 46 State prison systems.

The North Carolina attorney general, summarizing the concerns of his colleagues on the front line of fighting crime, argues that the bill, as written, will have a detrimental impact on the administration of local, State, and Federal correctional facilities.

Last year 49,939 civil cases were brought by prisoners in the Federal prison system alone. More cases were filed by prisoners against the government than the government filed cases against criminals.

My reading of this legislation leads to the conclusion that inmates will be provided much greater latitude to assault legitimate prison authority, by masking disobedience under the guise of special privileges for religious observation. The recent tragedy in the Lucasville, OH, is a case in point. There, members of the Fruit of Islam, a radical Moslem group, demanded as a condition for hostage release, an exemption from regulations requiring testing for tuberculosis, asserting religious rights, even though such testing is required to prevent the spread of disease among the closely quartered prison population. Five people died as a result of that incident.

In other prisons, inmates associated with the Aryan Nations, Yaweh Ben Yaweh, the Klan, and Louis Farrakahn are suing to force authorities distribute racist and anti-Semitic publications to the prison population in the name of free exercise of religion. Inmates are also suing for special clothing and eating privileges. As a result of a prisoner lawsuit, one State court has even recognized as a religion a group called the Church of the New Song which demands steak and wine for its religious practice every Friday.

Under S. 578, prison authorities would have a hard time justifying a refusal of such requests because prison regulations will now be placed under the compelling State interest test that permits courts to second guess prison administration in almost every area of prison discipline. The act as currently written would overrule the three-part test for evaluation of prison regulations which allegedly infringe on the constitutional rights of prisoners, established in *Turner* v. *Safley*, 482 U.S. 76 (1987), *O'Lone* v. *Estate of Shabazz*, 482 U.S. 340 (1987), and *Thornburgh* v. *Abbott*, 490 U.S. 401 (1989).

Under the test, prison regulations which impact on the exercise of first amendment rights pass muster if they are "reasonably related to legitimate penological interests." In an effort to balance the interests of prison safety and individual rights, the test requires a rational connection between prison regulation and the legitimate governmental interest. In other words does the individual assertion of first amendment rights have a detrimental impact on the prison staff, other inmates, and the allocation of prison resources.

Mr. President, I am not challenging the right to worship for those in the prison population. Nowhere is the need for religion more apparent than in the prisons. Religious freedom is important as long as you do not force the State and Federal systems to go bankrupt answering frivolous claims and accommodating phony religions.

Due to the closed and often dangerous nature of prison society, the reasonably related test seems appropriate to regulate prison religious practices. Civilian standards of justice and safety don't apply in the volatile prison setting and we should not be a party to the breakdown of order and discipline in the penal system, because too many lives are at stake.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the following be the only first-degree amendments remaining in order to this bill, and that they be subject to relevant second-degree amendments, and that no motion to recommit be in order.

The amendments are an amendment by Senator COVERDELL regarding unfunded mandates; an amendment by Senator GRAMM of Texas regarding a Federal employment cap; an amendment by Senator GRAMM of Texas regarding national performance review; an amendment by Senator MURKOWSKI regarding worker profiling; an amendment by Senator NICKLES creating a point of order relating to retroactivity; an amendment by Senator LOTT that is relevant; an amendment by Senator DOLE that is relevant; an amendment by Senator METZENBAUM that is relevant; another amendment by Senator METZENBAUM that is relevant; an amendment by Senator MOYNIHAN that is relevant; an amendment by Senator MITCHELL that is relevant; and an amendment by Senator MACK regarding spending cuts.

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

AMENDMENT NO. 1089

(Purpose: To prohibit the consideration of any retroactive tax increase unless three-fifths of all Senators duly chosen and sworn waive the prohibition by rollcall vote)

Mr. SIMPSON. Mr. President, on behalf of Senators NICKLES and SHELBY, I send to the desk the amendment which we will proceed to address tomorrow in accordance with the unanimous consent agreement, and I ask that it be read.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. NICKLES, for himself and Mr. SHELBY, proposes an amendment numbered 1089.

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

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

The amendment is as follows:

At the end of the bill, insert the following:

SEC. . RETROACTIVE TAX INCREASES IN THE SENATE.

(a) GENERAL RULE.—It shall not be in order in the Senate to consider any material in any bill, joint resolution, amendment, motion, conference report, or amendment between the Houses that increases a tax retroactively.

(b) POINT OF ORDER.—Upon a point of order being made by any Senator against material in any bill or joint resolution, amendment, motion, conference report, or amendment between the Houses that increases a tax retroactively, and the point of order being sustained by the Chair, the part of such title or provision that increases a tax retroactively shall be deemed stricken from the measure and may not be offered as an amendment from the floor.

(c) TREATMENT OF CONFERENCE REPORT.—When the Senate is considering a conference report or an amendment between the Houses, upon—

(1) a point of order being made by any Senator against material that increases a tax retroactively; and

(2) such point of order being sustained,

such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(d) WAIVERS.—

(1) SUPER MAJORITY WAIVER.—Except as provided in paragraph (2), subsections (a), (b), and (c) may be waived only upon the affirmative vote of three-fifths of all Senators, duly chosen and sworn. Each part of a title or provision that increases a tax retroactively shall be subject to a point of order. No motion for a general waiver shall be entertained.

(2) WAIVER DURING TIME OF WAR OR MILITARY CONFLICT.—The Senate may waive the provisions of this section for any fiscal year in which a declaration of war is in effect. The provisions of this section may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House of Congress, which becomes law.

(e) DEFINITION.—For purposes of this section, the term "increases a tax retroactively" means a change in the Internal Revenue Code of 1986 that will result in an obligation to pay a larger tax and when such change is made effective prior to:

(1) the date when formal public notice is given regarding the effective date of such material by a committee or subcommittee of either House of Congress;

(2) the date of approval by either House of Congress; or

(3) the date of approval by a committee or subcommittee having jurisdiction over the material.

Mr. FORD. Mr. President, would the Senator yield for a question?

Mr. SIMPSON. Yes. Certainly.