11:00 a.m.
Human Resources
Labor Subcommittee
To hold hearings on S. 517, to authorize employees and agencies of the Government of the U.S. to experiment with flexible and compressed work schedules.
4232 Dirksen Building

AUGUST 22

9:00 a.m.
Human Resources
To hold hearings on S. 2645, proposed National Art Bank Act.
4232 Dirksen Building
Judiciary
Constitution Subcommittee
To resume hearings on S. 3164, proposed Citizen's Privacy Protection Amendment.
5110 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue hearings on S. 2455, the Home Owners' Equity Act, and S. 70, the Home Buyers' Assistance Act.
5302 Dirksen Building
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings on S. 3363, proposed International Air Transportation Competition Act.
235 Russell Building
Environment and Public Works
Regional and Community Development Subcommittee
To mark up S. 3186, to provide public works employment for the long-term unemployed.
4200 Dirksen Building
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on S. 1449, proposed Grand Jury Reform Act.
2228 Dirksen Building

AUGUST 23

9:00 a.m.
Human Resources
To continue hearing on S. 2645, proposed National Art Bank Act.
4232 Dirksen Building

9:30 a.m.
Environment and Public Works
To hold a business meeting on pending calendar business.
4200 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold joint hearings with the Committee on Governmental Affairs on S. 2750, proposed Consolidated Banking Regulation Act.
3302 Dirksen Building
Commerce, Science, and Transportation
Aviation Subcommittee
To continue hearings on S. 3363, proposed International Air Transportation Competition Act.
235 Russell Building
Governmental Affairs
To resume joint hearings with Judiciary Subcommittee on Citizens and Shareholders Rights and Remedies on S. 3005, to broaden the rights of citizens to sue in Federal courts for unlawful governmental action.
2228 Dirksen Building
Judiciary
Citizens and Shareholders Rights and Remedies Subcommittee
To continue hearings on S. 3005, to broaden the rights of citizens to sue in Federal courts for unlawful governmental action.
2228 Dirksen Building

AUGUST 24

9:30 a.m.
Banking, Housing, and Urban Affairs
To continue joint hearings with the Committee on Governmental Affairs on S. 2750, proposed Consolidated Banking Regulation Act.
3302 Dirksen Building

10:00 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To continue hearings on S. 3363, proposed International Air Transportation Competition Act.
235 Russell Building
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on S. 1449, proposed Grand Jury Reform Act.
2228 Dirksen Building

AUGUST 25

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on S. 2843, to provide for the striking of gold medallions, and on gold sales by the Department of the Treasury.
5302 Dirksen Building
Judiciary
Criminal Laws and Procedures Subcommittee
To resume hearings on S. 3270, proposed Justice System Improvement Act, and related bills.
2228 Dirksen Building

AUGUST 28

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter as it concerns undercover operations.

AUGUST 29

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter as it concerns undercover operations.
2228 Dirksen Building

SEPTEMBER 7

10:00 a.m.
Commerce, Science, and Transportation
To hold oversight hearings on the lengths of motor tractor trailers
235 Russell Building

SEPTEMBER 8

10:00 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 2970, proposed Truck Safety Act.
235 Russell Building

SEPTEMBER 14

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To resume hearings on the FBI Charter and its overall policy.
2228 Dirksen Building

SEPTEMBER 19

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
6226 Dirksen Building

SEPTEMBER 21

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

CANCELLATIONS

AUGUST 17

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasion of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

AUGUST 22

9:00 a.m.
Judiciary
Constitution Subcommittee
To resume hearings on S. 1845, to prevent unwarranted invasions of privacy by prohibiting the use of polygraph type equipment for certain purposes.
5110 Dirksen Building

SENATE—*Tuesday, August 15, 1978*

(Legislative day of Wednesday, May 17, 1978)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT MORGAN, a Senator from the State of North Carolina.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, grant that we may this day endeavor to be that which Thou wouldst have us to be, and to do that which Thou wouldst have us to do; listening to the voice of Thy spirit within us; not leaving one sin unrepented of, one spot in our hearts uncleansed; not looking backward but forward; not looking downward but lifting our vision upward; not lamenting the things undone, but rejoicing in the things done; not leaning for strength upon mortal man, but upon Thee, the Rock of Ages, who endures forever; through Jesus Christ our Lord. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 15, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT MORGAN, a Senator from the State of North Carolina, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. MORGAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the standing order, the distinguished majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. tomorrow.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have no requirement for my time.

The ACTING PRESIDENT pro tempore. Under the standing order, the distinguished minority leader is recognized.

Mr. BAKER. Mr. President, I thank the Chair, I have no need for my time this morning. In the absence of any such requirement, I yield back my time.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for not to exceed 15 minutes.

DISTRICT OF COLUMBIA REPRESENTATION—HOUSE JOINT RESOLUTION 554

AMENDMENT NO. 3475

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR. submitted an amendment relating to commuter taxes, intended to be proposed by him to House Joint Resolution 554, proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

COMMUTER TAX AMENDMENT

Mr. HARRY F. BYRD, JR. Mr. President, I am today submitting an amendment to House Joint Resolution 554, a House-passed resolution now on the calendar proposing full voting representation for the District of Columbia in both Houses of the Congress.

My amendment would have the effect of placing a permanent ban on the imposition of any commuter tax by the District of Columbia.

Every year the District politicians come back to the Congress asking for a commuter tax. It is time to lay this unsound and unfair proposal to rest.

The District is prohibited, under the terms of its Home Rule Charter, from taxing the incomes of Virginia and Maryland residents who work in Washington. But each year, D.C. officials ask removal of this ban.

My proposal is to incorporate a prohibition on any commuter tax into the constitutional amendment giving the District full voting representation in Congress.

If D.C. voting representation is to become part of the Constitution, then I want to include a provision that will end once and for all the threat of a raid by the District on the citizens of Virginia and Maryland.

This year a subcommittee of the House actually approved a commuter tax. I believe it will be defeated, but I also believe that the D.C. government will be back again and again with the same request.

Virginians and Marylanders pay taxes in the District whenever they make purchases there. And like all other Federal taxpayers, they contribute to the Washington city government through Federal taxes.

There is no justification for a third level of taxation.

The District has one of the highest per capita incomes in the country, and its city government spends more per capita than any other city of comparable size in the United States.

Revelations of waste and inefficiency in the District government are frequent events.

What the District really wants is to finance its own extravagance with the hard-earned tax dollars of its neighbors.

This is totally unfair, and it must not be permitted.

I ask unanimous consent that the text of my amendment be printed at this point in the RECORD, and that the amendment be printed and lie at the desk.

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

AMENDMENT NO. 3475

On page 2, line 16, strike out the quotation marks and the last period.

At the end of the bill, add the following new section:

" 'Sec. 5. The government of the District of Columbia shall have no jurisdiction or authority to enact any law imposing any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District of Columbia.' ".

COMMITTEE MEETING

Mr. NELSON. Mr. President, I ask unanimous consent that the Senate Select Committee on Small Business be authorized to hold hearings on inflation as it relates to certain segments of the economy and small business on Friday afternoon, August 18, 1978.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TUITION TAX RELIEF ACT OF 1978

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 12050, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The following proceedings occurred during consideration of H.R. 12050:)

TIME-LIMITATION AGREEMENT—S. 2539, COLLEGE OPPORTUNITY ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 585, S. 2539, the higher education bill, is called up and made the pending business before the Senate, there be a time agreement as follows thereon: 4 hours on the bill, to be equally divided between Mr. PELL and Mr. JAVITS; 1 hour on any amendment; 20 minutes on any debatable motion, appeal, or point of order, if such be submitted to the Senate; and 1 hour on the bill under the control of Mr. MUSKIE; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. HODGES. Mr. President, reserving the right to object.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request momentarily.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. ROBERT C. BYRD. Mr. President, I now renew the request, which Mr. HODGES had a reservation on earlier and which has been cleared all around.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. It has to do with the time agreement on the higher education bill.

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

TIME LIMITATION AGREEMENT—S. 3073, FEDERAL-AID HIGHWAY ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate proceeds to the consideration of S. 3073, Calendar No. 764, the Federal-Aid Highway Act of 1978, an amendment adding a title on highway safety be inserted by unanimous consent, without

debate, and be considered as original text for the purpose of further amendment.

Provided, that there be 30 minutes on any amendment, with the following exceptions:

One hour on an amendment by each of the following Senators: Mr. GRAVEL, dealing with hydrofoil; Mr. GRAVEL, dealing with planning; Mr. GRAVEL, dealing with Alaska railroad; Mr. KENNEDY, dealing with truck lengths; Mr. ROTH, dealing with bridges; Mr. ROTH, dealing with beach erosion.

Provided further, that there be 1½ hours on each of the following amendments:

An amendment by Mr. GRAVEL, dealing with New York streets; by Mr. HUDDLESTON, dealing with coal haul roads; by Mr. ZORINSKY and Mr. ANDERSON, dealing with rail crossings; by Mr. KENNEDY and Mr. WEICKER, dealing with the trust fund.

Provided further, that there be 2 hours each on the following amendments:

An amendment by Mr. KENNEDY, dealing with planning; by Mr. CULVER, a bridge amendment.

Provided further, that there be 20 minutes on any debatable motion, appeal, or point of order, if such is submitted to the Senate or on which the Chair entertains debate, to be equally divided between and controlled by the mover of such amendment and the manager of that title of the bill; that the time in opposition thereto be controlled by the minority leader or his designee.

Provided further, that on the question of final passage of the said bill, debate shall be limited to 2 hours on title I, which is the highway bill, to be equally divided between and controlled by Mr. BENTSEN and Mr. CHAFEE; 1 hour on title II, which is the highway safety portion, to be equally divided between and controlled by Mr. CANNON and Mr. SCHMITT.

Provided further, that no amendments to title II shall be in order until the Chair has ascertained that there are no further amendments to title I to be offered, and that once title I of the bill has been amended and the Chair has ascertained that no more amendments to that title will be offered, further amendments to that title will not be in order.

Provided further, that after the amending process on titles I and II has been completed, the bill be laid aside until again called up by the majority leader for the purpose only of adding the text of S. 2441 as title III and germane amendments thereto; and that the agreement be in the usual form.

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

Mr. ROBERT C. BYRD. I thank all Senators for this very complex agreement which has been worked out.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, with statements limited therein to 5 minutes each, and that the period not extend beyond 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. Is there morning business?

TOBACCO RESEARCH

Mr. HUDDLESTON. Mr. President, on Thursday of last week the Associated Press and newspapers throughout the country carried stories concerning research conducted by Dr. Gio Batta Gori, deputy director of cancer prevention at the National Cancer Institute, on efforts to remove harmful ingredients from cigarette tobacco.

In those stories Dr. Gori stated that the new low tar and nicotine cigarettes are "less hazardous" and that when smoked moderately can significantly reduce any danger to the smoker.

"We don't want to call them safe," Dr. Gori said on behalf of himself and his colleague Dr. Cornelius J. Lynch. "We don't think there is such a thing. But some are so low (in tar and other toxic substances) as to cause no observable hazard." This quote comes from an Associated Press story of August 10.

In an interview with the Washington Post, Dr. Gori stated that some cigarettes can be called "less hazardous" and can be smoked in "tolerable" numbers without "appreciable" ill effects on the average smoker.

Mr. President, I ask unanimous consent that both the AP and the Washington Post story be printed in the RECORD.

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

SOME NEW CIGARETTES CUT RISK GREATLY, SCIENTIST SAYS

(By Michael Putzel)

WASHINGTON.—A top government scientist says an average smoker can consume roughly a pack a day of some new cigarettes on the market "without apparent risk."

"We don't want to call them safe. We don't think there is such a thing. But some are so low (in tar and other toxic substances) as to cause no observable hazard," says Gio Batta Gori, head of the smoking and health program at the National Institutes of Health.

The tobacco industry has developed these new cigarettes with the help of millions of dollars in government research funds.

Gori and Cornelius J. Lynch of Enviro Control Inc., the government's prime contractor on what has become known—despite their objections—as "safe-cigarette research," have identified the "tolerable levels" of smoking for 27 brands with relatively low tar.

Gori said details of their findings are to be published soon in the Journal of the American Medical Association.

(Gori spoke about his study in an interview with The Courier-Journal several months ago, before the results were available. Gori noted then that his figures for tolerable levels were based on averages. Because individuals differ, he said, his figures did not mean that anyone under the tolerable level would be safe.

(Gori's comments appeared in a series of articles on tobacco and health.)

Gori and Lynch define tolerable levels in terms of cigarettes before 1960, when tar and nicotine contents were much higher than today and studies first identified the long-term risks of cigarette smoking.

Gori said studies have shown that people who smoked no more than two pre-1960 cigarettes a day had no higher death rate than nonsmokers.

Therefore, he explained, if the toxic substances in cigarettes could be reduced below the pre-1960 levels, a smoker persumably could smoke more cigarettes without increasing the risk of dying from lung cancer, heart disease or the various other ailments associated with smoking.

A person could smoke 23 cigarettes a day of Carlton Menthol—more than a pack—before reaching the tolerable level, Gori and Lynch said. Tolerable levels of the other brands range from 18 cigarettes a day for Now Menthol to three a day for King Sano, King Sano Menthol, Merit, Merit Menthol, Real and Tempo 3.

Gori said that the government research project has tested more than 150 cigarettes modifications in efforts to reduce the danger and that some of those modifications are showing up on the market.

By changing the porousness of the paper, the soil in which the tobacco is grown, the texture of the cut leaf, the curing process, the filter, the burning temperature and the method of manufacture, scientists have substantially lowered the smoke's toxicity, he added.

The results have been turned over to the tobacco industry, and "some of these new cigarettes are a direct result of this work," Gori said, although the industry has never admitted that cigarette smoking is hazardous.

Tar, the total particulate matter found in cigarette smoke, is generally believed to be the chief cancer-causing agent, while nicotine is known to have short-term adverse effects and is suspected of causing addiction, peptic ulcers and other damage.

Gori and Lynch also compared the amounts of four other hazardous substances in cigarette smoke: carbon monoxide, hydrogen cyanide, nitrogen oxides and acrolein.

While some brands showed higher tolerance levels in some substances, the tolerance level was determined by the hazardous substance reduced least from pre-1960 levels. That means the brands ranked least hazardous aren't necessarily the ones with the lowest tar and nicotine content.

Gori conceded that, because it takes many years for most smoking-related diseases to show up, it will be some time before there is specific scientific evidence to prove or disprove his assumptions.

And some recent studies question the value of low-tar and -nicotine cigarettes, either because people tend to hold the smoke in their lungs longer or because new additives in the tobacco and paper may prove hazardous.

"But we feel confident," Gori said, "that these cigarettes will be useful to the point you will have people smoking a pack a day without apparent risk."

The newest report on smoking by the Department of Health, Education and Welfare, released last month, said studies do show a relationship between the amount of tar and nicotine in cigarettes, the amount a person smokes and the degree of risk.

The HEW report didn't assess the dangers of the newer low-tar brands. But it cited one study that found smokers of cigarettes with less than 17.6 milligrams of tar and 1.2 mg. of nicotine reduce the risk of dying about 15 percent when compared to smokers of high-tar and -nicotine cigarettes. However smokers of low-tar cigarettes still have mortality rates that are 50 percent higher than those of nonsmokers.

None of the 27 brands tested by Gori and Lynch exceeded 10.3 mg. tar or 1.01 mg. nicotine.

Gori's program has spent more than $21 million in federal funds since 1975, nearly half of it in search of less-hazardous cigarettes. But he said his budget is being trimmed as the government puts more emphasis on trying to persuade people not to smoke.

Here is a list of the 27 "low-tar" brands tested and the number of cigarettes of each brand that a person may smoke in a day without exceeding "tolerable levels," according to government researchers:

Carlton Menthol	23
Now Menthol	18
Now	17
Stride	17
Carlton	16
L&M Flavor Lights (King)	8
Lucky 100	8
True	8
True Menthol	8
Decade	7
Pall Mall Extra Mild	7
Decade Menthol	6
Iceberg 100s	6
Kent Golden Light Menthol	6
L&M Long Lights (100)	6
Lark II	6
Tareyton Lights	6
Kent Golden Lights	5
Real Menthol	5
Benson & Hedges Lights	4
Newport Lights Menthol	4
King Sano	3
King Sano Menthol	3
Merit	3
Merit Menthol	3
Real	3
Tempo	3

[From the Washington Post, Aug. 10, 1978]

SMOKING—SOME CIGARETTES NOW "TOLERABLE," DOCTOR SAYS

(By Victor Cohn)

Some cigarettes now have so little tar, nicotine and other harmful elements that they can be called "less hazardous" and can even be smoked in "tolerable" numbers without "appreciable" ill effects on the average smoker, a leading federal cancer scientist said yesterday.

Cigarettes in recent years have been found guilty beyond reasonable doubt of causing lung cancer, heart disease and several other illnesses.

But Dr. Gio Batta Gori, deputy director of cancer prevention at the National Cancer Institute, and Dr. Cornelius J. Lynch said yesterday there has been huge progress "in the last year and year and a half" in removing toxins—or poisons—from some

* * * * *

They expect this will reduce deaths from all diseases linked with smoking. They expect to report this soon in the Journal of the American Medical Association.

"I am not calling any cigarette 'safe,'" Gori emphasized. "The only cigarette that is safe is the cigarette that is not lit.

"I am not talking about what might happen to any individual. I am talking about averages. There may be a risk that still may be there even though we might not see it in overall, large population studies."

Still, he said, there has been so much progress in removing toxins that "we can now begin to talk about 'tolerable' levels of smoking from an overall, public health standpoint. I think we will begin to see some beneficial effects in this country"—that is, some abatement in this nation's lung cancer epidemic and in other diseases—"in five or six years."

Gori said one brand—Carlton Menthols—is so low in the toxins that most persons could smoke 23 a day, more than a pack, with no measurable risk beyond a nonsmoker's.

He said the average smoker might similarly consume 18 Now Menthols, 17 Nows or Strides or 16 Carltons without any problems beyond a nonsmoker's, so far as large-scale statistical studies could detect.

A cancer institute spokesman yesterday said Gori "probably represents the best expertise we have on smoking and health. "Until two weeks ago he headed the institute's program in that field, including the effort to learn to make less hazardous cigarettes.

Dr. Arthur Upton, cancer institute director, nonetheless issued a more cautious statement yesterday saying "our present knowledge does not permit us to establish" any levels "below which smoking might be safe."

"It is the firm position of the National Cancer Institute, the National Heart, Lung and Blood Institute and the Public Health Service that no cigarette now on the market can be considered wholly without risk to health," he said.

He said Gori's figures cannot indicate whether the risk to any single individual is large or small, only that it is "not demonstrable" in epidemiologic or population studies. Upton said "you might double your own risk of cancer," for example, "with no appreciable effect on large-scale population studies."

Gori also said there are many "high risk" individuals who should "never" smoke. These include present or former workers exposed to asbestos or the families of such workers, women using oral contraceptives, pregnant women, and persons with any of the heart, lung or breathing disorders linked to cigarettes.

Some scientists would also caution anyone exposed to any potentially cancer-causing chemical, since many harmful chemicals add to each others' effects in ways that are still little understood.

"What I am saying," Gori explained, is that the average effect of smoking "tolerable" levels of certain "less hazardous" cigarettes today would be as small as the ill effect on persons who smoked only two cigarettes a day before 1960. Virtually all cigarettes then were loaded with poisons like tar and nicotine far beyond present levels.

Gori disclosed his estimates first in an interview with Associated Press reporter Michael Putzel. The Washington Post then obtained a copy of the Gori-Lynch report.

Lynch is manager of the smoking and health program at Enviro Control Inc. of Rockville, the cancer institute's main contractor in the effort.

The five leading brands of less hazardous cigarettes on the Gori-Lynch list—Carlton Menthols, Now Menthols, Nows, Strides and Carltons—represented just under 2 percent of all cigarettes sold last year, Lynch estimated. But 22 more brands—with 17 to 18 percent of the market—are low enough in toxins so the average smoker might use between three and eight a day without appreciable added risk, Lynch said.

The cancer institute program to remove or minimize the effect of the main toxins found in cigarettes or cigarette smoke—tar or "total particulate matter," nicotine, carbon monoxide, nitrogen oxides and acrolein—began in 1970. At the most it has cost $4 million a year, a drop in the bucket compared to cost of smoking's huge toll in death and disease.

Still, it is a program that has often been flayed by some critics of smoking who have argued that efforts should be concentrated on halting smoking altogether.

"I think ours has been a worthwhile program," Gori replied. "We are not trying to endorse cigarettes or smoking in any way. We are only trying to put the facts before the public.

"If we could go from 100,000 cases of lung cancer a year to, say, 2,000 or 3,000 by the development of less hazardous cigarettes, I would still regret the 2,000 or 3,000 deaths but I would think we would have made a tremendous public health gain."

DOCTORS LIST OF CIGARETTES AND THEIR "TOLERABLE" LEVELS

Following is the number of cigarettes the average smoker could consume daily without exceeding a "tolerable" level of risk of cancer or other disease, according to Dr. Gio Batta Gori:

Carlton Menthol	23
Now Menthol	18
Now	17
Stride	17
Carlton	16
L&M Flavor Lights (King)	8
Lucky 100	8
True	8
True Menthol	8
Decade	7
Pall Mall Extra Mild	7
Decade Menthol	6
Iceberg 100s	6
Kent Golden Lights Menthol	6
L&M Long Lights (100s)	6
Lark II	6
Tareyton Lights	6
Kent Golden Lights	5
Real Menthol	5
Benson & Hedges Lights	4
Newport Lights Menthol	4
King Sano	3
King Sano Menthol	3
Merit	3
Merit Menthol	3
Real	3
Tempo	3

Cigarettes not named were not listed by by Dr. Gori.

Mr. HUDDLESTON. Mr. President, these stories were naturally greeted with great approval in the tobacco-producing—not, as some contend, because we view it as absolving tobacco and cigarettes from any health hazards, but because it indicates that our efforts to produce a safer cigarette and reduce potential hazards are showing some beneficial results.

My own State of Kentucky, for instance, commits $4 million annually to research aimed at identifying and removing any harmful components of tobacco. I continue to believe that in this case an ounce of prevention is indeed worth a pound of cure—and research to reduce or eliminate the hazards holds much more promise than efforts to make persons quit smoking.

However, Mr. President, I have been dismayed by the reaction to these published interviews with Dr. Gori. That reaction can only be described as a campaign of vilification and slander aimed at discrediting Dr. Gori and his findings.

I ask unanimous consent that articles in the Washington Post on August 11 and the Washington Star on August 12 be printed in the RECORD.

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

[From the Washington Post, Aug. 11, 1978]

HEALTH OFFICIALS CHALLENGE REPORT ON CIGARETTE USE

(By Victor Cohn)

Administration health officials and the American Cancer Society yesterday disputed vehemently a federal cancer official's contention that smoking limited numbers of certain "less hazardous" cigarettes is "tolerable" from a health standpoint.

But the official, Dr. Gio Batta Gori, deputy director for cancer cause and prevention at the National Cancer Institute, stood firmly by his conclusion. He said in an interview that his superiors are under pressure from Health, Education and Welfare Secretary Joseph A. Califano Jr. to fire him.

Cancer Institute officials denied that there has been any pressure to get rid of Gori, but they joined with Califano and other leaders in the health field in decrying Gori's conclusions.

They said there is no proof yet for his belief that not every smoker, except the "average" one who smokes no more than three to 23 cigarettes daily of some brands now on the market, should suffer no more extra risk of death from any cause than those who smoked only two cigarettes a day before 1960, when all cigarettes were far more dangerous.

Gori said so much tar, nicotine and other chemicals have been eliminated from cigarette smoke that from three to 23 cigarettes of certain brands contain no greater amounts of these chemicals than just two pre-1960 cigarettes. Gori called these smoking levels not safe but "tolerable," meaning the incidence of disease and death would be greatly reduced, though not eliminated.

The health officials said his use of the word "tolerable" in a general population or public health sense would mislead Americans into thinking cigarettes are safe for them as individuals.

"There is no such thing as a safe cigarette" or anything like it and leading government scientists are "all very disturbed" over the fear that millions of people might think so, said Califano, who last January started his own drive to halt cigarette smoking.

Surgeon General and Assistant HEW Secretary Julius Richmond and the heads of HEW's two biggest research units—the Cancer Institute and the National Heart, Lung and Blood Institute—all attacked Gori's "assumptions" that anyone can smoke any number of cigarettes whatsoever at low risk.

Dr. Arthur Upton, Cancer Institute head, said Gori's use of the word "tolerable" was "unfortunate." Gori's statements have "set back our cause, and even if we can correct the misinterpretation, we will have lost valuable momentum," he said.

In further response to the unusual attacks on his conclusions—scheduled to be published in the Journal of the American Medical Association—an upset Gori said in an interview:

"Califano is very hot on his own campaign, so he is putting pressure on the National Cancer Institute to have me disciplined or dismissed or something."

Upton, asked by The Washington Post if he intended to keep Gori in his present job, said, "I have been talking to Dr. Gori" about a change "for perhaps three months," because Gori, a deputy director since 1975, and his new superior, Dr. Gregory O'Conor, "simply haven't found a comfortable working relationship."

But Upton said "there is absolutely no substance" to any contention of pressure from Califano. He said, "I've spoken to the secretary several times today" about this matter, and "at no point has he indicated or asked that Gori was to be disciplined or demoted."

Upton said he had told Gori "that the secretary is upset" and "that the report tends to counteract the secretary's initiative on smoking." But any change in Gori's job, Upton said, will have "nothing to do with his report," since "I knew nothing at all about it until yesterday."

Dr. Sidney Wolfe, head of the Ralph Nader Health Research Group, said Gori should be fired for "the most damaging statement that has been made about smoking in the last 10 years." He called Gori's words "reckless," and said "we have no idea yet what chemicals in cigarette smoke are the dangerous ones," or "what the manufacturers' increases of all sorts of chemical additives for flavor" will do, or whether lower doses of some chemicals will just take longer to cause disease.

Still, Dr. Arthur Holleb, American Cancer Society medical director—while saying "there is no such thing as a proven safe cigarette"—agreed that low tar and nicotine cigarettes impose less serious risks of disease.

Dr. Lawrence Garfinkel, Cancer Society vice president and statistician, said that in two five-year periods—1960–65 and 1966–72—there was a 16 percent drop in mortality from all diseases, a 14 percent drop in heart disease mortality and a 26-percent drop in lung cancer mortality in a half-million male smokers followed by the society.

It was statistics like these that made Gori conclude that further improvements in cigarettes would reduce deaths not only from cancer—his own field—but from heart disease, pulmonary emphysema and other smoking-linked ills.

Garfinkel said these drops were "far from conclusive," but did indicate "some effect" of less dangerous cigarettes Dr. Ernest Wynder, president of the American Health Foundation and well-known cancer scientist, agreed that "it is reasonable to expect some reduction in risks" as cigarettes are made less dangerous.

Gori said the health leaders were themselves misinterpreting his statements. These made it clear that only one brand, Carlton Menthols, is now so low in toxins that by his calculation most persons could smoke 23 cigarettes daily with no measurable risk beyond a non-smoker's. He said the average smoker might similarly consume 18 Now Menthols, 17 Nows or Strides or 16 Carltons without added problems so far as large-scale statistical studies would detect.

But his co-worker, Dr. Cornelius Lynch, said these brands currently represent less than 2 percent of all cigarettes sold—and other "less hazardous" but not nearly as clean cigarettes represent only another 18 percent.

[From the Washington Star, Aug. 12, 1978]

SMOKE BUT NO FIRE AT HEW

Gio Batta Gori, the scientist who touched off a furor this week by suggesting people could smoke some cigarettes without apparent risk, apparently will lose his job in a government reorganization.

"Officials of the National Cancer Institute and the National Institutes of Health have been talking with Dr. Gori for some time about a change in assignment," said a terse announcement yesterday from the institutes' parent agency, the Department of Health, Education and Welfare.

"These conversations go back at least as far as the spring of 1977. The discussions are continuing, and no decision has been made," the statement added.

Gori confirmed that the discussions about his reassignment are the result of an ongoing reorganization, adding that they have been "friendly, above board, and I have no complaints."

Dr. Gregory O'Conor, Gori's division director at the National Cancer Institute, said the Italian-born scientist had been wearing three hats as head of the institute's smoking and health program, nutrition program and deputy director of the division of cancer cause and prevention.

As part of the institutional reorganization, O'Conor said, the smoking and nutrition programs have been removed from Gori's control in recent weeks, and Gori has been told that O'Conor wants someone else as his deputy.

Gori, a $47,500-a-year civil servant, is entitled to be transferred to another post of equal rank, but no agreement has been reached on what job he might take, O'Conor said.

The Division Chief said his relationship with the controversial scientist was "excellent" and that Gori's reassignment had nothing to do with his views on smoking.

But O'Conor also said the emphasis of the smoking and health program probably will shift to behavioral and educational research in line with HEW Secretary Joseph A. Califano Jr.'s campaign against cigarette smoking.

Gori, 48, has been involved in the government research for a less hazardous cigarette almost since the inception of such studies in 1968. The program always has been the subject of some controversy among those who contended the government should concentrate all its energies on stopping the smoking of cigarettes and leave cigarette research to the tobacco industry.

But Gori, a microbiologist by training, has long argued for what he called a more pragmatic approach.

"Since smoking occupies such a prominent position in the mythology of our daily life, it is unrealistic to expect that a society of nonsmokers could be created after a mere 20 years of public education," he wrote in an article published by Science magazine in 1976. "Historic perspective suggests that many decades may be needed to achieve this goal.

"Until then, it is important to protect those who continue to smoke despite all warnings. Leaving them to their fate is neither humane nor economic."

This week it was reported that Gori and a coworker had identified "tolerable levels" of smoke for 27 cigarette brands with relatively low tar.

While Gori was careful to point out that he did not consider the brands "safe," he did say: "Some are so low (in tar and other toxic substances) as to cause no observable hazard" at the levels he cited.

Those levels ranged from three cigarettes a day for several bands to as many as 23 a day for Carlton Menthols.

Publication of Gori's remarks brought an outcry from the U.S. surgeon general and other longtime anti-smoking forces who feared Gori's findings would be interpreted by many as scientific evidence that some smoking is safe.

In a statement issued late yesterday, Gori criticized "the recent misunderstanding" concerning his report.

"This report, and my work of ten years to reduce the toll of death and disability caused by smoking, are on record and testify to my conviction that no cigarette is safe," he said.

"I have consistently maintained that no one should smoke and advocated intensive public education against smoking.

"However, it is apparent that many smokers will not quit smoking despite all inducements to do so. For these smokers, less hazardous smoking materials and ways of smoking are available. These need to be identified, but with a clear warning that a degree of risk will always remain for those who persist in

smoking. My latest report is consistent with this position."

Mr. HUDDLESTON. These articles, Mr. President, indicate that efforts to produce a safer cigarette—or even honest research efforts—are not to be tolerated by some within our Government.

Dr. Gori has been attacked by HEW Secretary Joseph Califano, who Dr. Gori says has tried to get him fired, others within the bureaucracy, and the professional antitobacco lobby.

These actions cause me great concern in two respects: Apparently an effort is being made to fire, discipline or otherwise punish Dr. Gori for candidly reporting the results of scientific research; and this episode causes me to wonder whether research to produce a safer cigarette is being abandoned by the Government.

Mr. President, I have today written President Carter to express those concerns, and I ask unanimous consent that my letter be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., August 14, 1978.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Earlier this year when Mr. Califano began his anti-smoking and anti-tobacco campaign, I requested and was accorded a meeting with you to express two basic concerns of mine: (1) that the campaign of Mr. Califano not in any way harm the tobacco support program which affects 300,000 family farms, and (2) that the government should give more emphasis to research aimed at producing a safer cigarette.

You gave me strong assurances on both counts, and you have since reiterated your position—most recently on your trip to Wilson, N.C. For that, those of us from tobacco-producing states are grateful.

However, actions in recent days following publication of a report by Dr. Gio Batta Gori, a high-ranking scientist with the National Cancer Institute, have given me cause to wonder if others in this administration share your commitment to research for a safer cigarette.

Last week Dr. Gori and his associate, Dr. Cornelius Lynch, summarized the findings of their research aimed at reducing potential hazards of smoking. They stated that some of the newer low tar and nicotine cigarettes, when used moderately, would "cause no observable hazard."

What has happened since that time can only be described as a campaign of villification and slander designed to discredit Dr. Gori and his findings. This effort to discredit Dr. Gori, even before his research is properly reviewed, has apparently included Mr. Califano, U.S. surgeon general, the head of the National Cancer Institute and Ralph Nader.

This kind of mindless rejection of a serious research project is in direct conflict with your stated objective of continued federal research into the health hazards of tobacco aimed at producing a safer cigarette. It is more reflective of Mr. Califano's opposition to such research on grounds that "there is no such thing" as a safer cigarette.

According to press reports, Dr. Gori is now being moved to another position. He stated in one interview that the move was in the works prior to his recent statements and the resulting outcry. However, in another report Dr. Gori said Mr. Califano is putting pressure on the National Cancer Institute to have him disciplined or dismissed.

I hope you will make certain Dr. Gori is not reprimanded, disciplined, or in any way made to suffer for reporting the facts as he, a scientist, discovered them.

Furthermore, those of us from tobacco states now have serious doubts whether anyone holding the view that a safer cigarette is possible can survive—or even be employed—by an agency under the control of Mr. Califano.

My concern is that we not let this become the death-knell of government efforts to produce a safer cigarette. To do so would constitute a modern-day rejection of science and technology more properly associated with the Luddites.

I have never been one to dismiss scientific research just because its conclusions were uncomfortable. Indeed, when the recent A.M.A. study came out outlining tobacco hazards, I stated publicly that those of us from tobacco states should not reject it out of hand.

By the same token, anti-tobacco forces—especially those within the government itself—should not reject out of hand serious research which tends to show that progress can and is being made in the effort to produce a safer cigarette.

To take that position is actually in contravention to good health. We do not close all factories because air pollution is unhealthy; rather, we find ways of removing or reducing the pollutants before they enter the air we breathe. The same should apply to tobacco.

We should make an even greater effort to identify and remove potentially harmful ingredients in tobacco, and the reactions to Dr. Gori's findings can only make me think the government is becoming an obstacle rather than a catayst toward that objective.

I hope that you can give the tobacco state congressmen and senators, as well as Mr. Califano, renewed indication of your intent to support research to produce a safer cigarette.

Sincerely,

WALTER D. HUDDLESTON.

Mr. HUDDLESTON. As I told the President, the rejection of Dr. Gori's research before it has been seriously reviewed is an attitude more appropriate to the Luddites. To foreswear any hope that science and technology can solve any potential health hazards of tobacco is both shortsighted and counterproductive.

Those of us from tobacco-producing States have always recognized that we will have to provide some answers to the health-and-smoking issue. That is why Kentucky provides $4 million annually in State tax money to search for those answers. That is why I stated publicly that we cannot reject out of hand the research recently released by the American Medical Association stating there is a link between smoking and cancer. And that is why I am not opposed to reasonable and fair efforts to inform citizens of potential hazards in tobacco.

But the other side on this issue must also remained openminded enough to admit the possibility of progress in efforts to produce a safer cigarette. Indeed, Dr. Gori's research indicates that has already happened.

Rather than condemn his findings out of hand, Mr. Califano and like-minded persons should be pleased that progress is being made and provide incentives and encouragement to continue those efforts.

Mr. President, this whole episode leaves me with a bad feeling. It appears that Mr. Califano is trying to develop an orthodoxy on the smoking and health issue which will not be breached by anyone under his control. It appears that Mr. Califano has totally rejected the notion that progress is possible. In short, he has a prohibitionist approach to the whole matter and apparently is totally unwilling to consider any other approach, no matter how well founded in adequate scientific research.

President Carter has on several occasions given his strong endorsement to the tobacco price support program as well as research to produce a safer cigarette. I appeal to him to deliver that message to Mr. Califano before he brings to a halt the only Government research that can provide solutions to the health problem.

Mr. President, I ask unanimous consent that an article about President Carter's trip to North Carolina and an editorial in the Washington Star be placed in the RECORD.

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

CARTER SAYS ANTISMOKING DRIVE, TOBACCO SUBSIDIES BOTH NEEDED

(By Brooks Jackson)

WILSON, N.C.—President Carter said Saturday in the heart of North Carolina tobacco country that he sees no inconsistency in a $30 million federal anti-smoking campaign while the government helps tobacco farmers financially.

At a political rally here, Carter emphasized the need for continued federal research into the health hazards of smoking. Later, at a mock auction at a huge tobacco barn, he said the federal price support for tobacco cost the taxpayer very little, and "as long as I'm in the White House . . . we'll have a good tobacco loan program."

The president began the day in Norfolk, Va., where he dedicated the Navy's newest nuclear-powered cruiser, and flew back to Washington after an afternoon in Wilson, where his remarks and demeanor at times resembled those of a presidential campaigner.

Carter, a non-smoker, brought a lighter touch to the sensitive issue by poking fun at Joseph A. Califano, Jr., secretary of the Health, Education and Welfare Department, who is directing the anti-smoking campaign.

"I had planned to bring Joe Califano with me," the president said. He added that "he decided not to come" after discovering that Wilson's industry produces bricks as well as tobacco.

The president said Califano jested, about two weeks after presidential drug abuse adviser Peter Bourne resigned, "it was time for the White House staff to start smoking something regular."

Carter came here in part to try to advance the political fortunes of a Democratic candidate for the Senate who is trying to unseat conservative Republican Sen. Jesse Helms, who has called for the resignation of the secretary of Health, Education and Welfare.

The Democratic nominee, John Ingram, said: "We Tar Heels thank you, Mr. President, for protecting the tobacco loan program, which this season has given our farmers and a good crop and good prices."

During Carter's speech, a small group of people chanted "Free the Wilmington 10," a reference to the jailing of 10 persons convicted in North Carolina of firebombing. Five of the 10 are still in jail.

Carter acknowledged their presence, saying that regarding human rights, "one of those rights is to speak, even to shout, when other people are trying to speak."

With that, the president drew the loudest applause during his speech.

[From the Washington Star, August 13, 1978]

DR. GORI'S ORDEAL

Dr. Gio Gori's recent musings with an Associated Press reporter about cigarette smoking and the epidemiology of lung cancer have flushed the Savonarolas of the anti-nicotine crusade from their lairs.

The secretary of Health, Education and Welfare, a reformed smoker, seemed to be leading the charge of the hot-gospelers against Dr. Gori with one of Mr. Ralph Nader's health researchers, Dr. Sidney Wolfe, not far to the rear.

Mr. Califano, who has been spreading the gospel of abstinence, is deeply perturbed. Dr. Wolfe proposed what once was called the short way with sinners. Dr. Gori, he said, should be fired for making "the most damaging statement about smoking in the last 10 years." There are even rumors that Dr. Gori, who as deputy director of cancer prevention at NIH is within Mr. Califano's administrative reach, might be relocated. To Siberia, perhaps?

What did Dr. Gori do to incite this wrath? The best approach may be to ask what he did not say. He did not echo President Carter's recent statement in the tobaccoland citadel of Wilson, N.C., that the U.S. needs research "to make the smoking of tobacco even more safe than it is today"—a curious location from which the literal-minded might gather that future tobacco research would build from a solid foundation of safety. (One might as logically speak of a program to make bullets "even more safe" for human intake.)

Nor did Mr. Gori urge people to smoke more, or say that cigarettes are safe. "The only cigarette that is safe," said he, "is the cigarette that isn't lit." We would not be surprised if Dr. Gori personally feels, as we do, that if people had been intended to suck smoke into their lungs they would be born with a portable tobacco patch.

What Dr. Gori was saying, it appears, is (a) that certain cigarette brands recently produced after costly research, some of which he named, are far lower in toxic tars and nicotine than others—so much lower that it would take from 3 to 23 of them to equal the toxic kick of only two of the older, deadlier vintages; and (b) that, as a matter of statistical probability, the new brands might be smoked in limited numbers with "tolerable" improbability of self-injury. "I am not talking about what might happen to any individual," he said, "I am talking about averages."

Dr. Gori and his research associate, Dr. Cornelius Lynch, are excited by the prospect that cigarette-induced illness may be on the way down as a public health hazard. "If we could go from 100,000 cases of lung cancer a year to, say, 2,000 or 3,000 * * * I would think we would have made a tremendous public health gain." And so we would have.

There are two evident lessons in the Gori flap, one slightly comic and the other rather ominous.

The comic part is that vested economic and psychological interests swirling about the smoking-and-health issue are such that a reputable researcher muses about epidemic probabilities at the risk of being slyly exploited by those who think smoking is good for you, or at least would like to have you think so.

As for those who have decided that smoking is bad for themselves, and throb to dragoon everyone else into their company, the situation is roughly parallel; but more ominous. In their eyes, apparently, there are no innocent facts or opinions about cigarettes and cancer, however "scientific" or detached from ulterior motive. Not even Dr. Gori's careful disclaimers excuse him for running the risk of misinterpretation. By such standards, most scientists would have to take a vow of silence.

To measure the danger of that reaction, and how threatening it is to detached comment on a vital issue of public health, merely imagine that Dr. Gori had spoken of encouraging findings about some other hazard—carcinogenous food additives, say, or alcohol—and ask yourself whether the reaction would be as furious.

The fact is that people will eat rich foods, will imbibe spirits, and will even smoke cigarettes despite the evidence that it is no service to good health to do so. Since that is so, more power to researchers who merely put smokers on notice that while any smoking may be unsafe some cigarettes are statistically less deadly than others. And shame on those who treat them as if they were beating the drums for cigarettes and, indeed, for lung cancer.

Mr. HUDDLESTON. The editorial points out that despite the hysterical outcries to the contrary, Dr. Gori did not advocate smoking; he did not say cigarettes are safe; he simply stated that advances have been made in reducing harmful components to the extent that some cigarettes can be smoked in moderate numbers with significantly less hazard.

Dr. Gori should be applauded rather than condemned as some kind of villain. His heresy is that he told the truth in an orthodox environment that does not allow for deviation from the party line.

Finally, Mr. President, I ask unanimous consent that a letter I wrote today to Mr. Califano be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., August 14, 1978.

Hon. JOSEPH CALIFANO,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: I have been dismayed at the reaction that has occurred since Dr. Gori summarized last week the results of his research on efforts to reduce and remove harmful ingredients in tobacco.

Of particular concern is Dr. Gori's statement that you are exerting pressure on his superiors to either discipline or dismiss him.

If true, such action on your part is both reprehensible and counterproductive to efforts to enhance the health of our citizens.

To take the attitude, which you apparently have, that no progress is possible is a modern-day rejection of science and technology more properly associated with the Luddites.

More disturbing, however, is that the actions of you and Dr. Gori's superiors are in direct conflict with the pledge you made to tobacco state congressmen and senators that you would be fair and open-minded on the issue.

We asked for and received your assurances that you would consider the evidence on both sides of the issue; however, it now appears that an orthodoxy has been established that will allow no deviation from the party line.

To say that I am disappointed in your actions is an understatement. It is a serious detriment to conscientious efforts to produce a better and safer tobacco, and it is a sad day when government seeks to discredit its own scientist for candidly reporting the results of his research.

Sincerely,

WALTER D. HUDDLESTON.

Mr. HUDDLESTON. As I pointed out to the Secretary, his attitude in the Dr. Gori episode is directly contrary to assurances he gave tobacco-State Congressmen and Senators, when he launched his antitobacco campaign to the effect that he would be fair and consider both sides during his efforts.

It appears to me that Mr. Califano has a totally closed mind, with a prohibitionist attitude, on this matter. He is clearly an obstacle rather than a catalyst for progress toward a safer cigarette.

I might say further, Mr. President, that the statements made by Dr. Arthur Upton, head of the Cancer Institute, to me were simply incredible, for a person who is supposed to be interested in the truth, in research and experimentation to determine the truth, to categorically castigate a statement by Dr. Gori, which was based on research and scientific experimentation, to the effect that Dr. Gori was somehow out of line in revealing what his findings were. If we are going to have scientific research paid for by the Federal Government, we ought to be willing to accept the conclusions of that research or the fundings of that research with an open mind. That obviously is not the case with Dr. Upton, it is not the case with Joseph Califano. I think it is time we took a very hard look at what the objectives of these two gentlemen might be as far as their position relating to the effort to produce safer cigarettes versus the effort to simply eliminate the tobacco industry totally in the United States.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, on this same score, I commend our colleague from Kentucky for bringing into focus the Gori findings on the part of the National Institutes of Health in this particular study. I commend to our colleagues this morning's article by Daniel S. Greenberg, "That 'Smoking Is Safe' Report." I ask unanimous consent that the article in its entirety be printed in the RECORD at this point.

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

THAT "SMOKING IS SAFER" REPORT

(By Daniel S. Greenberg)

The dominant flavor in tobacco politics is what amounts to a tacit non-aggression deal between Washington and the cigarette industry. Grasp that and you're on the way to understanding why a sensible suggestion from a politically naive government scientist sent Washington's high command of health into a fit of petulant pronouncements last week.

The scientist is Gio B. Gori, an administrator at the National Cancer Institute, who for the past five years has supervised a program in which $18 million was spent for the development of "less hazardous" cigarettes. In a paper soon to be published in the Journal of the American Medical Association, Gori and a colleague correctly state that in terms of what are now known to be the most

dangerous components of cigarettes, some present-day brands—while not safe—are safer than most of those sold in 1960. And they urged, "While programs to discourage smoking should continue, these educational efforts should be coupled with others directed toward reducing the risks to persistent smokers," of whom there are many among this nation's 50 million cigarette smokers.

Less noxious smoke, they continued, could lead to a reduction in cigarette-induced illness and death. And then, lapsing into a bit of easily misunderstood technical jargon, they speculated that the reduction might be so great that the toll from cigarettes might be "considered socially tolerable"—meaning that it wouldn't stand out, as it now does, in mortality statistics. In lay terms, their message was: Don't smoke, but if you do, opt for the less poisonous varieties, which they listed in their article.

Press reports of the Gori thesis brought prompt denunciation from the director of the Cancer Institute, from several other top-level government health officials and from the Department of Health, Education and Welfare, whose chief, Joseph Califano, is leading a loudly proclaimed but, as it turns out, very thrifty campaign against smoking. Gori, they charged, is luring the public into thinking smoking is safe.

What's notable about all this is that to the extent that there are anything resembling durable policies in the mercurial U.S. government, they explicitly include the goal—established in 1968—of developing safer cigarettes. Gori, who is relatively low in the government's health-research hierarchy, didn't con anyone into establishing that goal or providing the $18 million. Rather, both goal and money are part of the so-called war on cancer, and have consistently survived periodic reviews that start with committees of scientists, wind through extensive agency and departmental examinations and finally conclude with approval by the House and Senate appropriations committees. Why, then, the eruption when Gori, writing in a respected, professionally screened medical journal, is merely reporting on work that the U.S. government paid him to perform?

The answer is that Gori's governmental denouncers, fervent anti-smokers all, have the misfortune of being in command of a mock war against tobacco. Though none of them raised any valid criticism of the scientific substance of the article, they recognize that a government-linked nod to the relative advantages of "less hazardous" smoking could diminish even the slightest support they now command for anti-tobacco efforts. For if smoking can be depicted as safe, or even safer, why should the government provide any support to encourage cessation?

The present anti-smoking effort, slight as it is, is politically precarious, what with our beleaguered president having recently journeyed to the heart of tobacco land to laud the economic value of the weed, which, produced mostly on small-scale holdings, earned some $2.3 billion last year for 600,000 farm families. To sell that stuff, the cigarette industry spends over $300 million a year to advertise the top 20 brands; against that sum, HEW has upped its anti-smoking educational drive to $6 million, an amount so piddling as to wipe out any claim that the government is determined to help its people kick the habit.

Safer cigarettes? Like it or not, they exist, though it must be emphasized that they are only safer, not safe, and their main benefit may be only that they delay the arrival of cigarette-induced ailments. But given the fact that millions smoke, and that the biggest market growth is among teen-agers, it's preposterous to reject what may be an opportunity for some hazard reduction.

If the health high command were given ample resources to help ween the public from cigarettes, then the rejection of halfway measures would be justified. But since that's not going to happen, why not recognize that Gori's advice, though politically dangerous to the anti-smoking movement, is, unfortunately, medically sound?

Mr. HOLLINGS. Mr. President, the whole point is that we do have a drive on within the Government to produce a safer cigarette, as well as in private industry. As we produce that safer cigarette, presumably, according to the Califano declaration of war, there is not going to be any such thing as a safe cigarette, there are just going to be none. That is his position. In order to carry that out, he excoriates our friend, Dr. Gori, in a totally unreasonable fashion. I think it is interesting that this was caught by Mr. Greenberg in his morning article, when he said:

What's notable about all this is that to the extent that there are anything resembling durable policies in the mercurial U.S. government, they explicitly include the goal—

That is the goal for a safer cigarette: established in 1968—of developing safer cigarettes. Gori, who is relatively low in the government's health-research hierarchy, didn't con anyone into establishing that goal or providing the $18 million.

So it was not that he was off wandering around on some thought-up assignment that was totally amiss and afar from the goals and policies of the Department of HEW, but down in the hierarchy somewhat, he was carrying out orders in his research endeavor. Then Greenberg points out further that he did not provide the $18 million for it:

Rather, both goals and money are part of the so-called war on cancer, and have consistently survived periodic reviews that start with committees of scientists, wind through extensive agency and departmental examinations and finally conclude with approval by the House and Senate appropriations committees.

That is a somewhat similar situation to what we have in the last several days of debate, where we, as Congress, find it necessary and desirable that we have equal educational opportunity, that there be advantage to the disadvantaged, that we have bilingual education for those who cannot speak the English language, that we have provisions made for the handicapped, that the public schools be open to the decipline problems and the unprepared and all the rest. Those are congressional findings, bolstered by court decisions.

Then, when we do that, when they come loaded down almost in the corner ready for the contest, the private schools come out and say, "Well, let us compete, and what we need in order to compete, rather than lifting the load or evening the burden," they instead say, "give us additional money and more than you have given those that you have loaded down."

Now comes the doctor, after making his findings and everything else, and after he has been through what the HEW Department asked him to do, what Secretary Califano asked him to do. Then, when he makes a scientific and medically sound finding he is held up to ridicule and rebuff.

Mr. Greenberg concludes:

If the health high command were given ample resources to help ween the public from cigarettes, then the rejection of halfway measures would be justified. But since that's not going to happen, why not recognize that Gori's advice, though politically dangerous to the anti-smoking movement, is, unfortunately, medically sound?

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

TUITION TAX RELIEF ACT OF 1978

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the pending bill (H.R. 12050), which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide Federal income tax credit for tuition.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3474

The ACTING PRESIDENT pro tempore. The pending question is the amendment of the Senator from Oregon.

The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, is the amendment number 3474?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. PACKWOOD. Mr. President, I do not see in the Chamber the two principal opponents who spoke last night and indicated they wanted to speak on this amendment.

I shall take only a few moments making my case in chief.

There has been objection stated to the preamble of the bill by several Senators claiming the proponents of the bill are trying to do an end run around the Supreme Court by proclaiming the bill is constitutional.

Mr. President, the argument could be made that any act Congress passes is presumed to be constitutional. The court has found that to be true many times.

Nevertheless, in an endeavor to compromise with those who take offense at the Senate itself making a judicial conclusion, the amendment that I have offered simply is:

"The Congress further finds that the constitutionality of Federal tuition tax credit for the educational expenses of students attending nonpublic schools can only be established by the enactment of a law providing such tax credits, which will in turn provide the Supreme Court of the United States with an opportunity to rule in a decisive and determinative manner.".

Mr. President, note carefully that amendment does not say this bill is con-

stitutional. Senator MOYNIHAN and I, Senator ROTH, Senator RIBICOFF, the other proponents who have argued this for 3 days now, have never maintained that without a shadow of doubt the bill is constitutional.

There is a complete split in the authorities. There is a split in the courts. For every constitutional expert the opponents of this bill can cite saying it is unconstitutional, we can cite one that says it is constitutional.

We had testimony on both sides in the committees. We have letters from both sides, constitutional experts disagreeing with each other as to whether or not the bill is constitutional.

It is obvious there is only one way we are going to find out as to this bill, which is a Federal tax credit. I call the attention of the Senate to the fact there has never been one before. The court has never passed on this issue. The court has never passed on an issue where the breadth of the beneficiaries of a tax credit bill are as broad as in this bill, even at the primary and secondary level. When we add the fact all higher education is added to this, the overwhelming preponderance of the beneficiaries are people who go to public schools.

That was not true in Nyquist. That was not true in Lemon. That was not true in Wolman or any other case. In each of those cases, the Supreme Court found the overwhelming preponderance of the beneficiaries were children attending Roman Catholic schools.

So, one, they never had one with a tax credit; or two, the number of beneficiaries in this case.

Even if we limit it to primary and secondary education, the court never had a bill where we had the breadth of the beneficiaries we now find in primary and secondary private school because the trend in the last 10 years has been a continuing decline in Catholic enrollment and an increase in the enrollment of Protestant and Jewish primary and secondary schools.

Mr. President, I hope it is clear from the debate we have had over the last 3 days that our Founding Fathers would have found no offense at the kind of legislation here proposed. Whatever might have been their intent in drafting the first amendment, it is very clear from their practice that they saw nothing wrong with using public funds to support church-run primary and secondary schools.

Every member of the Constitutional Convention came from a State that, prior to adoption of the Constitution and after, levied taxes—not tax credits, not tax deductions, levied taxes—collected those taxes, and gave the taxes to churches to run primary and secondary schools for the education of those children who chose to go to school.

It was not until 1820 we had a public school system, just the start of it. That was in Delaware. It was the start of the public school system as we know it today. That process was not completed until 1850 in some States. We had a situation of States levying taxes, or local governments levying taxes, giving the money to churches to run schools.

So, regardless of what our constitutional founders may have been thinking about when they drafted and finally ratified the establishment clause, regardless of whether they were thinking of an established religion in the sense of the Church of England, regardless of whether they were thinking of an established religion in the way many of the States had established religion at the time of the founding of the Constitution, regardless of the fact that what they were probably thinking about—and it is very difficult to tell because the debate on this particular amendment was very limited—it would seem that what they were thinking about was an established religion in the normal sense it was understood in the later 1700s, which was a State religion adopting a particular church.

There was not a word in the debate as to whether or not our constitutional fathers intended to prohibit the use of tax money to be given churches to run schools.

All I can say is that in practice, every one of them probably belonged to State legislatures or to city councils or township councils that, indeed, levied those taxes and gave them to church schools.

That is the history. Somehow, some way, by tortuous reasoning, the Supreme Court in past decisions has in some cases, in State cases, found that deductions for tuition under certain circumstances were constitutional. But they had to derive that from a later interpretation of the Constitution than was intended by our founders.

Mr. President, today we have child care credits. We may take up to $400 off our income tax for child care expenses. We may take that off the income tax even though for child care we have sent our child to a church-run care center, run in the basement of the church, run by nuns, run by rabbis, run by whatever other religious order may be in charge of the day care center, apparently on the presumption that from the time a child is at least age 0 to 6 they will be uninfluenced by the religion of the day care center.

The GI bill provides benefits to those attending public or private, primary, secondary, higher education, vocational, and a variety of other schools mentioned. I mentioned primary or secondary and the Veterans' Administration has paid benefits to primary and secondary sectarian schools under that bill, again apparently on the presumption that once we have been in the military we are safe to be entrusted back to a primary or secondary sectarian school without being washed by religion.

So, if there is anything at all, it is only in the age of, roughly, 6 to 17, or 6 to 18.

Now, it is the feeling of the sponsors that the bill as we have drafted it is constitutional. We think it is. We have not intentionally drafted an unconstitutional bill. But because it is arguably unconstitutional, we have provided a 2-year delay in the effect of the primary and secondary tax credits.

We have provided a provision for an expedited court test, so that this issue will go to the Supreme Court and they will decide for the first time whether or not a Federal tax credit for primary and secondary education is constitutional or unconstitutional.

That is all my amendment says. There is no other way that the Supreme Court can pass on that particular issue unless we pass a Federal tax credit bill. They do not give advisory opinions. They have to have some justiciable controversy before them.

Let me close by emphasizing once more that this amendment I have offered changes the preamble, so that the preamble does not find the bill constitutional. The preamble now will say that the only way the court can pass on the issue of constitutionality is for Congress to pass a bill creating the Federal tax credits and sending the issue to the court for determination.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, at this point, while we await the debate between the Senator from Missouri (Mr. EAGLETON) and the Senator from Oregon (Mr. PACKWOOD) relative to constitutionality, I think it would be well to include some items in the RECORD, in the interest of time.

I ask unanimous consent that an excerpt from the report of the Committee on Appropriations in connection with this bill be printed in the RECORD.

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

ELEMENTARY-SECONDARY EDUCATION

There are unique features relating to elementary and secondary tuition tax credits legislation which raise serious questions that have not been adequately addressed in the Senate:

First, enactment of tax credits for elementary and secondary education would result in a dramatic shift in Federal education policy in favor of private-school students. Only those private school students most in need, such as handicapped, non-English-speaking, or disadvantaged now receive Federal assistance. In other words, public-school students with no special needs receive no direct Federal assistance. Tax credits would subsidize all students in private schools. Private schools that serve economically disadvantaged children, or other children with special needs, currently receive aid through title I of the Elementary and Secondary Education Act. Under this bill, however, all private schools would receive aid, whether or not they chose to serve students with special education needs whom the Federal Government has required the public schools to serve. By extending blanket assistance to all children in private schools, this amendment would turn on its head the timetested Federal policy of targeting aid to those who need it most.

Presently, the Federal Government supports private-school students at approximately $50 per student. Per capita support for public-school students is approximately $120 per student. Assuming full benefit of the tax credit proposal, the Federal Government would then be in the position of providing more than four times the support for each private school student than it currently does for each public school student.

Second, the ultimate cost of this legislation will be much higher than is generally recognized. Cost estimates do not consider the potential billions of dollars required to fund those students in new private academies established to make advantage of this legislation. Nor does it take into consideration possible moves by public schools to charge tuition.

Third, H.R. 3946 as reported by the Finance Committee raises serious legal questions under the Establishment Clause of the first amendment to the Constitution. The Supreme Court decision in the 1973 *Nyquist* case, prohibited tuition tax credits under a State statute, stating:

"Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. To the contrary, insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions."

Given this relatively recent Supreme Court decision, the Committee believes this proposal holds out a false promise of tax relief.

Fourth, tuition tax credit would make it easier for a student to attend a segregated or minimally integrated school if the parents wished to avoid an integrated public school. Tuition tax credits would be an encouragement and reward to those who flee the public schools to attend private academies created largely in response to desegregation in public schools.

Even though H.R. 3946 limits the tax credit to expenses or tuition for attendance at tax-exempt institutions in order to prevent the credit from benefiting schools with racially discriminatory admission policies, there would be problems of monitoring tax forms and proving discrimination. The Internal Revenue Service should not be forced to assume an expanded role in handling discrimination investigations. Further, it makes no sense to give IRS the responsibility of enforcing civil rights when the Congress has previously delegated that responsibility to other agencies.

Although the foregoing sets forth the highlights of a number of problems and objections raised by H.R. 3946, it is not all inclusive or reflective of the individual views of all members of the Committee. Accordingly, the Committee does believe this measure creates more problems than it would solve and has reported the bill to the Senate with the recommendation that it not be adopted.

Mr. HOLLINGS. Mr. President, this report goes right to the matter of appropriating money for postsecondary education. It is very interesting that the members of the Appropriations Committee, like the Members of the U.S. Senate, have no difficulty in finding out what the law of the land is on this particular score.

The contention of the Senator from Oregon is this: How can they ever learn, unless we introduce a bill? That is a great favor for the Supreme Court of the United States. As if the Court never really has had the opportunity to rule on financial assistance to the elementary and secondary schools, or to the private schools, or to the parochial schools. As if the Court never has ruled on Federal action as well as State action. As if the Court never has ruled on the tuition tax credit approach.

We have only to look at the report of the members of the Appropriations Committee, charged with the financial responsibility of appropriating funds. They cite the 1973 Nyquist case:

Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this court. To the contrary, insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose—an inevitable effect—was to aid and advance those religious institutions.

My friend intimated in the debate yesterday that you have to be anti-Catholic to have that particular opinion. But this happens to be a legal opinion, not a personal opinion. You do not have to be anti-religious, as my friend said yesterday, to have that opinion. It just happens that under the Constitution, the establishment clause of the first amendment, you cannot aid or inhibit a religion. You should leave it alone. When they come in with a plan to spend the taxpayers' money to aid private schools, which are 85 to 90 percent parochial, they are aiding a religion.

There is no fine borderline case here about providing maps or other technicalities. Instead there are hard decisions on behalf of the Court.

Going further, Mr. President, I was asked on yesterday to put in the RECORD additional letters and resolutions with respect to the position of various organizations. I ask unanimous consent to have printed in the RECORD a letter from the distinguished president of Bob Jones University, in Greenville, S.C.

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

BOB JONES UNIVERSITY,
Greenville, S.C., June 23, 1978.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLINGS: The Packwood-Moynihan Elementary, Secondary, and College Tuition Tax Credit bill is soon coming up for a vote in the Senate. I am writing to request that you vote against the bill.

There is considerable difference of opinion among Christian school educators as to whether the bill is good or bad for private Christian education. I believe it is bad.

Everything that the government and the courts have done with regard to private education in the last eight or ten years has been to hinder private schools and to force them out of existence, if possible. Our basic distrust of the government's attitude toward private Christian education leaves us no reason to think that the government has mellowed its position or intends any good for the private schools with this Packwood-Moynihan bill.

I speak for Bob Jones University when I say that we do not want any government help of any kind. We just want the government to keep its hands off, and any tuition tax credit given to parents for sending their children here will eventually be interpreted by the agencies which administer the program to be federal aid to the college, even as the courts have now interpreted aid to the student to be aid to the college. No decent, Christian school wants aid in any form from the federal government. I'm afraid that the Packwood-Moynihan bill will be the undoing of separation of church and state as it affects Christian education.

I urge you to cast a negative vote when this bill goes to the Senate floor.

Thank you.

Sincerely yours,

BOB JONES III,
President.

Mr. HOLLINGS. Mr. President, I read from the letter:

I speak for Bob Jones University when I say that we do not want any government help of any kind. We just want the government to keep its hands off, and any tuition tax credit given to parents for sending their children here will eventually be interpreted by the agencies which administer the program to be federal aid to the college, even as the courts have now interpreted aid to the student to be aid to the college.

There you are. The Senator from Oregon cannot see it. Those who are in the business of administering these universities come in and say that they are not for any tuition tax credit.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Howard M. Squadron, president of the American Jewish Congress, dated August 11.

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

AMERICAN JEWISH CONGRESS,
August 11, 1978.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLINGS: Please be assured of the support of the American Jewish Congress for your amendment to the Tuition Tax Relief Act which is now pending in the United States Senate. We trust the amendment will receive favorable action when it reaches the Senate floor for a vote next week.

The American Jewish Congress has, since its inception 60 years ago, been in the forefront of the struggle to protect the public school system and we do not believe that the federal government should be in a position to weaken that system by underwriting non-public education with the use of public funds.

Furthermore, federal aid to private schools, as embodied in pending tuition tax credit proposals, raises the danger of creating a breach in the wall of separation between church and state. Such aid is in violation of the constitution and in contradiction to the principles upon which our non-sectarian public schools rest.

We are grateful for your efforts to protect one of the most valued institutions in American life, the public school system.

Sincerely yours,

HOWARD M. SQUADRON,
President.

Mr. PACKWOOD. Mr. President, will the Senator yield for a question?

Mr. HOLLINGS. I yield.

Mr. PACKWOOD. Is Bob Jones University the one that lost its 501(c)(3) exemption because of discrimination?

Mr. HOLLINGS. I am not sure whether it did or not. I am sure they had a case, and I see the gentleman nodding there.

Mr. PACKWOOD. I believe the record will show that this university did discriminate on the basis of race. It use to have a 501(c)(3) exemption, and it lost that. It has had its nose out of joint ever since about this issue. I think they are now afraid that if we have this tuition tax credit bill, which students going

to their school will not be entitled to, it will put them at a disadvantage with other schools.

Mr. HOLLINGS. I would not say the university has its nose out of joint. I would say that Bob Jones is typical of many schools and many school administrators in our particular section of the country. It is accredited to be an outstanding college.

The Senator finds many that are outstanding, with great diversity in pluralism. I do not know what that pluralism is. Every time we come to that, I never really know whether we are going to coronate the Senator from Connecticut, on the one hand, or start the Democratic Convention, on the other. Then when we really get into the meat of the coconut and start debating this thing, we run off on tangents of diversity and pluralism.

Bob Jones University happens to have art classes that are internationally known; music courses that are internationally recognized. It has that pluralism. It has that pluralism and it has that diversity.

And if it has a position with respect to discrimination I am not totally familiar with that. I am not hedging. I understand that there was a case brought. I never did really realize what the final outcome was. But I made no bones about the many, many, many protest schools.

The Senator from Rhode Island brought out that it is not the case that the public schools are shoving out the private schools. On the contrary the diminution in enrollment in the parochial private schools, on the one hand, and the public schools, on the other hand, took place during 1965 to the period 1975.

During the 5-year period between 1970 and 1975, the State of Kansas public elementary and secondary schools lost 13 percent of its enrollment; the State of North Dakota between 1970 and 1975 in elementary and secondary schools lost 10 percent of its enrollment.

It is not our contention, necessarily, that the private schools shoved them out of public schools. We are just giving realistic facts, as the Senator from Rhode Island was doing on yesterday afternoon. And they all diminished—private, parochial, and public elementary and secondary schools, over that 10-year period.

Now the decline of private school enrollments has bottomed-out, particularly the Catholic schools, as accounted for by the Catholic Conference. There has been a slight enrollment increase in the last year. What has really occurred is that there has been a blossoming in the past 10 years of protest schools, private schools, that have sprung up over the entire southland, and in other parts of the country.

Referring again to the American Jewish Congress letter from Howard M. Squadron:

> We are grateful for your efforts to protect one of the most valued institutions in American life, the public school system.

Now, the American Jewish Congress is not anti-Catholic; it is not anti-religious. It has fought for 60 years for an established principle of the separation of church and state, and they do not want that wall of church-state separation breached, and that is exactly what they say.

"Such aid is in violation of the Constitution."

They have no difficulty.

Organizations and educators galore, everyone in the land, seems to know the law of the land, but the authors of this bill come up with a unique proposition: We want to help the Supreme Court. How can they decide? We must help them decide.

So in order to get them to decide this unique question that has been decided over and over and over and over and as recent as last summer a year ago, "Now we are going to propose a bill."

Is that not a reasonable request? Do you not want to help the Court to decide what has already been decided?

Mr. President, other organizations, for example, the Southern Baptist Convention met this summer and they passed a resolution, No. 16, on tuition tax credits.

Mr. President, I ask unanimous consent that the resolution in its entirety be printed in the RECORD.

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

RESOLUTION NO. 18—ON TUITION TAX CREDITS

Whereas the Congress of the United States is considering legislation to give taxpayers a tax credit (that is, a direct subtraction from one's tax bill) for tuition payments.

Whereas the effect of such legislation would be of most benefit to those who can afford to finance their children's attendance at private schools, including elite schools,

Whereas most private elementary and secondary schools are related to churches and exist to serve the religious mission of sponsoring churches,

Whereas tuition tax credit legislation carries the potential of financing private education at the expense of public education,

Whereas the attorney general of the United States has issued an advisory opinion that such legislation is of doubtful constitutionality under the First Amendment, especially with regard to tuition paid to elementary and secondary schools,

Whereas the Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state,

Be it therefore Resolved, that we call upon President Jimmy Carter to veto any tax credit legislation now under consideration by Congress, and

Be it further Resolved, that we, messengers to the Southern Baptist Convention, meeting in Atlanta, Georgia, on June 15, 1978, register our opposition to all tuition tax credit legislation pending in Congress; urge the Baptist Joint Committee on Public Affairs to continue to oppose such legislation; and express our concern over such legislation's threat to the First Amendment guarantees of non-establishment of religion and the free exercise of religion.

Mr. HOLLINGS. "Whereas the Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state."

They see the inroads. They see the unconstitutionality.

Mr. President, the State of North Carolina is an outstanding State with respect to education. There is no question about it. I tried, in a sense, to emulate its technical training school system. I know its board for higher education and its approach to higher, elementary and secondary education has been considered a leader in our southland.

I never forget they passed a sales tax in North Carolina in 1936 for public education, and it was not until 15 years later, in 1951, that we followed the leadership of North Carolina in trying to build up our public schools.

Incidentally, no one argued at that particular time that because they paid a sales tax and had no children—and since all the sales tax money went for education then "the government should reimburse them because it is unjust and inequitable." What we want is fairness and justice and nondiscrimination.

That is the plea being made today that they should be reimbursed, because their children—who would be allowed into the public schools—chose rather to attend the private school, while the parents paid their property tax.

They passed a sales tax in North Carolina in 1936 and in 1951 in South Carolina, and no one has ever brought a suit or complaint or even extended the idea that since I do not have any children, I do not have to pay a tax.

All the tax, incidentally, every red cent of the 4 percent sales tax in the State of South Carolina, goes to elementary and secondary education.

Now comes the point we were talking about yesterday, on certification and entanglement, and the Senator from Oregon and myself seemed unable to understand each other.

The Senator from Oregon could not understand the almost accepted fact of the Senator from South Carolina that any time you do this you have entanglement. The Senator from South Carolina could not understand the position of the Senator from Oregon that no entanglement whatever was involved.

Let us look at the Columbia Christian Academy and the other Christian academies that are located in North Carolina. Under the State law the State department of public instruction was required, under this new law passed last year, to insure that the nonreligious curriculum of private schools meets certain standards.

We do not have that in South Carolina. But North Carolina, perhaps again leading the way, has attempted under article 32, chapter 1-15, to require just that—that the nonreligious curriculum of the private schools meet certain standards.

Sixty-one schools refused to fill out the necessary forms, and their refusal is premised on the basis of the separation between church and state.

So the State sues the 61 schools for refusing to fill out the State forms, and

that is on its way to the U.S. Supreme Court.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. ALLEN). Without objection, it is so ordered.

Mr. MOYNIHAN. I thank the Chair. Madam President, early last evening—at about 7 o'clock—a not altogether agreeable exchange took place upon this floor. A number of persons who do not support the legislation which Senator RIBICOFF, Senator PACKWOOD, Senator ROTH, and I have introduced expressed great displeasure, even to the point of making personal references, at the fact that we, the bill's supporters, had hoped to get an audience to attend to some of the arguments we were making. We simply hoped to have the opportunity to persuade other Senators of the cogency of our position.

It seemed to trouble people, that we should ask for votes and further discourse. We had one vote. But this came after 2 days during which we spoke to an essentially empty Chamber. Some Senators were away, no doubt, on business. Others no doubt have stayed away by choice, not wanting to hear what we had to say; we resorted to very elemental strategems in the hope of seeking a vote at 7 o'clock, so that these Senators might find it convenient to be present.

Even then, not many chose to stay on the floor.

At that point, given the high level of displeasure with our efforts to gather an audience for our debate, we concluded at an early hour. Now we are back, Madam President. We have been here for an hour, and not one of those concerned with the lateness of the hour last night has yet appeared at this not inordinately early hour. We are once again alone and surrounded by virtual silence. We have stood for 2 days. And I believe we have had fruitful exchanges with the Senator from South Carolina and the Senator from Arkansas, who are also now on the floor. But where are those who were so annoyed at 7 o'clock last night that we were keeping the Senate late and who argued that this debate could best be conducted in the bright and shining hours of the morning? Where are they now?

Madam President, I suggest the absence of a quorum.

Mr. PACKWOOD. Madam President, will the Senator withhold that?

Mr. MOYNIHAN. Yes.

Mr. PACKWOOD. Madam President, I ask unanimous consent that Mimi Weyforth, of my staff, may have the privileges of the floor during the debate and votes on this bill.

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

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

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

Mr. EAGLETON. Madam President, is the pending order of business the Packwood amendment that has been under discussion?

The PRESIDING OFFICER. The Senator is correct.

Mr. EAGLETON. Madam President, I will address my remarks, in essence, to the Hollings amendment, but since the Packwood amendment treats of the question of the constitutionality of tuition tax credits, I think the remarks will be equally germane at this point as well.

I favor, Madam President, the Hollings amendment, which would strike from the Packwood-Moynihan bill those provisions which pertain to tuition tax credits for private elementary and secondary education. I do take this position with simple or benign comfort, for my own personal elementary and secondary education was through private schools. Pluralistic education, as afforded by a mix of public and private schools, is one of the great strengths of our Nation. The private education component of that mix is caught in the creeping squeeze between declining enrollment and rising costs. No doubt the private schools need help. No doubt the private schools have been helped. No doubt the enactment of Packwood-Moynihan, if constitutional, would help private schools. The threshold question for me, Mr. President, is not one of need, but one of constitutionality.

It is clear to me that the mechanism selected by Senators PACKWOOD and MOYNIHAN—the tuition tax credit—is unconstitutional under the Supreme Court's decisions in the Nyquist and Sloan cases—(*Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973); *Sloan* v. *Lemon*, 413 U.S. 825 (1973)).

THE CONSTITUTIONAL ISSUE

The first amendment to the U.S. Constitution reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Since the preponderance of private schools in this country are church related, it is the establishment clause which has caused the Supreme Court to monitor closely whether a particular legislative mechanism is or is not violative of the "wall of separation between church and state" as the Supreme Court has expounded first amendment law.

To be sure, the Supreme Court has not at all times spoken with a clarion voice on separation of church and state issues. Prof. Antonin Scalia of the University of Chicago School of Law, a vocal proponent of the Packwood-Moynihan bill, testified with considerable vigor and some persuasiveness on the "confusing" and "bewildering" nature of Supreme Court decisions beginning with the Everson case in 1947 right up through the Wolman case in 1977 with lots of cases—and, admittedly, lots of zigs and zags—in between.

But, Madam President, although there are many unresolved constitutional thickets in first amendment law, there is one area where the Court has spoken precisely and definitively: tuition tax credits for elementary and secondary private education are unconstitutional. That is what the Supreme Court said in both the Nyquist and Sloan cases when it declared unconstitutional statutes in New York and Pennsylvania which sought to provide same.

It is because of the Nyquist and Sloan cases that the Attorney General of the United States has stated that Packwood-Moynihan is unconstitutional. It is because of the Nyquist and Sloan cases that Professors Paul Freund, Harvard Law School; Laurence Tribe, Harvard Law School; Andrew Kaufman, Harvard Law School; Gerald Gunther, Stanford Law School; William Van Alstyne, Duke Law School; Kent Greenwalt, Columbia Law School, amongst others, state that Packwood-Moynihan is unconstitutional.

It is Nyquist and Sloan that the proponents of tuition tax credit cannot escape, although escape they try. Senator MOYNIHAN escapes them by not even mentioning them in his two major public utterances on the constitutional issues involved in his bill. I refer to his article in the April 1978 issue of Harper's magazine and his address to the College of St. Rose, Albany, N.Y., in May 1978. The good Senator flails away at bigotry of the Jacksonian Democrats, the anti-Catholicism of President Ulysses S. Grant, the anti-Papist plank in the 1876 Republican platform, and unintended, but apparent anti-Catholic bias of Justice William O. Douglas, in his speech, I think it is, "I do not think Douglas was anti-Catholic. It is just that ***" Good wordsman that the Senator is, I wonder why he did not have even one word for the two Supreme Court cases which outlaw the premise of his bill? He simply writes them out of existence by failure even to mention them.

Let me quote from the Supreme Court in the Nyquist case:

> Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. To the contrary, insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions.

There is no doubt that the private schools are confronted with increasingly grave fiscal problems, that resolving these problems by increasing tuition charges forces parents to turn to the public schools, and that this in turn—as the present legislation recognizes—(meaning the New York statute that was before the court) exacerbates the problems of public education at the same time that it weakens support for the parochial schools. . . . They are substantial reasons. Yet they must be weighed against the relevant provisions and purposes of the First Amendment, which safeguard the separation of Church from State and which have been regarded from the beginning as among the most cherished features of our constitutional system.

It is true, of course, that this Court has long recognized and maintained the right to choose nonpublic over public education. It is also true that a state law interfering with a parent's right to have his child educated in a sectarian school would run afoul of the Free Exercise Clause. But this Court repeatedly has recognized that tension inevitably exists between the Free Exercise and the Establishment Clauses, and that it may often not be possible to promote the former without offending the latter. . . . However great our sympathy for the burdens experienced by those who must pay public school taxes at the same time that they support other schools . . . neither may justify an eroding of the limitations of the Establishment Clause now firmly emplanted.

The Supreme Court, by the way, misspelled the word "implanted."

Madam President, the Packwood-Moynihan bill is purely and simply a repackaging of the New York and Pennsylvania statutes struck down by the Supreme Court in Nyquist and Sloan. It is specious to argue that putting a pretty new congressional ribbon around an already declared unconstitutional package somehow purifies the contents.

Finally, Madam President, let me address the question as to whether we as Senators should at all concern ourselves about the issue of constitutionality. Some of my colleagues argue: "What the heck, our job is to pass laws. It's the Supreme Court's job to pass on their constitutionality. We should do 'our thing.' Let the Supreme Court do 'its thing.'" Professor Scalia, mentioned earlier as a proponent of Packwood-Moynihan, puts it a bit more professorially: "I urge you, then"—meaning the Members of the Senate—"to approach this issue as a question of what the constitutional law 'should be,' rather than vainly seeking to determine what it 'is' under the decisions of the Court."

I submit that it is our role to enact bills which will make both good public policy and sound constitutional law. Our role is not to grasp at an ephemeral, flimsy pretext of somehow granting the Supreme Court a second-chance learning experience. Our job is not to pass the constitutional buck to the Supreme Court simply to get it off our backs. Time and again in other legislation we make constitutional evaluations pretaining, for example, to the search and seizure clause, the due process clause, the equal protection clause, the interstate commerce clause, and so forth. How can we and why should we shirk our responsibility with respect to the first amendment issue?

Madam President, I am well aware of the political appeal of granting partial relief to parents who support the public schools they do not use. While simple equity might demand that we find a way to relieve these citizens of the heavy financial burden of educating their children, I do not think the tuition tax credit as provided by this bill, insofar as it provides relief at the elementary and secondary school level, comports with the constitutional requirement of separation of church and state, and therefore, at the appropriate time, when we get around to voting on it, I shall support the Hollings amendment to strike it from the bill.

Madam President, I ask unanimous consent that the following items be printed at this point in the RECORD: First, the Library of Congress topical listing. Second the legal opinion of the Attorney General of the United States; and, third the letter opinion of Professors Freund, Tribe, Kaufman, and Gunther.

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

FEDERAL PROGRAMS IN WHICH NONPUBLIC ELEMENTARY AND SECONDARY SCHOOL STUDENTS ARE ELIGIBLE TO PARTICIPATE

Asterisks (*) mark programs which have statutory provisions expressly *requiring* the participation of eligible nonpublic school students. Numbers preceding program citations are those assigned to program in the Catalog of Federal Domestic Assistance. Programs for initial preparation of teachers are not included.

I. Programs Administered by the U.S. Office of Education:

Alcohol and Drug Abuse Education Act;

13.420—alcohol and drug abuse prevention.

Education Amendments of 1974—Title IV:

*13.562—education for gifted and talented children and youth (sec. 404; included in consolidation in Title IV, Part C, of the Elementary and Secondary Education Act.

Education Amendments of 1974—Title VII—National Reading Improvement Program:

*13.533—Right to Read—elimination of illiteracy.

Education of the Handicapped Act:

*13.449—formula grants to States (Part B).

13.444—early childhood education (Part C).

13.445—deaf-blind centers (Part C).

13.450—regional education programs (Part C).

13.447—physical education and recreation research (Part E).

13.520—specific learning disabilities (Part G).

Elementary and Secondary Education Act—Title I:

*13.428—formula grants to local education agencies for education of low-income children.

13.427—handicapped children.[1]

*13.429—migratory children.

13.431—neglected or delinquent children.[1]

*13.512—special incentive grants (Part B).

Elementary and Secondary Education Act—Title II:

*13.480—library resources, textbooks and other instructional materials; included in consolidation in Title IV, Part B, of the Elementary and Secondary Education Act.

Elementary and Secondary Education Act—Title III:

*13.519—supplementary education centers and services; guidance, counseling, and testing (sec. 301); included in consolidation in Title IV, Parts B and C of the Elementary and Secondary Education Act.

Elementary and Secondary Education Act—Title VII:

*13.403—bilingual education.

Elementary and Secondary Education Act—Title VIII:

*13.410—dropout prevention (sec. 807); included in consolidation in Title IV, Part C, of the Elementary and Secondary Education Act.

*13.523—school health and nutrition services for children from low-income families (sec. 808); included in consolidation in Title IV, Part C, of the Elementary and Secondary Education Act.

*13.525—Indian education—special programs and projects (sec. 810).

Emergency School Aid Act:[2]

*13.525—basic grants to LEA's.

*13.526—pilot programs.

*13.528—bilingual education projects.

*13.529—special programs and projects.

*13.530—educational television.

*13.532—special programs.

Environmental Education Act:

13.522—environmental education.

Headstart—Follow Through Act (Community Services Act, Title V):

*13.433—Follow Through

Higher Education Act—Title IV:

13.488—Talent Search.

13.492—Upward Bound.

13.543—Educational Opportunity Centers.

Higher Education Act—Title V:

13.489—Teacher Corps.

National Defense Education Act—Title III:

*13.483—strengthening instruction through equipment and minor remodeling; included in consolidation in Title IV, Part B, of the Elementary and Secondary Education Act.

Vocational Education Act:

*13.499—special needs (sec. 102(b); Part B, sec. 122(a)(4)).

13.493—basic grants to States (Part B).

*13.502—innovation (Part D).

13.494—consumer and homemaking education (Part F).

*13.495—cooperative education (Part G).

13.501—work-study (Part H).

13.558—bilingual (Part J).

II. Programs Administered by Other Federal Agencies:

DEPARTMENT OF AGRICULTURE

Food and nutrition service

Child Nutrition Act:

*10.533—school breakfast program.

10.544—nonfood assistance for school food programs.

National School Lunch Act:

*10.555—school lunch program.

*10.556—school milk program.

[1] Program aids children whose education State agency rather than LEA is directly responsible for; States in some cases arrange with private organizations, for instance by contract, to provide educational services to these children.

[2] Participation of eligible nonpublic school children must be provided for by applicant local education agencies; when applicant is other than LEA, statute does not expressly require participation of eligible nonpublic children (although regulations do in some cases).

National agricultural library

5 U.S.C. 5946; 7 U.S.C. 450b, 450i, 2201, 2202, 2204, 2206, 2244, 2264, 2265.

10.700—National Agricultural Library service.

DEPARTMENT OF COMMERCE

Domestic and international business administration

Tariff Schedules of the United States:

11.105—importation of duty-free educational and scientific materials.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

General Education Provisions Act:

13.575—educational research and development (sec. 405).

Office of the Secretary

Federal Property and Administrative Services Act:

13.606—surplus property utilization.

Vocational Rehabilitation Act:

13.603—Office for Handicapped Individuals.

Public Health Service

Executive Order 11562 (September 25, 1970):

13.289—President's Council on Physical Fitness and Sports.

DEPARTMENT OF THE INTERIOR

National Park Service

15.902—national environmental study areas and national environmental education development programs.

Energy Research and Development Administration

Atomic Energy Act; Energy Reorganization Act:

24.002—motion picture film libraries.

24.023—information services.

LIBRARY OF CONGRESS

Act to Provide Books for the Adult Blind (2 U.S.C. 135a, a–1, b):

42.001—books for the blind and physically handicapped.

National Aeronautics and Space Administration

National Aeronautics and Space Act:

43.001—space science education project.

National Foundation on the Arts and Humanities

National Foundation on the Arts and Humanities Act:

45.001—promotion of the arts—architectural and environmental arts.

45.003—promotion of the arts—education.

45.004—promotion of the arts—literature.

45.005—promotion of the arts—music.

45.111—promotion of the humanities—education projects.

National Gallery of Art

20 U.S.C. 71–75:

68.001—extension service.

Smithsonian Institution

Act of Congress approved August 10, 1846:

60.001—programs in basic research and public education.

60.005—educational services for elementary and secondary education.

60.013—traveling exhibition service.

Veterans Administration

38 U.S.C. 1661 (GI Bill)

64.111—veterans educational assistance.

Nancy Dawson,

Education and Public Welfare Division

July 7, 1976.

HARVARD LAW SCHOOL,
Cambridge, Mass., March 27, 1978.

Hon. EDMUND MUSKIE,
Chairman, Budget Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MUSKIE: This letter concerns S. 2142, the Packwood-Moynihan bill, which provides for federal income tax credits for tuition and fees paid for the education of students in colleges and in elementary and secondary schools. Under the terms of the bill, credit applies only to expenses "required for enrollment or attendance" of students; thus the benefit to elementary and secondary school children is essentially confined to those enrolled in nopublic schools, of whom an overwhelming majority—approximately 85%—are parochial school students. This effect is evidently welcomed by the authors of the bill, at least one of whom has explicitly observed that public subsidization of parochial schools is a purpose of the proposed legislation and is likely to pose constitutional problems. See Sept. 26, 1977, Statement by Senator Daniel Patrick Moynihan on Tuition Tax Credit Act of 1977. The character and extent of such constitutional problems is the subject of this letter, which is written in the belief that an appraisal of the likelihood of successful constitutional attack on S. 2142 might be helpful to the Budget Committee in rationalizing federal educational expenditures.

The conclusion seems inescapable that the provisions of S. 2142 regarding elementary and secondary school expenses would be held inconsistent with the Establishment Clause of the First Amendment and thus violative of the Fourteenth Amendment to the United States Constitution. As recently as 1973, the Supreme Court struck down a similar tax relief program enacted by New York State. The Court in *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973), noted that parochial school children comprised over 80% of the benefitted class and reasoned that, although cast as a direct grant or tax benefit to the families of school children rather than to parochial schools as such, "[t]he effect of the aid [was] unmistakably to provide support for nonpublic sectarian education." 413 U.S. at 783. The state grant of this benefit accruing only to nonpublic school children was accordingly held unconstitutional, as was a nearly identical Pennsylvania program. See *Sloan* v. *Lemon*, 413 U.S. 825 (1973). The *Nyquist* Court expressly distinguished *Everson* v. *Board of Education*, 330 U.S. 1 (1947) (permitting publicly funded transportation of parocial school children) and *Board of Education* v. *Allen*, 392 U.S. 236 (1963) (permitting publicly funded text book loans to parochial school children), on the ground that in "both [*Everson* and *Allen*] the class of beneficiaries included *all* school children, those in public as well as those in private schools." 413 U.S. at 782 n. 38 (emphasis in original).

The provisions of S. 2142 regarding elementary and secondary education closely parallel those struck down in *Nyquist* and *Sloan*. The plans invalidated in those two cases included systems of graduated reimbursements and credits constitutionally indistinguishable from the tax credits of S. 2142. The invalidated state plans, though neutral in their terms, benefitted only families of nonpublic school children, the vast majority of whom were enrolled in sectarian schools. Exactly the same is true of S. 2142.

Given the reasoning of the *Nyquist* Court, however, the proposed federal program seems even more constitutionally offensive than the New York and Pennsylvania programs invalidated in 1973. Beyond condemning the impermissibly non-secular effects of the state programs before it, the Court in *Nyquist* and *Sloan* criticized those programs for creating undue risks of impermissible entanglement between church and state: "assistance of the sort here involved carries grave potential for entanglement in the broader sense of continuing political strife over aid to religion." 413 U.S. at 794. Whereas the New York and Pennsylvania programs provided aid of up to $50 and $75 per elementary school student, respectively, and double that level per high school student, the proposed federal program provides a tax credit with a far higher limit—$500. Whatever political strife along religious lines would accompany the small state programs struck down in *Nyquist* and *Sloan* would be greatly magnified by the more expensive and expansive federal program proposed in S. 2142.

Finally, it is inconceivable that the federal tax relief program would be any more favorably received than New York's or Pennsylvania's simply because the federal government would also simultaneously enact a similar tax credit for college (and post-secondary vocational) students. That these are two separate programs is clear from the bill itself, which would enact the elementary and secondary school provisions separately from the provision relating to the college credit, would begin them in different years, and would provide for severability and expedited judicial review—the latter to resolve more swiftly the "validity of any provision." See Senate Finance Committee Report, p. 7.

Moreover, the Supreme Court's Establishment Clause analyses have long been sensitive to the distinction between college education, on the one hand, and elementary and secondary education, on the other, searching aid to the latter far more strictly in order to discern non-secular purposes or effects and risks of administrative or political church-state entanglement. Contrast, e.g., *Roemer* v. *Board of Public Works of Maryland*, 426 U.S. 736 (1976) (permitting noncategorical grants to qualifying colleges and universities, including sectarian institutions, providing that the beneficiaries prepare reports detailing secular uses), with *Wolman* v. *Walter*, 433 U.S. 229 (1977) (applying stricter test for provisions aiding elementary and secondary schools). Clearly, these cases must be read as indicative of the Supreme Court's special concern with insulating early education from any suggestion of government support of religion as such—a concern consistent with isolating, and invalidating, the tax credit for elementary and secondary school tuition in S. 2142.

The converse proposition also seems correct: The Supreme Court would be likely to uphold the validity of the proposed tax credit for college tuition and fees. As indicated above, the Court has been far more tolerant of public support to sectarian colleges. Moreover, since free public education is far from universally offered at the college level, the college tuition tax credit would have the obvious secular effect of subsidizing higher education for a broad class of citizens rather than for a class most of whose members attend religious schools. For a fuller discussion, see L. Tribe, *American Constitutional Law* §§ 14–9, 14–12 (1978).

We hope these views will be of some help to you.

Yours truly,

PAUL A. FREUND,
Leoeb University Professor, Emeritus, Harvard University.

LAURENCE H. TRIBE,
Professor of Law, Harvard University.

ANDREW L. KAUFMAN,
Professor of Law, Harvard University.
GERALD GUNTHER,
William Nelson Cromwell Professor of Law, Stanford University.

DEPARTMENT OF JUSTICE,
Washington, D.C., March 16, 1978.

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Constitutionality of Packwood-Moynihan Bill

You have asked for our views concerning the constitutionality under the establishment clause of the first amendment of providing either tax credits or grants for tuition payments to nonpublic elementary and secondary schools. You referred to two specific proposals providing such grants or credits: S. 2142, the Packwood-Moynihan bill, which would give limited income tax relief in the form of a credit for tuition payments to nonpublic schools; and the extension of the Basic Educational Opportunity Grant program to include nonpublic elementary and secondary school education.

Under existing Supreme Court decisions both proposals would appear to violate the first amendment guarantee against establishment of religion. The controlling decisions on tuition grants and credits for nonpublic elementary and secondary education are *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973), and *Sloan* v. *Lemon*, 413 U.S. 825 (1973), a companion case.

In *Nyquist*, the Court invalidated a New York tuition reimbursement and tax relief plan. The plan provided limited tuition reimbursements to low income families with children attending nonpublic elementary and secondary schools. Families failing to qualify for tuition reimbursement were allowed tuition tax credits in varying amounts depending upon adjusted gross income. The Court found both facets of the program unconstitutional under the three-part establishment clause test enunciated in *Lemon* v. *Kurtzman*, 403 U.S. 602, 612 (1971):

"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster 'an excessive entanglement with religion.' "

The Court acknowledged that the purposes of the State in enacting the measures—to preserve a healthy, safe educational environment for all schoolchildren, to promote pluralism and diversity in education, and to prevent further overburdening of the public school system—were secular and not inappropriate legislative considerations. It held, however, that the tuition grants and credits failed the second prong of the test because a primary effect of the plan was aid to religious education. The Court noted additionally that the plan created the prospect of politically divisive Church-State entanglement. Adoption of programs assisting sectarian education would generate ongoing controversy along religious lines over continuing or enlarging available relief.

In *Sloan*, the Court held that a Pennsylvania tuition reimbursement program was constitutionally indistinguishable from the New York program invalidated in *Nyquist*. Since the Pennsylvania program had the effect of advancing religion, it too infringed upon the establishment clause guarantee.

The Packwood-Moynihan bill provides an income tax credit for tuition payments to elementary and secondary schools as well as vocational schools, colleges, and universities.[1] The amount of the credit is 50% of tuition up to a total of $500 per student. If the credit to which the taxpayer is entitled exceeds his tax liability, the difference is refunded to him. It is our opinion that the tax relief provided in the bill for tuition payments to nonpublic elementary and secondary schools falls within the scope of *Nyquist*.

Although we have considered carefully possible arguments distinguishing the Packwood-Moynihan tax credit from the New York tax relief program struck by the Supreme Court, we do not believe the differences are of constitutional dimension. It might be argued that the facially neutral, broad based tax relief provided in the bill prevents it from having a "primary effect" of advancing religion. According to that argument, aid accruing to nonpublic elementary and secondary schools would be only "incidental" to an otherwise neutral plan, and therefore would be constitutionally permissible under *Nyquist*. 413 U.S. at 771, 782 n. 38; *Walz* v. *Tax Commission*, 397 U.S. 664 (1970). A realistic appraisal of the tax credits proposal, however, indicates that it is not so neutral or broad based as it might first appear. In analyzing the effect of the tuition tax credit under the establishment clause, it is necessary to separate the elementary and secondary school and higher education components of the package.[2] Recent Supreme Court decisions have consistently distinguished aid to college level institutions from aid to lower level schools, pointing out that religiously affiliated institutions at the college level are less often so "pervasively sectarian" as are schools educating younger students and that older students are generally less impressionable. *See, e.g., Roemer* v. *Board of Public Works of Maryland*, 426 U.S. 736 (1976); *Hunt* v. *McNair*, 413 U.S. 734 (1973); *Committee for Public Education* v. *Nyquist*, 413 U.S. at 777 n. 32; *Tilton* v. *Richardson*, 403 U.S. 672, 685 (1971).

Once the focus is on elementary and secondary school tuition credits alone, it is evident that the effect on sectarian education is not merely incidental. Not only would the credits benefit institutions whose role is to emphasize religious training and beliefs, but they would also benefit sectarian schools in significantly larger numbers than nonsectarian schools. The high percentage of sectarian elementary and secondary schools in New York State—approximately 85 percent of all nonpublic schools—was one factor influencing the Court's decision in *Nyquist*.

Current statistics on nonpublic schools nationally show that nearly 17 percent of the nation's elementary and secondary schools are nonpublic. Of that percentage, 85 percent are religiously affiliated. U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, Nonpublic School Statistics, 1976–77. According to the most recent statistics available, 87.5 percent of nonpublic schools at the elementary level and 70.2 percent of nonpublic schools at the secondary level are sectarian.[3] U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, Statistics of nonpublic elementary and secondary schools, 1970–71. Although sectarian secondary schools do not dominate nonpublic education to the same extent as sectarian elementary schools, we believe that their numbers are sufficiently substantial that no meaningful distinction between credits for elementary and secondary schools could be drawn.

It might be argued that the availability of credits for public elementary and secondary school tuition under the provisions of the bill would significantly affect those statistics. The Court has repeatedly made the point, however, that the actual impact or "effect" of the program is the controlling determinant, not its theoretical or hypothetical consequences. The simple fact is that most public schools are supported by state funds, not tuition payments, and there is no evidence of which we are aware that the structure of state funding is likely to change radically as a result of this legislation. Thus, it appears that the tax credits here, like the tax reductions in *Nyquist*, have a primary effect of benefiting parents of children attending sectarian, nonpublic schools.[4]

The neutrality argument, as the most plausible basis for distinguishing the bill from the statute at issue in *Nyquist* and *Sloan*, deserves elaboration. The argument rests primarily on language in Mr. Justice Powell's opinion for the Court in *Nyquist*, in which he distinguished *Walz* v. *Tax Commissioner*, 397 U.S. 664 (1970). In *Walz* the Court upheld the constitutionality of property tax exemptions for churches. The *Nyquist* Court distinguished the earlier case on several grounds, one of which was the broad based and neutral class of property exempted:

"The exemption challenged in *Walz* was not restricted to a class composed exclusively or even predominantly of religious institutions. Instead the exemption covered all property devoted to religious, educational, or charitable purposes. As the parties here must concede, tax reductions authorized by this law flow primarily to the parents of children attending sectarian, nonpublic schools. Without intimating whether this factor alone might have controlling significance in another context in some future case, it should be apparent that in terms of the potential divisiveness of any legislative measure the narrowness of the benefited class would be an important factor."

413 U.S. at 794. At the end of the above discussion the Court added a footnote referring back to a similar point made earlier, which stated:

"[W]e need not decide whether the significantly religious character of the statute's beneficiaries might differentiate the present case from a case involving some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian or public-nonpublic nature of the institution benefited."

413 U.S. at 783 n. 38.

The contention might be made on the basis of those remarks that the present bill is valid; because it would benefit a large, diverse class and would not in its operation draw distinctions based upon the religious character of institutions. This argument may be maintained, however, only if no line is drawn between elementary and secondary school and higher education tuition credits. We think the bill cannot be viewed in this manner for several reasons. First, as we noted above, the Supreme Court has repeatedly drawn a distinction between grants to sectarian colleges and universities and similar grants at the precollege level. Second, the history of education in this country has evolved along lines distinguishing between universal free and mandatory public education at the elementary and secondary level and the more restrictive, nonmandatory, and rarely free educational offerings by the States at the higher education level. Because of these differences, the effect of the bill's tax credit provisions will be decidedly different for parents of public schoolchildren than for those whose offspring are enrolled in colleges and universities. Third, comments and testimony submitted on the bill leave little doubt that Congress has been made aware of the differences between tuition tax credits for the families of college students and

Footnotes at end of article.

credits for those families of elementary and secondary schoolchildren who desire a private school alternative.[5] *See, e.g.*, letter dated December 21, 1977 to Senators Packwood and Moynihan from Professor Freund of Harvard Law School.

Finally, we do not think that broadening the class of beneficiaries to mesh elementary and secondary students with college and university students obscures the fact that one of the "primary effects" of the bill is to aid sectarian education. The Court has stated clearly that to constitute a "primary effect" a law need not result exclusively or even predominantly in religious benefits. Rather, a primary effect can exist even where there are any number of other appropriate and praiseworthy consequences of the legislation. Given these considerations, we do not think it reasonable to contend that the provisions of the bill pertaining to tuition for elementary and secondary schools would survive on "neutrality" grounds.[6]

An alternative argument in support of the bill is that federal tax relief is fundamentally different from similar state measures. If the states promote the education of elementary and secondary schoolchildren through the provision of free public schools, the primary effect of any state tax relief for elementary and secondary school tuition is to assist the sectarian schools which make up the bulk of educational institutions charging tuition. It is argued that the federal government, on the other hand, does not provide elementary and secondary schooling, and can attempt effectively to promote the education of schoolchildren only through generally applicable tax relief measures. This argument ignores the focus of *Nyquist*. Although the purpose underlying a tax benefit plan may be both secular and laudable, the effect of the plan may be impermissibly to advance or inhibit religion. As we have said, it is our opinion that the effect upon nonpublic elementary and secondary schools of the Packwood-Moynihan tax credit would be constitutionally indistinguishable from the effect of the *Nyquist* tax reduction legislation.[7]

Our comments with respect to the proposed extension of the Basic Education Opportunity Grant (BEOG) program[8] to include nonpublic elementary and secondary education follow the same vein. Under the present program grants are awarded to students enrolled at institutions of higher learning on the basis of need. The amount of the grant is determined by a number of factors including family size, income, and tuition costs. The proposed extension would make those grants available to pupils in nonpublic elementary and secondary schools as well. Both *Nyquist* and *Sloan* hold that tuition grants for nonpublic elementary and secondary education infringe upon the establishment clause guarantee if a primary effect of the grant or reimbursement plan is to aid sectarian schools. Given the predominantly sectarian affiliation of nonpublic elementary and secondary schools nationally, any broadening of the BEOG program into elementary and secondary education would appear to have a primary effect nearly identical to the tuition reimbursement plans invalidated in *Nyquist* and *Sloan*.

Finally, we note that the problem of entanglement in the form of politically divisive activity described by the Court in *Nyquist* would exist under both tuition relief proposals. Insofar as the programs have a primary effect upon sectarian elementary and secondary schools controversy is predictable. As the Court stated:

> [W]e know from long experience with both Federal and State Governments that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies. * * * In this situation, where the underlying issue is the deeply emotional one for Church-State relationship, the potential for seriously divisive political consequences needs no elaboration.

413 U.S. at 797.

In conclusion, it is our opinion that both the proposed extension of the BEOG and the provisions of the Packwood-Moynihan Bill which would provide relief for tuition payments to nonpublic elementary and secondary schools are unconstitutional under the decisions of the Supreme Court in *Nyquist* and *Sloan*.

JOHN M. HARMON,
Assistant Attorney General,
Office of Legal Counsel.

FOOTNOTES

[1] We understand that the bill as reported out of the Senate Finance Committee was amended in a number of ways but that the basic tax credit provisions remain unchanged.

[2] We understand that a severability clause was added to the bill as recently reported out of the Senate Committee.

[3] Statistics showing the breakdown of schools at the elementary and secondary school levels for the 1976–77 academic year have not yet been completed. Preliminary statistics on student enrollment during 1976–77 are available. however, which, although compiled using a somewhat different format than earlier statistics, suggest that the percentages of nonpublic schools have not changed radically over the last six years.

[4] It is important to avoid placing too great a reliance on the statistical breakdown between sectarian and nonsectarian schools. The Court in *Nyquist* made clear that a law could offend the establishment clause even if aid to religion was not *the* primary effect but was only one of several consequences of that law. An additional New York State program considered by the Court in *Nyquist* provided "maintenance and repair grants" to nonpublic schools limiting those grants to 50 percent of the maintenance and repair costs of public schools. Even though it was clear that most of the funds would be used for nonsectarian purposes, the Court held the grants unconstitutional. The flaw in the program was that it provided no means of excluding State funds from having some substantial effect benefiting religion. 413 U.S. at 778–80. Possibly a clearer example may be found in the Federal higher education construction grants involved in *Tilton* v. *Richardson, supra*. In that case, even though it was clear that the constructed facilities would be used predominantly for secular purposes, the fact that those facilities could be used for sectarian purposes 20 years after their construction was enough to render that portion of the law unconstitutional in the unanimous view of the Court. Indeed, the Court struck that provision down on the ground that the 20 year limitation "will *in part* have the effect of advancing religion," 403 U.S. at 683 (emphasis added), not because that effect was predominant. No one could have claimed there that the law's central effects were secular. Only when the sectarian effects may be characterized fairly as merely "incidental" can a funding program which benefits religion be upheld.

[5] We note that the report of the Senate Finance Committee on the bill as amended separately discusses elementary and secondary school tuition credits and college tuition credits. S. Rep. No. 95–642, 95th Cong., 2d Sess. 2–3 (1978).

[6] Supporters of the bill who seek to distinguish *Nyquist* make one other generalized claim. The assertion is made that the Court's precedents in the establishment clause area of first amendment law have been so changeable and unpredictable that little significance may be attached to recent holdings. In our view that reading of the cases is unfair. Certainly, as the Court has freely acknowledged, the lines are not easy ones to draw. The Court has, however, developed—and adhered to—the three-part test outlined at length eight years ago in *Lemon* v. *Kurtzman, supra*. That test has commanded the votes of every Justice of the Court with the exception of Justices White and Rehnquist. More importantly though, we know of no reason to argue that *Nyquist* and *Sloan*, the precedents directly pertinent here, are of doubtful vitality.

[7] We believe, however, that the Packwood-Moynihan tax credit would be constitutional with respect to college and university tuition. It appears that the benefits of a higher education tuition tax credit would flow to a broad class of individuals, and not, as with elementary and secondary school credits, primarily to individuals affiliated with sectarian institutions. As the Court noted in *Nyquist*, nothing in its decision compels the conclusion that a generally available form of education assistance, such as the "G.I. Bill", 38 U.S.C. § 1651, impermissibly advances religion. 413 U.S. at 783 n. 38. Our views on the constitutionality of the college tuition tax credit are buttressed by the Court's recent summary affirmance of a case involving an establishment clause challenge to a Tennessee program providing grants to students in public and private colleges. *Americans United for the Separation of Church and State* v. *Blanton*, ——— U.S. ———, 98 S. Ct. 39 (1977), *aff'g* 433 F. Supp. 97 (M. D. Tenn. 1977). The District Court, relying in part on the *Nyquist* footnote mentioned above, concluded that the broad Tennessee college scholarship program, with its emphasis on the student rather than the institution, did not have the effect of favoring private or sectarian institutions over public institutions and therefore did not compromise establishment clause values. We believe that the same rationale is applicable to federal tax credits for college and university tuition.

[8] That program is set out at 20 U.S.C. § 107a (Supp. V 1975), *as amended by* 20 U.S.C.A. 1070a (Supp. 1977).

Mr. EAGLETON. Madam President, I yield the floor.

Mr. PACKWOOD. Madam President, would the Senator from Missouri respond to two or three questions?

Mr. EAGLETON. Yes, indeed.

Mr. PACKWOOD. Last October 10, we had on this floor a bill relating to child pornography, specifically amendment 1398, which would have made it a Federal crime to knowingly transport, ship, or mail in interstate or foreign commerce for sale or distribution any film, photograph, and so on, depicting a minor engaged in sexually explicit conduct. In the testimony before the Judiciary Committee on that bill, the Attorney General offered an opinion that that was unconstitutional. Every expert that testified said it was unconstitutional. Yet I note the Senator from Missouri voted for the amendment in the face of this constitutional advice. Why would that be?

Mr. EAGLETON. I do not pretend to be an expert on the free press-pornography issue. I never had to grapple with

it when I was a prosecuting attorney or attorney general of Missouri. Those were "quieter days" insofar as pornography was concerned.

I did have to grapple, I might say, with the establishment clause of the Constitution.

When I was attorney general of Missouri, we had before our office several proposals insofar as assistance to the private and parochial schools of Missouri were concerned. We had our own "separation clause" in the Missouri State constitution. It was a very, very difficult thing to juxtapose the proposed remedial legislation before the Missouri legislature and the stricture on separation of church and state in the Missouri constitution. It was from that origin that I developed an awareness of and an interest in the separation issue.

I have continued that interest and have tried to keep current on the law. I went over to hear the Nyquist case argued before the Supreme Court—I think I was the only Member of the Senate present for that argument—because I thought it would have a profound constitutional impact regardless of how it was decided. Had the New York statute in Nyquist been upheld, obviously, there would be no purpose in even having this debate here today. It would be clear beyond peradventure of doubt that a tuition tax credit mechanism was constitutional. Conversely, once the Supreme Court ruled against the constitutionality of the New York and Pennsylvania statutes, then that ruling serves as the impediment to what Senators PACKWOOD and MOYNIHAN propose here today.

Mr. PACKWOOD. To paraphrase the Senator's answer, what he is saying is that he is not an expert on the first amendment clause; therefore, when every constitutional expert and the Attorney General said it was unconstitutional, he voted for it anyway because he did not know anything about it.

Mr. EAGLETON. What I am saying is that if I have any constitutional expertise on the first amendment, it is under the establishment clause. I do not hold myself out as an expert on pornography.

Mr. PACKWOOD. Then it is not the fact that all these experts that he has cited and the Attorney General say that the Packwood-Moynihan bill is unconstitutional, it is the Eagleton opinion that it is unconstitutional that is the prevailing factor in the Senator's mind.

Mr. EAGLETON. I think it is the opinion of anyone who has taken the time to carefully read the Nyquist and Sloan cases that tuition tax credits are unconstitutional under those two cases. As I said in my opening remarks, the simple fact that it is repackaged in some Federal form, in my opinion, does not elevate or enhance its constitutionality. I think that the Packwood-Moynihan bill is just as unconstitutional within the Federal framework as were the statutes in the State of New York and State of Pennsylvania in Nyquist and Sloan.

Mr. PACKWOOD. Is there any possibility that the Senator could be wrong on this subject?

Mr. EAGLETON. There is always a possibility that any Senator might be wrong, including the Senator from Oregon.

Mr. PACKWOOD. Is there a possibility that this is constitutional?

Mr. EAGLETON. I suspect there is a possibility, although the Nyquist and Sloan doctrines are very, very clear to me and, apparently, were very, very clear to the Attorney General of the United States and the aforementioned professors of constitutional law to which both of us have made reference.

Mr. PACKWOOD. What about Professors Casper, Bork, Katz, Kurland, Rosenblum, Scalia, and Winter, who say this is sufficiently constitutional or could be argued as constitutional so that the Court shall pass on it and——

Mr. EAGLETON. They are entitled to their opinion. I do not happen to agree with them. I do not think it is our role, I say, to pass the constitutional buck to the Supreme Court. I think each Senator has the obligation, to make his own constitutional evaluation of this subject matter, bearing in mind that the Nyquist and Sloan cases are on the books. If those two cases were not on the books, as I said earlier, there would be no purpose in having this debate today. The issue would be an open one from the constitutional point of view. The Packwood-Moynihan would then be resolved purely on the question of whether it is prudent public policy or not.

Mr. PACKWOOD. Madam President, the constitutional issue obviously is open. The Senator from Missouri cited five or six experts and put them in the RECORD. I have cited five or six and they have been put in the RECORD the past 2 or 3 days. The experts divide on this subject. If the Senator from Missouri is so cocksure that his position is right, he should have no fear to let this go to the Court and they will throw it out immediately.

Time and time again, the Senator from New York and I have asked just for an opportunity to get this to the Court. We have never been so positive as to say that, beyond any shadow of a doubt, this is constitutional. All we have said is give us a chance. We have cited authorities that say our position is constitutional.

What I sense in many cases is that, with a few exceptions, some people who use the argument of constitutionality and not get to the main issue. For 2½ days, the Senator from New York and I and Senator ROTH and Senator RIBICOFF have tried and tried to get to what we think is the substance of these issues. We have had to come back to constitutionality. We are arguing it and are prepared to argue it, but we are perfectly prepared to let the Supreme Court decide it and willingly live with the Supreme Court decision. All we ask is a chance to get to the Supreme Court.

I might say, would the Senator from Missouri think it would make any difference if public school tuitions were added in this as well as private school tuitions—primary and secondary we are talking about, not high education?

Mr. EAGLETON. I do not think the doctrine can be cleansed in any way. I think the law is very clear that tuition tax credits when made broadly available for parochial schools are unconstitutional.

Mr. PACKWOOD. Would it make any difference if it were a tax deduction rather than a tax credit?

Mr. EAGLETON. Interestingly enough, a three-judge court in Minnesota this year did draw the distinction between a tuition tax "deduction" and a tuition tax "credit." I have the case somewhere in my files here. That three-judge court said in essence, "Well, we read Nyquist and Sloan as specifically declaring unconstitutional a tuition tax credit and if the Minnesota statute were a tuition tax credit, we would be obliged to declare the Minnesota statute unconstitutional. However, the Minnesota statute is a tuition tax deduction; therefore, it falls without the scope of the Nyquist and Sloan cases."

It was a very curious opinion, I might add.

It also went on to say that because the Minnesota statute was passed in 1955 and the Nyquist and Sloan statutes were of more recent origin, somehow, the Minnesota statute had, because of longevity, garnered some kind of presumptive constitutionality that the Nyquist and Sloan statutes had not. The case is now on appeal.

Also, there was a New Jersey case decided this year by the Federal district court. It discussed the difference between a "deduction" and a "credit" and that judge ruled that, by whatever label, the New Jersey statute was unconstitutional under Nyquist and Sloan.

Mr. PACKWOOD. I take it, from the tenor of the Senator's remarks, that he thinks the Minnesota case will probably be held unconstitutional also.

Mr. EAGLETON. I would guess that, if the Supreme Court takes the Minnesota case, it will probably declare the Minnesota statute unconstitutional with a one-line opinion citing Nyquist and Sloan.

Mr. PACKWOOD. Why did the founders of this country, who wrote this establishment clause, continue in practice to levy taxes, collect the taxes, and give the money to churches for the running of schools if they indeed thought this was unconstitutional?

Mr. EAGLETON. The linchpin of my argument is the Nyquist and Sloan cases. They are there on the law books; they say what they say; they hold what they hold; and they are the hurdle over which Packwood and Moynihan cannot leap.

Mr. PACKWOOD. Does the Senator think those cases are at odds then with the practice of the founders of this Constitution in what they evidenced by levying them to churches to run primary and secondary schools?

Mr. EAGLETON. Well, I do not know about tax levies in States where they

actually levy a parochial school tax and say, "We collected it for you, we help distribute it to parochial schools."

I am not aware of any such statutes.

I do know, as I said in my remarks, there have been many zigs and zags in constitutional law with respect to the first amendment, the establishment clause. We have everything from the Everson case in 1947 through the Wolman case in 1977.

But on one issue it is clear. It is abundantly clear, and a very recent case at that, that tuition tax credits are unconstitutional.

If the Nyquist case had been decided back at the time of Plessy v. Ferguson, back, for example, in the late part of the 19th century or early part of the 20th century, one could say, "Oh well, lots of water has gone under the bridge and, thus, maybe the Supreme Court should take a second look.

But in Nyquist, we are talking about a 1973 case in which the issue was squarely before the court and on which the court squarely ruled. Nyquist is about as fresh as a Supreme Court case can be.

Mr. PACKWOOD. The Senator is aware there were no public schools in this country until about 1820 and that all schools were run by the churches and in part supported by public funds?

Mr. EAGLETON. Well, there was a mixed history and, I take it, fairly accurately reflects some of the discussion previously had on this issue.

Mr. PACKWOOD. The only point I make, I will read into the RECORD the response of the Library of Congress almost a year ago when I asked them the question about history in early State aid to churches, the church-related schools. They responded as follows:

> Reference is made to your inquiry of August 10, 1977, requesting information on the above matter, specifically, you ask (1) whether State aid to private church-related schools was a fairly common practice in the United States at least during the first half of the 19th century, and (2) whether such aid violated relevant Federal constitutional safeguards.
>
> The answer to these questions is yes and no, respectively.

It was common. It was not unconstitutional:

> I wrote again on January 30, 1978, and they responded, the Library of Congress responded, again as follows on that same subject:
>
> In response to your request of January 30, 1978, for a memo regarding the status of schools in America from 1770 to 1820, the following generalization can be made: All, or almost all, the schools during this period were private, were religious, and were publicly supported, that is, denominational schools received public school funds.
>
> As one educational historian wrote describing the period from 1775 to 1820, "public provision for religion and public support for private and church schools, in some form or other, direct or indirect, explicit or implicit, were either embodied in constitutions, or granted by laws, or carried out in customs or practice.

Then the memo from the Library of Congress went on to go down State by State, both before and after adoption of the Constitution, the different kinds of taxes the States levied, collected the money, gave it to the church, for the purpose of running the school.

Now, I will not quarrel with what the Senator says Nyquist, Wolman, and the others concluded.

All I say is that what the founders of this country intended, at least as evidenced by their practice, was never to preclude the use of public funds to be given to churches to run schools for primary and secondary children.

Somehow along the way the court, interpreting this amendment, has not interpreted what the founders were thinking about or practicing. They have reached the conclusion based upon some other theory that was never in the minds of the people who wrote that amendment.

Mr. EAGLETON. Well, I think that is a very intriguing historical recitation. It is similar, if not identical, to what was presented the court in the Nyquist case. As I say, I was there for the argument. The attorneys appearing on behalf of the State of New York and the State of Pennsylvania went through a long recitation of how parochial schools have somehow or other been assisted.

There were nine justices sitting on the court and they listened to that argument, similar to the argument Senator PACKWOOD is making today. But unfortunately, from the viewpoint of Senator PACKWOOD, they rejected that argument because when they wrote their opinion in 1973 they very bluntly and very directly said that these tuition tax credits are unconstitutional.

What Senator PACKWOOD and Senator MOYNIHAN want is that there be a different doctrine of constitutional law. They do not like the Nyquist and Sloan cases.

We are all entitled to have our likes and dislikes so far as Supreme Court opinions are concerned. I did not much like the Supreme Court opinion on abortion, for example. The Senator from Oregon did like the Supreme Court's opinion on abortion. But once the Supreme Court ruled, that becomes the law of the land, and the law of the land on tuition tax credits is that they are unconstitutional.

Mr. PACKWOOD. Let me ask this, conceding for purposes of argument, but for no other, that the Supreme Court in the past has stated tuition tax credits are unconstitutional, but has never passed on a Federal tuition tax credit, how can we get that issue before the court to see if they would reverse their opinion?

Mr. EAGLETON. The only way to get before the court would be if there were a tuition tax credit on the books.

Mr. PACKWOOD. How will we get one on the books to test that unless we pass one?

Mr. EAGLETON. I do not think we should enact a tuition tax credit because of constitutional barriers and, in the opinion of others like Senator HOLLINGS, public policy reasons as well. I do not think, 5 years after the Supreme Court ruled in Nyquist and Sloan, we should pass a statute saying that we pretend those two cases are not in existence. I do not think we can ignore them or wish them away and say, we cannot say, "Supreme Court, we think you ought to have another learning experience on this. We think the Court has been blind on this issue. We do not think you knew what you were talking about when you wrote the Nyquist and Sloan opinions."

The Supreme Court very much knew what it was talking about and took into account the very same arguments that have been raised in this debate by Senator PACKWOOD and Senator MOYNIHAN.

Mr. PACKWOOD. Madam President, I think we are down to the Senator's last answer. When he is not a constitutional expert, he has no hesitancy to fly in the face of constitutional experts and vote in whatever manner he feels, as he did on the child pornography issue. When he is a constitutional expert in his own mind, when it is constitutional according to EAGLETON, as he sees it, then he will follow that.

But in his last answer here, when I posed the question as to whether or not we wanted to try and give the Supreme Court another chance to see if they wanted to reverse their opinion, he said, "I am opposed to that for constitutional and other policy reasons."

It is those policy reasons we have tried to argue, and argued in vain, because we kept getting back to the constitutional argument.

If the Senator is, indeed, opposed on policy positions, I would love to argue that topic, because I found time and again people hiding behind the constitutional argument because they did not want to talk about the policy issues implicit in this legislation.

I will yield the floor.

Mr. EAGLETON addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. EAGLETON. Madam President, it is the Supreme Court that declared constitutional policy in Nyquist and Sloan. As much as the two proponents of this bill wish it were the other way, the Supreme Court has ruled on this issue and it has ruled on it very directly.

I know both of them wish Nyquist and Sloan were not on the books.

Senator MOYNIHAN wished so much that they were not on the books that in his two principal presentations on this issue, the two that he gave me for study, he does not mention the Nyquist and Sloan cases. He mentions all the "bigotry" that has pervaded this country, including the 1876 Republican platform, as if that had anything to do with today's debate.

He raises the unintentioned bigotry of Justice William O. Douglas and others. But this "bigotry smokescreen" cannot get around the fact, Madam President, that the Supreme Court of the United States in Nyquist and in Sloan, has declared to be unconstitutional that which Senators PACKWOOD and MOYNIHAN seek to do in their bill.

Mr. HODGES. Mr. President, will the Senator yield for a question?

Mr. EAGLETON. I yield.

Mr. HODGES. The Senator from Missouri at one time was a prosecutor. Is that correct?

Mr. EAGLETON. Yes; for 4 years.

Mr. HODGES. The Senator from Arkansas also has served as a prosecutor.

Does the Senator recall the old adage of defense lawyers, "When you have the facts, you argue the facts; when you have the law, you argue the law; and when you have neither, you try the police officer"?

Mr. EAGLETON. Yes. That is sort of a rule of "unconventional wisdom."

Mr. HODGES. Would the Senator say in that sense, then, that the proponents of this measure exemplify in the highest tradition that approach to the law and the facts? They are, in effect, trying the Supreme Court.

Mr. EAGLETON. The proponents of this issue seem to pin everything on the innate bigotry that is "out there" in the United States and also, apparently and unwittingly, in the hearts and minds of some of the members of the Supreme Court. The one issue they really do not want to face up to is the Nyquist and Sloan opinions. Those opinions truly bother them. They know that those opinions prevent what they are seeking to do. Somehow or other, they wish a modern constitutional miracle were to occur and that the Nyquist and Sloan cases would evaporate into the mist.

Mr. HODGES. Madam President, will the Senator yield for a second question?

Mr. EAGLETON. I yield.

Mr. HODGES. They have put in their bill a provision for expedited review by the U.S. Supreme Court, while at the same time maintaining a great conviction of constitutionality.

Mr. EAGLETON. Yes. One of the witnesses—I do not have it in my file—but one of the witnesses who testified before the House on this issue, a professor who supported Packwood-Moynihan, spent about half his remarks saying:

> Under no circumstances put an expedited appeal clause in here, because if you do that, the people will then know that you are on very shaky constitutional grounds. So let's just go ahead and say that we are on solid ground, and make no indirect admission that we are on thin ice, by putting in an expedited review procedure.

But I have to compliment Senators PACKWOOD and MOYNIHAN in this regard. They know their grounds are so infirm, and that they are over their heads insofar as constitutionality is concerned, that, out of a semblance of good conscience, they felt they had to put in an expedited review procedure.

Mr. HODGES. Is the Senator familiar with the 28th chapter of Proverbs, the 1st verse, which says, as I recall:

> The wicked flee when no man pursueth; but the righteous are bold as a lion.

Mr. EAGLETON. I know that Senator HODGES went from the business of prosecuting to preaching. I went from prosecuting straight on to politics, and I bypassed preaching in between, but I will take his reference to the Scriptures as being accurate.

Mr. HODGES. I thank the Senator.

Mr. MOYNIHAN. Madam President, may I first observe that the advocates of this measure seem to me to have shown extraordinary restraint in having failed to note that our most formidable adversary is, in fact, a Methodist preacher. This emerged perhaps inadvertently in the cross-examination which I believe he, himself, initiated with the Senator from Missouri. Let it be clear that it never would have come from us. I see the Senator smiling, and I know he takes it in the intended spirit.

Madam President, these have been noble days for me. Others may not have noticed—and understandably so—but twice in 2 days the senior Senator from Missouri has drawn to the attention of the Senate certain personal qualities which he feels I display.

Last evening, he made a not altogether friendly suggestion as to what might have been my purpose in having asked for a vote on an amendment Senators PACKWOOD, RIBICOFF, ROTH, and I offered. This morning, he discussed at some length my treatment of some of the issues before us in commencement addresses and articles. He did so in a tone of voice which seems to suggest that I have been evasive of fact and casual with standards of argument.

I take quite seriously the suggestions of someone whose standards of argument I respect, and I should like to address myself to them here.

The Senator said:

> It is Nyquist and Sloan that the proponents of the tuition tax credits cannot escape, although escape they try. Senator Moynihan escapes them by not even mentioning them in his two major public utterances on the constitutional issues involved in this bill.

The Senator from Missouri then refers to an article I wrote for this April's Harper's magazine, and to a commencement address I delivered in May at the College of St. Rose in Albany, N.Y. These are the two of the more recent public statements I have made on this subject. Although the Senator may wish to characterize them as my two major statements, they are certainly not the only ones.

I have been writing about this subject for——

Mr. EAGLETON. Mr. President, will the Senator yield for a brief comment?

Mr. MOYNIHAN. I yield.

Mr. EAGLETON. The Senator was kind enough to come by my office to discuss the constitutionality of this issue.

Mr. MOYNIHAN. That is right.

Mr. EAGLETON. He left with me two documents that he felt summarized his views on the point.

Mr. MOYNIHAN. That is right.

Mr. EAGLETON. The two he left were the two I mentioned.

Mr. MOYNIHAN. But does the Senator think it fair to suggest that the two readings I gave him were my major pronouncements, and to suggest that since I did not deal with Nyquist in them, I have escaped the Nyquist question?

Mr. EAGLETON. I will say that the Senator is an exhausting writer.

Mr. MOYNIHAN. It is exactly that tone that troubles me.

I wonder whether the Senator from Arkansas would also have the kindness to attend to my remarks on this subject.

I first discussed this matter in the Senate in the spring of 1977; I have also done so in three commencement addresses and in one periodical article.

The first commencement address was at LeMoyne College in Syracuse, N.Y., on Saturday, May 14, 1977. I devoted most of that address to the Nyquist decision.

That is where I first spoke on this subject, and where anyone who wishes to know my feelings about the Court's position should begin. Far from evading this issue, I began my remarks with a discussion of it. I shall now take the liberty of reading what I had to say.

I pointed out that the Court's modern ruling on this subject, that is, the general first amendment subject—

> came in the case of *Everson* v. *Board of Education* in 1947. Since then there has been a series of decisions of which the kindest thing to say is that they are unpersuasive. The unkind thing to say is that the Court has been given the thankless task of providing Constitutional legitimacy for the religious bigotry of the 19th Century, and that the quality of its decisions suggests the misgivings with which the deed has been done.
>
> Before I go further let me state my genuine respect for the standards of evidence and scholarship which the Supreme Court in our time has brought to its process of decision.

May I interject at this point the fact that this address was delivered before a college audience and thus I feel that the remark which follows is not an inappropriate one:

> A work of mine was once cited in a footnote of a Supreme Court decision and I can imagine no greater distinction. It is precisely because these qualities seem so absent from the series of decisions on the First Amendment and private school aid that I am so troubled. I hold with Mr. Justice White, who with Mr. Justice Rehnquist, and Chief Justice Burger, has vigorously dissented from a number of these decisions: "I am quite unreconciled . . ."
>
> Justice White so declared in his dissent on *Committee for Public Education and Religious Liberty* v. *Nyquist*, decided in 1973, which is the leading case in this area, and which, by a curious symmetry, concerned a New York State law providing tax reductions to parents of parochial school children. The decision was based, as the majority opinion put it, on the "now well-defined three-part test" to determine constitutionality under the Establishment Clause. "Taken together," Justice Powell wrote for the Court, the Court's decisions "dictate that to pass muster under the Establishment Clause the law in question, first, must reflect a clearly secular legislative purpose . . . , second, must have a primary effect that neither advances nor inhibits religion . . . , and, third, must avoid excessive government entanglement with religion."
>
> Of these three tests only the second provides any serious difficulty, and I will suggest that this difficulty is quite surmountable.
>
> The "secular purpose" test has been applied to state legislation, and the Court has accepted that aid to parochial schools is founded in the desire to aid the students and their parents, rather than the religion in which they believe.
>
> The "excessive entanglement" test emerges, in part, from the Court's worry about the "potentially divisive political effect" of annual appropriations battles in state legislatures. This is a prudential judgment, and it is not for me to suggest that the Court is overly concerned, but in any event an intelligently conceived program *will* avoid "excessive entanglement".

I have earlier remarked that one would think "entanglement" would be enough. Does the Court really suggest that "en-

tanglement" is all right but that "excessive entanglement" is not?

I continue:

It is scarcely beyond the limits of political science or legislative wisdom.

The nub of the Court's concern has been the "primary effect" test, and it is here that the quality of the reasoning simply does not, in my view, bear scrutiny. Thus in *Meek v. Pittenger*, decided in 1975, Justice Stewart announced that "we agree with appellants that the direct loan of instructional material and equipment has the unconstitutional primary effect of advancing religion because of the predominantly religious character of the schools benefiting from the Act" which was being challenged, a Pennsylvania statute.

Observe. The Court asks itself an *empirical* question. What is "the primary effect" of this Act? It then gives an *a priori* answer! The primary effect is to advance religion "because of the predominantly religious character of the schools benefiting from the Act."

That is not a proof. It is an assertion. Where are the facts that support the assertion?

Madam President, I ask unanimous consent that my address at LeMoyne College be printed in the RECORD.

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

COMMENCEMENT ADDRESS: SENATOR DANIEL PATRICK MOYNIHAN

It is just sixteen years now since I left Syracuse to join the Administration of President Kennedy. It was a path taken, and one not taken, and it has indeed "made all the difference."

And yet some things persist. Returning today I would like also to return to a subject with which I was quite preoccupied in the months before I left. This is the subject of public assistance to private education, which I hasten to state signifies, in the main, Catholic education, it being the case that three quarters of private elementary and secondary school students attend Roman Catholic schools.

In 1961, I had just completed my collaboration with Nathan Glazer in a study of the persistence of ethnicity in America, which we were to publish as Beyond the Melting Pot.

In the main my contribution to the effort consisted of organizing into somewhat coherent theses things I already knew by virtue of having been raised on the streets of Manhattan and having subsequently been engaged in Democratic politics. The one exception had to do with my researches into the history of the parochial school system in New York. (As I did much of this work here in the Le Moyne College Library, I hope you will forgive this perhaps overgenerous term for what mostly consisted of reading public documents of the first half of the 19th Century.) My finds were wholly accessible, but nonetheless surprising—to me at all events.

Education was largely a church function in the early days of New York, as elsewhere in the nation. In 1805, however, a Free School Society was formed "for the education of such poor children as do not belong to any religious society." The Society's address to the public proclaimed that "It will be a primary object, without observing the peculiar forms of any religious society, to inculcate the sublime truths of religion and morality contained in the Holy Scriptures." That year the legislature established a fund for the support of common schools throughout the State which in New York City was distributed to the trustees of the Free School Society "and of such incorporated religious societies in said city as supported or should establish charity schools who might apply for the same." Under this system Catholic schools, along with Baptist, Methodist, Episcopal, Dutch Reformed, German Lutheran, and Scotch Presbyterian, to mention only some, received state aid.

Assorted serpents entered this denominational Eden, principally the too familiar one of fiscal irregularity. I put it to you: payrolls were padded, teachers kicked back portions of their salaries. Then came the familiar remedy of centralization. The Free School Society, renamed the Public School Society, would get all the money. Protestants did not protest, for the Society was pronouncedly of that persuasion. Catholics did, and by the 1830s the pattern of a dual school system that persists to this day commenced to take form.

In his message to the legislature of 1840, Governor Seward, an upstate Episcopalian if it must be known, averred that this arrangement was patently unfair. He proposed that the Catholic schools should get state aid as well.

"I do not hestitate . . . to recommend the establishment of schools in which they [the children of immigrants] may be instructed by teachers speaking the same language with themselves and professing the same faith."

The next year, Seward's Secretary of State, John C. Spencer, issued a report on the controversy. Spencer, ex-officio Superintendent of Schools, was an authority on the laws of New York State (as well as de Tocqueville's American editor). He began by assuming the essential justice of the Catholic position. "It can scarcely be necessary to say that the founders of these schools, and those who wish to establish others, have absolute rights to the benefits of a common burthen; and that any system which deprives them of their just share in the application of a common and public fund must be justified, if at all, by a necessity which demands the sacrifice of individual rights, for the accomplishment of a social benefit of paramount importance. It is presumed no such necessity can be urged in the present instance."

To those who feared the use of public funds for sectarian purposes, Spencer replied that all instruction must in some way be sectarian: "No books can be found, no reading lessons can be selected, which do not contain more or less of some principles of religious faith, either directly avowed, or indirectly assumed." As for avoiding sectarianism by abolishing religious instruction altogether, "On the contrary, it would be in itself sectarian; because it would be consonant to the views of a peculiar class, and opposed to the opinions of other classes."

Spencer hoped for a system of local option. It was not to be. Faced with that or wholly secular schools. Protestant opinion chose the latter, and now finally our present arrangements were fixed.

The next real challenge to these arrangements came more than a century later, to wit in the Spring of 1961 after a Catholic had been elected President on a platform which called, inter alia, for federal aid to elementary and secondary education. The Catholic Bishops of the nation responded that they could support such legislation only if private schools were included, and so the stage was set for the first legislative stalemate of President Kennedy's term.

May I say that this could be foreseen. Just as I left for Washington I published in *The Reporter* magazine (May 25, 1961) an article entitled "How Catholics Feel About Federal School Aid," in which I recounted the New York background of the existing arrangements and asked that this whole history be understood by those who would make the decisions.

For it seemed to me that Americans at that time, and to this day, know only the history of this issue as it developed in the *second* half of the 19th Century.

This is a history of religious bigotry. Beginning at mid century with the Know Nothing Party anti-Catholicism became what can only be described as a political movement. In 1875, thinking of running for a third term and looking for an issue, President Grant raised the specter of Catholic schools getting public monies and proposed a constitutional amendment to forbid it. His party's platform for 1876 states:

"The public school system of the several states is the bulwark of the American republic; and, with a view to its security and permanence, we recommend an *amendment to the constitution of the United States*, forbidding the application of any public funds or property for the benefit of any school or institution under sectarian control." (emphasis added)

Would not a fair-minded person conclude from this statement that even those against Catholic school aid in 1876 were disposed to believe that it *was* constitutional?

Would it not be reasonable to judge that precisely because such persons felt that it was, and saw the growth of the political influence of those who might support it, that they proposed a constitutional amendment to forbid it? In my Reporter article I noted that at the time of the drafting of the Constitution, and the First Amendment, nine of the thirteen states had esablished churches. Was it not evident, I asked, that the prohibition on Congress' establishing a religion was intended to protect the religions already established in the various states? Was it not the case, I concluded, that "it is only because most Americans no longer have the foggiest idea what an established religion is that they can be persuaded that the words of the First Amendment mean more than they say."

Years have passed and I have become, perhaps professionally, forgiving of the public. But with the greatest respect, it is difficult to be so generous with the Supreme Court.

The Court's first modern ruling on this subject came in the case of *Everson* v. *Board of Education* in 1947. Since then there has been a series of decisions of which the kindest thing to say is that they are unpersuasive. The unkind thing to say is that the Court has been given the thankless task of providing Constitutional legitimacy for the religious bigotry of the 19th Century, and that the quality of its decisions suggest the misgivings with which the deed has been done.

Before I go further let me state my genuine respect for the standards of evidence and scholarship which the Supreme Court in our time has brought to its process of decision. A work of mine was once cited in a footnote of a Supreme Court decision and I can imagine no greater distinction. It is precisely because these qualities seem so absent from the series of decisions on the First Amendment and private school aid that I am so troubled. I hold with Mr. Justice White, who with Mr. Justice Rehnquist, and Chief Justice Burger, has vigorously dissented from a number of these decisions: "I am quite unreconciled. . . ."

Justice White so declared in his dissent on *Committee for Public Education and Religious Liberty* v. *Nyquist*, decided in 1973, which is the leading case in this area, and which, by a curious symmetry, concerned a New York State law providing tax reductions to parents of parochial school children. The decision was based, as the majority opinion put it, on the "now well-defined three-part test" to determine constitutionality under the Establishment Clause.

"Taken together," Justice Powell wrote for the Court, the Court's decisions "dictate that to pass muster under the Establishment Clause the law in question, first, must reflect a clearly secular legislative purpose . . ., second, must have a primary effect that neither advances nor inhibits religion . . ., and, third, must avoid excessive government entanglement with religion."

Of these three tests only the second pro-

vides any serious difficulty, and I will suggest that this difficulty is quite surmountable.

The "secular purpose" test has been applied to state legislation, and the Court has accepted that aid to parochial schools is founded in the desire to aid the students and their parents, rather than the religion in which they believe.

The "excessive entanglement" test emerges, in part, from the Court's worry about the "potentially divisive political effect" of annual appropriations battles in state legislatures. This is a prudential judgment, and it is not for me to suggest that the Court is overly concerned, but in any event an intelligently conceived program will avoid "excessive entanglement". It is scarcely beyond the limits of political science or legislative wisdom.

The nub of the Court's concern has been the "primary effect" test, and it is here that the quality of the reasoning simply does not, in my view, bear scrutiny. Thus in *Meek* v. *Pittenger*, decided in 1975, Justice Stewart announced that "we agree with appellants that the direct loan of instructional material and equipment has the unconstitutional primary effect of advancing religion because of the predominantly religious character of the schools benefiting from the Act" which was being challenged, a Pennsylvania statute.

Observe. The Court asks itself an *empirical* question. What is "the primary effect" of this Act? It then gives an *a priori* answer! The primary effect is to advance religion "because of the predominantly religious character of the schools benefiting from the Act."

That is not a proof. It is an assertion. Where are the facts that support the assertion?

Does not this point come with special force in view of the widely noted use of social science findings by the Court in "education" cases concerning school desegregation and school funding, and generally in the greater use of data by the Court in answering empirical questions?

If the test of "advancing religion" is in fact an appropriate test—and must we concede that it is?—it just happens that for more than a decade we have had, thanks in the first instance to the pioneering work of Andrew M. Greeley and Peter Rossi, an increasing store of social science findings on the effect of Catholic schools on the advancement of Catholicism. I have assumed that these findings have given but little comfort to the Bishops. Would it be presumptuous to express some wonder then that they have not attracted the favorable notice of the Justices?

Briefly, and in the round, the present state of the evidence is that Catholic schooling as such has at most a weak relation to adult religious practice and belief. Save for the fact that Greeley and Rossi were the first to establish this in a large scale study, there is nothing notable in their findings. The same weak-to-nonexistent relationship has since turned up with respect to the effect of all manner of schooling on all manner of performance of all manner of students.

In this academic setting, let me be precise. The *Beta* of Catholic education with subsequent regular attendance at mass is .05. The *Beta* of Catholic education with subsequent desire for a son to become a priest is .12. Translated, these correlation coefficients mean that the number of years of Catholic schooling explain one fourth of one percent of the variance in attendance at mass among Catholics, and one point four percent of preference for having a son enter the priesthood.

At the risk of excessive entanglement, one may say "Amen" to the passage in Chief Justice Burger's dissent in the *Nyquist* case in which he said that: "I fear that the Court has in reality followed the unsupportable approach of measuring the 'effect' of a law by the percentage of the recipients who choose to use the money for religious, rather than secular, education."

If, as I believe, the Chief Justice is correct, the question is: Where does this leave us? Some may differ, but I would respectfully suggest that it leaves us considerably more advanced in this matter than we were sixteen years ago when, after examining the views of those who were for and those who were against Federal aid to nonpublic schools, I concluded my *Reporter* article by stating:

"Before any discussion of compromise can take place . . . it is necessary to dispose of the constitutional 'issue'."

To the contrary, I would argue today that we should continue to discuss compromise and see which one will finally be in accord with what I fully expect will one day be a revised judgment of the Court. For we are under no obligation to agree with the Court, only to obey it. We have the perfect right to press our views. We have more than once seen minorities on the Court become majorities.

In this regard, the position of the national parties is not without relevance. After all, the view to which the Court now adheres first appeared in a party platform.

In the interests of what lawyers term full disclosure, let me acknowledge that I have been involved here. In 1964 I drafted an education "plank" in the Democratic Platform which stated:

"The demands on the already inadequate sources of state and local revenues place a serious limitation on education. New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education, and, to the extent permitted by the Constitution, to *all* schools." (emphasis added)

It will be recalled that President Kennedy's proposal for Federal school aid had failed owing to opposition from those who felt nonpublic schools should be included. In effect it was up to the Administration to change its mind. The National Catholic Welfare Conference* said that if the Platform were to include the term "all schools", such opposition as they had mounted to a school aid bill would be withdrawn. They were as good as their word, and the result was the Elementary and Secondary Education Act of 1965.

This legislation was not without consequence. The U.S. Office of Education now, for example, has within it a subdivision of "Nonpublic Educational Services". This office reports that there are eleven ongoing education aid programs of the Federal government which provide some funds to nonpublic schools. Perhaps 4.5 percent of the expenditure under Title I of the Elementary and Secondary Act goes for such purposes.

Still, it is not really possible to state that the agreement of 1964 has been kept. At most we might say it has not been disowned. I was again involved with the Democratic Platform in 1976, and again drafted a plank on this issue:

"The Party reaffirms its support of public school education. The Party also renews its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in nonsegregated schools in order to insure parental freedom in choosing the best education for their children. Specifically, the Party will continue to advocate constitutionally permissible federal education legislation which provides for the equitable participation in federal programs of all low and moderate income pupils attending all the nation's schools."

In 1976 the Republican Party Platform spoke to the same issue.

"We favor consideration of tax credits for parents making elementary and secondary school tuition payments."

And so the case can be made that a measure of political consensus has emerged in this area. The task, as I see it, is to use that consensus to give the Supreme Court a chance to reconsider, and hopefully to change its recent position. To that end there is no more direct object than for the Congress to enact and the President to sign legislation that provides what we believe to be Constitutionally acceptable forms of aid. In an ecumenical spirit, let us describe one such form as "tax credits for parents making elementary and secondary school tuition payments."

I shall accordingly, in the coming week, introduce legislation in the United States Senate that will provide a tax credit equal to half the tuition paid, per child, to a nonpublic elementary or secondary school. The maximum allowable credit would be $250 per child. A qualifying school would have to be fully in compliance with our Civil Rights statutes and similar regulations. The median income of families having children in private schools was under $15,000 in 1974, which suggests a standard income distribution, but in the spirit of these things, I believe any tax credit should begin to phase out after family income passes $18,000. The credit will be refundable, meaning that if the parents are entitled to a credit greater than the amount of their tax liability, the difference will be refunded to them in cash.

This cannot be an inexpensive proposal. It may cost a billion dollars a year in what we now call tax expenditures. On the other hand, it may be said that this is less than one twentieth the annual growth of uncommitted Federal revenues. It is by no means a massive sum. More to the point, it is a small sum if we think of it in the light of the long history of denial, and in the view of some at least, of injustice which such a measure would commence to make up for. I might cite the words of the Chief Justice in his dissent in *Nyquist*:

"It is beyond dispute that the parents of public school children . . . presently receive the 'benefit' of having their children educated totally at state expense; the statutes . . . at issue here merely attempt to equalize that 'benefit' by giving to parents of private school children, in the form of dollars or tax deductions, what the parents of public school children receive in kind. It is no more than simple equity to grant partial relief to parents who support the public schools they do not use."

Why, we may ask, does it matter?

I would suggest a dual answer—first narrow, then broad—that follows naturally from the dual beneficiaries of such a plan. *Cui bono?* First, the youngsters who attend private and parochial schools, and the parents whose tax burdens would be somewhat lightened. Second, children who attend public schools, and their parents, which is to say, the rest of the society.

For I take pluralism to be a valuable characteristic of education, as of much else in our society. In "Beyond the Melting Pot," Glazer and I wrote of the persistence of pluralism in American life, and of its values. We are many peoples and our social arrangements reflect this disinclination to submerge our inherited distinctiveness in a homogeneous whole.

At the college and university level, we take for granted that diversity is a good thing, that estimable educational institutions such as Le Moyne College and Syracuse should coexist with the massive public universities as a valuable source of education with qualities that no public institution can supply. New York is in the vanguard of states that have begun to recognize this value—and the dull and costly fate that would befall us if we failed to assist such institutions to survive—

*National Catholic Welfare Conference is now the U.S. Catholic Conference.

and has developed an imaginative and creative set of measures to provide public resources to private colleges and their students. Federal policy is beginning to recognize—again at the level of higher education—the distinctive needs and contributions of private colleges and universities, and to tailor its programs to them as well as to their public sector counterparts. I look forward to playing a part in future such efforts.

Precisely the same values inhere in our private elementary and secondary schools, although public policy has been less ready to embrace them. They provide diversity to the society, choices to students and their parents, and a rich array of distinctive educational offerings that even the finest of public institutions find difficult to supply, not least because they are *public*, and must embody generalized values. Having noted the uncertainty which attends any effort by educational institutions to inculcate values and beliefs, advocates of plural education systems ought to take care lest they seem to suggest that such a system produces students wedded to pluralism. But still there is the plain plural *fact* which a diverse school system constitutes, and this may be said to be a good thing by such as deem such things to be good.

I might add that many of our parochial schools have demonstrated a laudable efficiency in their use of resources. That is not without its costs, is at least possible but it is notable that parents who choose to send their children to private schools can expect that educational value for money. This is perhaps the more important to them as they simultaneously pay their full share of the support of the public schools their children do not attend.

Diversity. Pluralism. Variety. These are values, too, and perhaps nowhere more valuable than in the experiences that our children have in their early years, when their values and attitudes are formed, their minds awakened, and their friendships formed. I cherish these values, and I do not believe it excessive to ask that they be embodied in our national policies for the betterment of American education.

Nor yet do I believe it impossible that this cause of diversity, and this aspect of that cause, will come in time to be seen as the liberal cause in American life. A generation ago Schumpeter warned us that the end of liberal society would not come about through some Marxian convulsion but rather by what he described as the slow but steady "conquest of the private sector by the public sector." There is not an aspect of American life in which this steady encroachment is not to be seen. For a period in the 1960's, with the decline of parochial school enrollment, it looked as if the private sector in education might collapse as well. But this decline has been arrested. A strong and vital nonpublic sector continues in education, and perhaps especially in New York. It is a thing of great value, and should be preserved.

Mr. MOYNIHAN. I thank the Chair. I have had my address printed in the RECORD in order not to hold the Senator from Missouri any longer.

But it seemed to me hardly generous to suggest that I have avoided comments on Nyquist when the very first of my commentaries concentrated on Nyquist.

Madam President, the Senator from Missouri has also suggested that we have somehow been talking about the innate bigotry of the Supreme Court justices. I have said nothing of the kind. And I know of no one on this side of this issue who has said—or implied—anything of the kind.

The Senator speaks of my having suggested the "unintended but apparent anti-Catholic bias of Justice William O. Douglas." I said nothing of the sort. I wrote nothing of the sort. What I wrote had very little to do with Justice Douglas personally.

In another commencement address, I discussed the intellectual difficulties encountered in advancing and defending these causes. I gave this address as a scholar in a community of scholars. I pointed to the casual manner in which seemingly unassailable assertions are often made in this field—assertions that would hardly escape scrutiny and, indeed, rebuke if they were made by any other group.

I observed that at a critical point in the Lemon against Kurtzman decision, Justice Douglas stated his opposition to these forms of aid by saying:

> We do not deal with evil teachers but with zealous ones who may use any opportunity to indoctrinate a class.

The evidence marshalled in these cases seems quite remarkable to me. In this case, Justice Douglas cited a work by Mr. Loraine Boettner entitled "Roman Catholicism" published in Philadelphia in 1962.

I pause to observe that there are three Senators in the Chamber as I make this point. The Senator from South Carolina is returning, so I may have an audience of four. But I wish the RECORD to indicate, Madam President, that we have stood in good faith making serious constitutional arguments for 3 days now, and we have done so to an empty Chamber.

(Mrs. HUMPHREY assumed the chair.)

Mr. MOYNIHAN. This is the passage which Justice Douglas quoted:

> In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system.

There are now five Senators on the floor. If my four colleagues could just listen to this one sentence:

> Their purpose is not so much to educate but to indoctrinate and train, not to teach Scripture truths and Americanism but to make loyal Roman Catholics.

Did everybody hear that line—"Their purpose is not to teach Scripture truths"?

Mr. Boettner objects to the Roman Catholic schools because they are not Presbyterian, and contends on that basis that aid to them is unconstitutional.

I cannot imagine that there are five Presbyterians in the country who agree with him.

Mr. Boettner's book argues that there is only one true church, that the Roman Catholic church is an antichurch, and that the job of the schools is to promulgate the teachings of the true church. He wants the "true scriptures" taught in our schools. He even suggests at one point that Roman Catholics should not be allowed to teach in the public schools because they will not teach the true scriptures, and, after all, teaching the true scriptures is the purpose of the schools.

Madam President, as a member of the community of Catholic scholars, I must say that it was most extraordinary that this incredible proposition went unremarked. Nobody took issue with it. No brother judge said, "Surely, Justice Douglas, you did not mean to cite that book."

Mr. HOLLINGS. Madam President, will the Senator yield?

Mr. MOYNIHAN. I will yield for a question.

Mr. HOLLINGS. Not only did no one remark about it, but no one in the Senate today feels that way or is contending what this language says.

Mr. MOYNIHAN. I do not suggest for a moment that anyone does.

Mr. HOLLINGS. That is what I mean.

Mr. MOYNIHAN. But, I say to the Senator, it was remarkable that no brother Justice saw fit to comment on it. It was a quaint and altogether absurd citation. Here is a pertinent analogy, which I feel, reinforces my basic point. Suppose the Supreme Court were asked to rule on a statute permitting orthodox Jewish shopkeepers to do business on Sunday, and, citing the protocols of the Elders of Zion declared that this was not in the national interest. Might we not expect to hear a word or two from constitutional scholars?

Or, let us suppose that the Supreme Court were asked to rule on a matter of school integration, and, citing a communication from a kleagle of the Ku Klux Klan, held that racial integration was un-American. Might we not expect to hear from constitutional scholars?

I was simply making the point that a matter which would normally have been called into question, and, at the very least, gently decided, went wholly uncriticized in this case.

Mr. HOLLINGS. But you must admit that the Court itself experiences similar intellectual inquisition as the distinguished Senator from New York experiences. The fact is when they were asked about segregation or integration in the public schools of America they consulted none other than a psychologist from Sweden. I mean, they go all around. They used as a formative——

Mr. MOYNIHAN. No.

Mr. HOLLINGS. Book and doctrine the thoughts of Gunnar Myrdal.

Mr. MOYNIHAN. No; they did not.

Mr. HOLLINGS. You do not think—in Brown against the Board of Education, and I will show to you certain indications——

Mr. MOYNIHAN. The citation was not of one psychologist but of the work of two psychologists—the Clarks. You could probably maintain that one of them was from Panama, because Kent Clark was born in Panama.

Mr. HOLLINGS. You are talking to one of the lawyers who argued in December 1952. Gunnar Myrdal was quoted there, and was later quoted in the citation.

Mr. MOYNIHAN. The Senator refers to the psychologists.

Mr. HOLLINGS. That is right. I am not stating any particular fault.

Mr. MOYNIHAN. He is an economist. The psychologists were the Clarks.

Mr. HOLLINGS. But they went to Gunnar Myrdal, and they went to all of these other studies. They took every particular one they——

Mr. MOYNIHAN. That was precisely the point I made in my Albany address—that the empirical standards are simply not supportable. I said that one of the remarkable developments of our age is the often unsupportable way in which the Court has been using social science, and perhaps, using selective evidence.

Yesterday, I spoke at some length of Tilton against Richardson, a case which deals with a Federal statute, and which most closely encompasses the issue before us.

Mr. HOLLINGS. Right.

Mr. MOYNIHAN. Although the Senator from Missouri was not able to be present, I said yesterday that in the decision in Tilton against Richardson, the constitutional distinction which mandates that it is permissible to provide Federal aid to a college freshman but not to a high school senior turned on the question of degree of religious impressionability.

Mr. HOLLINGS. The impressionability, of course, is very easily——

Mr. MOYNIHAN. Here is the citation from the 1970 case of Tilton against Richardson:

> There are general significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools. There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination. Common observation would seem to support that view.

I said yesterday, and I repeat today, that there is no substance, there is no evidence, to adequately support any conclusion on this question.

I wrote to the president of the American Psychological Association and asked him, "Have you got any evidence on this case?" This is precisely what the courts do. They say, "When we make an empirical statement we back it up."

I read you the answer from Dr. Smith. I simply ask for some evidence regarding the high school versus college comparison in which the Senator is interested, and his emphatic answers was that no such evidence exists.

I reiterate that decisions of this nature are not of the quality we have come to expect of the Supreme Court. It is on those grounds that many scholars have testified before us, written to us, stated to us, that there is no way to predict what the Court will do. Indeed, the Court should pay heed, and might well consider setting those of its positions that are now in disarray in some kind of rational order, or consolidated form.

I say to the Senator from Missouri, that it seems to me that there is almost a judicial pietism in his suggestion that we should not challenge the Court with any of these questions. Surely, the Senator would have agreed that we should have challenged Plessy against Ferguson. Surely even he would have said, "The Court has ruled this way, but the Court is wrong. It should rule differently."

Yesterday I cited the same animus on the part of Abraham Lincoln with respect to the Dred Scott decision.

The Senator from Missouri will recall that last year he introduced an amendment to the HEW appropriation bill to restrict the amount of busing that may be done at Federal expense. The clear consequence of that measure—its obvious intention, perhaps—would have been to limit the amount of racial integration in public schools.

I thought that measure to be a violation of the Constitution, and I think many people here agreed that it would be unconstitutional, and that it might be so held by the Court. We passed the bill anyway, and it may be held one way or the other. It may be challenged at any time in the Court.

Congress has a responsibility to do what it thinks to be constitutional, for there is no way the system can work until the Court is presented with a tangible act. Senator RIBICOFF has said that the Supreme Court does not issue advisory opinion. If we want to resolve our questions about this legislation, then, we must pass it and put it before the Court.

I would maintain that if the impressionability distinction between high school seniors and college freshmen is the basis for the decision the Court will render, then that distinction will not survive an insistence upon empirical evidence.

I have delineated the procedure of the Supreme Court in making empirical statements and in rendering a priori judgments. By this process, the Court has said tuition tax credits for colleges—whether denominational or nondenominational—private or public—are constitutional but that they are not constitutional for high schools.

Though I am not extraordinary competent in the law, I have read Tilton against Richardson—the one case which deals with impressionability—and I have concluded there is no evidence to support the distinction; it simply will not sustain a thoughtful inquiry.

Madam President, I do hope the Senator from Missouri now understands that, far from trying to avoid the Nyquist decision, I actually began the series of comments I have made in this field by dealing squarely with the Nyquist decision.

Could I ask the Senator from Missouri if he takes my point? He is not required to know the details of every commencement address I have ever made, but does the Senator take my point?

Mr. EAGLETON. Mr. President, will the Senator yield so that I may respond?

Mr. MOYNIHAN. I yield, yes.

Mr. EAGLETON. The two speeches, the two documents to which I referred were the two the Senator left with me when he came to see me at my office a week or so ago. These are the two that he thought best reflected his judgment on this constitutional issue, because that is what we discussed in my office, the constitutional issue.

He left his Harper's article; he left his speech to the St. Rose College in Albany, N.Y.; and he left the testimony of Professor Scalia, and those are the ones I read, because the Senator thought they were very relevant and useful.

And in the Harper's article and the St. Rose speech the Senator dealt at some length with the constitutional issue. In neither of these did he make any reference to the Nyquist case, which I take to be the controlling case. That is the point I was making.

Mr. MOYNIHAN. It was an understandable misimpression which the Senator received.

Mr. EAGLETON. I received no misimpression after reading the two speeches. If the Senator thought his more memorable address was the one he gave the year before, I assume he would have left that with me also, but he did not give a copy of that one to me.

Mr. MOYNIHAN. Before the Senator embarks upon an intellectually questionable practice, I wish to point out that had he had only have instructed one of his assistants to call me up and ask, "Do these two works comprise the sum of your corpus—or your oeuvre, as the French say—on this matter, or is there more?" There is much more.

As I have said repeatedly, far from avoiding Nyquist, the first commentary I made on this matter was devoted primarily to Nyquist. We have been trying to maintain decent standards of evidence and argument on our side—as I know everyone else is endeavoring to do—and consequently I do very much regret that the Senator has understood much of our argument to somehow refer to the innate bigotry of the Justices of the Court. I do not know of anyone on our side who has stated anything of the kind.

The problem here, I will state once again is simply that the standard of these decisions does not match the high standard the Court maintains in other areas. That is the judgment of scholars and commentators for whom I have the highest regard, and it is a judgment which I share. And it seems to me that in the face of firmly held opinions, pro and con, those who would not let this matter be tested before the Supreme Court demonstrate a less than complete confidence in their position and a less than complete confidence as to what the outcome of a Supreme Court test would be.

I thank the Chair.

Mr. HODGES. Madam President, I would like to take this opportunity to address an issue which I think is most relevant and most important in this bill, and which has not yet been addressed. I think the constitutionality is very relevant, and I think it is of paramount importance to many of us. But I would also suggest that the policy considerations are important.

One of the effects of this bill in terms of Arkansas and in terms of our Nation is going to be its effect on blacks. The editorials in the Washington Star, and

in others, have indicated that this should not be an issue; and I do not blame people with a weak case for trying to take out those parts which are most advantageous to the opponents; therefore they say, "Let us ignore constitutionality," and I suppose they would like also to ignore race.

But I call upon all who would look at this bill, and I particularly call upon the Senator from New York, who likes to talk about the traditions of the Democratic Party, and I further call upon the Republican Party, which is making a renewed effort to win minorities, to look closely at this bill in the light of race; and I think we might view those Republican two-thirds who will vote for it, and wonder, perhaps, about them also.

In the Washington Post of Tuesday, August 8, 1978, there was published an article entitled "Tuition Credit's Impact Feared." I ask unanimous consent that the article written by Saundra Saperstein, be printed in full at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD.

[From the Washington Post, Aug. 8, 1978]

TUITION CREDIT'S IMPACT FEARED

(By Saundra Saperstein)

White enrollment in private and parochial schools in the 1960s was closely tied to the racial makeup of the nation's largest cities, and these enrollments often increased in cities with heavily black populations, a Johns Hopkins University study has shown.

Washington topped the list of the cities in the study whose white enrollment in nonpublic schools increased. About 37 percent of Washington's white students were enrolled in these schools in 1960; the figure was 47 percent 10 years later.

The study indicates that tuition tax credits designed to aid parents of private and parochial school students "may result in greater social-class and racial segregation of American children than now exists," according to study director Henry Becker.

Becker said the tax credits might intensify the relationship between race and private school enrollment found in the study. The tax credits, he said, might be "more widely used by white families in cities with large or growing black populations, and could inhibit progress on school desegregation in these cities."

A controversial proposal to establish federal income tax credits for private college, secondary or elementary tuition is scheduled to come up in the Senate this week.

Spokesmen for public schools, including Health, Education, and Welfare Secretary Joseph A. Califano Jr., have warned that providing a tax subsidy for private school tuition would increase the exodus from public schools and seriously hurt many systems.

Becker noted in his study that the large cities where white enrollment in private and parochial schools increased in the '60s were either southern cities or northern ones with large black populations. These cities included Washington, Atlanta, Miami, Charlotte, Dallas, Fort Worth, Philadelphia, Detroit, Newark and New York.

The rise in white enrollment in nonpublic schools in Washington between 1960 and 1970 seems "more startling when you realize that in most large northern cities the figure was going down," Becker said.

He pointed, for instance, to Milwaukee, a city with a low minority population. In 1960 about 36 percent of the white students were enrolled in non-public schools; by the end of the decade the percentage was down to 26, he said.

Washington's experience of increasing white enrollment in parochial and private schools appears to be continuing in the 1970s, according to figures provided by the Division of Research and Evaluation. In October 1977, about 55 percent in the city's "nonblack" students were attending non-public schools, the figures showed.

The Hopkins study was based on data from the 1960 and 1970 censuses. According to Becker, it was the first statistical look at private school enrollment according to race.

Becker emphasized that the figures do not necessarily reflect what has happened in the 1970s.

Still, the Council for American Private Education found the study "alarming and misleading," according to council executive director Robert Lamborn.

"The facts since 1970 are substantially different than the facts prior to 1970," said Lamborn, whose organization is an umbrella group for about 90 percent of the nation's private and parochial schools.

"I'm not criticizing the scholarship of this study, but I am worried when a study done by anyone attributes movement to factors that are basically racial," he said.

"A great deal of movement from public to private schools has had nothing to do with race. Most of the changes have been attitudinal, reflecting desires of parents to find the best schools possible for their children."

Mr. HODGES. That article indicated there was a considerable correlation between the growth of private schools and racial desegregation, or racial segregation. I would suggest, and I will show statistics in a moment from Arkansas that make it absolutely clear, that this is the case, and that the very bill which we have before us will cause resegregation, and give aid and comfort to those who are trying to avoid integrated schools in this Nation.

The truth of the matter is that this country has been undergoing a social revolution which began with Brown against Board of Education in 1954. One of the most dramatic and first impacts of this occurred in the State of Arkansas, at Central High School in Little Rock, where there was a confrontation between the Federal Government and the Federal courts and the State government. I daresay that if you checked around the world today and asked people what is the most difficult situation that has been faced in the integration of schools in the United States, Central High School would still be mentioned, although there have been, since that time, far more bitter and far more difficult adjustments made.

We have had only a short period of time in this Nation's history to live with full and complete integration, and yet there would not be a single Senator who would stand on his feet in this body now and argue that that is not a good thing. Senators might feel differently in their hearts; they might act differently in terms of where they send their children and what they espouse in their own lifestyles, but no one now has the courage to openly court the segregation vote.

I would say that if you took the pronouncements of some in this body today——

Mr. MOYNIHAN. Mr. President, will the Senator yield for a question?

Mr. HODGES. Yes.

Mr. MOYNIHAN. A brief question. On June 28, 1977, the Eagleton amendment was offered here on the Senate floor, after nonacceptance by the committee.

Senator BROOKE offered an amendment to delete this language, which was rejected 51 to 42 although I voted for it.

Then Senator BROOKE offered an amendment with substitute language which I cosponsored. We lost. What does the Senator think was going on in the Senate that day?

Mr. HODGES. I have not the foggiest notion.

Mr. MOYNIHAN. It was an amendment to restrict the use of funds for busing. What does the Senator think was going on here?

Mr. HODGES. I have not the foggiest notion. I hope the Senator, in his question, will make this relevant to what I am saying.

Mr. MOYNIHAN. Nobody said it was courting the segregation vote.

Mr. HODGES. Openly, I said. Do you have a Senator who is openly courting the segregation vote?

Mr. MOYNIHAN. I missed the word "open."

Mr. HODGES. I indicated also in my remarks there are those who vote hoping to get the segregation vote but no one will openly seek that vote.

Mr. MOYNIHAN. I am glad to be corrected.

Mr. HODGES. I thank the Senator.

I will also say to the Senator from New York that those who believe in their heart in racial equality, but vote for this bill, are going to cause severe problems of racial equality in the South, and most certainly in Arkansas.

Let me go back to the point I was making. We have only had effective integration in the schools in this country since 1965.

Mr. MOYNIHAN. Will the Senator yield for a question? He refers to the South.

Mr. HODGES. I am sorry?

Mr. MOYNIHAN. The Senator referred to the public schools of the old South.

Mr. HODGES. I would say effective integration has not yet come to many Northern cities. I would say there is no integration in Washington, D.C., for we have schools which are 95 percent black. I am talking about a racial balance.

Mr. MOYNIHAN. A "racial balance" is the term used by the Senator?

Mr. HODGES. Yes.

I would say to the Senator again that time has shown that there are significant racial problems in the Northern cities as there are in the South. I am talking about the public school system.

I say that the great experiment which is underway today, and that is whether we can have a viable, integrated society in terms of the public schools, has only been going on some 13 or 14 years. There is no question but that there have been problems with it. Apparently there are those who are willing to abandon the problem. I count as effective abandonment those who are advocating this bill, not because they want to abandon it, but because that is going to be the result.

Let us look for a moment at the national distribution of children in public and nonpublic schools by race. There are in the public schools 17.2 percent nonwhites and 82.8 percent whites. That is the public schools.

In the private schools, there are 92 percent whites and 8 percent nonwhites, which is less than half of minority enrollment in public schools.

That ought to call your attention to something. That ought to tell you something, Madam President.

What is it in terms of my State of Arkansas? Let us look at some school districts which have established academies, private academies, private schools, in the last few years. In Chicot County, Ark., the percentage of blacks in the school-age population is 21.8 percent. The percentage in the public school after the academy was established is 88 percent. Are you listening?

In Saint Francis County they established an academy. The percentage of blacks eligible of school age is 20 percent, and in the public schools it is 57 percent and growing yearly.

Mr. HOLLINGS. Will the Senator yield?

Mr. HODGES. I would like to finish. In Crittenden County, where an academy was established, the eligibility of black school-age children is approximately 20 percent and it is 50 percent in black students in public schools and growing. In Phillips County, where an academy was established, the eligibility of young people, blacks for the public school, is 22 percent and the actual enrollment is 72 percent.

Does that prove a point? That was the result of academies being established, and the same pattern is true of other States.

I do not know, and I am sure the question is going to come, are these academies approved by IRS?

Mr. HOLLINGS. Will the Senator yield?

Mr. HODGES. Yes.

Mr. HOLLINGS. What they really want us to do at the Federal level is to start financing those academies. There is a great need here, for pluralism and diversity. To get pluralism and diversity, we are told, we ought to go ahead and start financing these academies from Washington, and call it a liberal trend, or liberal movement.

Mr. HODGES. Yes. What they are asking us to do is to put our stamp of approval as the Federal Government on this flight.

I would like to make one thing clear. Those people who have put their children in those academies have a legitimate right to do so. I think they are morally wrong. I think people who abandon tough public problems are gutless. My children are in the public schools of Washington, D.C.

Let us talk for a moment, then, about who is diverse, who is concerned about democracy, which party is concerned.

Senator MOYNIHAN, you are not going to drag my party down through this bill. My party has fought consistently for equality. Those of us in the South who have fought for the public schools are not going to retreat from tough problems and have not.

The reason I am involved in this bill lies in these statistics, and in the fact that we have less public school students in Arkansas now than 1972 and more private school students, and also in knowing that there will be more and more private students because this bill is encouraging such.

The very fact that on the floor of the Senate such a bill would be proposed causes me great perplexity. But to put on it the stamp of approval of the Democratic Party and thereby try to bring into disrepute men who have always stood for racial equality is startling.

Mr. MOYNIHAN. Will the Senator yield?

Mr. HODGES. I would like to reiterate one thing. I am not saying that is their motive or the reason why they have done it. I am saying that is the true effect of the bill. The side effects of some things done in Washington often are far worse than what they started out to be. It is like some drugs where the side effects are devastating and the cure ends up being worse than the disease.

Mr. MOYNIHAN. Will the Senator yield for a question?

Mr. HODGES. Will the Senator let me finish? Then I will be happy to yield.

Where then, does this leave us? Where it leaves us is that if this bill passes, we will shore up these white flight academies and encourage others to open in other school districts. My town in which I live has a fine public school, fully integrated—not without its problems, Mr. President, but we have solved problems and we are going to live with this school. Those of us who are committed to public education and to democracy are going to continue to fight for our school. My county has the same percent of eligible black young people as other counties in Arkansas. But we do not have an academy. If we get an academy I will tell you what we are going to have: We will see that national tilt begin to occur, and we will see the handicapped and others left in the public schools because the private schools cannot afford them, or because such schools are selective, or because they do not want the problem children.

We cannot exist as a democracy if we create islands.

I did not want to make this debate a party thing. Perhaps it ought not to be. But the sponsors have tried to make it a party issue as if somehow the Republicans are highly esteemed and are for the American people, and are for diversity and pluralism and motherhood and the flag, solely because they are for this bill. Just the opposite is true. This is an island-building bill. It is just the opposite of the Statue of Liberty. This says, "Take away from me the poor. Take away from me the oppressed. Put them into the public schools."

It is a strange thing about problems: they do not go away.

The problems in Washington, D.C., such as the tremendous unemployment among black youth, will not go away. The problems in the Washington, D.C., system with assaults and fear will not go away. If we create, in Arkansas, islands of black public schools and white academies, those problems will not go away but will grow.

At first blush, such schools seem good for the whites: Get your own school system, make it exclusive, and argue that it is better for your children. I suggest that it is true. My children would be better off academically in a private school right now. But I do not want for them the lessons they would learn there about democracy. I do not want such lessons inculcated in them in terms of living in a real world. I say they are far better off staying with the people with whom they are going to have to live in real life.

Life is not one long series of upper income suburbia. Life is not one long series of private academies, either.

I say to the Senate that the future effect of this bill in Arkansas is obvious, because you can see now what has already happened. But for those of you who do not know anything about Arkansas or who wonder whether these figures are right or wrong, walk out and look in Washington, D.C.

Do you know that about 37 percent of Washington's white students were enrolled in private schools in 1960—and this is quoting from the study that I mentioned earlier in the Washington Post article of August 8, 1978. The figure was 47 percent only 10 years later. Do you know what the figure is now? It must be 95 percent, because Washington is only 5 percent white in its public schools.

One of the most courageous men who has ever served in politics in this era with relation to race relations was Congressman Brooks Hays of Arkansas. He now lives, I believe, in the State of the distinguished Senator from North Carolina, who is on the floor. Brooks Hays is quite a man. He was a Congressman from Little Rock at the time of the Central High crisis. It was a tremendous crisis to those of us living in Arkansas at the time, particularly for the minority of people who felt strongly that what was being done was right in terms of integrating schools.

Brooks Hays stood up for what was right, and he was counted, but he unfortunately was counted out. He lost on a write-in vote to the bigotry and emotions of the times. He certainly is no less a man, and, from what I have seen of him, probably a better man. But let me tell the Senate what Brooks Hays has said, a man who has paid all to the bigot:

> We must have a firm commitment to the democratic traditions as expressed in our procedures and institutions. Our public school system must be preserved. Without it, the freedom that flowers from an educated citizenry would perish. James Madison put it succinctly: Without popular education, popular government will be a farce or a tragedy, perhaps both."

I say to the Senate that the effect of this bill will have strong racial overtones. The point could not have been made better than by one of the star witnesses of the proponents, Mr. Coleman. Mr. Coleman said that those blacks who could not afford to vote with their feet would not get any benefit from private schools, and that therefore this bill would give them

an option which they deserved. I think that, to some extent, he is correct, because the flight is not just white flight. The flight from the public schools is middle-income and upper-income flight, whether such people be black or white or red or yellow. So what Mr. Coleman is suggesting is that the good, stabilizing, middle-income blacks want to get out, too. They have had enough, and then we will sure enough have good public schools, will we not? Let us take all the stabilizing influence out.

I suggest that Mr. Coleman ought to recommit himself, as everybody in this Senate ought to, to make work the experiment in social adjustment which we are going through. When did all this crisis begin to occur in private education? It really and truly occurred when the blacks began coming into the public school system, because it is from that period of time that we begin to see the most statistics quoted. If you want a parallel, look for parallels in that area.

I am not saying that segregation is the only bad effect of this bill, but I am saying that, in certain parts of the country, this will be one of its most devastating effects.

(Mr. HOLLINGS assumed the chair.)

Mr. MOYNIHAN. Will the Senator yield for a question at this point?

Mr. HODGES. I am happy to yield.

Mr. MOYNIHAN. Does the Senator understand that when we talk of a crisis in our school system, or of the difficulty with the private school system, we talk about the decline in their enrollment? The Senator just said, "When did the crisis begin? It began when blacks," I quote, "started coming into the public schools."

That may be what happened in Arkansas. It did not happen in Benjamin Franklin High School in East Harlem, where I went to school.

But leaving that aside, is the Senator saying that enrollment in the private schools began to decline at that moment when the public schools began to integrate?

Mr. HODGES. No.

Mr. MOYNIHAN. That is what the Senator said. He must explain this: If this is a racial phenomenon, how is it that at the point where racial integration begins to appear, enrollment in the private schools begins to drop?

Mr. HODGES. To save time for the Senate——

Mr. MOYINHAN. The Senate has plenty of time for that subject.

Mr. HODGES. There really is such little consequence to that point that I shall back up and drop it.

Mr. MOYNIHAN. Fair enough. Because it is certainly clear that we need not engage in making spurious arguments, and we know there are difficulties in this particular one.

Mr. HODGES. Would the Senator respond, though? Since the Senator is interested in getting in, let us have the Senator respond to the effect of this bill in the South, in a State like Arkansas, based on what has happened already and based further on what obviously will be the future trend?

Does the Senator just write off Arkansas?

Mr. MOYNIHAN. Not at all. I understand that there is a real set of difficulties down there that are not unique to the Senator's State but instead are characteristic of a region. I am perfectly willing to acknowledge them. But it seems to me to be less than charitable that the Senator will not acknowledge ours.

The Senator knows what we are talking about. He knows what the Democratic Party was talking about when it made the commitments that I have repeatedly referred to. Senator GEORGE MCGOVERN made them, Senator Hubert Humphrey made them. They made them with respect to the church-related schools of the North and of the West, schools that have never been the domain of the elite. To the contrary, they have been the schools of the working people of the industrial cities of America, and they have never been segregated, and they have never had any of the characteristics of the academies the Senator talks about.

I am altogether willing to acknowledge the reality of the Senator's problem, but let us have a little charity about ours, just a little from the Old South, for once.

Mr. HODGES. The Senator just made the statement that these academies have never been segregated.

Mr. MOYNIHAN. Our schools in the North? No, never.

Mr. HODGES. Private schools?

Mr. MOYNIHAN. The church-related schools I am talking about? No, never. N-o, n-e-v-e-r; no, never.

Mr. HODGES. Certainly, the Senator is clear in his opinion, but I would suggest to the Senator that if he were to check he would find that many of those have, in fact, been segregated.

Mr. MOYNIHAN. Are not the school systems I was talking about——

Mr. HODGES. In the Senator's mind, but let us talk about reality. I do not know what the Senator is talking about.

How about Andover or Exeter? Does the Senator think there have been blacks over the years in those schools?

I will tell the Senator that I know because I attended Princeton as an undergraduate.

Mr. MOYNIHAN. I am not talking about Andover or Exeter. The Senator knows very well that I am not.

Mr. HODGES. Let us get the point of what the Senator has in mind, not as to what the Senator has not made clear.

Let us get to the facts. That is part of what is honest, candid debate.

Tell me what it is in the Senator's mind and to what school he refers, and then I can respond.

Mr. MOYNIHAN. I am talking about parochial schools.

Mr. HODGES. Is the Senator talking about the Roman Catholic parochial schools?

Mr. MOYNIHAN. Yes.

Mr. HODGES. All right. That is fine.

Mr. MOYNIHAN. Now, with regard to Andover and Exeter there is an Exeter man in this room.

Mr. HODGES. The Senator from New York has, I think, 22 people on the floor. The chances are he has someone from almost any school I can think of amongst the 22. However, I have only one. We are just poor Arkansas boys.

But I will say this, regardless of whether he has an Andover or Exeter man, and I cannot even remember all the names—I remember Lawrenceville was a good one in New Jersey—we never saw any blacks in those schools in the 1940's and 1950's. Let us be honest about it. We never saw them anywhere.

So we cannot talk about they might have had one or two, or something.

But the point still remains: what is the effect of this bill going to be? That is the issue. That is really the issue.

One of the things I think needs to be said unequivocally is that this bill is going to cause resegregation, it is going to erode the public school system in Arkansas, and I daresay there are other Southern States it will have an equal effect upon.

I would like to go on to one last point. That is, who really benefits by this bill?

Let me mention one last thing about blacks in private schools. I do not know how we get around the fact that only 8 percent of the private school students are black and that almost 18 percent, and the percentage is growing, are black students in the public schools. The fact is that whites are going more and more to the private schools and leaving the blacks in the public school.

But let me talk for a moment about who is going to benefit by this bill.

I say, first of all, the bill will primarily benefit those who are affluent. But I would also say to those using the private sector, those who have children in private elementary and secondary schools, and those who are interested in receiving these tuition grants, that they ought to think twice before they get them. Because one thing the Supreme Court mentions in Nyquist and in decision after decision on the first amendment is the insatiable desire of the Federal Government, once it gets an entree, to grow and to increase its control, and to spread its bureaucracy and its rules and regulations.

If we think it is going to be a simple matter, or procedure, to give these grants, or tuition tax credits, or however it is ultimately done, and not have follow a considerable amount of redtape, investigation, looking and seeing where it goes, and whether or not it is being used properly——

Mr. MOYNIHAN. Will the Senator yield for a question?

Mr. HODGES [continuing]. And so on, I say that we are absolutely out of our minds.

It has never happened yet, and it is going to happen, I guarantee, in this case.

I will yield for a question.

Mr. MOYNIHAN. The Senator seems to have reversed his field somewhat. Is he now suggesting that most dreaded of Southern conflicts—if this bill passes there are going to be Federal Government people down in the Old South, looking into the schools to see whether or not they are integrated?

Mr. HODGES. I say to the Senator from New York, he does far better when he does not attempt a Southern accent, as I do not think he does it well.

If I take his intent to disparage either my accent or the region I am from, I will not take umbrage, but I would suggest that we keep the debate on a plane which I think the Senate rules require.

Mr. MOYNIHAN. I will restate my question.

Is the Senator suggesting that the danger of this bill is that there will be Federal agents inquiring into the conduct of the private schools in the South?

Mr. HODGES. I say that that already exists, in theory.

Mr. MOYNIHAN. In theory?

Mr. HODGES. Yes.

Mr. MOYNIHAN. But is the Senator suggesting that the process now exists in the South?

Mr. HODGES. What I am suggesting to the Senator is that the larger a Federal program becomes, the more we see of rules and regulations, the more we see increased interest of the Government in where the grants are going, the more we see bureaucrats looking and evaluating. Then we will have someone come into the Senate with a report that there are gross abuses of tuition tax credits, and that there are more credits being taken than there are people eligible for elementary and secondary schools in the Nation. We will appoint 14 inspectors. They will bring a report back. We will have a division of control in the tuition tax credit section of the Internal Revenue Service.

That is all I am suggesting. If we look at the history since 1960 when we began social engineering in Washington, D.C., then I would suggest that is what we will find.

Mr. MOYNIHAN. Would not the Senator agree that the social engineering that is involved has been in the direction of enforcement of civil rights statutes?

Mr. HODGES. I am not talking about——

Mr. MOYNIHAN. And that, indeed, this legislation mandating some degree of Federal involvement in the whole range of private schools—including those which might have been established for the purpose of avoiding the civil rights statutes—might facilitate the upholding of those classrooms?

Mr. HODGES. I think if the Senator will check, he will discover they are already subject to such scrutiny, and if he will further check the 1975 and 1976 Civil Rights Commission Report he will find that the IRS approved seven private schools in Mississippi that clearly practice segregation, and that they were given a clearance for charitable deductions.

I am simply saying, and I am not making it a regional statement only, dealing with the effect on my region, that in the Northern cities we see incredible hypocrisy. Here in Washington, D.C., we do. We are surrounded by some of the finest public schools in the country, but they exist, oftentimes, at the expense of the blacks. And in this city, too.

If I might go on and complete my remarks about who is going to benefit, then I will be happy to yield the floor, not for questions, but even questions in the form of statements.

Mr. MOYNIHAN. Even statements in the form of questions.

Mr. HODGES. Either one, whichever way the Senator wishes to do it, because the floor would be his.

Let us talk for a moment about the income levels of those people who are going to benefit from this bill, because that is a relevant public policy issue.

The fact is that families of four—a father, a mother, and two children—must earn $7,250 to get a nickel's worth of credit; and even then, for the first $100, they get only $4 worth of credit. They are simply not eligible under this bill.

So when we hear these arguments that are being made about how this bill is going to help the poor and how this bill is going to give everyone a chance, that is just hogwash. The sponsors took out the refundability part. They took out that part of it. So now the bill applies only to people who make more than $7,250 a year.

However, the statistics about the percentage of people in private schools and what they make is very interesting, because when you get down to the lowest income levels, we are talking about $1,000 to $7,000 of income. At the lowest level, $1,000 to $1,999, 97 percent of students are in public schools, and 3 percent in private schools.

When you get to $50,000 and over, 75 percent are in the public schools, and 25 percent are in the private schools. But all those at $50,000 and over are going to get the $250—or, with two children, $500.

We are changing, for the first time, significant policy. We are not going to base Government help on need. The millionaire is going to get exactly the same amount as someone earning—well, you do not get $250 until you earn about $10,000.

So, really, who is going to get the assistance? The average parent of a child in a private school earns 25 percent more than the average parent of a child in the public school. That is the way it is now.

Equally important—and the thing that puzzled me—was when you got to $50,000 and over, I thought perhaps the percentage would be greater of those having their children in the private schools. But do you know why it is not? Some of the finest schools in this country, including even the finest private schools, are public schools in the wealthy suburbs. I daresay that within 15 to 20 minutes of this very hall in which we stand there are 5 or 10 of the finest, wealthiest, well-financed public schools in the Nation, and they train their young people as well as anywhere else. So they do not need it. So even these figures are distorted.

The Republican Party, perhaps two-thirds of them, should vote for this. I grew up what was called a "yellow-dog Democrat" in the country. Everybody blamed the Republicans for everything. I found out, however, that the Democrats have done their share, too, I must say.

So this is not a bill to aid the average man or the common man. This is a bill that does not even have in it any controls for a cutoff place. They required even more money for it than it does now. When they had the full $500 credit, it took about $12,000 in income to receive it.

Mr. President, I will conclude my remarks by quoting from a case which is really the critical case for us to look at, in terms of both the constitutional issues and some very practical issues inside the bill before us. It is the case of Committee for Public Education and Religious Liberty, et al. against Nyquist. At page 42 of its decision, the court said the following:

> But we know from long experience with both Federal and State Governments that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies. And the larger the class of recipients, the greater the pressure for accelerated increases.

That is one thing the court pointed out. The second was this, on page 36: They indicated that one of the critical tests was whether such aid would result in entanglement of the State with religion in the sense of a comprehensive, discriminating, and continuing State surveillance. They say:

> But the importance of the competing societal interests implicated in this case prompts us to make the further observation that, apart from any specific entanglement of the State in particular religious programs, assistance of the sort here involved carries grave potential for entanglement in the broader sense of continuing political strife over aid to religion.

What were they talking about? What sort of program was it that they said carried such grave potential for entanglement? They were talking about the matter of issuing tax credits to elementary and secondary private schools in the State of New York.

I thank the Chair and yield the floor

Mr. MOYNIHAN. Mr. President, two things.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I hope the Senator from Arkansas will accept that having been born in Oklahoma I came by my Southern accent fairly. In response to his statement, I shall make two remarks and then a general statement. I hope the Senators will hear me in this room.

It does not make much sense to say that it is interesting that the crisis in the nonpublic schools came about at a time when Federal integration efforts were commencing. It makes little sense, when in fact the crisis consists of a decline in the enrollment of the nonpublic schools. That contention does not bear logical examination.

Second, raising the issue of civil rights, and simultaneously raising the issue of Federal interference in private institutions also does not bear much logical scrutiny.

But, Mr. President, it is now time for some of us to get just a little more serious about our feelings.

Let me read a brief passage from a lengthy editorial on this debate, which appeared in the Washington Star of Thursday, August 10, 1978:

> Of all the attacks on the tuition tax credit proposal, the shabbiest is the insinuation that they are a sugar-coated scheme for promoting racial segregation in the schools.

We have never hesitated to say, openly, in 3 days of the debate in this empty Chamber, that—

In fact, the neediest beneficiaries would be Catholic parochial schools with an old and honorable record of racial equity. And as for the so-called "segregation academies" mushrooming up across the South at the heels of school integration, their students, insofar as their racial exclusiveness is their aim, would be ineligible under the tax laws. So much is clearly provided in the latest draft of the bill.

The Senator from Arkansas invoked the name of James S. Coleman, with whom I have been associated as a colleague for many years. I was coauthor, with Frederick Mosteller, of the largest analysis of Coleman's 1975 report. I have chaired a 2-year seminar at the American Academy of Arts and Sciences on Coleman's findings.

And the same Star editorial says:

Prof. James S. Coleman touched on this point in a recent supportive letter to Senator Moynihan. Tax credits, he suggested, "will help give low income people some of the educational opportunity for their children that high income people already have. In a sense," he continued, "it provides an aid to parents to rescue their children from school situations that they find bad; and ... this is especially the case for black parents who are locked into a given residential situation." Professor Coleman's view has been echoed and endorsed by a number of black scholars, including Thomas Sowell and Walter Williams.

Mr. President, we have tried in 3 days of debate in this empty Chamber to suggest that there are complexities here, to acknowledge our own uncertainties, and to say that we do not know what the Court will finally rule. Yet we simply ask for a ruling. We have put this measure forward as a petition of right with the conviction that an injustice has been done us. We have asked for the Court to rule, and we openly aver that we will absolutely accept the ruling of the Court.

We accept there are, and will be, difficulties; surely there will be some difficulties in a place such as Arkansas. The thought that somehow we might be inviting those difficulties is, however, most unseemly. We have tried to accept the complexity of this matter and even to admit that it may at some point involve a conflict of rights, but to suggest that we seek anything but social justice and equal opportunity is to debase the debate. I am sorry it has been done.

I thank the Chair.

Mr. PACKWOOD and Mr. HODGES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HODGES. Mr. President, will the Senator yield for a quick response to the last statement? I will not make it a long response.

Mr. PACKWOOD. No, I think not. We are drawing close to a time to vote.

Mr. HODGES. I am sorry. The Senator has his amendment up. I will respond, though, to what the Senator from New York said which I think was highly inaccurate.

Mr. PACKWOOD. I am delighted that the Senator from Arkansas got off the issue of constitutionality and I do not intend to come back and touch it again.

We are going to vote on that about 1 o'clock, and that is fine. See what happens then.

But the Senator first mentioned three times, and I was curious about the almost rhyming of his litany of those of us who are committed to the public schools and democracy, public schools and democracy, public schools and democracy.

The two do not necessarily have to be solely intertwined. There are those people who go to private schools who share some of the beliefs in democracy that those who go to public schools share.

This whole country grew out of private schools. When time and time and time again we are cited as the founding beacon of democracy in this country it was out of a private school system that it grew, not a public school system.

So, let us not demean those who go to private schools by tying together those words as only those who somehow have their education paid for by public taxes can have the proper view about the way the Government should be run.

Second, he talked about the complexity and once we pass this we are ipso facto going to have Federal agents and the Federal heavy hand, and what not.

For the better part of the last 100 years, at least while we have had the income tax, we have had charitable deductions which somehow have managed to go along without at least an overwhelming entanglement of the Federal bureaucracy. From time to time I admit the IRS has had to pass on whether or not there was a legitimate charitable purpose and therefore you could have a deduction for a contribution.

Mr. HODGES. Mr. President, will the Senator yield?

Mr. PACKWOOD. No, I will not.

But by and large it has worked out very well, and we have gotten more money for our dollar out of private charitable institutions in this country than anything else that the Federal Government has ever devised to spend money on, and it has worked amazingly well.

We allow a person to give money to his church and again from time to time as a new church comes along there is a period when you question about is this a religion, but it has worked reasonably well.

We have allowed a person to give money to his church, take it off his income tax without the heavy hand of the Government saying, "Oh, you can't do that."

We even allow a person to give money to a church school and take it off his income tax, and somehow the heavy hand of the Government has not intervened.

We allow people to make all kinds of deductions and take credits through the income tax system, and by and large it has proved in my mind to be a much more preferable system than the system of appropriation and expenditures by the Federal Government.

Allowing tax credits for the cost of tuition is not that substantially different from a charitable contribution to a school. It makes utterly no sense to say that I can send my child to a private school, give the school $500 and take part of that off the income tax, but I cannot pay them $500 tuition and take part of that off my income tax because of the heavy hand of the Government that will follow the latter but not the former. It simply does not follow.

As far as the handicapped persons are concerned, the Handicapped Persons Association, the principal association of handicapped schools in this country, support this legislation.

It was never the public schools that wanted to take handicapped students. They got shunted aside. If, unfortunately, you were a parent of a handicapped or retarded student, you paid, if you could afford to, to send them to a private school. There was no help from the public schools. It was the private sector that did the best they could under overwhelming and burdening expenses to try to take care of handicapped students in this country.

No wonder the Association of Handicapped Schools is for this legislation. Let us not say it was the private schools that threw out the handicapped and that the public schools welcomed them.

The public schools have been fighting for the last 3 years the obligations that were imposed upon them by the Federal Government to put ramps and put in things to handle handicapped students. Hopefully we will have upset that situation and we will have laid that at last to rest. The public schools never will be supportive or will want the handicapped student.

Now, as to income: The Roper poll has been cited frequently as evidence that the public does not want the tuition tax credit. I think there have been put in the RECORD, I might say to the Senator from New York and the Senator from Arkansas, other polls that have been taken in the last 2 years, every one of which supports tuition tax credit, including a number of polls where they were asked specifically, "Do you prefer the credit or do you prefer the grant approach?" including the Roper poll of 1 year ago. If we are just going to weigh where the public is based upon polls, they are overwhelmingly on the side of the tax credits.

In the last Roper poll, one of the questions he asked was, "What do you consider middle income?" Interestingly enough, the answer was $20,000 to $40,000. That was considered by those whom Roper polled, $20,000 to $40,000 a year.

In this bill as it is now written, without refundability, 77 percent of the benefits will go to people who make $30,000 or less, and that is the Joint Committee on Taxation source.

If you want to add refundability to it, 78 percent of the benefits will go to those under $30,000 a year.

I am frank to say I do not know many people who are making $35,000 and $40,000 a year, trying to send their children to college or even to a public university, who are overwhelmingly wealthy. They are having the same problems that everybody else is having in trying to educate their children, be it in a public or private college or a public or private primary and secondary school. But that issue has been raised.

You know, if I thought there were enough people in this Senate who really accepted the philosophy that the Senator from New York and I are driving

at about diversity and pluralism, I would be willing to compromise and compromise and compromise so long as we could maintain two principles: One, the concept of a tax credit or a tax deduction. I could even be convinced of that, although a tax deduction has more favoritism toward the rich than a tax credit, and, two that primary and secondary private schools, including religious schools, be included. Those are the only two basic issues.

If constitutionality is the issue, I think the expedited test would satisfy anybody with a fair mind because there is an honest difference of opinion on constitutionality.

If the issue is the endowment of St. Paul's, Exeter, or Choate, if that was the issue, if the idea is that 22 percent of the people who make over $30,000 might get some benefit, and I thought that was the real issue, I would vote for that cap.

If refundability was the issue, and by refundability I mean when you simply are entitled to more money back from the Government than you owe them in taxes, if under this bill you would get a $250 tax credit for sending your child to a Catholic, parochial, primary school, and you happened to be under that $7,200 income level for a family of four, and you pay no taxes, and the Government would give you back $250 because you are too poor to afford it, if I thought that was the issue that would turn the Senate around because it was too expensive, I would vote for it, and we would get to it in another year, much as I would hate to leave it out now.

If the issue was really cost, total cost, I would be willing to cut these benefits down to $50 for primary and secondary schools, and $100 for college for the sake of starting a principle that is important.

But you know what the problem is. Constitutionality is not the issue. The Senator from Missouri admitted in his last statement when he finally said it is not just constitutionality, it is policy. Then he walked off the floor and we never talked about the policy.

It is not the issue of millionaires being able to take $250 off their income tax. Ladies and gentlemen, be serious. For anyone who can send his children to Deerfield, Groton, Exeter at tuitions of $4,000 or $5,000 a year, do you think it makes any difference to him if he can take $250 off his income tax?

The sure way to make positive that nobody but the rich has the opportunity for private education in this country is to defeat this bill. Do not worry about the Deerfields and the Grotons, they will continue. There will be people who make $50,000, $80,000, and $100,000 and who will send their children to those schools, with or without this bill.

The real problem is seldom addressed by the opponents. The real objection to this bill is control. It was stated by the senior Senator from Vermont in his statement that if this bill passes it is going to disperse control of the educational system, decentralize it, even divide it among different committees of the Congress. Heaven forbid that more than one committee should have jurisdiction over educational policy.

The Senator from Rhode Island (Mr. PELL) said it in response to a question from Senator MOYNIHAN when the Senator from Rhode Island was saying he thought it was unfair that so much more money was going to be spent on private students than public students. I hope we have set that to rest.

If this bill passes, the Federal Government—not all public expenditures, just the Federal Government if this bill passes—will still spend substantially less money on private education, private primary and secondary education, than they do on public education. The Federal Government, let alone all of the money that States and local governments spend on public education, is what I am talking about.

But, in response to the question of the Senator from New York when he asked would the Senator from Rhode Island, if the matter of the preponderance of money that is spent in public students as opposed to private students, if that is his principal concern, if we were to cut down the bill and make the amount spent on private students smaller, would that allay his objections? No, he said. His real objection was the tax credit, because control by the Federal Government was lost.

(Mr. HASKELL assumed the chair.)

Mr. HODGES. Mr. President, will the Senator yield?

Mr. PACKWOOD. No, I will not yield.

The Department of Health, Education, and Welfare, when they testified on this bill—and interestingly enough after they were able to send the Secretary of Health, Education, and Welfare to how many, four or five, hearings on the bill in the House and Senate, when the time came for testimony on this bill, 3 days of testimony set 3 months ahead of time, 8 hours a day, managed to send an Assistant Secretary for Legislative Affairs. Not the Secretary, not the Assistant Secretary for Education, not the Commissioner for Education, but an Assistant Secretary for Legislative Affairs, who used to be a lobbyist for the United Automobile Workers, and now he is an Assistant Secretary for Legislative Affairs. If you translate that, he is now a lobbyist for the Department of Health, Education, and Welfare, paid at public expense to come up here and lobby for the things they want. He has not changed jobs; he has just changed hats.

He is a nice fellow. He is a fellow who came up and testified against this bill, testified very emphatically, of course, against the primary and secondary parts because it was unconstitutional, because of a whole variety of reasons, and then he got to the higher education part.

Now, understand how this works. You send your child off to Oregon State University or Ohio State University and you pay $800 a year tuition for your child. Under this bill, when it is in full effect, you can take $400 off your income tax, and there is a line for an income tax credit for child care, a credit for political contributions, and we would then add another line that says "tuition tax credit," and, assuming you can divide by two and subtract, that is how the bill works.

If you add up all of the deductions, you figure out your tax. If it turns out that you owe $1,400 in taxes and you are entitled to a $400 credit for tuition you pay the Government $1,000. Now, ladies and gentlemen, that is not too complicated, too difficult to figure out, is it?

But what did the Secretary testify to? They were——

Mr. MOYNIHAN. The Secretary's representative.

Mr. PACKWOOD. Pardon me——

Mr. MOYNIHAN. The Secretary did not appear.

Mr. PACKWOOD. The Secretary's assistant. The Secretary's assistant's assistant.

What did he say? That they were opposed to our bill because it was too complex.

Too complex. You know, the problem here, they say, if you have too many children in college—and only an HEW bureaucrat could testify this way—is not that you have too many children too close together, they are all going to college at once, and you could not afford them all. The problem is that you are a victim of sibling overlap.

Who would use that kind of language except somebody from the Department of HEW? The problem is not that you cannot afford to send your children to college. If you could spread it over an entire working life, you could afford it. You are just a victim of a temporary liquidity crisis.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. PACKWOOD. I yield.

Mr MOYNIHAN. Would he explain to us the nature of this disease afflicting so many American households? Sibling overlap?

Mr. PACKWOOD. A terrible disease. I do not know how many people are killed every year because of it.

Mr. MOYNIHAN. What is sibling overlap?

Mr. PACKWOOD. Sibling overlap means you have too many children too close together.

Mr. MOYNIHAN. I see.

Mr. PACKWOOD. Or, to put it in simple terms, you had too many kids too quick.

Now, what is the answer, at the higher education level, to these tuition tax credits? That they already have basic education opportunity grants programs that cost $2.6 billion a year, they are going to add, if they are successful, another $1.2 billion on legislation we will have before us Tuesday, for a total of $3.8 billion; and if you add work study programs and other programs, they have about $5 billion a year.

HEW lost last year, according to the GAO, $7 billion on account of fraud, abuse, and waste. In the student loan program alone, they have lost $356 million. Out of $4.5 billion of loans outstanding, over $1 billion are in default. Twenty-two percent, and they have the audacity to come in here and say that what we are suggesting is too complex.

Let us take a look at what they are of-

fering. Here is a form for applying for basic educational opportunity grants for 1978–79. Twelve pages, counting instructions. It looks like a very complicated income tax form. I defy any Member of the Senate to fill this form out correctly the first time.

Assuming that you are not a lawyer or a CPA, and you have tried to figure this out, you are just a little old second-year college student, maybe you have lived in this country 2 or 3 years, and are not too comfortable with the language, and you get down to the last line, and what does it say?

Any person who knowingly makes a false statement or misrepresentation on this form shall be subject to a fine, or to imprisonment, or to both, under provisions of the United States Criminal Code.

That is simplicity; if you make a mistake you go to jail.

Let us take an example of simplicity. Parents. Can you write a definition of a parent? Most students, I think, could grasp the idea of what a parent is. But listen to this:

If you are able to answer no—

The "no" is in big black letters—

to every—

"Every" in italics—

If you are able to answer no to every question for every year with regard to your mother and father, their financial information will not have to be provided. However, if some person other than a parent (or spouse) provided or will provide more than half of your support during 1978, you would complete section C with that person being considered your "parent." If you can still answer no to every question for every year, you would go on to section E. If you answer yes to any question for any year with regard to your "parent," you would complete section D using their financial information.

If you have understood it thus far, the last sentence is:

In no case would a spouse be considered to be the applicant's "parent."

Well, if it has gotten that bad, that we have to have a paragraph of instructions to state that your spouse cannot be your parent, I do not see how HEW could come in and argue that our provisions are too complex.

If I were a lawyer, I might devise some arguments against it, but what I would not have the audacity to do is use the argument that HEW used on control: "We do not want to give up these programs because we are going to lose control."

I had a debate with the president of the National Education Association, John Ryor, a televised debate, and two other people on this subject, with the argument on constitutionality, being raised by Mr. Ryor, who has his principal interest in primary and secondary education; there is no greater benefactor of primary and secondary education in the United States now than the National Education Association.

I said to Mr. Ryor, as he was arguing the constitutionality of primary and secondary education benefits, "All right, let us exclude the religious schools. Would you be in favor of benefits for the nonreligious schools?

His answer is no; he is opposed to any expenditure that is not controlled by public agencies.

Control by public agencies. Ladies and gentlemen, there it is. That is the nut of the issue we are talking about. When it comes to the education of our children or the education of ourselves, if we are putting ourselves through college, are we going to allow the parents or the students to choose their school, or to go to the primary or secondary school of their choice, pay their tuition, and take something off their income tax in a relatively simple, uncomplicated transaction, or are we going to continue to funnel the money through an agency that lost $7 billion through fraud, waste, and abuse last year, or 22 percent of whose loans are in default, administered by people who work for the Federal Government, making an average salary of $12,000 and who work for the Department of HEW, whose job it is to enforce these laws?

Are we going to follow that "simple procedure" or adopt the "complex procedure" Senator MOYNIHAN and I and others are contending for? Ladies and gentlemen, I leave it to you. I do not know how a more clear-cut issue can be presented to Congress than the issue of control over our lives by the Government, or control by parents or the students themselves by the passage of a bill that gives you the opportunity to decide where you will spend your educational money, when you want to spend it, and on what institution you want to spend it.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, we are scheduled to vote in just 2 minutes, I believe, on this matter, and I take this opportunity to observe that there are now 10 Senators on this floor, and of course the distinguished Senator from Colorado (Mr. HASKELL) is in the Chair.

I believe this is the largest number I can recall during this debate. Those Senators who have just arrived are welcomed to it. They might like to know that this is now the middle of the third day of a debate, during which, in the main, we have addressed an empty Chamber. To whatever degree we have succeeded in addressing what we feel to be important constitutional issues, what we have encountered here is an extraordinary degree of indifference. It is not our purpose to alarm, but hopefully it is to persuade, and it may be that in the remainder of the debate—which is by no means concluded—we will see more Senators participating, if only to the extent of listening passively.

We have tried to make our case as calmly as possible. We have tried to be factual. We have tried to state honestly the probabilities where there was no certainty. I do not know why there has been so little attendance.

It may be that the measure of detachment we have exhibited is not conducive to the engagement of an audience; but at all events, Mr. President, as the hour of 1 o'clock approaches, may I ask if the yeas and nays have been ordered on the amendment by Senator PACKWOOD?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MOYNIHAN. I then 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.

Mr. MOYNIHAN. I thank the Chair, and yield the floor.

The PRESIDING OFFICER. The hour of 1 o'clock having arrived, the question is on agreeing to the amendment of the Senator from Oregon (Mr. PACKWOOD). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND) and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 316 Leg.]

YEAS—56

Allen	Hansen	Packwood
Anderson	Hatch	Pearson
Baker	Hathaway	Proxmire
Bartlett	Hayakawa	Ribicoff
Bayh	Heinz	Roth
Bellmon	Helms	Sarbanes
Bentsen	Jackson	Sasser
Biden	Laxalt	Schmitt
Brooke	Long	Schweiker
Church	Lugar	Sparkman
Clark	Magnuson	Stevens
Curtis	Matsunaga	Stone
Danforth	McClure	Tower
Dole	McIntyre	Wallop
Domenici	Melcher	Weicker
Garn	Morgan	Williams
Goldwater	Moynihan	Young
Gravel	Nelson	Zorinsky
Griffin	Nunn	

NAYS—42

Abourezk	Ford	Leahy
Bumpers	Glenn	Mathias
Burdick	Hart	McGovern
Byrd, Harry F., Jr.	Haskell	Metzenbaum
Byrd, Robert C.	Hatfield, Mark O.	Muskie
Cannon	Hatfield, Paul G.	Pell
Case	Hodges	Percy
Chafee	Hollings	Randolph
Chiles	Huddleston	Riegle
Cranston	Humphrey	Scott
Culver	Inouye	Stafford
DeConcini	Javits	Stennis
Durkin	Kennedy	Stevenson
Eagleton		Talmadge
		Thurmond

NOT VOTING—2

Eastland	Johnston

So the amendment (No. 3474) was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1654

(Purpose: To limit the credit to post-secondary expenses)

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

The PRESIDING OFFICER (Mr. RIEGLE). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. HODGES) for himself Mr. HOLLINGS, Mr. ABOUREZK, Mr. BELLMON, Mr. DOMENICI, Mr. MARK O. HATFIELD, Mr. EAGLETON and Mr. BENTSEN, proposes an unprinted amendment numbered 1654.

Mr. HODGES. I ask unanimous consent that further reading of the amendment may be dispensed with.

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

The amendment is as follows:

At the end of the committee substitute amendment add the following new section:

SEC. . Elimination of policy references, constitutional references and credits and deductions for elementary and secondary school expenses.

Notwithstanding any of the aforesaid provisions of this committee amendment, any provision for a tax credit or deduction, be it property or income, for elementary and secondary education is hereby inoperative.

UP AMENDMENT NO. 1655

(Purpose: To limit the credit to post-secondary expenses)

Mr. HOLLINGS. Mr. President, I send a perfecting amendment to the Hodges amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) for himself, Mr. ABOUREZK, Mr. BELLMON, Mr. EAGLETON, Mr. DOMENICI, Mr. MARK O. HATFIELD, Mr. BENTSEN, and Mr. HODGES, proposes an unprinted amendment numbered 1655 to unprinted amendment No. 1654:

Strike out all after "notwithstanding" and insert in lieu thereof the following: "any of the aforesaid provisions of this committee substitute amendment, all references to elementary and secondary school policy and elementary and secondary constitutionality are inoperative, and any provision for a tax credit or deduction, be it property or income, for elementary and secondary education is inoperative."

Mr. HOLLINGS. Mr. President, I am glad to yield to the distinguished majority leader to see if we can get a time limitation agreement.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I take the floor at this time, and I thank the distinguished Senator from South Carolina for yielding, to ascertain the possibilities or the likelihood of our getting a time agreement of some kind on the pending amendment and on other amendments and on the bill.

Mr. PACKWOOD. Will the Senator yield?

Mr. ROBERT C. BYRD. If the distinguished Senator will continue to yield.

Mr. PACKWOOD. I just want to ask for a moment, as to it being read, this is a perfecting amendment, no amendments are now in order to that amendment, is that right?

The PRESIDING OFFICER. The Chair would advise that the amendment before us is in the second degree and, therefore, is not amendable.

Mr. PACKWOOD. Mr. President, I will object to any time limit. We have played very fair and square on this. We told of all amendments we were going to bring up. This is a total surprise. It is a low blow.

Mr. ROBERT C. BYRD. Mr. President, for the time being, I take it we cannot get one.

I thank the Senator for yielding.

Mr. HOLLINGS. Mr. President, I would like to claim my right to the floor.

I yield to the Senator from Wisconsin.

Mr. NELSON. Mr. President, I ask unanimous consent that Peter Connolly of my staff be granted privilege of the floor during debate and roll calls on the pending legislation.

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

Mr. HOLLINGS. Mr. President, let me make just a few comments with respect to the amendment.

The PRESIDING OFFICER. Will the Senator suspend to get order in the Chamber?

Can we have order, please, in the Senate Chamber.

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, for several weeks now, the matter of elementary and secondary tuition tax credit, or aid to elementary and secondary parochial and private schools, has been debated.

I have had one particular singular thrust. It is evident in the RECORD on Friday, in the RECORD numerous times yesterday, and in the RECORD now made by my perfecting amendment in the second degree.

I did not want to engage in the higher education debate. I did not want this misunderstood or confused by technicality. I thought fundamentally—not just constitutionally, but fundamentally—it was unsound to begin general assistance coming from the Federal Government in education, and going to the private and parochial schools, while it was simultaneously prohibited from going to the public schools.

My intent was clear. They talk about playing fair, and maneuvering around. Mr. President, it is they who have been maneuvering, they who have been amending their own amendment, they who have been in and out of the Finance Committee twice, they who said, "No, take the refundable credit out, but, by the way, we'll put it back in later for you. Or we will agree on the constitutionality, but, no, we now have language with respect to the preambular section on the constitutionality."

I just could not keep up with the maneuvering, if we are going to talk about who is playing fair.

So I consulted parliamentary procedure brilliance and I said, "How in the world do I do this?" I figured out that this was the only way fairly to do it, to get a perfecting amendment to a perfecting amendment, namely, one in the second degree. There would not be any substitute, there would not be any perfecting amendments to it. So, my colleagues, in fairness—and I emphasize that word—my colleagues then in fairness would understand. They would not have to race to the floor and say, "Wait a minute, what is this, what is this change," and so on. They all understand this now after 3 days of debate. They understand our amendment by the distinguished Senator from Arkansas and the distinguished Senator from Texas, the distinguished Senator from South Dakota, the distinguished Senator from Oklahoma, the distinguished senior Senator from Oregon, the distinguished Senator from Missouri, and the distinguished Senator from New Mexico.

We have always debated credits for higher education. We have passed it six times in the U.S. Senate in the past 10 to 12 years. But this is the first real attempt and novel attempt, if you please, to put general assistance into the private and parochial schools. And yet they come and say now, "We are going to keep you from hogging it all." Let us find out who hogs it all.

Mr. MOYNIHAN. Will the Senator yield for a question?

Mr. HOLLINGS. No, not now. I have been listening for 3 or 4 days, I know where I am right now and I want to say where the benefits go and who hogs it all.

Because there are approximately 74 million families in America, but there are 56.1 million families in the Nation that have children in the elementary and secondary schools, or at least eligible for it.

We estimate that of the 44 million students in elementary and secondary schools in this Nation, roughly 5 million are enrolled in the private sector. If we assume each of these 5 million students belongs to a separate family, we would say $\frac{5}{56.1}$ million or 9 percent of all families in the Nation had children in private and elementary schools.

However, Mr. President, the average number of children per family for all families in the Nation with children ages 5 to 17 is 1.9. Catholic families average 2.6 children per family. More than 67 percent of the children in private and elementary and secondary schools are in Catholic schools, a figure has been pointed to of 75 percent, but the ones I rely on for this discussion are figures furnished by the Department of HEW.

So if we formulate that out we come to slightly over 3 percent of the families in the Nation have children in private elementary and secondary schools, if all families with children in private schools send all their children to these schools.

Now, who is going to hog it all?

I refer, if you please, for Senators who were not on the floor yesterday to the Senator from Oregon's expression when he said, and I quote from the RECORD of yesterday, page 25813:

Just as a century earlier the church "ins" did not want to share any of their money and wanted to hog it all, now the public education lobby, especially led by the NEA, wants to hog it all and not share it with anybody.

Now, let us see who is hogging it all, for we come down to a little over 3 percent of the families in this country are eligible and are going to enjoy this great democratic initiative.

But the Senator from New York is talking about the Democratic Party, if you please. We will not go into that. Let us get to the facts here.

Now, family income, let us see what it says. It says here the family income, the percent of the total benefits for this particular bill from zero to $15,000 in 1980, only 12 percent of the families in that income group are going to enjoy any benefit out of this particular bill.

The remainder of the recipients the 88 percent, are above $15,000.

I can break it down for 1980 to 1983. I can do it from the $15,000 to the $25,000 bracket, $25,000 to $30,000, $30,000 to $40,000, and over $40,000.

Eighty-nine percent of the families in the great State of South Carolina make $15,000 or less. So look at this. Eighty-eight percent of the benefits, I say to the Senator, go to about 10 percent of the people of South Carolina.

They say, "Senator, why are you so excited about this?" And then they get off on constitutionality.

We start reading about Irish mythology and the habits and practices within the church here, there, and yonder. We are not trying to get into a church argument. We are trying to get into an education argument—an argument on the matter of education and education alone.

We can see exactly what is occurring. The Senator from Rhode Island on yesterday was trying to point out that the public schools are not shoving them out. We can go to all the States. I do not want to dwell too long on too many points when I get a few Senators who will listen, but between 1970 and 1975, we can see the facts.

In the State of Kansas, there was a 12.9 percent decline in enrollment in the elementary and secondary public schools. I am looking at the declining enrollments, table 1 of the State school systems.

We look at North Dakota: 10.2 percent decline in enrollment in public elementary and secondary schools; Oklahoma, 5.7 percent; Iowa, 6.6 percent.

What we really have is a decline between 5 percent and 13 percent in enrollment in public school education because of the birthrate, the declining birthrate in America. That occurred also in the private schools.

The Senator from New York said earlier this morning that is when the crisis started. The crisis started, he said, when we got declining enrollment in the private schools. So he will do something for the private schools when the crisis starts there.

But here is our charge, as Senators. The duty of the Government, for the public, is to public schools. The duty of the Government for the private schools is to leave them alone. That is what we are trying to do.

We give targeted, categorical aid for disadvantaged in the private schools. We do not demean private education. People have that choice and that right to decide where to send their children to school.

A lot of my friends—I cannot say a majority of my friends, one way or the other—but many have had children in both private and public schools right here in Washington, D.C. I have had children in both public and private schools iri Washington.

The fact is that we have tried our level best to stay out of the administration of the public schools at the State and local level, and that is why we have resisted effort after effort and only come in with categorical grants for disadvantaged, bilingual, handicapped, and the various titles. We never went to general aid for public education, because we knew that was one of the finest strengths of America—the public education.

As Madison said, "Popular government without popular education is a farce and a tragedy."

We have relied on public education over the many years, and we have relied on its diversity and its pluralism.

Every time we run proponents of this measure up a tree and show them court decisions that they cannot ignore, and every time we get them in a corner somewhere, they burst out with "pluralism" and "diversity." Where is there more pluralism and diversity than in the 107,000 public schools in America, administered by 16,000 elected school boards? Are you going to get that pluralism in the church school?

Let us be honest. If I wanted to compare, say, my public school in Charleston, S.C., with a public school in Washington, D.C., I probably would find there was great diversity between the two. If I wanted to find a similarity, I could take a parochial school in my hometown and a parochial school here, and find that similarity.

I know where you would find the sameness: At Andover, Phillips Exeter, Lawrenceville, and St. Paul, with endowments of $50, $60, $57 and $45 million.

Hog it all? Who is hogging it all? We cannot get the benefits. They give them all to the rich. They give them all to the private schools. Public schools are open to everyone, but, in the name of equity and justice, they want you to put in tax money that goes to a church school or a private school—and they have admission policies. They have selectivity.

I have one person on my staff who graduated from a Catholic elementary and a Catholic high school, and if I have to produce the witness, I will give the empirical evidence the Senator from New York wants. Not one black was in that parochial school during her elementary or secondary school years. That is historically the way it has been. Let us be honest with each other.

Who gets into the schools? I told yesterday of my experience in trying to get my boy into St. Albans. They said, "Your son is all right, but we are looking for some young lads with voices. We have a famous choir." That is their right; that is fine. My boy sounded like his daddy. He sounded lousy. He did not have any voice, so we did not get him into St. Albans.

We went to another school. They said, "We have enough children of Congressmen and Senators." They must have known something about us Senators long before the Roper poll and the Louis Harris poll, about the public disregard for Congressmen and Senators. They told me this 12 years ago. This is a very perceptive school in the city of Washington. They have admissions policies.

The bill has the public giving public money where there is no control whatsoever.

On top of this, they talk of competition. When they get through with diversity and pluaralism, then they jump to competition. Let us talk about the fairness of this kind of competition.

In 1965, when we passed the Equal Educational Opportunity Act, the States and localities said, "Look, we don't have the money." So we said, "All right. We passed the Elementary and Secondary Education Act. We gave them Title I for the disadvantaged, and title IV."

Then we came under section 504 of the Vocational and Rehabilitation Act, and the distinguished senior Senator from West Virginia is familiar with this one. The senior Senator from West Virginia was a leader, and has been a leader for many years, with respect to the vocational and rehabilitation program.

We gave assistance to the handicapped. Then the bilingual. We said, "Congress mandates bilingual capabilities in the public education system of America." This was because, for example, many Spanish-speaking kids came in and did not have the understanding or comprehension to obtain an education, to receive the curriculum. So we did this on bilingual education.

Imagine the public schools, over here in the corner. We are getting ready for the contest to compete. The public schools are weighted down by the requirements of Congress and the Supreme Court of the United States—the Law decision on bilingual, the Swann decision on equal education opportunity, and so on. Having been weighted down in the corner with all these requirements, we have to take the difficult problem; we have to take the unprepared; we have to take the handicapped; we take them all, going right down the line.

Then, having been burdened by all these, Congress is now supposed to say, "we need a little diversity, a little pluralism, and a little competition, so we are going to give a little money to the private schools that do not have any of that."

What kind of competition are they talking about? You have your hands tied behind your back while you try your admirable best on the local level.

The people of California, after voting for proposition 13, were polled. They were asked, "What are you going to cut out?" They said, "Cut down on some of that bureaucracy at city hall. Cut down even on the police protection and the fire protection. But, last of all, do not interfere with public education."

People are supporting the public schools. One Senator said on yesterday they were in terrible shape; we have discipline problems and all the rest.

When I was in school and when the Senator from West Virginia (Mr. RANDOLPH) was there, they could cane you and toss you out. The private school does not toss you out. The private school does not let you in in the first place. They are selective. It has done pretty good. You do not even get in. You get suspended quick in private education. But now under public education the policy is, under the national Congress, do not suspend the child, keep the door open, and let us work with the child.

I think that is commendable.

Let us try our best. But as we try, let us not cut and run. When they do have

that problem child, it is not a deterioration.

The contrary is true. We are paying public school teachers better. The programs are now getting back to the basics. We are having public support for public education. And I refer only, if I may, to the letter of the coalition to see those who understand public education and what the issues are. You cannot often get people in this fragmented society to get together on anything. You just really cannot.

The farmers come up and they bring billygoats in your office, sit down and demand, "you vote for this Senator or I strike. One hundred percent parity, or nothing."

Everyone comes in. They want to strike. I was here earlier this year with a hearing before my Subcommittee on State, Justice, and Commerce, and the FBI was out there striking. The doctors downtown in Washington were striking. Everyone strikes.

Is it not interesting that we now have an issue upon which the public generally can come together as a coalition? There are the American Association of Colleges for Teacher Education.

American Association for Health, Physical Education, and Recreation.

American Association of School Administrators.

American Civil Liberties Union.

American Ethical Union.

American Federation of State, County, and Municipal Employees.

American Federation of Teachers, AFL–CIO.

American Humanist Association.

American Jewish Congress.

Americans for Democratic Action.

American United for Separation of Church and State.

A. Philip Randolph Institute.

Association for International Childhood Education.

Baptist Joint Committee on Public Affairs.

Coalition of Labor Union Women.

Council for Educational Development and Research.

Council for Exceptional Children.

Council of Chief State School Officers.

Council of Great City Schools.

Division of Homeland Ministries, Christian Church (Disciples of Christ).

Federal Education Project of the Lawyers Committee for Civil Rights Under Law.

Horace Mann League.

Labor Council for Latin American Advancement.

League of Women Voters.

National Association for the Advancement of Colored People.

National Association of Elementary School Principals.

National Association for Hearing and Speech Action.

National Association of Secondary School Principals.

National Association of State Boards of Education.

National Coalition for Public Education and Religious Liberty.

National Committee for Citizens in Education.

National Congress of Parents and Teachers.

National Council of Churches.

National Council of Jewish Women.

National Council of Senior Citizens.

National Education Association.

National School Boards Association.

National Student Association.

National Student Lobby.

National Urban Coalition.

National Urban League.

Student National Education Association.

Union of American Hebrew Congregations.

Unitarian Universalist Association.

United Auto Workers.

United Methodist Church, right on down the line from every angle.

Again I quote my friend in his debate. He says when you pose this, and I quote the Senator from Oregon on yesterday:

> It is an anti-Catholic bigotry that has existed in this country for the better part of a century and a quarter, at least in the school system, and continues to exist in the minds of many people today.
>
> The irony today is that it is no longer just anti-Catholic. It is anti-religious. . . .

Mr. President, it is not that at all. The groups I have just named destroy that argument.

What we point to is what Justice Douglas and others said about public education. Earlier in the history of this country, when he was talking and writing in his famous document, and this is one of the real liberals and minds of our time, Justice Douglas said:

> Horace Mann, the educator, once said that this law laid the foundation of the present system of free schools. The idea of an educational system that was at once both universal, free, and available to all the people, rich and poor alike, was revolutionary. This is the great thing about America. No other nation ever had such an institution. Three centuries later it is a stranger to the bulk of the people of the world. The free public school system which puritans conceived has been in large measure the secret of America's success. In these classrooms children of all races, nationalities, and tongues learned a common language and became imbued with one central idea, the American conception that all men are created equal, that opportunities are open to all, that every minority, whether respected or despised, has the same guaranteed rights as the majority. Parents who landed here often brought with them the antagonisms, the rivalries, the suspicions of other continents, but their children became one and united in pursuit of a democratic ideal.

If there is any meaning to the United States of America there it is in that little paragraph by Justice Douglas. It tells us what we are really concerned about. The Senator from Arkansas and I, both with experience in our own States, have tried to maintain our way of life, we have tried to maintain the integrity of the law of the land, the constitutional decrees of Brown against Board of Education, and all the other decisions, that there be a unitary school system, that we have the different programs in order to bring about equality within education. And the public schools have been through a traumatic state in the last 20 to 25 years, but they are stabilizing, they are rebuilding. We are bringing back discipline. We are getting parental interest, and we are working hard because we share the thoughts Justice Douglas described so eloquently.

Instead, in the name of diversity, pluralism, justice and equity, the other side wants to start rewarding the protest schools, and we know exactly what that means.

We have some pretty good ones. The parents have every right in the world to send their children there. That is their privilege. It is not our position here to deter that kind of freedom of choice. They can choose any private school they want, and they have my respect. That is their business with their children, and I am never going to try to get in between a parent and his child. But do not come to the Senator from South Carolina and say, "Senator, we want you to take public tax moneys and finance this," because we went from some 30 private schools 20 years ago in my State to 207. They broke out like measles. They have had now about a 10-year trial period, and they are not working out too well. There is just not that much money. They never talk about the budgetary implications there. But there is not that much money to finance a dual school system.

The little schools and the academies did not have moneys for gymnasiums. They did not have moneys then for a library. They did not have moneys for a physics or science lab and as a result they are not giving as well-rounded an education. They are not giving all that diversity they are talking about.

Senator MUSKIE talked about the Trojan horse yesterday. It looked like a nice gift, shiny in broad daylight and so appealing, but then when dark came, the horse opens up and there is a foot in the door, and you have on your doorsteps a budget buster. Every fact and figure that we have from the Budget Committee shows it is a budget buster.

I ask unanimous consent to have printed in the RECORD a letter, dated August 10, with an enclosure and stated amounts from the Congressional Budget Office.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 10, 1978.

Hon. ERNEST F. HOLLINGS,
Committee on the Budget,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLINGS: In response to our meeting yesterday, we have estimated the costs of the proposed tax credit (H.R. 12050) if it were fully operational in fiscal year 1978. The total costs due to the inclusion of elementary and secondary education would have been $1.15 billion or $217 per student enrolled in private schools.

In fiscal year 1978, federal education grant programs provided $115 and $61 per student in public and private elementary and secondary schools, respectively (see attached Table 1). If the tuition tax credit had been fully operational in that year, total federal support would have been $115 and $278 per student in public and private schools, respectively.

Support for education also results from the tax expenditures associated with the tax deductibility of state and local tax payments and charitable contributions to schools. Esti-

mates of the levels of these tax expenditures are, however, highly uncertain. If this support is added to support from current grants and the proposed tax credit, the federal support per student would be $229 and $325 in public and private schools, respectively (see attached Table 2).

We enjoyed meeting with you yesterday. Should you need further assistance, do not hesitate to call.

Sincerely,

DAVID S. MUNDEL,
Deputy Assistant Director for Human Resources and Community Development.

TABLE 1.—*Direct Federal support for elementary-secondary education by type of school (dollars per student in fiscal year 1978)*

	Public	Private
Direct Federal outlays[1]	115	61
Proposed tax credit (H.R. 12050)[2]	0	217
Total direct support	115	278

[1] Includes all programs within budget subfunction 501 (Elementary-Secondary Education) except Human Development Services Programs (Head Start, etc.) and the post-secondary portion of vocational education support. Library programs and special projects funds are also included.

[2] Assumes that H.R. 12050 would be fully operational in FY 1978. If enacted as currently drafted, H.R. 12050 would have no elementary and secondary costs in FY 1978.

TABLE 2.—*Total Federal support for elementary-secondary education by type of school (dollars per student in fiscal year 1978)*

	Public	Private
Direct Federal outlays[1]	115	61
Proposed tax credit (H.R. 12050)[2]	0	217
Total direct support (excluding existing tax expenditures)	115	278
Current tax expenditures (estimate)	114	47
Total support	229	325

[1] Includes all programs within budget subfunction 501 (Elementary-Secondary Education) except Human Development Services Programs (Head Start, etc.) and the post-secondary portion of vocational education support. Library programs and special projects funds are also included.

[2] Assumes that H.R. 12050 would be fully operational in fiscal year 1978. If enacted as currently drafted, H.R. 12050 would have no elementary and secondary costs in fiscal year 1978.

(Mr. PAUL G. HATFIELD assumed the chair.)

Mr. RANDOLPH. Mr. President, will my knowledgeable friend from South Carolina yield?

Mr. HOLLINGS. Yes.

Mr. RANDOLPH. I do not gather from your remarks that you are against collegiate and university education that is private or church-related?

Mr. HOLLINGS. The Senator's impression is correct. I am not talking to higher education. The fact is, the RECORD will show, that the Senator from South Carolina has supported and voted for tuition tax credit for higher education at least four times.

Mr. RANDOLPH. I think over and over again this point must be made——

Mr. HOLLINGS. Yes.

Mr. RANDOLPH [continued]. By you, because here there are two strata of help, is that correct, that are involved?

Mr. HOLLINGS. That is exactly correct, two strata of help involved, differentiated in fact and in law. The lower strata is no impact on religion. Look at the facts in the universities, look at the Lutheran colleges, look even at the Catholic universities, look at the various church schools, Trinity University, Duke, look at Furman, the Baptist school.

We found yesterday, for example, that the student body complement at Furman University is somewhere less than 40 percent made up of Baptists, so they are not of the one religion. The faculty is not in habit or garment, there is no nun or priest within the order. On the contrary, the majority of the faculty could be of any religion.

The emphasis, unlike elementary and secondary schools, is not on the catechism or the principles and precepts or faith of the Catholic or other church faith. On the contrary, you can go all the way through these particular church colleges that you talk about and never take a particular church or religion subject. You can get a degree.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. HOLLINGS. Wait a minute, I am not finished. I am not going to yield now.

So you get that particular difference in higher education not because just of impressionability. The Supreme Court found that particular age, children did not have the impressionability that people of the age in elementary and secondary schools have.

You know, it is tough for you and for me—you had a son in college and I have had three children in college already—and it is hard to keep up and pay the bills, without wondering about what is going on in their minds. You are just like a tenth-round boxer. So impressionability is not there.

You can take little children and come up to me and I will teach them Bible school lessons in a parochial school. You cannot take that college student, unless he learns otherwise, and teach him the same way. So you do not have the impressionability.

Then, finally going to the makeup of the entire student body, 80 percent of those in higher education are in the publicly supported, in State, local, universities, and colleges of one kind or another. Less than 20 percent are in the so-called church colleges; whereas 85 to 95 percent in private elementary and secondary education are in the parochial schools. So the money given is obviously money that impacts upon a religion at the elementary and secondary level. The money given at the higher level obviously does not impact upon a religion, and that is the finding in the GI bill of rights.

Mr. RANDOLPH. Well, the Senator make a very important point in connection with the primary and secondary education, and his percentages as contrasted with the collegiate levels of education. This is very important.

Mrs. Randolph and I have not had one son but two sons in college, and we understand the problems that parents have. I do say we are glad to report here—and, perhaps, it is not a part of the record, it is too personal—that our two sons were working their way through college, sir, as perhaps was your son and other sons.

Mr. HOLLINGS. Yes.

Mr. RANDOLPH. In connection with the college with which I have had a particularly close affiliation, it was principally founded by my grandfather, who had only five winters of schooling. That is all he had, did Jesse Randolph. Yet he rode horseback through the valleys and over the hills to bring into being a college.

We must remember that in the State of West Virginia in earlier days we did not have our university system, we did not have our State college system, we did not have our community system of schools with 2 years of training, but we did have those persons who are, let us say, members of certain religious organizations who were realizing that it was very, very important not to work upon the creed of a particular denomination but there was, sir, the responsibility of church people to bring an independent college into being.

So that happened in West Virginia. It happened in South Carolina. Today, of course, the figures of the enrollments are with the State-supported institutions. But even though it is apart from what the Senator is saying or others may say here today, I am a strong believer in higher education, in the independent or the church-related institutions of learning. I believe that is very important in our country.

I think we lose something if we simply rely upon public-supported universities and colleges and the junior colleges. I think these independents, so-called church-related, colleges as they began but are more independent now in nature, that there is a very important place they have to fill.

Today many families, parents and students alike, are searching for alternatives to the assembly-line teaching of many thousands of young people who are ill-equipped to go on to higher education or to enter the work force. They are searching for schools where the ratio between faculty and student is small, where there is a personal contact between student and scholar. They search for institutions where there is an emphasis on scholarship, on character and integrity, and where there will be equal opportunities for all.

If diversity in our society is a virtue, and most assuredly it is, then it is surely a continuing necessity that we work together to see that it survives.

I join with my colleague (Mr. HOLLINGS) in supporting this amendment which would eliminate the provision for tuition tax credit as it would apply for elementary and secondary schools. I believe that we must find ways to

strengthen and maintain our system of private education at the elementary and secondary level, but I do not feel that this proposed legislation is a realistic way of approaching the problem at this time. To promote a true diversity in our education system and maintain the standards of excellence which we desire will require the collective efforts of the Members of Congress. All segments of our society must work to achieve an equitable and effecitve solution. Does the Senator agree?

Mr. HOLLINGS. I definitely agree. There is not any question about it. I appreciate the place they do fill. I just do not think it is our responsibility, I think we would be remiss in our responsibility, if we started to interpose the Federal Government.

Our President ran on a program of getting away from bureaucracy, Washington control, Washington involvement, and Washington regulations. On that particular score that is one reason why the Council of Churches feels as it does, and the same applies to the various organizations, whether they be Presbyterian, Methodist, or Baptist, all down the line. When the Roper Survey came out the week before last it showed two-thirds of all Americans opposed the private elementary and secondary tax credit. And it found that of the Catholic citizenry of this land, only 43 percent favored tuition tax credits for elementary and secondary parochial schools, while 48 percent opposed tuition tax credit for the elementary and secondary parochial schools.

So when we talk about the people, the people know and appreciate this. They do not want government interfering with their parochial school and their private school system. They enjoy it and they appreciate it. But there are a few who have become overzealous about the Democratic Party platform, and a few other things, who keep running up here trying to have a misreading of history—they call it a fair reading of history. It is a misreading of history.

I am trying to yield—I thank the Senator very much.

Mr. RANDOLPH. I have not finished.

Mr. HOLLINGS. No, I appreciate the contribution the Senator is making to the dialog.

Mr. RANDOLPH. I shall be very brief.

Mr. HOLLINGS. Yes.

Mr. RANDOLPH. The two sons I have mentioned that Mrs. Randolph and I have had in the college and university level of education, both of those young men as they went through the primary and secondary, that is the grade and the high schools, were in the public sector. The Senator understands that?

Mr. HOLLINGS. That is right.

Mr. RANDOLPH. We believed in that.

Mr. HOLLINGS. That is right.

Mr. RANDOLPH. Then we believed when they came, if they so desired and we so desired, in the collegiate and university level of education that that was a decision that would be made as to whether it would be a public university supported by public funds or whether it would be an institution of whatever type, whether it is Salem College or Yale University or what-not, and that is the way it should be; is that correct?

Mr. HOLLINGS. That is correct. I agree with the Senator.

Mr. RANDOLPH. One further question.

Mr. HOLLINGS. I welcome it.

Mr. RANDOLPH. The Senator talked about everybody striking. That was an expression the Senator used.

Mr. HOLLINGS. That is right, I feel it and I see it.

Mr. RANDOLPH. And only because the Senator expressed alarm, depart from the primary educational problem. Would the Senator tell us, does he believe that public employees have the right to strike?

Mr. HOLLINGS. No, sir; I do not.

Mr. RANDOLPH. I thank the Senator. I believe as he believes.

Mr. HOLLINGS. I thank the distinguished senior Senator from West Virginia (Mr. RANDOLPH). He has been in the Halls of Congress since 1933.

Mr. RANDOLPH. It has been a challenging time.

Mr. HOLLINGS. JENNINGS RANDOLPH was a college professor when he was first elected to Congress. He was a dean of a university and served as a college trustee for over 50 years. He has served in private industry with distinction.

He came to the Senate in 1958, is on the Education Subcommittee. Our colleague has been an active sponsor of legislation for educational and training opportunities. He has been effective in the formulation and passage of such landmark legislation as the Elementary and Secondary Education Act, the Higher Education Facilities Act, the Library Services and Construction Act, the Education for the Handicapped Act, and others.

Probably no Member of Congress is better equipped by experience and expertise for the tasks he has undertaken. His comment on this particular subject is exceedingly helpful to both sides of this issue.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. HOLLINGS. Yes; I yield the floor to the Senator from Virginia.

Mr. SCOTT. I appreciate very much the Senator's yielding.

Certainly, Mr. President, I support the amendment of the distinguished Senator from Arkansas as amended by the amendment of the distinguished Senator from South Carolina. However, I do rise in opposition to the bill before us without these amendments.

I have in the past cosponsored tax credits to assist parents with college expenses, and I heard the distinguished Senator from West Virginia speak of his own children. Such a measure would not benefit me personally; I am rather proud of my own three children having a total of 55 years in school between them, all of them graduates of a State-supported school, the College of William and Mary, but then going to different schools for graduate study, the older daughter going to Cornell University and the two boys to the law schools, one at William and Mary and one at the University of Virginia.

So I know, as other Senators know, that whether they go to a private school or to a public school, there are expenses in connection with sending your youngsters through college. But I have a little reservation, even, about this bill, that portion, now, because it looks as though some would use it as a vehicle to obtain tax credits for elementary and secondary tuition.

The bill presently before us, providing assistance for parents who send their children to private or parochial elementary or secondary schools, in my opinion would be expanded over the years to increase the amount of aid, in the event it should be found valid by the Supreme Court.

All parents have the right, in my judgment, to determine whether their children should attend the public school system or attend either a private or a parochial school. I am in agreement with their right to make that determination. However, the public school system, supported by tax funds, is available to all children, regardless of their political persuasion, regardless of their race or their ethnic background. To me, it would be unreasonable for taxpayers who support a public system of education also to be required to contribute to the cost of the education of children whose parents prefer to send them to a private or a parochial school.

There is no doubt that the cost of maintaining three different systems of education—and I believe we do have to think of this as three different systems, the private school system, the parochial school system, and the public school system—at public expense would be greater than the cost of maintaining one unified system for all of the children whose parents choose to send them to the public school.

In the Nyquist case, involving tax credits, the Supreme Court, at page 797, referred to the initial cost, and indicated that the programs start at modest levels, but that long experience with those Federal and State governments indicated that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies; and that the greater the class of recipients of aid, the greater the pressure for accelerated increases.

Moreover, the State itself, concededly anxious to avoid assuming the burden of educating children now in private and parochial schools—may we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order.

The Senator from Virginia may proceed.

Mr. SCOTT. Moreover, the State itself, concededly anxious to avoid assuming the burden of educating students now in private and parochial schools, has a strong motivation for increasing this aid as public school costs rise and population increases.

In this situation, where the underlying issue is the deeply emotional one of church-state relations, the potential for seriously divisive political consequences needs no elaboration.

It is interesting to note that pages 23 and 24 of the bill provide for an expedited review of the constitutionality of the educational expense credit, including an appeal to the Supreme Court, while at the same time the first section of the bill, section 1(b), entitled "Declaration of Policy," indicates that the Congress further finds that the provision of such assistance in this manner fully complies with all the provisions of the Constitution of the United States, that it does not constitute excessive Government entanglement with religion, that it is wholly secular in purpose, and that such assistance will neither advance nor hinder religion.

It also appears unusual that the findings of the Congress fly in the face of the opinion of Attorney General Bell that the measure is unconstitutional.

If it is wholly secular in nature, it seems unusual for Catholic priests, from the pulpit, to be urging their congregations to contact their Senators, to obtain favorable votes on this legislation.

Mr. President, I am well aware of the Packwood amendment being adopted last night, that would eliminate portions of the objectionable feature, and the fact that the amendment before us by the Senator from South Carolina would in itself tend to eliminate part of this. But I had not known. The distinguished Senator from Oregon mentioned that he has always dealt fairly, and that he has never taken anybody by surprise. I had already prepared my remarks with no knowledge, no indication that there would be a change in this bill. I do thank the distinguished Senator, however, for eliminating a congressional finding of constitutionality, because in my judgment the courts, regardless of the findings of Congress, will make their own determination as to whether a measure enacted by Congress is a violation of the Constitution or not.

Of course, there are faults in our public schools, as is true in the case of every public and private institution, and I would hope that we would work to improve the quality of education. Yet the American public school system is a cornerstone of our Republic. It has contributed mightly to national stability, to equality, to greatness. For roughly 150 years our public schools have demonstrated a method of achieving an enlightened and unified citizenry, in assisting the children of those coming to our shores from different lands, from various cultures and religious backgrounds, speaking different languages, and of different intellectual qualities, to become united into one nation. This is part of the traditional American melting pot.

Therefore, it would seem reasonable to me that its preservation should be of vital concern to all Americans.

The sense of community closeness, or equality, is bound to be developed when children attend school together for a period of 12 years, beginning in early childhood. To me this is part of the strength of America; and providing subsidies to encourage parents to remove their children from the public schools will tend to diminish this unity and this strength. We might well ask whether new immigrants coming to our shores will bridge the language difficulties and the cultural differences between their old and their new countries as readily if we weaken the public schools of the country. I am quite aware, Mr. President, that many Members of Congress are disillusioned with teachers sometimes going on strike, with their interests sometimes appearing to weigh more heavily on their own economic welfare than the welfare of the children they teach, of the demands made by the leaders of their unions, by whatever name they may be called; but if we disagree with some of these policies, it would appear that we should attempt to change them rather than to do what may result in irreparable damage to the public school system.

While the public school system has been the melting pot, the place where children from all backgrounds can come together and develop characteristics of good citizens which we feel are laudable, parochial and private schools may emphasize ethnic differences. I would hate to see a classification of Chinese children, or Jewish children, of Italian children, of Spanish children rather than children—American children. Children from throughout the world coming to our shores attending our public schools can develop much more unity than if they are divided along ethnic or religious grounds.

We see an example of this in our neighbor to the north where the French-speaking Province of Quebec is threatening to break away from the rest of Canada. In other words, Mr. President, I disagree with the declaration of policy in the bill that would have Congress declare it to be the policy of the United States to foster diversity and pluralism at taxpayers' expense. Those words are still in the policy statement of the bill. In a different vein, some of the religious leaders who support this bill might consider whether they want to continue the right to govern their parochial schools, to provide textbooks of their own choosing, and to use their own methods of teaching of children rather than to have more policies dictated to them by State and Federal Governments. While the declaration of policy refers to tax credit that will be made available to those schools which fully comply with all the applicable Federal and State laws and requirements, including civil rights provisions, the language is more detailed at page 26 under section 3 entitled "Report on Civil Rights Enforcement by Internal Revenue Service." Does the parent who voluntarily sends his child to a private or parochial school want our Federal Government to exercise the same type of control over those schools as they now exercise over the public schools? Many of the private schools were constructed in order that children could escape some of the regulations affecting the public schools. But if tuition grants or tax credits are commenced and expanded, is there any doubt in the mind of any thinking person that the private and parochial school leaders will not be as free to make decisions governing their schools as they are today?

In the opinion of the Attorney General, S. 2142, the Packwood-Moynihan bill, now included to a large extent in H.R. 12050, is unconstitutional. The Attorney General finds that the establishment clause of the first amendment prevents the Federal Government from making tuition grants or tax credit for nonpublic elementary and secondary education. To support his opinion he relies to a large extent on the cases of *Committee For Free Education* against *Nyguist*, 413 U.S. 756 (1973), and *Sloan* against *Lemon*, 413 U.S. 825 (193), a companion case. The court found the State law examined in these cases to be unconstitutional under the three-part establishment clause tests enunciated in *Lemon* against *Kurtzman*, 403 U.S. 602 (1971).

To be valid the statute must first have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an "excessive entanglement with religion." Section 1b of the measure as reported by the committee provides attempts to meet these objectives by merely stating that the Congress finds that such conditions exist under this bill. If Congress had the power to determine the constitutionality of a bill it enacts, there would be no need later on in the bill to have an expedited review of its constitutionality. In fact, the courts would be relieved of part of their judicial duties by action within the legislative branch. But under the division of powers, while an act of Congress is presumed to be constitutional, the ultimate decision is made by the courts.

On the surface, Mr. President, it would appear that the authors of the bill intend to make an unconstitutional measure more palatable by stating that Congress finds that it is constitutional. I had intended to offer my amendment No. 3461 at a later time to strike section 1B, the declaration of policy provision, and to permit the Court to determine whether or not the bill, in all of its ramifications, is valid or invalid. I believe the Court will do this in any event but why should we attempt to hamstring the Supreme Court of the United States in the performance of a judicial function? There may still be objectable features in 1(b) even with the Packwood amendment.

I believe the amendment by the distinguished Senator from South Carolina, if adopted, will eliminate this and it will not be necessary for me to offer my own amendment. But should that be defeated, then I do propose to offer the amendment.

During the past decade, I believe every legislative effort, both State and Federal, to give aid to parochial schools beyond the furnishing of text books and transportation has been held invalid. The question of tax credits or tuition grants to parochial schools by the State of New York was decided to be invalid by the Supreme Court in the Nyquist case and on page 785 of its opinion, the Court refers to the various ingenious plans for channeling State aid to sectarian schools that periodically reach this Court.

On page 790 of the same opinion, the court indicates that "constitutional an-

alysis is not a legalistic minuet in which precise rules and forms must govern, instead we must examine the form and the relationship for the light it casts on the substance."

At page 792, the Nyquist case states:

Indeed it seems clear that tax benefits for parents whose children attend parochial schools are a recent innovation, occasioned by the growing financial plight of such nonpublic institutions and designed, albeit unsuccessfully, to tailor state aid in a manner not incompatible with the recent decisions of this court.

It seems obvious that the bill before us, and especially section 1b, the declaration of policy provision, is tailored to meet decisions of the Supreme Court that direct or indirect aid to parochial schools in the form of tuition grants or tax credits at the elementary or secondary school level is contrary to the establishment clause of the Constitution. Again, it appears unworthy of what we like to believe is the greatest deliberative body in the world to attempt to foist an unconstitutional law upon the courts and the American people by labeling it constitutional.

Before discussing recent cases to a greater extent, it might be well to reflect a bit on the first amendment. We often times hear about first amendment rights as they pertain to freedom of the press, but the amendment begins:

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

A Virginian, James Madison, played a major part in the drafting of this amendment, although, he is understood to have been influenced by Jefferson, who believed that the bill provided a wall of separation between church and state.

Mr. President, that should read "bill" because I am talking about the Virginia Statute of Religious Freedom. I am perhaps more partial to that, it being something that is a part of the law in my own State and something that was put together by two prominent Americans, Madison and Jefferson, both of whom happened to be Virginians.

A portion of the Virginia Act of Religious Freedom after the enacting clause reads as follows:

That no man shall be compelled to frequent or support any religious worship, place of ministry whatsoever, nor shall be enforced, restrained, molested, or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinion or belief; but all men shall be free to profess, and by argument, to maintain their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

The act, of course, has not been changed or repealed and indeed has been reaffirmed time after time, the most recent affirmation, I note, being in 1919. However, a similar provision is embodied in the State constitution.

Over the years, the portion of the first amendment of the Federal Constitution relating to separation of church and state, and especially the establishment clause, has been subject to judicial interpretation, and been subject to some changes as the membership of the Court changed. Perhaps it would be well to review this before returning to the latest cases.

The explication of the religion clauses by the scholars has followed a restrained sense of their meaning. Story thought that—

The right of a society or government to interfere in matters of religion will hardly be contested by any persons, who believe that piety, religion, and morality are intimately connected with the well being of the state, and indispensable to the administration of civil justice.

Story, in his "Commentaries on the Constitution of the United States" looked upon the prohibition simply as an exclusion from the Federal Government of all power to act upon the subject. He said:

[Footnotes not included.]

The situation . . . of the different states equally proclaimed the policy, as well as the necessity of such an exclusion. In some of the states, episcopalians constituted the predominant sect; in others, Presbyterians; in others, Congregationists; in others, Quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible, that there should not arise perpetual strife and perpetual jealousy on the subject ecclesiastical ascendancy, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been an imperfect security, if it had not been followed up by a declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religions tests. Thus, the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their own sense of justice, and the state constitutions; and the Catholic and the Protestant, the Calvinist and the Armenian, the Jew and the Infidel, may sit down at the common table of the national councils, without any inquisition into their faith, or mode of worship.

"Probably," Story also wrote, "at the time of the adoption of the constitution and of the amendment to it, now under consideration, the general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation." The object, then, of the religion clauses was not to prevent general governmental encouragement of religion, of Christianity, but to prevent religious persecution and to prevent a national establishment.

Before considering the development of the two religion clauses by the Supreme Court, one should notice briefly the tests developed by which religion cases are adjudicated by the Court.

While later cases rely on a series of rather well-defined, if difficult-to-apply, tests, the language of earlier cases "may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles."[10] It is well to recall that "the purpose [of the religion clauses] was to state an objective, not to write a statute."

In 1802, President Jefferson wrote a letter to a group of Baptists in Danbury, Connecticut, in which he declared that it was the purpose of the First Amendment to build "a wall of separation between Church and State."[12] In *Reynolds* v. *United States*,[13] Chief Justice Waite for the Court characterized the phrase as "almost an authoritative declaration of the scope and effect of the amendment." In its first encounters with challenges to state programs on religious grounds, the Court looked to Jefferson's metaphor for substantial guidance.[14] But a metaphor may obscure as well as illuminate and the Court soon began to emphasize neutrality and voluntarism as the standard of restraint on governmental action.[15] The concept of neutrality, though, is a coat of many colors,[16] and three standards which could be stated in objective fashion emerged. The first two standards were part of the same formulation. "The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constiution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."[17] The third test is whether the governmental program results in "an excessive government entanglement with religion. The test is inescapably one of degree . . . [T]he questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement."[18] The Justices disagree among themselves on the results of the applications of these tests and the fact that the tests have evolved over time means that the cases do not follow a consistent line of development. Nonetheless, evaluation of the results of each case and of its continuing vitality in the light of later decisions is somewhat easier with the tests in mind. Finally, the Court has established one distinct difference between establishment cases and free exercise cases; in the latter but not in the former, a challenger must demonstrate the coercive effect of a policy or enactment in order to prevail.[19]

We are speaking of a portion of the first amendment: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. I continue:

One value which both clauses of the religion section serve is to enforce governmental neutrality in deciding controversies arising out of religious disputes. It will often be the case that schism will develop within churches or between a local church and the general church, which will result in secession or expulsion of one faction or of the local church. A dispute over which body is to have control of the property of the church will then often be taken into the courts. It is now established that both religion clauses prevent governmental inquiry into religious doctrine in settling such disputes and contrarily require courts to look simply to the decision-making body or process in the church and to give effect to whatever decision is officially and properly made.

The first such case was *Watson* v. *Jones* which was decided on common-law grounds in a diversity action without explicit reliance on the First Amendment. A constitutionalization of the rule was made in *Kelroff* v. *St. Nicholas Cathedral*, in which the Court held unconstitutional a state statute that recognized the autonomy and authority of these North American branches of the Russian Orthodox Church which had declared their independence from the general church. Recognizing that *Watson* v. *Jones* had been decided on nonconstitutional grounds, the Court nonetheless thought that the "opinion radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulations—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." Then, in a 1969 case, the

Court severely circumscribed the power of state courts to resolve church property disputes. "First amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern . . . The Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrines." What a court must do is to look at the church rules; if the church is a hierarchical one which reposes determination of ecclesiastical issues in a certain body, the resolution by that body is determinative, while if the church is a congregational one prescribing action by majority vote that determination will prevail. Courts may, however, make a limited or marginal inquiry to determine the legality of the actions taken, whether church rules have been complied with. Whatever rule is applied must be one which is neutral with regard to the content of religious doctrine.

"[F]or the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity." However, the Court's reading of the clause has never resulted in the barring of all assistance which aids, however incidentally, a religious institution. Outside this area, the decisions generally have more rigorously prohibited what may be deemed governmental promotion of religious doctrine.

Several recent decisions make clear that the discretion of state and federal bodies to assist financially sectarian elementary and secondary schools is quite limited; at the same time, the Court's prior disposition to allow a greater discretion when colleges affiliated with religious institutions are aided has been reaffirmed.

Mr. President, at the Department of Justice, I had a secretary for a number of years who was from Massachusetts. She mentioned to me that she was a graduate of Boston University. I said, "Well, that is a Methodist school." She argued with me that it was not affiliated with any church.

Here was a young lady who had spent 4 years at a church-related school and was not even aware that the school was church-related. I think that adds a little credence to the suggestion that there is a difference between young people at the elementary and high school level and the more mature students at the college level.

Returning to the notes:

Moreover, these decisions reveal a division of opinion among the Justices upon the application of two of the three tests developed in past litigation to provide "helpful signposts" in the resolution of concrete controversies. *Hunt* v. *McNair* 413 U.S. 734 at page 741 (1973).

In Committee for Public Education against Nyquist—this, to me, is the leading case on the matter before us—reported at 413 U.S. 556, it is indicated that—

A secular purpose is the first requirement to sustain the validity of legislation touching upon religion and upon this requirement the Justices were united; state desire to preserve a healthy and safe educational environment for all of its school children, state interest in promoting pluralism and diversity among its public and nonpublic schools, and state concern to prevent an overburdening of the public school system that would accompany the financial failure of private schools provided adequate legitimate, nonsectarian bases for the legislation under review. Upon the tests of secular primary effect and church state entanglement, however, varied views were expressed. Thus, Chief Justice Burger, in dissent, argued that "government aid to individuals generally stands on an entirely different footing from direct aid to religious institutions." Direct aid to institutions may involve government in assisting the religious institutions sectarian functions and to avoid this impermissible primary effect necessitates the imposition of governmental monitoring and reviewing activities leading to an impermissible entanglement of state with church.

Justice Powell, speaking for the Court, denied any controlling significance to the delivery of funds, either directly in grants or indirectly in tax credits, to parents rather than to schools. Delivery to parents is only one factor among many to consider. The controlling question is whether government has established "an effective means of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral, and nonideological purposes." Grants directly to religious schools would be invalid without such a guarantee and no reason existed for treating differently aid to parents "when the effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions."

Substantial unanimity, at least in result, prevailed among the Justices in dealing with direct financial assistance to sectarian schools, as might have been expected from the argument over the primary effect test. Thus, a state program to reimburse nonpublic schools in the State for a variety of services mandated by state law was struck down because the statute did not distinguish between services, some secular and some potentially religious, the costs of which would be reimbursed.[7] Similarly, a program of direct money grants to nonpublic schools to be used for the maintenance of school facilities and equipment failed to survive the primary effect test because it did not restrict payment to those expenditures related to the upkeep of facilities used exclusively for secular purposes and because "within the context of these religion-oriented institutions" the Court could not see how such restrictions could effectively be imposed.

Two other programs of assistance that went to private, including sectarian, schools were struck down in *Meek* v. *Pittenger*. First, legislation authorizing the loan of instructional material and equipment directly to qualifying nonpublic elementary and secondary schools in the State was voided as an impermissible extension of assistance to religion. This conclusion was reached because 75 percent of the qualified schools were church-related or religiously affiliated educational institutions and the assistance was available without regard to the degree of religious activity of the schools. The materials and equipment loaned were religiously neutral but the substantial assistance necessarily constituted aid to the sectarian school enterprise as a whole and thus had a primary effect of advancing religion. Second, legislation authorizing the provision of auxiliary services—remedial and accelerated instruction, guidance counseling and testing, speech and hearing services—by public employees on nonpublic school premises was invalidated because the Court thought the program had to be policed to ensure religious neutrality and it saw no way that could be done without impermissible entanglement. The fact that the teachers would, under this program and unlike one of the programs held unconstitutional in *Lemon* v. *Kurtzman*, be public employees rather than employees of the religious schools and possibly under religious discipline was insufficient in the Court's view to permit the State to fail to make certain that religion was not inculcated by subsidized teachers.

Substantially similar tuition reimbursement programs from New York and Pennsylvania were also struck down. New York's program provided out of general tax revenues reimbursements for tuitions paid by low-income parents to send their children to nonpublic elementary and secondary schools; the reimbursements were of fixed amounts but could not exceed 50 percent of actual tuition paid. Pennsylvania provided fixed-sum reimbursement for parents who send their children to nonpublic elementary and secondary schools, so long as the amount paid did not exceed actual tuition, the funds to be derived from cigarette tax revenues. Both programs, it was held, constituted public financial assistance to sectarian institutions with no attempt to segregate the benefits so that religious activities did not receive any.

New York had also enacted a program of tax relief for those parents sending their children to nonpublic schools; relief was available to parents not qualifying for the tuition reimbursements so long as they made less than $25,000 per year and the relief was in the form of fixed sums bearing no relationship to the amounts of tuition paid.

Reading from the opinion in the Nyquist case, the court said:

In practical terms there would appear to be little difference, for purposes of determining whether such aid has the effect of advancing religion, between the tax benefit allowed here and the tuition grant allowed under § 2. The qualifying parent under either program receives the same form of encouragement and reward for sending his children to nonpublic schools. The only difference is that one parent receives an actual cash payment while the other is allowed to reduce by an arbitrary amount the sum he would otherwise be obliged to pay over to the State. We see no answer to Judge Hays' dissenting statement below that "[i]n both instances the money involved represents a change made upon the state for the purpose of religious education."

Mr. President, in summary I believe we should give credence to the opinion of the Attorney General that this proposal is unconstitutional. I believe we should give credence to the most recent Supreme Court cases combined by the Court in 1973, the cases from New York and Pennsylvania, holding tuition grants and credits as unconstitutional violations of the establishment clause of the first amendment. I believe we should give credence to the views of the distinguished chairman of the Budget Committee that this measure would add substantially to the cost of Government and further increase the existing deficit.

In my own judgment, rather than promoting diversity and pluralism within our country, it would appear that we should promote unity. The concept that the United States is a place where people can come from various cultures, various races and religions and over a period of time, under the melting pot concept, become Americans regardless

of their race, color or creed. The public school system, with all of its faults, has served our country well.

I do not believe that we can afford to have the taxpayers finance alternate systems, two additional systems of schools. Certainly those who desire to send their children to private schools for any reason should be entirely free to do so. Certainly those who prefer to send their children to church schools for any reason should be entirely free to do so. This is in accordance with the constitutional concept of religious freedom. We should bear in mind, however, the statistics included within the Attorney General's opinion that the proposed law is contrary to the establishment clause of the first amendment. He indicated current statistics on nonpublic schools nationally show nearly 17 percent of the Nation's elementary and secondary schools are nonpublic.

Of that percentage, 85 percent of the nonpublic schools are religiously affiliated. Citing U.S. Department of Health, Education and Welfare, National Center for Education Statistics, nonpublic school statistics, 1976–77. According to the most recent statistics available, 87.5 percent of nonpublic schools at the elementary level and 70.2 percent of nonpublic schools at the secondary level are sectarian. He continues that although sectarian secondary schools do not dominate nonpublic education to the same extent as sectarian elementary schools, we believe that their numbers are sufficiently substantial that no meaningful distinction between credits for elementary and secondary schools could be drawn.

Mr. President, we are considering a bill that the committee estimates will cost something approaching $10 billion within the next 5 years; and, as the court the court in the Nyquist case:

> Government aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies. The greater the class of recipients, the greater the pressure of accelerated increases.

Quoting again from the opinion of the court in the Nyguist case:

> In this situation, where the underlying issue is the deeply emotional one of church-state relations, the potential for seriously divisive political consequences needs no elaboration. And while the prospects of such divisiveness may not alone warrant the invalidation of state laws that otherwise survive the careful scrutiny required by the decisions of this court, it is certainly a warning signal not to be ignored."

I urge, Mr. President, that the proposal be rejected, that we as Senators attempt by our activities to obtain unity. A United Nation can be far more effective in dealing with both domestic and foreign affairs than a divided nation. Regardless of everything else, this is a divisive bill we have under consideration.

In my judgment, it would be rejected by a vast majority, of Americans if it were put to a referendum of the people of the country. In my judgment, it is contrary to the establishment clause of the first amendment.

Mr. President, I yield the floor.

Mr. BENTSEN and Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas had earlier asked for recognition.

The Senator from Texas.

Mr. BENTSEN. Thank you very much, Mr. President. We do not often have debates in this Senate lately that are really educational for the membership. But I think Senator MOYNIHAN and Senator HOLLINGS have made that kind of a contribution by discussing at some length the merits and the problems resulting from a Federal system of private education.

We have heard an outstanding debate on the constitutional questions and that has carried over for three legislative days.

So I will not continue to pursue that part of the subject.

I shall address my remarks instead to the practical problems today of financing public education.

My cosponsorship of the Hollings amendment stems from a deep sense of disquiet about how this Nation is handling its finite resources. Rather than spreading around some more tax credits, I think we should be concentrating on seeing what we can do to improve public education in this country of ours.

This Nation has long embraced an abiding commitment to first class public education and it is a commitment that has served this Nation well.

It has given us a population equipped to sustain democracy and make a success of freedom. Quality public education is fundamental to the American experience but education today faces severe problems in our own country.

Many of these problems are directly attributable to inflation, to a decreasing tax base, to things like proposition 13.

In Brownsville, Tex., a town of about 60,000 people, we have a school district today that is having to add a schoolroom every 15 days—a schoolroom for the children of legal aliens. Now, by any stretch of the imagination you would not think that the private schools can accept that kind of a burden. When you have the children of legal aliens, who is going to question and who is going to deny that child coming into the schoolroom? The public schools have to accept them.

When I told you they are adding a new schoolroom every 15 days, what kind of a schoolroom is it? It is a temporary schoolroom because that is all they can afford. We have the lowest per capita income in the United States along the Mexican border, a low tax base, not able to handle the situation, and that is where we should concentrate our efforts.

These problems are duplicated a thousand times over in communities across the country, many of them with low tax bases, limited resources, and are suffering from inflation. To the extent that we divert the taxpayers' money to private education, we diminish our ability to fulfill our primary commitment, which is the best possible education for the greatest number of people.

Providing tax credits to pay tuition for private elementary and secondary schools is bad educational policy, and it is bad tax policy. In both instances we will be using general revenues to benefit a small and a generally privileged segment of our population.

The Federal Government, of course, is already assisting public education in the States by funding special targeted educational assistance in areas of special need, and private schools also benefit, although to a lesser degree, from these programs.

We help them on aid to the handicapped, on bilingual education, and other programs. I think that is money well spent, and money that must be spent.

In addressing the Texas Council on Exceptional Children last week I stressed my strong support for such programs. I have in-house counsel on that since my daughter is a teacher in special education, so I admit to some bias on that particular subject.

Mr. President, no one is going to quarrel with the right of a parent to be able to send his child to a private school, just as no one is going to quarrel with the right of a private citizen if he does not want to attend the public schools. While no one is required to swim in the public swimming pools, taxpayers should not have to finance a person's private pool. The right of choice is inherent in everything we stand for in this Nation.

My own children attended both public and private schools. That right of choice, however, does not imply that the American taxpayer should be required to shoulder the financial burden of education at private elementary and secondary institutions.

I would submit that the taxpayers' obligation ends where private education begins. I would submit that we have enough problems in the field of public education without diverting our limited resources into the private sector.

It has been suggested that the tuition tax credits do not really go to the children, that they go to the parents. Now, that really seems to me to be a distinction without a difference, since nothing in this bill would prohibit those private schools from raising their tuition to match whatever the tax credit happens to be.

If the tax credits enable additional children to attend private schools, then I think what we really do is run the risk of a two-tiered educational system, and we saw that two-tiered system in the stock market, and it did not turn out too well, and I do not believe it will work to accomplish the objectives we want for education in this country.

Private schools, heavily endowed, could still pick and choose those children who meet their educational standards. They certainly would not be concentrating on the least advantaged. They certainly would not be taking large numbers of alien children. So I believe such a development would jeopardize one of our most cherished precepts, that of providing a free quality education for all of our children.

If, on the other hand, the tax credit is not sufficient to induce new students into private schools, we will simply have

passed a relief bill for the most financially privileged class of our Nation.

And finally, Mr. President, we should all be aware that the budget implications of elementary and secondary tuition tax credits are astounding. Estimates vary on the cost of the proposal because we simply do not know how many people might take advantage of it. We do, however, know that there will be pressure every year to increase the size of any tax credit that might be enacted. We can also predict with certainty that the public school system would want—and could make a very convincing case for—an equal measure of assistance. While we do not know the exact magnitude of the cost involved, we can safely predict the trend, and it is higher and higher. It would go on and on and on.

I am committed to support education—quality public education that serves the needs of all our people. I can see little merit in a proposal that taxes every American to subsidize the few who chose not to take advantage of public educational facilities. There is just not enough money to go around; not enough money to meet current, pressing public educational needs. The issue is that simple, and it leads me to conclude that tuition tax credits for elementary and secondary education are not a proper form of Federal education assistance.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ANDERSON). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I call up an amendment from the floor and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from Delaware.

Mr. ROTH. Mr. President, as we approach a vote on the Roth-Ribicoff-Packwood-Moynihan tuition tax relief bill, I want to emphasize once again my strong support for elementary and secondary tax credits.

In addition to the rising cost of colleges, the cost of nonpublic elementary and secondary schools has also increased substantially. And as a result, enrollment in these elementary and secondary schools has dropped sharply.

In 1960, 14 percent of elementary and secondary school children attended private and parochial schools. By 1976, only 9 percent of our schoolchildren were attending nonpublic schools.

Between 1965 and 1976, nonpublic elementary and secondary schools lost 1.8 million students. And in 1976, there were 2,246 fewer private schools in existence than there were 10 years ago.

Catholic elementary and secondary schools have been hit especially hard by increasing costs. In the last 10 years, Catholic schools have lost 39 percent of their enrollment, more than 2 million students.

Mr. President, I believe in freedom of choice. I believe parents should be free to choose whether to send their children to a public school or a nonpublic school.

But as the sharp drop in nonpublic school enrollment shows, too many parents no longer have a freedom of choice. In fact, more and more parents are being deprived of the freedom of choice to send their children to nonpublic schools by a government which takes more of their own earnings through higher taxes and inflation.

I believe a tuition tax credit will restore freedom of choice to the millions of American families who are struggling to pay both nonpublic school tuition and higher taxes for public schools.

Mr. President, I am a strong supporter of public schools. I personally am a product of public school education, and my two children attend public schools in Delaware.

I do not believe the tuition tax credit will destroy our public schools. The Federal Government will spend $15 billion this year in support for public elementary and secondary schools. Government at all levels will spend $73 billion this year on public elementary and secondary schools.

At the Federal level, Federal assistance for public elementary and secondary schools amounts to $352 per pupil. Total government support per public school student is about $1,400 per student.

According to the Joint Committee on Taxation, the tuition tax credit would be worth, an average of $170 per private elementary and secondary school student. When combined with existing programs, the total government assistance per private school student would be $268 per student.

Clearly, these figures do not support the argument that a tuition tax credit would destroy public schools. Instead, a tuition tax credit will reverse the decline in enrollment which threatens to destroy our nonpublic schools.

Mr. President, I also cannot accept the argument that a tuition tax credit will only benefit the rich. According to Census Bureau figures, 78.5 percent of private elementary and secondary school students are from families with income of less than $25,000; 64 percent are from families with income under $20,000.

By giving them the freedom of choice, low-income minority students will particularly benefit from tuition tax credits. According to Mr. Roy Innis, National Director of the Congress of Racial Equality:

> Passage of tuition tax credits at the elementary and secondary levels will have a tremendous potential impact on poor and minority kids throughout this country by giving them what they desperately need: options.

Finally, I do not believe this bill is unconstitutional. The Supreme Court has never ruled on the constitutionality of tax credits for colleges, vocational, elementary and secondary schools, and arguments exist on both sides of the issue.

The Attorney General has given his opinion, based on an opinion written by the Assistant Attorney General, that tax credits limited to elementary and secondary schools would be unconstitutional. But his immediate predecessor in that position believes this bill is constitutional.

I, too, believe this bill is constitutional, and there are numerous parallels. For example, a tax deduction is allowed for contributions to churches and church-sponsored charities. The GI bill provides direct Federal payments for students attending private and religious schools, including parochial elementary and secondary schools.

Finally, I do not believe Congress should not act on an issue merely because some scholars believe the Supreme Court may rule it unconstitutional. It is about time that Congress recognize it is a coequal branch of government, and I believe we should act and allow the Court to rule on the issue. The sponsors of the legislation have made provision for the Court to rule quickly.

Mr. President, I urge this body to endorse tuition tax credits for elementary and secondary students. At stake in this vote are freedom of choice, pluralism, civil rights, and opportunity for low- and middle-income families and their children. Mr. President, I again urge my colleagues to support tuition tax credits.

The PRESIDING OFFICER. The Senator from Maine.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield to the majority leader, without losing my right to the floor.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. President, I have been making up what I hope will be an agreement to vote on certain amendments at certain times. It goes like this:

That following the comments of Mr. MUSKIE, the amendment by Mr. HOLLINGS then be temporarily set aside; that an amendment by Mr. PACKWOOD—and Mr. MOYNIHAN?

Mr. PACKWOOD. Yes.

Mr. MOYNIHAN. Jointly.

Mr. ROBERT C. BYRD. That an amendment by Mr. PACKWOOD and Mr. MOYNIHAN be called up, that there be a 30-minute time limitation thereon, to be equally divided between the sponsors and—Mr. HOLLINGS?

Mr. HOLLINGS. I may be on the same side.

Mr. ROBERT C. BYRD. And the minority leader or his designee.

That there then be called up an amendment by Mr. METZENBAUM, Mr. HOLLINGS' amendment continuing to be temporarily set aside; that there be a 30-minute time limitation on the amendment by Mr. METZENBAUM, to be equally divided between Mr. METZENBAUM and Mr. HOLLINGS; and that upon the disposition of the amendment by Mr. METZENBAUM, Mr. MOYNIHAN or Mr. PACKWOOD be recognized to move, without debate, to table the amendment by Mr. HOLLINGS.

Mr. PACKWOOD. I might ask if the time on the Metzenbaum amendment could be divided between Mr. METZENBAUM and myself.

Mr. ROBERT C. BYRD. You mean the time of the proponents, or are you opposed to it?

Mr. PACKWOOD. I am going to oppose the higher education part of it.

Mr. ROBERT C. BYRD. That the time

on the Metzenbaum amendment be equally divided between Mr. METZENBAUM and Mr. PACKWOOD.

Mr. HOLLINGS. That will be all right.

Mr. ROBERT C. BYRD. That upon the disposition of that amendment, Mr. MOYNIHAN be recognized to move to table, without debate, the amendment by Mr. HOLLINGS, and that if that motion to table fails, there be 20 minutes for further debate on the amendment by Mr. HOLLINGS, to be equally divided between Mr. HOLLINGS and Mr. MOYNIHAN, at the conclusion of which an up or down vote occur on the amendment by Mr. HOLLINGS.

That would dispose, one way or the other, of the Hollings amendment, and then other amendments to the bill would be in order.

Mr. STEVENS. Mr. President, reserving the right to object, do I understand this Metzenbaum amendment would have 30 minutes, and then a motion to table the Hollings amendment, and then 30 minutes on each side if it is not tabled, the amendment then to be voted on up or down, and then 30 minutes on the Hodges amendment, to be equally divided?

Mr. ROBERT C. BYRD. No. There would only be 20 minutes for debate on the Hollings amendment if the motion to table fails. After the 20 minutes, the vote would occur up or down on the Hollings amendment.

Mr. HOLLINGS. Then the vote on the Hodges amendment, because mine is an amendment to his.

Mr. STEVENS. After which there would be 20 minutes on the Hollings amendment?

Mr. ROBERT C. BYRD. It presumes the Hollings amendment would be disposed of before the Hodges amendment is taken up.

Mr. STEVENS. And the Hodges amendment would follow?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. What about the Domenici amendment?

Mr. ROBERT C. BYRD. It would come after the Hodges amendment.

Mr. MOYNIHAN. I would like to request 10 minutes, to be equally divided, on each side, if we should get to that point, between the Hollings amendment and the Hodges amendment.

Mr. ROBERT C. BYRD. Is that all right?

Mr. ROTH. Mr. President, reserving the right to object, I am not clear as to what the Senator from Ohio is proposing in the way of an amendment.

Mr. METZENBAUM. The Senator from Ohio has an amendment at the desk which would provide a limitation as pertains to income related to both primary and secondary and higher education, with different levels. There would be a $20,000 limitation, with phase-out to $25,000, for primary and secondary education, and there would be a limitation of $30,000, with a phase out to $40,000, for higher education. That depends; whether the amendment is ultimately in that form or some other form would relate directly to the action taken by this body on the Packwood amendment, because I have indicated to Senator PACKWOOD I would join with him in the Packwood-Moynihan amendment, since it covers the first half of the amendment I am offering. If that amendment fails, then I would make my amendment applicable only to higher education; or to primary, secondary, and higher education, all together. If his passes, I would make it applicable only to primary and secondary education.

Mr. ROTH. Mr. President, I am not willing to agree at this time to an agreement on time with respect to higher education.

Mr. STEVENS. I think I am still reserving the right to object. Do I understand that these are the only two amendments that will take place when the Hollings amendment is set aside?

Mr. ROBERT C. BYRD. That is correct.

Mr. STEVENS. There will be no more requests for setting aside the Hollings amendment and the time would be roughly 2 hours that we are talking about?

Mr. ROBERT C. BYRD. Not 2 hours, no. Well, including the rollcall votes, yes.

Mr. STEVENS. I do not object, as I understand it.

Mr. SCOTT. Reserving the right to object, it is my understanding this does not in any way affect any subsequent amendment to the Hollings amendment. Is that accurate?

Mr. HOLLINGS. Once we have the vote on our amendment and the Hodges amendment, they would be in the bill. I guess it would be parliamentarily in order. We hope to get a motion to reconsider tabled. It would not forego any amendments to the bill itself.

Mr. SCOTT. I am talking about up to final passage. I would still have a right to offer an amendment.

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. But not to the amendment of the Senator from South Carolina. This does foreclose any further amendment to the amendment of the Senator from South Carolina.

Mr. DOMENICI. Senator HOLLINGS called me and that is why I am late. Will the leader state again what it is we are agreeing to, please?

Mr. ROBERT C. BYRD. Yes. Mr. President, allow me to restate the request.

Mr. ROTH. Mr. President, reserving the right to object, my only concern with this proposed time limit is to have the limitation on higher education brought up during a discussion of the Hollings amendment. I would be willing to agree to a time limit, once we completed debate on the elementary and secondary.

Mr. METZENBAUM. That would not be acceptable. That is the entire issue. That is the whole purpose of this discussion.

Mr. ROTH. Mr. President, I object.

Mr. PACKWOOD. I wonder if we might do this, and I do not think it would take very long. Could we agree to the order without a time limit on my amendment? That is, the amendments would be taken in the order stated.

Mr. HOLLINGS. Without a time agreement?

Mr. PACKWOOD. You mean the time agreements just on the amendments, do you not?

Mr. ROTH. Basically, I would like to complete the discussion on elementary and secondary before we get into the amendments modifying college provisions.

Mr. ROBERT C. BYRD. I think we have been discussing that for 2 or 3 days, Mr. President. I am not referring to a specific amendment.

Mr. HOLLINGS. Mostly elementary and secondary.

Mr. ROTH. I think it is a parliamentary question as to whether or not the amendment applying to colleges would come in at this stage. It is just a question of trying to bring it up in an orderly manner.

Mr. ROBERT C. BYRD. Could we agree to set aside the Hollings amendment long enough to take up the Packwood amendment?

Mr. MOYNIHAN. Yes.

Mr. METZENBAUM. I object, Mr. Leader. I want to be cooperative.

Mr. ROBERT C. BYRD. The best way to be cooperative is not to object.

Mr. METZENBAUM. I have just had an amendment offered which was objected to by the distinguished Senator from Oregon, and I have no objection to his doing that. But I said to him earlier I was not willing to stand back while his amendment went before mine. He came and inquired of me on that subject and I said I would agree with it. But I am not now willing to stand that far behind and wait until the Hollings amendment is disposed of before I offer my amendment.

Mr. PACKWOOD. It was a time limit situation but not the order, is it not?

Mr. ROTH. I objected to the order.

Mr. HOLLINGS. That is the whole thing.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum—no, I will withhold that.

Will the Senator proceed?

Mr. MUSKIE. I will be happy to.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, I am not sure how relevant my remarks may be to the discussion which has just taken place or how it may influence the final outcome of that discussion, but I wish the conferees all good luck in arriving at a time agreement on this issue.

Since they have left the floor, I take it they are not interested in anything I might say or that anything I might say would influence the result of the conference.

Mr. DOMENICI. Will the Senator from Maine yield for a question to him at this point?

Mr. MUSKIE. I have not made my speech yet.

Mr. DOMENICI. I did not know that. I apologize.

Mr. MUSKIE. I wonder if I might proceed. This is not a long statement today. May I ask, is it a question related to the speech I am about to make?

Mr. DOMENICI. Actually, it relates to asking if the Senator would let me try to exchange an approach I have, to see

if the Senator would have an objection. I have an unprinted amendment. I would like to submit it so that I may make reference to it in the deliberations about time agreements.

Mr. MUSKIE. I yield for that purpose.

Mr. DOMENICI. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Is it in order for the Senator from New Mexico to submit an unprinted amendment to the bill at this point?

The PRESIDING OFFICER. It requires unanimous consent.

Mr. MUSKIE. If it requires unanimous consent——

Mr. DOMENICI. I do not intend to call it up. I just want to submit it.

The PRESIDING OFFICER. The Senator has that right.

Mr. MUSKIE. Will the Senator withhold just long enough until we find out what the procedure should be? I will be glad to yield shortly.

Mr. DOMENICI. I thank the Senator from Maine.

Mr. MUSKIE. Mr. President, I have followed with respect and interest the forceful presentation Senator HOLLINGS has made against this tax credit bill.

I share his view that we cannot afford this new multibillion dollar program for tuition assistance.

I share his concern that such tuition aid may be abused by those who would establish private schools to perpetuate racial segregation.

I oppose this tax credit bill because it must be deficit financed.

I oppose this bill because it provides the same benefits to the richest family in America as it does to the poorest family in Maine.

And it does so at higher tax cost to all our citizens, whether they ever personally benefit from it at all.

I think we underestimate the citizens we represent here if we think they want this bill when it means more deficit and more inflation.

These are compelling reasons to vote against this poorly designed, budget-busting, deficit-deepening bill.

But I am unable to see how one part of this bill is anymore acceptable than the other.

If the Hollings amendment is adopted, we will save only 40 percent of the $8.5 billion cost of this bill during the next 5 years.

We will save only about 40 percent of the deficit it will cause,

And all the inequities in the bill will continue in the college tuition part of the bill, which accounts for 60 percent of its cost:

The rich will still get exactly the same aid as the poor;

Those millions of taxpayers whose children are beyond college age will pay higher taxes for benefits to other families, including the very well-to-do, whose children do go to college;

The 70 percent of all our young people who will never go to college will pay the bill in higher taxes all their lives for those who do go to college;

And the deficit will be deeper for the indefinite future by the full $1.5 billion cost of the college part of the bill.

I intend to vote against this entire bill because we cannot afford it, because it is a poorly designed response to the problem it seeks to address, and because our fellow citizens want a balanced budget before the Treasury is tapped for new Federal programs which must be bought by higher taxes and deeper deficits.

I am concerned about the potential abuse of Federal tuition aid to start private schools which perpetuate segregation. The basis for my vote against the entire bill includes that concern.

Frankly, if I thought we could afford even half of this bill, I would be hard pressed to decide for which half to vote.

I see no compelling reason to vote against the elementary and secondary part of this very expensive bill which does not apply to the college part as well. We cannot afford either half, but I find no less merit in one half than the other.

In my own view, the preservation of a private elementary and secondary school system is a legitimate and important national objective. Several of my own children have attended parochial grade and high schools, so, perhaps I have a special appreciation of the valuable role such schools play in a wholesomely diverse society like our own.

The argument has been made that tuition aid to private elementary and secondary schools is unconstitutional, because such aid may violate the constitutionally required separation of church and state. Supreme Court decisions have been frequently cited in this debate as if they had settled this difficult question.

Surely the first amendment's guarantee of religious liberty is one of our most treasured freedoms. It derives directly from the religious intolerance and persecution our early settlers experienced in the Europe from which they fled.

At the same time, it is also clear that the application of the first amendment's bar against "the establishment of any religion" is not self-evident. It has required substantial and continuing interpretation by the courts.

I do not believe we are in a position today to determine what the Supreme Court would say about this bill. The Supreme Court has not settled this issue.

As an opinion by the Library of Congress has summed it up: The constitutionality of a bill such as this one "cannot be said to have been definitely determined."

The Supreme Court has found State government tuition aid to be unconstitutional in some cases. But those same cases have refused to formulate any general principle against all such aid, such as the GI bill of rights, which can be used for seminary training, or the Federal deduction for charitable expenses, which may be used to establish sectarian schools. An the court has specifically upheld local property tax exemptions for charitable institutions even though without them, many sectarian schools would find it too expensive to operate.

Also, the tuition cases so far considered have not produced the end of general aid contained in this bill which is directed to both elementary and secondary, and public and private college education.

The Senate has a duty to uphold the Constitution in clear cases. But the Senate is not the Supreme Court. The Founding Fathers could have given the Senate, like the British House of Lords, a duty to interpret the laws. But our Constitution places the burden of interpreting the laws squarely on our Supreme Court.

It is premature to judge the constitutionality of a proposal such as this one. A vote against this is not compelled on constitutional grounds.

The Hollings amendment confronts us with many difficult questions.

It would reduce the cost of the bill, but not sufficiently to make the bill acceptable.

It would eliminate the major constitutional issue the bill presents, but would do so prematurely, since the courts should, and would, eventually decide this open issue.

It would reduce the possibility of segregationist abuse, but it would do so at the expense of every other private elementary and secondary school established for legitimate purposes.

If the Hollings amendment is adopted, it will not reduce the most expensive part of this bill. That is the part which passes out deficit-financed payments for college tuition without regard to need. In fact, success for the Hollings amendment would enhance the chance for passing the more expensive portions of the bill.

We can afford neither this bill nor any of its parts. If our citizens could afford the $8 million in deficit this bill will cost in the next 5 years, the choice might be more difficult. But looking into the jaws of a $40 billion deficit this year—and with more to come—the choice is easy.

The choice is clear: It is to vote no on this amendment, and no on the entire budget-busting bill.

Mr. MOYNIHAN. Mr. President, I should like to say to the Senator from Maine that no one envies his responsibility in this Chamber and that few could equal his performance. I attempted yesterday to make an economist's point about the elementary and secondary school provision of our bill—a point that is not without some relevance to his concerns. A very large proportion of the nongovernment schools in this country comprise a sector which could very easily go out of operation entirely, as the considerable decline in their enrollment over the last decade would indicate. If they do, their students would begin attending public schools, and, as a result the cost per student to the economy would treble or quadruple. I simply make the point that the nonpublic sector is an efficient sector of education, at least to the extent that it spends less. I do not mean by "efficient" anything other than less expensive.

On the second point, I should like to thank the Senator from Maine for acknowledging what we have tried to acknowledge—that it is not at all certain

how the Court would respond if a statute such as ours were presented to it. I see him nodding in agreement. It simply is not certain. And for that reason, we have said repeatedly there is only one way to resolve the matter logically, and that is to enact the statute and find out.

There may be objections for hundreds of reasons on other grounds. The Senator from Maine, it seems to me, has pointed to the most formidable one, which is the cost.

Mr. MUSKIE. I appreciate the Senator's comment. I will not take up his time, or the time of the Senate as a whole, much longer.

But I would like to say this about the problems of the private school sector at the elementary and secondary level, especially that of the problem facing private parochial schools.

I have been a supporter, of course, as a Catholic, of parochial schools. My children have attended them. All except one have attended and benefited from Catholic elementary and secondary education through all of their precollege years. So I appreciate the values that go with it.

As a Catholic and as a parishioner in Maine, two or three parishes at one time or another, and here in Washington, I am concerned about the trends and the difficulties that the schools face, and they are not simple. But there is the problem of cost. There is the problem of recruiting teachers. I suspect that there is also the problem of changing perspectives on Catholic education on the part of Catholic parents in various parts of the country, depending upon how they perceive the quality of the education provided and the values pursued in their schools.

So I suspect that Catholic parochial schools are going through a shaking-down period. I hope it does not mean that they are in danger of fading out. But they are going to a shaking-down period, as are all institutions in our society in the public schools at the present time.

If the problems of these schools as perceived is purely a financial one that can be solved by providing a tuition tax credit of $250 per student per year, no one would be more pleased than I, but I doubt that it is that simple.

I suspect, secondly, that if the problem is principally economic—principally economic—this $250 tax credit is not going to solve that problem. How much it will take to solve it if it does not, we will learn in the years ahead.

I have seen so many entitlement programs grow from so-called modest first year costs. The food stamp program occurs to me. Medicaid occurs to me. Medicare, social security, and all the programs we have tied to it, all have begun with relatively modest costs.

I wrote my senior thesis as a college senior on the Social Security Act, which was enacted the year before I graduated from college.

So I have lived with these so-called solutions to massive social problems that have resulted in massive budgetary impact at the Federal level to which our people are at the present time rebelling in ways we are all seeking to interpret.

My view on this bill is very simple. I am not saying that there is nothing to this proposal that recommends it at the Federal level. But I am saying. No. 1, that at the present time our first priority, in connection with the Federal budget overriding every other priority, should be the Federal budget, the contribution it makes to the state of our economy, and particularly inflation. To me, at the present time, it overrides every other priority.

Second, granted that, then I find myself comfortable with the idea that these proposals, both halves of the bill, if we look at it in halves, as I do, require further maturing and evaluation, and the state of the Federal budget and our national economy impels us to give us the time to do that.

So I find my position serving the national interest from both points of view. I do not say "no" forever to the proposal with respect to elementary and secondary schools. I have been for 20 years, long before the budget process was ever created, opposed to college tuition tax credit for other reasons I have not gone into because I wanted to focus my remarks on the two particular points I have tried.

I know the Senator from New York understands my duty and my responsibility. I appreciate that.

Mr. President, I yield the floor at this time.

Mr. MOYNIHAN. I thank the Senator. I said that few would envy his responsibilities as chairman of the Budget Committee and fewer still could equal his performance of them.

It was pleasant to hear that this bill is not totally a work of the devil.

I yield for a question to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. It seems to this Senator, may I suggest this, that Senators needlessly confuse themselves when they look upon a tax cut as a Federal expenditure. That, I think, is what has caused people needless cause for concern.

A tax credit is a tax cut. It is a reduction of our taxes. It means the Government takes that much less from our pocket, and it leaves that much more in our pocket.

Now, we can cut taxes two ways. We can do as we do with a gift to education or a gift to charity, where we provide a deduction. We just say that we do not tax the money that is to be used for that purpose. That is an old, long-established part of the law.

Now, one can call that a tax expenditure if he wants to. But we can give a tax cut insofar as income is used for a particular purpose, or we can just cut taxes, period. We have done it both ways. Throughout the code we see it done both ways.

Now, we are going to have tax cuts, just depend on it—not as big as the Senator from Delaware (Mr. ROTH) wants, but we will get some big ones, you can depend on it. We will get a big tax cut this year, and there will be a tax cut in future years for the simple reason that inflation is here to stay for some time and because of the inflationary pressures, the tax laws will be extracting more money from the pockets of taxpayers.

Every Congress will be talking about how we should adjust taxes to take inflation into account and to take various other things into account. The people of this Nation are going to demand tax cuts, if you have not gotten the word. I just read the Economist, a British-published magazine. What happened out in California is sweeping the whole wide world. People are complaining about too much tax and they want their governments to cut back on expenditures.

Mind you, they do not mean the so-called tax expenditures—a tax cut is what they want. That is what they expect. In their mind it does not make too much difference whether we cut taxes by letting them keep some money in their pocket to educate their children or whether we do it by reducing the amount of taxes they pay generally.

So I do not think Senators need to say too much about whether we cut taxes so people can have more money for education or whether we just cut taxes so people can have more money, period.

If we just disabuse ourselves of the theory that a tax cut means Uncle Sam is digging more money out of the people's pockets when it means just the opposite, it seems to me we can face the issue on a more reasonable basis.

We will be bringing a big tax cut bill to the Senate, and we will consider all the needs of the American citizens while we are voting on it. There will be further tax cut bills in the future.

The public would like us to reduce the spending that the Government does. I am not proposing that we have any reduction in spending for education. Some people want to contend that if we let people keep some of their own money to spend to educate their children, we are somehow going to reduce the amount of money available to the public school system. This Senator has no such intention, and I am sure the Senator from New York has no such intention.

Those little children do not get the quality education we would like them to get in the public schools, for the most part, the way it is now, especially in the congested areas. We expect to help with that, but we do not want to neglect any education, whether it is education in the private schools, the public schools, or the parochial schools. You will find a passage in the Bible where the Master said:

> Do ye these things, but leave not the other undone.

By all means, let us provide for public education; but for those who, for whatever reason, want their children to have some education in religion, to go along with their education in other things, so much the better.

Let them pay for it, but let us help them if we can, because they are having a difficult time doing it.

For those who think their children are not getting an adequate education because there is overcrowding in the classrooms and who want to pay their own money to put their children in a private school, why not? It is a matter

of not ignoring anybody. If one wants to put his children in a private school because his conscience as a parent dictates that, why discriminate against him?

We are going to provide for public education and Federal aid to public education, if the money is available, to try to provide the best we can for children in the public schools.

When you try to help everyone look after his children, you have discriminated against none.

I salute the Senator for the fine fight he has made.

Mr. MOYNIHAN. I think that is fine.

Mr. President, I take this occasion to emphasize what the Senator from Louisiana, the chairman of the Finance Committee, has said. This is a tax cut bill—a tax bill that reduces taxes.

There is something about the concept of tax expenditure that bothers me. There is something about it that makes me think of it as a totalitarian idea. There is a notion implicit in it that your income somehow belongs to the Government and the Government has given you the share which you are allowed to keep. It is not so.

I do not want to suggest any disapproval of Prof. Stanley Surrey, who is a good friend and a fine man, but one's income does not belong to the Government. Taxes are a form of forced labor exacted by Government. It is labor that is, in a sense, taken from you.

I refer those who think otherwise to the recent works of Professor Mosteller. Income belongs to the individual who garners it. We give taxes to the Government. The Government does not give income to us.

Mr. LONG. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I yield.

Mr. LONG. Implicit in all this is the theory on behalf of some of us—I know the Senator from New York feels this way—that the Government works for us, rather than the other way around. At least, that is the way it is supposed to be.

Mr. MOYNIHAN. That is the theory. That is why the Constitution is filled with limitations on what government may do.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. MOYNIHAN. The Senator from Idaho was on his feet first.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. HOLLINGS. I would like to be heard on the amendment.

Mr. McCLURE. Mr. President, I commend the Senator from New York on the statement he just made about so-called tax expenditures, because it troubles me in the same way it troubles the Senator from New York: That it is implicit that somehow the Government owns the income and what is left in our hands is a grant from Government.

I believe, in spite of that feeling on my part, that the concept of tax expenditure does allow us at least to take a look at what we have done in terms of priority setting with respect to the use of the economic muscle of this country, but only in that limited concept. I share the instinctive reaction against the idea.

Mr. MOYNIHAN. I appreciate what the Senator has said. No one has suggested that this is not a useful subject to keep an eye on, to index, perhaps, but it should not be subtly transformed into an argument on behalf of Government ownership of income.

Mr. McCLURE. I agree totally.

Mr. MOYNIHAN. The presumption is that Government owns none of your income; a law must be adopted solemnly, in a bicameral legislature, and must then be approved by the executive, before the Government can take a penny of your income.

Does the Senator from Maine have a question?

Mr. MUSKIE. Mr. President, I have the faintest of suspicions that the distinguished chairman of the Finance Committee rose to put his question to the floor manager of the bill because his question followed a speech by the Senator from Maine and perhaps the speech the Senator from Maine delivered yesterday.

I did not use the words "tax expenditure" yesterday or today, at any time. I talked about the cost of these programs.

I could conclude, if I were simplistic in my thinking, and I am not, that these bills can be passed without cost to anybody because they are simply a cut in taxes, so they do not cost anybody anything. Those who are tempted to believe that to be the case are referred to my speech of yesterday, on page 25853 of the RECORD.

I talked about what this bill will cost to those who think they would benefit from it; to children who think they would benefit from it; to those whose children never will go to private elementary or secondary schools; to those whose children will never go to college. Anybody who tries to argue with me that this bill will cost them nothing is going to have a steep argument.

But if those who support the bill choose to believe that the issue really is somebody's definition of "tax expenditure," they are fooling the public.

What we are concerned about is the cost. The cost of this bill—both halves of it, in my judgment—would be unacceptable to the majority of the American people today if they understood what was in it. I think it is intolerable from the point of view of the Federal budget and its potential impact on inflation in the months or year or two immediately ahead. That was my thesis.

We can argue about what "tax expenditure" means or "tax loophole" or "tax-privilege" or "tax avoidance" or whatever bland phrase those who dislike the words "tax expenditure" would like to use. These bills have costs associated with them, and that is the only point I tried to make yesterday and today.

I say this to the Senator from South Carolina, because I understand that he is disturbed that I will not support his amendment. I tried to make that clear in the speech he did not hear because he was understandably engaged in a conference with the leadership and the other side, in an attempt to reach a time agreement.

I have struggled long with this question. I applaud his effort to reduce the cost of the bill. But I find difficulty in confronting this question: Is this half of the bill less palatable, from a budget point of view, than the college part of the bill? To me, it is not. They are equally unpalatable.

Second, just from a tactical point of view, I believe there is a better chance of defeating this bill if we vote on it in its entirety than if we vote on it with a successful Hollings amendment having divided it in half.

Those are the two reasons I voted as I did. But I wanted the Senator from South Carolina to know that to the extent that his opposition to this bill stems from his concern about the budget—which, for my part, is legendary, and I greatly value his contribution to the budget process—I applaud that part of it; and I wanted to explain to him, while he is in the Chamber, the two reasons why I find it difficult to go along.

Mr. MOYNIHAN. The Senator from South Carolina wishes the floor, and I will yield in a moment.

I assure the Senator from Maine that I understand his position precisely. This is a tax cut proposed, and it will reduce Federal revenue; it was the extent of the reduction and its desirability—or lack thereof—to which he addressed himself.

I took the opportunity during a moment when we are trying to get a time agreement and most of the advocates of this measure are not on the floor, to discourse freely—and I hope not too irrelevantly—on this matter. I had been seeking some pause in the Senate's proceedings to touch briefly upon it.

Mr. MUSKIE. I suggest to the Senator that it is well if, from time to time, we discuss things that are of less than global interest.

Mr. MOYNIHAN. I thank the Senator, and I yield the floor.

Mr. HOLLINGS. Mr. President, let me just make one comment or two to bring this into perspective because the Senator from Maine did shock the Senator from South Carolina with his comment, and I say this respectfully. The Senator knows I know how to solicit and try with charm and courage to persuade, and what I am about to say of course will not help persuade him, or to get his vote back, because this is just the most illogic reason I ever heard.

There are certain difficulties that we had in this measure. One of the big difficulties started with the President of the United States when he let it out that he was going to veto the measure. That put everyone in a position of a freebee. So they can tell the bishop, "Surely I will vote for your parochial aid to education, I am with you." And the Senator from Louisiana calls it minority politics. Those are the people who will remember you. The majority that you stand for never remember you on election day, but you take a single concerted organized group, such as the church, and say, "Surely, I will be for you," and then you know the

President is going to veto it. If it is vetoed, it is not going to hurt public education, so you go to the polls having helped someone. That is one of the big difficulties we have, because when the President intimated this, then, of course, the Senator from New York picked up some 51 cosponsors.

So we started with a majority already against us, and not frankly having even considered elementary and secondary education. The history will also show that the Senate has passed tuition credits for higher education six times in the last 10 years. So we did not have to worry whether we got enough help to defeat higher education. On the contrary, what we are trying to do is to take this elementary, secondary, parochial, private school crowd and take an already proved six times successful higher education measure and piggyback the private school system without due consideration for the substance of the measure.

I am confident they did not have a real debate on the House side because I have looked at the RECORD, talked to Members of the House of Representatives, and witnesses, all of these in the coalition who were interested, and they said they were all looking at that higher education part. They had been in the campaigns. They talked about tuition tax credits. It has been in campaigns for over 10 years. Wilbur Mills had it. We had it. I voted for it at least four times myself.

But they say we never could single out elementary and secondary education and get the attention of the Senate, anyone in Congress, on the radical departure with respect to Federal financing of education in this country that the Moynihan-Packwood elementary and secondary part started.

Let us look at the costs. Let us look at the problem. Certainly it is that, and I am using the CBO figures, that we use in the Budget Committee. On higher education in 1978 it is $21 million; in 1979 it is $491 million; in 1980 it is $704 million; in 1981 it is $1.41 billion; in 1982 it is $1.409 billion; and in 1983 it is $1.523 billion.

So the higher education cost part is $5,289,000,000.

And we look at the elementary and secondary. That was drawn so that you could not see it, and it was only the members of the Budget Committee who finally caught it. I am persuaded if they can reduce the limits, if they can reduce the income levels, if they can reduce the amount, if they can get the principal fixed for $1 for a parent, they would be tickled and call it a victory. They arranged it so this year there is no impact, and next year no impact. They tried to get by the budget process, but the budget process caught it. In 1980 then it starts with $100 million; in 1981 it is $754 million; in 1982 it is $1.237 billion; and in 1983 it is $1.238 billion; for a total of $3.329 billion.

The task of the Senator from South Carolina, was to try to bring the attention of this Senate to what we were really doing with respect to a matter of budget-busting proportions, not to mention the constitutional and educational policy ramifications. Here is an opportunity at least budgetwise to save $3.329 billion rather than for the total of almost $10 billion because when you add the three and the five it is $8.5 billion—$8.5 billion rather than $10 billion, and you had a chance to save $3.3 billion.

And the Senator from Maine now comes and says, "No, let us not save that at all. I really think I can kill off the $8.8 billion if I have yours."

Mr. MUSKIE. Mr. President, will the Senator yield.

Mr. HOLLINGS. I yield.

Mr. MUSKIE. I am not saying that at all, may I say to my good friend. There were three votes on college tuition tax credits in the last 2 years, two of them stimulated by motions made by the Senator from Maine. If I remember correctly, the Senator from South Carolina voted for those tuition tax credits.

Mr. HOLLINGS. I just stated that.

Mr. MUSKIE. All right. So the Senator voted for them.

Mr. HOLLINGS. That is right.

Mr. MUSKIE. Now, my objection is to the total cost. I know that I do not have the Senator's support, if the Hollings amendment is defeated. If the Hollings amendment is——

Mr. HOLLINGS. Enacted.

Mr. MUSKIE (continuing). Is enacted. So that is one vote less that I know I do not have against the total bill.

The Senator says, "You are going to lose it anyway, so why fight it."

If I had taken that position, may I say to my good friend, a lot of the memorable fights on this floor that have helped establish the budget process would never have been waged.

I know the tendency of this body. It is to spend unless someone tries to block it. I am not going to avoid a fight simply because I thank the odds are against me.

I fought college tuition tax credits three times in the last 2 years. I know what the odds are. I can remember the votes. But now there are other factors that I hope will cause a majority of the Senate to take another look at it.

No. 1, inflation is a much more serious problem than it was any of the last 3 years.

No. 2, there is an alternative in the President's program to the college tuition part of the bill which may take some votes away from the college part of the bill.

No. 3, the total cost of the two packages, college tuition and elementary and secondary tuition, is so staggering potentially that in combination that should turn some votes around.

So I think what may appear to be a hopeless fight will not be a hopeless fight. At least I see my duty as making the fight, and I think I am going to get more votes if this whole bill stands together on final passage than I got in either of the last 2 years.

No, my argument is not as simple as the Senator from South Carolina puts it, and I think he understands that. If there were a way after final passage on the total package to consider part of it, I would be with the Senator.

Mr. HOLLINGS. Mr. President, I stated just as simply as the Senator from Maine stated it. I heard him and I listened clearly. He said that with the Hollings amendment defeated they would have a better chance to defeat the entire bill. That is exactly what he said. I am saying that is not the problem because we know he is trying to get in other things about the President's program, but I am saying we come to this particular problem with a different history and a different record, and I know it and I know what the odds are when you start up with a bill having passed the House overwhelmingly, then coming over to the Senate. No one on the Human Resources Education Committee was particularly interested. You cannot get them to speak. In fact, they go back and they propose another half billion dollars.

The precedent set here of general financial aid for parochial and private schools for the first time in history does not disturb them. I am not on that committee, and so you have graduation speeches and Harper's articles and Outlook articles and appearances on national TV and all the rest—and 51 votes.

Do not tell me about odds. I am fighting uphill now, and I know it, and I know there is a better way to fight to get your vote, but I told you in the beginning that I heard you clearly. I know I will not, but I can tell you now——

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HOLLINGS. No.

I am talking about the art of the possible. We are talking about how we measure things in that Budget Committee, Senator from New Mexico. We know how we measure it. It is a frustration for all of us sitting there. If we could have it our way we would cut it all down. Many times we actually put in things to head off budget cuts.

One of the best examples I know of is solar energy. Heavens above. No one around here much knows anything about the energy crisis, but there is one way to demonstrate our commitment. This is a political body, so you demonstrate knowledge that there is a crisis. Whenever you hear the word "solar" you raise your hand and say "aye." We go in there and we mark up a budget, the President recommends $60 million, and we say we will give him $80 million. We come out and they put in $50 million more.

We go in with $110 million the next time and we add another $50 million to $60 million and say that will forestall cutting it, and they put in $50 milion more. We are up to more than $404 milion, and the scientists and all say, "We don't know where to spend it."

I think in every budget that comes through the State Department they say they want a solar demonstration project on every embassy in the world to show our concern about the energy crisis. Absolute nonsense and waste.

So I have finally determined, Senator, where you want whole hog, and we have heard about whole hog earlier from the Senator from Oregon, I want what we can get budgetarily, what we can save. I would solicit your assistance to help us knock out at least $3.3 billion. If we cannot get up to $8.5 billion, at least knock out $3.3 billion that is dangerous.

This is not a minor one. This is the dangerous one.

The Senator from Maine also said when I came back into the room, I could hear just part of it, that the real major one was the tuition tax credit for higher education, that that was the big one. If he could head it off with the little one by voting against the little one then maybe he could make them both sink, that is his logic.

On the contrary, the big one is aid for elementary and secondary private schools, because if this carries and we go back home we are going to hear from the constituents saying, "What in heaven's name happened to you? We sent you to Washington charged with looking out, among other things, for the public's interest and the public's concern. We sure did not tell you to take over the church schools down the street. The priests and the bishop of the parish have control of them. We did not send you down there to take care of private schools. You have gone and doubled the amount of aid—general assistance for the first time and for private schools only—to the private and the parochial schools as compared to what you have given to the poor public schools students."

We would do this for 4.5 million youngsters at the expense of the other 44.5 million. Down the road, Congress might decide to include them, too. Take that $250, multiply it out, and see if we would not end up with at least $10 billion more.

The biggie in this one is the foot in the door. The Senator from New York said, in talking of pluralism and diversity, he hoped they did not avoid Greek. The only thing Greek I understood was when the Senator from Maine was talking yesterday about that Trojan horse. I could hear him clearly. How pretty and bright and gentle and sweet and innocent-looking was the Trojan Horse in the daylight. But when the fiscal darkness of night fell, the animal opened up and there came the conquering enemy. I wish you could go back to that staff and yesterday's talk and make it over again. I could hear you clearly then. I cannot hear you now.

Mr. MUSKIE. You cannot hear it now either.

The PRESIDING OFFICER (Mr. DURKIN.) The Senator from New York.

Mr. MOYNIHAN. Mr. President, we have been debating this matter for a full 3 days now, and we have now reached a point where our national motto "E Pluribus Unum," a brief but emphatic hymn to pluralism, has been described as Greek. I think it is time we voted.

But I would be happy to yield to the Senator from Maine for a question.

Mr. MUSKIE. I really would have preferred it if my good friend from South Carolina had yielded.

I really do not have any trouble knowing that you hear what I say, Senator, but you do not alway repeat it in a way that makes it come out the way that my position is.

Just a few moments ago you praised me for yesterday's speech privately. Now you are frustrated that I do not apply the budget-restraining values that prompted that speech in a way that pleases you. Well, it did not please me when you voted for college tax credits against my motions in the past, and I know you are going to vote for it again. If your amendment succeeds and only the higher education tuition tax credit provision remains, you are going to vote for it again.

Just how you presume to judge me because I am against the total bill and you are for half of it I do not understand. You want me to be against the part that you oppose most vigorously but not against the part that you support most vigorously. That, unfortunately, is the kind of standard that motivates us too often on the floor of the Senate.

But I am against the whole bill, and I said it yesterday, and before this debate is finished, before a vote on passage of the bill, I will fully vote to implement yesterday's speech, but you will not.

Mr. METZENBAUM. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MOYNIHAN. I yield.

Mr. METZENBAUM. I ask unanimous consent that David Lippy and Barry Direnfeld have the privileges of the floor during the pendency of this measure.

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

Mr. MOYNIHAN. Mr. President, does the Senator from California (Mr. HAYAKAWA) desire to ask a question? I will yield to the Senator for a question.

Mr. HAYAKAWA. I have a short statement to make, about 4 or 5 minutes.

Mr. MOYNIHAN. We are about to commence voting. I wonder if the Senator could put his statement in the form of a question to me?

Mr. HAYAKAWA. Let me look at it, let me see. [Laughter.]

It is only a two-page statement.

Mr. MOYNIHAN. If the Senator will put it in the form of an interrogatory I will yield to him.

Mr. HAYAKAWA. I will try to put it in the form of an interrogatory tone.

Mr. President, the last time I spoke on the floor about tuition tax credits, my remarks concerned the rights of minority students and their parents to utilize education as a means of personal liberation from poverty and racism. I want to express my appreciation to our colleagues, Senator PACKWOOD and Senator MOYNIHAN, for their kind appraisal of my speech that day and for their distribution of it to other congressional offices. It is a pleasant surprise to find one's intellectual currency so much in circulation.

As an advocate of tuition tax credits, especially at the elementary and secondary level, I realize that my remarks will draw criticism as well as approval. We have heard dire warnings that, if we give parents control of their children's education, the public schools of America will close their doors and, one presumes, be turned into warehouses. This is nonsense! I, for one, have more faith in public education than to presume that a little bit of competition would finish it off.

This has been a rough issue. The lobbyists have come out of the woodwork. The heavy hand of the National Education Association—what a name; you would think it were something more than a self-interested union—has attempted to stifle the facts with smokescreens about the Constitution, about segregation, and about costs. And one by one, the winds of change have blown away their obfuscations.

But that does not make it easier to take a stand on principle and support tuition tax credits in the face of rigorous political opposition.

Let us make no mistake about it: There will be a price to pay if we stand up for the parents and children of America. Some interest groups will never forgive us for doing that. Their political action committees will target us, and their membership will be instructed to knock us off at the polls. But so what? What, after all, are we here for?

I will not rehearse again today all the arguments in favor of tuition tax credits. We all know them by heart. Are they constitutional? Ask Billy Graham or Antonin Scalia, our former Assistant Attorney General. Would they help minorities and the poor? Ask Prof. James Coleman and the Harlem Parents Union.

Let us look beyond the pressure groups. Let us look toward an America which trusts its citizens enough to permit them their own choices. Let us look toward the day when poor kids have the same latitude in education as the children of Members of Congress. Let us take our stand in defense of parental rights and educational freedom.

The question I would like to ask, Mr. President, is, Has any serious estimate been made of the degree to which public education would suffer from tuition tax credits, or has any clear-cut explanation been made of the degree to which public education will benefit from the inducements offered? Have there been specific instances of cities or communities where that kind of assistance has improved the quality of public education, or have there been specific instances of communities in which there has been a significant loss to public education as a result?

Mr. MOYNIHAN. Mr. President, I would like to say that in the State of Minnesota a tuition tax credit was not accompanied by any decline in public school enrollment; we have been able to establish that there is a fairly clear correlation between the number of students in nonpublic schools and the level of support for public schools. Where there is a fairly large enrollment in nonpublic schools—and the enrollment in nonpublic schools is, of course, never more than 15 percent of the total—the public schools are generally well supported. Where there is a relatively low enrollment, the public schools are comparatively not as well supported. I say to my distinguished friend from California that the validity of the correlation may not yet have been established to his satisfaction.

Mr. HAYAKAWA. I thank the distinguished Senator and my friend from New York.

Mr. President, I ask unanimous con-

sent that an editorial entitled, "The Tax Credit Fight," published in the Washington Star of August 10 be printed in the RECORD at this point.

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

THE TAX CREDIT FIGHT

As the Packwood-Moynihan tuition tax credit bill works its way toward crucial Senate floor action, the quality of the debate steadily deteriorates. What its sponsors view as a measure to promote diversity, choice and fiscal equity in education is denounced as a budget-busting money grab by the rich, or—as *The Washington Post* pronounced the other day—a "radical and ill-considered reversal of longstanding American values . . . a fundamental assault on the public schools," and even a boon for racial segregation.

These conflicting perceptions of the bill cannot be bridged, even allowing for the usual excesses of editorial rhetoric. And indeed the bill clearly raises issues—constitutional, fiscal and educational—of a fundamental sort.

If you think that American education, especially in the lower grades, is always to be a public monopoly; or that "root, hog, or die" must be the iron rule for private religious education; or that the First Congress erected "an eternal wall of separation between church and state," the case for the tax credits is weak indeed.

Happily, those principles, however fervently urged by secular educational lobbies or editorial writers, are largely subjective. They are nowhere chiseled in stone. Still less are they to be found in the Constitution. The Constitution is silent as to how Americans shall elect to educate their children. All it says about religion, apart from banning religious tests for office, is that Congress (and now, by judicial interpretation, the states) may not promote "an establishment" nor interfere with its free exercise.

Set aside the dubious—at times even hysterical—claim that tuition tax credits constitute some sort of foul play against American principles, and what is left? A few practical questions of policy, it seems to us. Would the program injure or strengthen public education? Would it encourage or discourage the proliferation of so-called "segregation academies"? Would it accentuate or arrest racial disparity in education?

It is unthinkable, to us at least, that Congress would seriously contemplate a measure that threatened the basic place of public schools in U.S. education. That primacy is all but universally conceded, and the reasons for it well understood. Rather, the anxieties about the future of public schools, given tuition tax credits, seem to stem from a vast insecurity. The notion, we gather, is that clients of public education are a captive audience, awaiting an incentive to bolt.

Such fears, we faithfully believe, are overwrought. But even if some parents do feel "trapped" in deteriorating and undisciplined public schools (especially in the inner cities), and would welcome an escape hatch, we can attach no other meaning to the ideal of American cultural diversity than that they should have that option. That option is always open to the well-to-do, who usually have mobility to move to the suburbs or the money to pay the steep price of private education, whether or not a fraction of that price may be subtracted from income tax bills—or both.

Prof. James S. Coleman touched on this point in a recent supportive letter to Senator Moynihan. Tax credits, he suggested, "will help give low income people some of the educational opportunity for their children that high income people already have. In a sense," he continued, "it provides an aid to parents to rescue their children from school situations that they find bad; and . . . this is especially the case for black parents who are locked into a given residential situation." Professor Coleman's view has been echoed and endorsed by a number of black scholars, including Thomas Sowell and Walter Williams.

But suppose that a substantial number of public school clients did seize tax credits as an avenue of "escape." Are the public schools so fragile, so far gone in demoralization and indiscipline, as to be incapable of responding? Or would keen competition spur them to reform and to compete? The latter, we firmly believe.

Of course, the nitty-gritty of the matter, politically speaking, is the ageless quarrel over public help for schools of religious affiliation, mainly Roman Catholic. It is notable that every recent Democratic presidential candidate, including Mr. Carter, has given handsome pledges to the Catholic educational community. In an October 1976 letter to the Association of Chief Administrators of Catholic Education, Mr. Carter wrote that he was "firmly committed to finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools." As governor of Georgia, he said, he had supported "annual grants for students attending non-public colleges" and he was of the view that "we must develop similar supportive programs at the national level for nonpublic elementary and secondary schools if we are to maintain a healthy diversity of educational opportunity." Senator Moynihan himself could hardly have stated the promise more clearly. But as everyone has noticed, Mr. Carter's explicit pledge has gone a-glimmering now that he is faced with an opportunity to make good on it. Why that is so, we can't imagine. But if the president finds it expedient to renege he owes the Catholic educators at least an equivalent legislative alternative.

Of all the attacks on the tuition tax credit proposal, the shabbiest is the insinuation that they are a sugar-coated scheme for promoting racial segregation in the schools. In fact, the main—and the neediest—beneficiaries would be Catholic parochial schools with an old and honorable record of racial equity. And as for the so-called "segregation academies" mushrooming up across the South at the heels of school integration, their students, insofar as racial exclusiveness is their aim, would be ineligible under the tax laws. So much is clearly provided in the latest draft of the bill.

We recognize, again, that there are those who fervently believe that the bill is not in the national interest; that this country is better off with a public monopoly of educational funds. Obviously, keen opposition to the Packwood-Moynihan bill can be squared with that outlook. It cannot, however, be squared with the profession of faith that educational and cultural diversity are what this nation is all about—or should be.

Mr. HAYAKAWA. I thank the Senator from New York.

Mr. MOYNIHAN. I thank the distinguished Senator from California, who has vast experience as an educator in both public and private institutions. He has served a great private university, the University of Chicago, and has also attained renown as an administrator at State universities and colleges, in particular the San Francisco State University. Thus, he is eminently qualified to speak on this subject, and his support has been a matter of great importance to us.

Mr. ANDERSON. Mr. President, will the Senator from New York yield?

Mr. MOYNIHAN. I am happy to yield to the distinguished Senator from Minnesota, about whose State I commented earlier.

Mr. ANDERSON. Mr. President, a number of Members of this body have expressed apprehension that if we have tax credits applying strictly to elementary and secondary levels, there would be a massive desertion from public schools to private schools. I would like to apprise the Members of the body that in Minnesota we have had some experience to go on, because we have had a tax credit in Minnesota that would apply to the elementary and secondary schools. In 1971, we passed a tuition tax credit bill which provided, really, more relief than is being offered in the Senator's bill.

Senators might be interested to know that despite the fact that our tuition credit in Minnesota was in percentage terms more generous, the first year the law was in effect, the enrollment in parochial and private schools dropped over 11 percent. The second year the drop-off was over 8 percent. Perhaps the drop would have been even larger without the tax credit, but the fact is that during the period of time we had the tuition tax credit in effect, there was no dramatic shift out of public education into private education, and in the light of our experience, it appears unlikely that the tuition tax credit would do any damage to public education.

I am also reminded that in Minnesota, despite the fact that the per capita income is normally below the national average, our per capita spending for public education and all forms of education is sixth from the top. We have made a dramatic commitment to public education that has been of great benefit, but we have also found the resources to put into the private sector, and we think it has tremendously benefited our young people, regardless of where they go to school.

Mr. President, in the past decade the cost of a college education has skyrocketed. The overall cost of a private college education rose 119 percent between 1964 and 1976. The cost of attending a public university increased by 99 percent during the same period. The average annual total cost of a private university is now $4,811, with the cost of a public university now averaging $2,906.

These increasing costs are reasons why college attendance has declined in the past few years, with the sharpest declines coming from middle-income students.

All of American society benefits from young people receiving all the education that they desire. One of the most vital tasks of Government is to make education easily available to all who could benefit from it. For that reason, as Governor of Minnesota, I proposed major increases in the funding of public higher education, sought to restrain tuition increases, and, in one budget, proposed a freeze on tuition increases at public colleges and universities and opposed plans to impose tuition at Minnesota vocational-technical institutes.

Private higher education also has a real contribution to make to society and is deserving of public assistance. While the initiatives taken to aid private higher education were modest compared to the increases given to public colleges, they were justified and effective. We enacted

per capita aids to directly subsidize private colleges, provided State guarantees for private college construction programs, and greatly increased State scholarship and loan programs which were available to students going to either public or private institutions. These programs were successful in restoring the financial health of a number of Minnesota colleges which faced deficit budgets.

There is no justification for the allegations that tuition tax credits for higher education represent an attack on public education by private colleges. The trend over the past decades has been clearly in the direction of public institutions, as private colleges have passed on increased costs in tuition while taxes have cushioned the impact of inflation on public colleges. In the early 1950's about 50 percent of all college students were in private institutions. Today less than 25 percent of higher education students attend private colleges and the proportion continues to decline.

The pending Federal tuition tax credit will provide much needed assistance to the 11.3 million U.S. students in public and private postsecondary institutions. It will relieve some of the burden of inflating tuition costs and reverse the trend of decreasing college attendance by middle-class students.

Those who support education must stop thinking in cliches and realize changing American educational needs and traditions. The fluid labor market, different lifestyles, economic pressures, and new types of jobs all influence the educational needs of Americans. Retraining and continuing education have become an economic necessity for many. Other Americans begin or return to college in midlife to refocus their lives or to prepare for a career.

Many of these returning students are women looking to reenter the job market, and many of these women are single heads of households supporting children. College attendance among people 35 and older increased 50 percent between 1973 and 1975. These career adjustments or reentry efforts directly affect our national employment picture; yet these Americans who are trying to help themselves through education receive limited public assistance. Traditional scholarship and grant programs are not designed to assist these types of students. But a tuition tax credit will be of major assistance to these nontraditional students.

In 1980, the Senate version of the tuition tax credit bill would be extended to elementary and secondary schools. While 62 percent of the benefits for the postsecondary tuition tax credits will go to students at public institutions, all of the elementary-secondary benefits will go to students at private schools as no public elementary or secondary schools charge tuition. Approximately 5 million nonpublic school students would become eligible compared to the 11.3 million public and private postsecondary students covered.

During my tenure as Governor, State appropriations for aid to elementary and secondary education rose from $660 million to over $1.7 billion or a $1 billion increase in just 6 years. The system of State aids was reformed to compensate school districts with inadequate access to property tax funds with additional State funds; funding for education for mentally and physically handicapped children nearly tripled; additional aid was given to districts experiencing falling enrollment; and supplemental aid was provided districts with concentrations of children from socially deprived backgrounds.

Public education in Minnesota still faces problems but Minnesota's system of financing is more equitable than most States, our system is more stable than most States, and we remain one of the most generous States in the Nation toward public education as shown by Minnesota's per capita public spending on public education which is sixth highest in the Nation. Minnesota's public education problems, while serious, pale into insignificance when compared to the shortened school years, prolonged Christmas vacations, inability to meet payrolls, and chronic financial crisis which afflict many major school systems around the Nation.

The way in which Minnesota reformed our school finance system, along with significant changes in aids to municipal and county governments and direct property tax relief programs also allowed us to bring property taxes under control. In 1971, when I came into office as Governor, Minnesota property taxes were 13th highest in the Nation and well above the average. Yet Minnesota did this while maintaining the high investment in education, sixth highest in the Nation, and without sacrificing needed public services. Because Minnesota acted wisely and rationally about bringing its property taxes under control, Minnesota does not face the kind of drastic action that is now taking place in California.

Private education has a role in elementary-secondary education that is valuable. Nonpublic education provides diversity and variety in education that is highly desirable as a matter of social policy. This variety has been steadily declining over the past decades as inflation and changes in the programs that schools offer has greatly increased costs. The result has been that nonpublic education has played a steadily smaller and smaller role in American schools.

In the period from 1965 to 1975, the national enrollment in public schools kindergarten through grade 8, declined slightly, from 30,563,000 to 30,545,000. In the nonpublic schools, enrollment in grades kindergarten through grade 8 declined from 4,900,000 to 3,900,000, a decline of 20 percent.

In the last 10 years the decline in enrollment in private secondary schools was 13 percent compared to a net national increase in public school secondary enrollment. In 1965 86 percent of all students were in public schools and 14 percent in private education. By the latest figures that ratio has changed to 91 percent in public education and 9 percent in nonpublic schools. Minnesota figures show a similar trend. In 1967, 14.5 percent of students in Minnesota were enrolled in nonpublic schools. In 1975, the figure was 9.5 percent.

Again, the figures show that the proportion of students in nonpublic education is declining, and, charges that tuition tax credits represent an offensive against public education are not based upon the evidence.

There are several other points about the Senate tuition tax credit bill which should be kept in mind. First, 75 percent of the benefits of the bill would accrue to college and postsecondary students. Of this, 62 percent of the benefits for postsecondary students will be for students enrolled in public institutions. Only 25 percent of the total benefits are for students in elementary-secondary nonpublic schools.

Approximately 57 percent of the benefits will go to families with incomes of $20,000 or less; 85 percent of the benefits are for families with incomes of $30,000 or less. In order to provide greater relief to low-income families the tax credit is made refundable. This will provide relief to low-income families who have no tax liability or whose tax liability is too small to benefit fully from a nonrefundable tax credit.

The strong feeling many people have against tuition tax credits is understandable. Much of the strong objection is based on a commitment to public education, a commitment which I share. But I do not believe that tuition tax credits will damage public education at the college level or the elementary-secondary level.

I do not believe the predictions that if a tuition tax credit is provided that there will be a massive desertion of public education for private schools. In 1971 the Minnesota Legislature passed a tuition tax credit bill which provided a credit of up to $100 for elementary students and $140 for secondary students. While these maximums are lower than those provided in the pending Senate bill, considering the inflation costs and the 50-percent limit of the pending Senate bill, the 1971 Minnesota law was comparable to the pending bill. The 1971 Minnesota law provided a credit which was usually 100 percent of the tuition of Minnesota parochial elementary schools and just under 50 percent of the tuition of parochial secondary schools.

In spite of the fact that the tuition credit in Minnesota was, in percentage terms, more generous than the pending Senate bill, in the first year the law was in effect, enrollment in parochial schools dropped 11.4 percent, nearly double the drop of the prior year. In the second year the drop was 8 percent, still larger than the 6-percent drop prior to the law. Perhaps the drops would have been larger without the credit. But the facts are that in the years the tuition tax credit was in effect in Minnesota, there was no shift out of public education into private education.

In light of the Minnesota experience, it appears unlikely that tuition tax credits will damage public education. If, after enactment, tuition tax credits do harm public education, I will work to repeal the credits. But, I do not believe that any harm will occur. Tuition tax credits will help both public and private postsecondary education and may stop

the decline of nonpublic elementary-secondary education.

Mr. MOYNIHAN. Mr. President, this is remarkably helpful information from a Senator who has been a remarkably successful Governor of a great State which has tried out this system and found that it works. His statement lends remarkable credence to our position, and I thank the Senator very much for his comments.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, having sponsored and strongly supported tuition tax credit legislation for many years, I am very pleased that the Senate now is considering H.R. 12050.

In past years, legislation to provide tuition tax credits has passed the Senate on six different occasions—but each time it failed of enactment for one reason or another.

I feel confident that it will be different this year; a number of factors lead me to such a conclusion. First, the House of Representatives already has passed its version of the same legislation. The House bill is a bit more modest, but nevertheless the mandate was convincing.

Second, this year tuition tax credit legislation must be viewed in the context of a citizen tax revolt that exploded in California and is now sweeping the country. It is clear that middle-income taxpayers in this country are fed up with excessive Government spending and with tax burdens that have grown too heavy Nowhere is the burden heavier than in the area of education.

When it comes to providing education for their youngsters, middle-income wage earners are caught between a rock and a hard place. If they were poor, they could look to the Government for help. If they were wealthy, of course, they would have no problem. But, being "in the middle" they just pay and pay.

No wonder so many feel so strongly that it is high time for tax relief that helps the middle-income wage earner. This tuition tax credit bill is a good beginning.

I also think prospects for enacting this legislation were improved by modifications made within the Senate Finance Committee—modifications that respond responsibly to many of the concerns expressed about the earlier bill. As revised by the committee, the tuition tax credit program would be implemented in two stages:

First. Effective August 1, 1978, a tax credit of 50 percent of tuition and fees—up to $250 per student—would be available for full-time students in universities, colleges, junior and community colleges, and postsecondary vocational schools.

Second. Effective October 1, 1980, tuition paid for nonpublic elementary and secondary education would be eligible for 50-percent credit—up to $250 per student. In addition, the maximum credit for college and vocational schools would be increased to $500, and tuition paid for students attending less than full time—but at least half time—would become eligible.

The revised version of the bill would reduce the estimated revenue loss associated with the bill from $5.2 billion to $2.88 billion (when fully implemented in 1982)—a cut of 45 percent.

In addition, the Senate committee has included a requirement that the amount of tax credit available in the case of any student be reduced by the amount of any need-based Federal grant which the student might receive; this would prevent a form of "double dipping," and would, in effect, provide a choice.

Finally, the Senate committee added a provision to assure that tuition tax credits would not be used to foster or encourage racial discrimination.

Mr. President, as one of the original architects of a major student assistance program—the National Direct Student Loan (NDSL) program—I have long been concerned about the need and importance of making educational opportunities available on a broad basis.

This year, I am cosponsoring a bill to create an educational savings bond program to provide strong incentives for parents and youngsters to save for a future in college. The interest on such bonds would be tax free if the savings are later used for college tuition, room, and board.

Unfortunately, despite help that is available from a variety of sources, the dream of a college education has been fading for youngsters of many middle-income families who are squeezed severely by inflation, higher taxes, and soaring tuition costs. Consider these disturbing facts:

Between 1967 and 1976, the average tuition costs at public colleges and universities increased 93 percent; the figure is the same for private colleges and universities.

During the same period, the after-tax—or disposable—income of median income families increased only 66.8 percent.

During the same period, the percentage of disposable income required for tuition costs at a public university rose 16.3 percent; for private schools the figure is 15.7 percent.

It is estimated that in 1990 it will cost $47,000 to send a youngster to a public university or college; if he or she goes to a private college, the cost will be closer to $82,000.

In light of such statistics, it is no wonder that the enrollment rate of middle-income students at colleges and universities has been declining over the past 10 years. Unless action is taken soon to help, we may soon reach a situation in which only the very wealthy and the poor will be able to send their children to college. The group in the middle—those who bear the heaviest tax burdens—will be unable to afford it.

This tax credit program is a simple, efficient and equitable means of providing some needed relief. It would allow families to keep a little more of their hard-earned income and would allow them to determine their own spending priorities.

I favor this tax credit approach because it can be easily administered without expanding an already swollen bureaucracy. Eligibility could be declared on one or two lines of an income tax form; students and parents would not be required to fill out reams of HEW forms.

Mr. President, this tax credit program is an investment in our Nation's future. Because it will increase educational opportunities for our children, it will increase their earning potential—and society will eventually reap dividends many times greater than the original cost.

Mr. President, of course I recognize that there is wide disagreement over one aspect of this bill—that portion which provides tax credits for nonpublic elementary and secondary tuition costs.

As nearly as I can boil it down, opposition to this part of the legislation is based upon two major concerns: First, that availability of tax credits for nonpublic schools will lead to the deterioration of our public education system, particularly in urban America; and second, that, because many nonpublic schools are church-related, it is argued that the tax credits would violate the first amendment's prohibition against State action to "establish" a religion.

I know these concerns are expressed sincerely. As a strong believer in our public school system—and as the father of four children who have attended and thrived in public schools—I appreciate the value and importance of a vibrant, healthy public education system. If I thought this bill would actually result in deterioration of our public school system, I would vote against it. I would also vote against it if I thought the tax credits were clearly unconstitutional. I do not agree with such pessimistic appraisals. Let me set forth my reasons.

Implicit in the argument that tax credits for nonpublic schools will produce a mass exodus from the public schools—as Albert Shanker, head of America's largest teachers' union, has suggested—is the assumption that public schools are in such a precarious and tenuous state that they can survive only if they enjoy a monopoly on primary and secondary education. Even to advance such an argument does a grave disservice to our public school system; I do not accept it.

No real evidence has been offered to substantiate dire predictions of the demise of public education with the advent of such tax credits. In fact, the best evidence available indicates that the true cause for alarm is—not the deterioration of public schools—but the continuing decline of the nonpublic alternative.

Over the past 12 years, enrollment in nonpublic elementary and secondary schools has dropped by 1.3 million students—or one-fifth of their enrollment. Further, in 1960, 14 of every 100 students attended nonpublic schools; today the figure is only 9 out of 100.

It is by no means certain that tax credits will halt this erosion; it is only possible that the tide may be stemmed. It should be clear that, tax credits or no tax credits, the overwhelming majority of America's children will continue to receive a public education.

Another concern sometimes suggested is that such a tax credit might provide a windfall for whites and would thereby "foster segregation" of our schools—with whites in nonpublic schools and blacks in public schools. This argument is simply unsupported by the facts.

Some of the leading civil rights advocates strongly support tuition tax credits for nonpublic schools. Just last week, Mr. Roy Innis, national director of the Congress of Racial Equality (CORE), wrote in the Washington Post as follows:

> We believe the passage of tuition tax credits at the elementary and secondary levels will have a tremendous impact on poor and minority youngsters throughout this country by giving them what they desperately need: options. . . . To us, it is perhaps most important that this legislation would provide a competitive stimulus to the public schools . . . Innovation in both public and private education would be stimulated by the tax credit. . . . We believe it is time that the laws of this country give more than lip service to freedom of choice and quality education.

Dr. James S. Coleman, sociologist and a noted expert on desegregation whose studies have been cited by the U.S. Supreme Court, has announced his support for the elementary and secondary tax credit legislation. He said it "would increase the opportunity of black parents to escape from schools they think hurt their children."

It has been pointed out that significant numbers of urban blacks and other minorities already attend nonpublic schools. In testimony before the Senate Finance Committee, the noted black economist, Prof. Thomas Sowell of UCLA, expressed his support for tax credits on the basis of his own extensive research in the area. He found that "one of the great untold stories of contemporary American education is the extent to which Catholic schools, left behind in ghettoes by the departure of their original white clientele, are successfully educating black youngsters there at low cost."

A socioeconomic survey of public and nonpublic student populations at the elementary and secondary levels reveals that family incomes of nonpublic school students are remarkably similar to the income patterns for the entire American population:

About 20 percent of the nonpublic school students are families with income under $10,000.

Fifty-seven percent of all nonpublic school students come from families earning between $10,000 and $25,000.

Eighty-two percent come from families with incomes below $30,000.

Ninety-two percent come from families earning less than $40,000.

Perhaps most significantly, as a percentage of enrollment, nonpublic schools enroll only 2.5 percent more wealthy students than do public schools.

These figures hardly indicate a windfall for the wealthy. Instead, they do suggest that ordinary people who now pay—and will continue to pay—property taxes for support of public schools would receive at least a bit of assistance in paying for the nonpublic education they favor for their children. I do not believe this modest assistance will result in the ruin of public education.

Of course, it is also argued that such tax credits for tuition paid to parochial elementary and secondary schools would be an unconstitutional abridgement of the first amendment's "establishment of religion" clause.

I will not dwell on the relative merits of the arguments on both sides of this constitutional issue. Scholars—and, I suspect, members of the Supreme Court—are very much divided on this difficult question. In recent years, the Court has ruled on a series of State programs which have included various types of assistance for parochial schools. The results have been rather confusing, to say the least.

For example, in a recent decision, Wolman against Walter, involving an Ohio plan, the Court concluded:

> In summary, we hold constitutional those portions of the Ohio statute authorizing the State to provide nonpublic school pupils with books . . . . We hold unconstitutional those portions relating to instructional materials . . . .

If this bill is enacted, the Court should be given an opportunity to rule on its constitutionality as early as possible.

I am pleased that this is precisely what the bill before us contemplates. The measure expressly provides for expedited judicial review, allowing the courts to rule on the constitutionality of any section of the bill—even before tax credits can be claimed. This would insure that there will be no confusion for taxpayers—or the Internal Revenue Service—when the time arrives for the credits to take effect. This is the responsible way to proceed.

Mr. President, this is important legislation that is urgently needed. We pass it at a time when wage earners and taxpayers are expecting and demanding more tax equity. I hope it will become law.

● Mr. CHURCH. Mr. President, reaching a decision on whether to support or oppose the Hollings amendment has not been easy. I have tried to ponder the question carefully and have come to a conclusion only after considerable soul searching.

I believe in diversity at every level in our educational system. A mixture of public, private, and parochial grade schools and high schools has been good for our country. In Idaho, although there are relatively few parochial schools, those that do exist are of fine quality. I, myself, entered the first grade at St. Joseph's School in Boise where I received my first three grades of instruction. Years later, the Bishop Kelly High School was built in Boise and I have enjoyed a cordial relationship with the faculty and student body there. The academic standards and the high order of discipline at Bishop Kelly High School have attracted many students from Protestant, as well as Catholic, homes.

If my vote were governed by sentiment alone, I would vote for the committee bill and against the Hollings amendment. I want to help strengthen the parochial schools but I am unpersuaded that it would be wise to do so at the expense of the public schools.

It is not the constitutional question—the first-amendment provision which separates church and state—that influences my decision. In correspondence with Idaho's Catholic Bishop Treinan, I agreed that the courts, rather than Congress, should settle the constitutional issue.

It is the public policy that Congress must decide upon. This bill brings us to a fork in the road. We must ask ourselves which is the right direction to take. What will happen to our tax-supported public education system, which is available free of charge, to all children of grade school and high school age, if Federal tax credits are given to subsidize tuition paid to competing private and parochial schools?

If we start subsidizing this tuition, where is the stopping place? It is said that the $250 tax credit per student falls far short of actual tuition costs, and that the bill, as reported by the committee, would therefore do no serious damage to the public school system. This argument has been seriously challenged in the course of the debate. However, even if it were true, this bill represents a new departure. The public policy embodied in the bill, that of allowing Federal tax credit to compensate parents for tuition paid to private and parochial schools at the elementary and secondary level, would set the course for the future. The tax credits would later be enlarged, with consequences that could seriously impair the quality, nature, and scope of free public education in America. Moreover, the social impact of such a decision could easily be even more injurious than the erosion inflicted upon the public schools themselves. My concern, in this regard, is documented in a recent article which appeared in the Washington Post on August 8, 1978, captioned, "Tuition Credit's Impact Feared." I submit for the RECORD the full text of this article.

These considerations, despite my sentiments, have led me to conclude that I must vote in favor of the Hollings amendment. Another way can be found to assist private and parochial schools without the risk of undermining the public school system in this country. Too much is at stake to take that risk.

The article follows:

STUDY CITES POSSIBILITY OF MORE SEGREGATION—TUITION CREDIT'S IMPACT FEARED

(By Saundra Saperstein)

White enrollment in private and parochial schools in the 1960s was closely tied to the racial makeup of the nation's largest cities, and these enrollments often increased in cities with heavily black populations, a Johns Hopkins University study has shown.

Washington topped the list of the cities in the study whose white enrollment in nonpublic schools increased. About 37 percent of Washington's white students were enrolled in these schools in 1960; the figure was 47 percent 10 years later.

The study indicates that tuition tax credits designed to aid parents of private and parochial school students "may result in greater social-class and racial segregation of American children than now exists," according to study director Henry Becker.

Becker said the tax credits might intensify

the relationship between race and private school enrollment found in the study. The tax credits, he said, might be "more widely used by white families in cities with large or growing black populations, and could inhibit progress on school desegregation in these cities."

A controversial proposal to establish federal income tax credits for private college, secondary or elementary tuition is scheduled to come up in the Senate this week.

Spokesmen for public schools, including Health, Education and Welfare Secretary Joseph A. Califano Jr., have warned that providing a tax subsidy for private school tuition would increase the exodus from public schools and seriously hurt many systems.

Becker noted in his study that the large cities where white enrollment in private and parochial schools increased in the '60s were either southern cities or northern ones with large black populations. These cities included Washington, Atlanta, Miami, Charlotte, Dallas, Fort Worth, Philadelphia, Detroit, Newark and New York.

The rise in white enrollment in nonpublic schools in Washington between 1960 and 1970 seems "more startling when you realize that in most large northern cities the figure was going down," Becker said.

He pointed, for instance, to Milwaukee, a city with a low minority population, in 1960 about 36 percent of the white students were enrolled in non-public schools; by the end of the decade the percentage was down to 26, he said.

Washington's experience of increasing white enrollment in parochial and private schools appears to be continuing in the 1970s, according to figures provided by the Division of Research and Evaluation. In October 1977, about 55 percent of the city's "non-black" students were attending nonpublic schools, the figures showed.

The Hopkins study was based on data from the 1968 and 1970 censuses. According to Becker, it was the first statistical look at private school enrollment according to race.

Becker emphasized that the figures do not necessarily reflect what has happened in the 1970s.

Still, the Council for American Private Education found the study "alarming and misleading," according to council executive director Robert Lamborn.

"The facts since 1970 are substantially different than the facts prior to 1970," said Lamborn, whose organization is an umbrella group for about 90 percent of the nation's private and parochial schools.

"I'm not criticizing the scholarship of this study, but I am worried when a study done by anyone attributes movement to factors that are basically racial," he said.

"A great deal of movement from public to private schools has had nothing to do with race. Most of the changes have been attitudinal, reflecting desires of parents to find the best schools possible for their children.●

● Mr. SCHMITT. Mr. President, education is New Mexico's and the Nation's most vital resource for the future. Communication through the education of young people is literally direct communication with this future. There is no more awesome responsibility for parents and teachers who teach, or for legislators who create the environment for teaching.

New Mexico's future, the Nation's future, the Earth's future, our leadership, and our survival depend on the success of our educational system. An educated and farseeing electorate is essential to democracy; democracy in the United States is essential to freedom in the world.

These things I believe.

But today's argument is more pragmatic: How to begin the search for a better, indeed an adequate educational environment through legislation. Obviously, what we have been doing recently has not worked for the majority of America's young people. The rate of improvement of their education is not keeping pace with the rate of increase in the societal demands upon them.

The quality of the public school system is declining; the private school system is disappearing. How can we reverse these trends?

The typical American answer is to increase the incentives for providing a good education. Many of us believe this can be done by the tuition tax credit, a simple way of increasing the range of choice available to parents for the education of their children. With increased freedom of choice comes increased competition among schools to become the beneficiaries of that choice. With competition comes improvement of the educational service being offered whether it be public or private.

The argument is raised that providing a tax credit for private education, some of which is church affiliated, is unconstitutional. This question must be answered by the courts; but I ask you, how can an increase in the freedom of choice be unconstitutional in a Nation created to preserve freedom of choice?

Mr. President, as a cosponsor of the tuition tax credit bill, I will vote for H.R. 12050, the Tuition Tax Relief Act of 1978. The question of tuition tax credits is an issue whose time has finally arrived. While the Senate has passed similar bills on numerous occasions in the past, this is the first time that the House has also passed a tuition tax credit bill. Three fundamental reasons exist for support of this concept.

First of all, it provides some tax relief for the citizens of this country. A very clear message is being sent by the citizens of this country to their elected officials on all levels of government. The people of the United States are overtaxed. They want government spending and taxes reduced. They want more personal control of their income.

Second, and more importantly, this bill will provide citizens with a greater degree of freedom in the choice of education programs. The choice of education which has always been available to the rich will now be available to the middle- and lower economic classes. Parents will once again, and in some cases, for the first time be able to have some control over the education of their children.

Third, and most importantly, the quality of education will improve. Through the healthy competition which will certainly result from this proposal, both public and private schools will improve the quality of the educational services which they provide. Our children will be the ultimate beneficiaries of this.

Too many of our children are being denied a good education, and their parents feel helpless to do anything because of financial considerations. Under this bill, finances will play less of a role in the decisionmaking. Though to send one's children to a nonpublic school will still require a major financial commitment, it will be less of one than now. The beneficiaries will be the middle- and lower-economic classes. It is precisely these groups which require the assistance the greatest.

Mr. President, we talk about aiding the poor, eliminating the ghetto, and assisting those individuals who start their lives at a disadvantage. This bill will do more to accomplish those goals than anything else we can do. No longer will a poor family be forced to send their children to the public school even if it fails to provide adequate education. These parents will now be able to exercise some choice. Competition will increase to provide them that choice. Public and private education will both benefit from the competition.

The benefits will be greatest to minorities. On June 26, I submitted for the RECORD an article which appeared in the Washington Post. The article was about the University of Chicago sociologist James Coleman who endorsed tuition tax credits. Professor Coleman, long active in desegregation movements, pointed out that "low-income black parents" will benefit from the increased range of choices. Recently, Roy Innis of the Congress of Racial Equality (CORE) endorsed this approach. The Hispanic community has long favored choice in education.

Mr. President, Coleman and Innis have spent more time working for desegregation and racial equality than almost any two individuals. I do not believe that they would endorse any proposal that would not assist minorities and would promote segregation in the schools. Plus, their position is supported by the logic of their case.

When I contacted Hispanic groups in New Mexico to inquire as to their feelings about tuition tax credit, the response was enthusiastically in support of this proposal. I was told that any proposal which aided education, which gave parents more control over the education of their children, and which prompted competition and choice in education was welcome. These groups, some of which are involved in education, understand that minorities stand to benefit the most under this bill and not at the cost of some other groups.

Mr. President, all too often we in the Congress receive negative mail; that is, mail from constituents who are opposed to legislation being considered. The issue of tuition tax credits, however, has sparked much positive mail. During the past year I have received a great deal of mail supporting tuition tax credits. This mail has been from a cross section of New Mexicans and has outnumbered mail opposed to this issue by a wide margin.

Mr. President, I think many of the fears expressed in the past few days of debate are unfounded. I have supported the bill for elementary and secondary schools as well as for colleges because I feel that this is the best approach to assisting our citizens in providing for quality education.●

Mr. HEINZ. Mr. President, I rise in support of H.R. 12050, the Tuition Tax Relief Act of 1978, and as an original cosponsor of the Packwood-Moynihan bill, S. 2142, whose principles this bill embodies.

I have been an advocate of constitutionally acceptable aid to students in nonpublic schools before I ever ran for Congress many years ago. This is, therefore, a longstanding conviction and goal. The one way I know how to achieve this goal is through a tuition tax credit available only to students or parents. Such a credit is a simple, efficient, and fair approach to providing families some relief from rising education costs. It steers clear of institutional support, and it avoids the costs and invasions of privacy too frequently found when a Federal middleman is invited to collect and disburse the taxpayer's money.

The bill before us today would begin immediately to offer a tax credit to postsecondary students, and beginning on October 1, 1980, 2 years from now, extend that credit to students in elementary and secondary schools. It is a responsible approach and legislation that will be good for American education.

I believe that education in the United States must be a national priority. Toward that end, this bill is an important step; the proposal to create a separate Department of Education, of which I am a cosponsor and expect enactment this year, is another. For education has been and is still the lifeblood of a strong and dynamic America. It has always stood out as the hope of parents for a better opportunity for the next generation. America's greatness does not rest on her military might or economic power or humane instincts alone, but stems also from her unique and successful system of public and private education which has enabled young men and women of diverse races and backgrounds to give flower to their inate skills and abilities.

The bill before us addresses an important and fundamental principle, that of a pluralistic society. Pluralism is a unique part of America, and our confidence in the principle of educational pluralism in America is longstanding. This pluralism is threatened by the increasingly escalating costs of education which have made it more and more difficult for families of modest or moderate means to exercise their freedom of choice to pursue a nonpublic education which they believe may best meet their and their children's needs. This distinguished body has recognized this problem, and has passed six college education tax credit proposals in the past 10 years as a means of providing relief from those escalating costs.

H.R. 12050 is a departure from the past. It would provide tax credits for elementary and secondary education as well as higher education. Both have the same objectives. Tax credits for college tuitions go to parents to relieve public and private education costs: To deny them for elementary and secondary tuition costs, as the sponsors of the Hollings amendment seek to do, would constitute an artificial distinction that is wholly inconsistent with our earlier actions.

Not only would this be inconsistent educational policy, it would be bad social policy. The erosion of the tax base in many of our urban neighborhoods is an inescapable fact. The main cause is the flight of both white and black middle and upper income families from inner city areas. As a result of the decrease in local revenues, public schools in these areas are "educationally deteriorating and physically dangerous." And I for one am deeply concerned with keeping nonpublic schools alive in our urban neighborhoods. This is especially important, for these schools are often the one thing standing in the way of both black and white flight to the surburbs. And here tuition tax credits will help; indeed, I believe they are an essential element in saving our urban neighborhoods and our cities themselves.

As a matter of educational policy, tax credits will mean not less, but more, money for education. The combined impact of the tuition tax credit and the anticipated growth of Federal appropriations for public education programs will mean exactly that, and that will be good for our children as it can only serve to improve our educational system. I trust this proposition is self-evident.

One point I also want to be unambiguous about is that passage of this bill will in no way lessen my strong support for public education. Insofar as I am concerned, our system of public education in America is absolutely essential to the future of America. And I would oppose any measure that would give preference to nonpublic education over public education. But this clearly is not the case with tuition tax credits. Leaving aside the amount of State and local support per child, which in my own State of Pennsylvania totals $1,785 per student, the total elementary and secondary tax credit claimed by Federal taxpayers will be an estimated $900 million by 1983, or approximately $170 per nonpublic education student. This is less than half the estimated Federal support of $352 per public education student. Clearly, then, H.R. 12050 maintains a proper balance of support for public education.

Mr. President, I want to say again that I remain committed to seeking increased support for public education through funding of the Elementary and Secondary Education Act, the Education of the Handicapped Act, and other appropriate measures. But I am equally committed to the support embodied by this bill. I believe that the tuition tax credits provided in H.R. 12050 will allow for support for education in a way that will be good for education.

Philosophically, this tuition tax credit measure goes to the heart of another very serious matter, that of individual choice and personal freedom which we Americans hold so dear. I strongly agree with the noted sociologist James S. Coleman, the author of the landmark Coleman report, who has argued convincingly that any measure such as this that would increase the range of choice for low-income and minority parents and offer greater opportunity for individuals is a positive step forward and that more freedom of choice for Americans cannot possibly be bad for this country.

Mr. President, I am aware that there are those who are opposed, from sincere motivations, to this legislation. At the same time, I believe that the authors of the bill have carefully examined and made every effort to accommodate all legitimate concerns, and I commend the authors for their sensitivity and forthrightness in addressing those concerns:

To the concern of constitutionality, the bill provides for expedited review by the Supreme Court and defers for 2 years the credit for elementary and secondary students to allow the judicial review to be completed;

To the concern of a proliferation of segregated academies, the bill provides for monitoring of IRS enforcement of nondiscrimination standards;

To the concern of nonaccredited "fly-by-night" schools, the bill requires compliance by schools with applicable State laws for its students to be eligible for tax credits;

To the concern that middle- and upper-income families will receive a check from Washington, the bill does not provide for refunds—only credits against taxes owned.

Mr. President, some concern has been expressed about the financial impact of H.R. 12050. The total cost of this program when fully effective by 1983 is estimated to be approximately $2.8 billion: $1.9 billion, attributable to postsecondary education, $900 million to elementary and secondary education. Of the $726 billion in estimated Federal receipts for 1983, the total involved is less than two-fifths of 1 percent. This is a minimal amount. And to those concerned about Federal spending, I want to stress that this is not an outlay. At the worst, this is money we will not collect; at best, this is money over which the taxpayers themselves will have more control, and the opportunity of a better education for their children.

In sum, Mr. President, I believe the public interest is best served by passing H.R. 12050 and making a tuition tax credit available. I am equally confident that the quality of our American system of education will continue to thrive from the diversity and competition that have always been the hallmark of American education, and I urge my colleagues to support this important legislation.

Mr. HELMS. Mr. President, I support the concept of the tuition tax credit. I was a cosponsor of one of the original measures, and I still believe that the concept is sound.

I believe that the concept is sound because it provides a way to offer relief to the taxpayer without involving the Federal Government in the educational process. But that concept has been seriously damaged by the legislation and legislative history that has been developed over the past few days.

As the bill came from the House of Representatives, it was exclusively a revenue measure, unrelated to assistance to education, either public or private. In fact, it even contained a clause insuring that the tax credit not be considered as

Federal assistance to educational institutions. That clause read: "Any educational institution which enrolls a student for whom a tax credit is claimed under this Act shall not be considered to be a recipient of Federal assistance under this Act." That statement was reiterated in the House report.

Yet the Senate Finance Committee, in rewriting the bill, pointedly omitted that clause, even though it accepted verbatim the language of the preceding and succeeding paragraphs. Although that action in itself would not have been determinative, I was deeply disturbed to learn in a colloquy last night with the distinguished Senator from New York that the sponsors did appear to consider this measure as assistance to the institution, rather than as relief to the taxpayer. I gave them every opportunity to deny that interpretation, and they failed to do so.

Now I realize that there are those who maintain that this bill amounts to Federal subsidy for segregated schools. In this day and age, such a charge is a red herring that has very little meaning in practice. It is true that two decades ago many schools were organized as a result of the desegregation decisions of the Supreme Court. But desegregation in itself was not a cause that could long sustain the sacrifices of parents and teachers. Indeed, many of the schools that were set up only for the purposes of avoiding desegregation have already closed.

On the other hand, the development of the Christian school movement is increasing rapidly. With the deterioration of academic standards, moral standards, and teaching standards throughout the Nation, and the steady erosion of cultural and religious values by the infiltration of secular humanism into the curricula of the public schools, many parents have felt the need to remove their children from that environment.

The Christian school movement is based upon the premise that the religious, social, cultural, and academic aspects of education are a totality. To maintain the integrity of that unit, it is necessary to have absolute control over all parts of it. That means control not only over the academic content, but also over the social behavior of students, the attitudes portrayed in textbooks, the Christian witness of the teachers, the ethics of moral problems. There are many, of course, who would disagree with the goals and aims of the Christian schools; but they are not required to participate in voluntary, private activity.

Yet, if by means of false legislative interpretation of the tuition tax credits, we suddenly transform this wholesome, socially useful private activity into an area subject to State action, we destroy the integrity of the activity. Moreover, in a democracy, we open ourselves to the charge of funding religious activity.

Now, although the debate so far has been directed toward the false issue of segregation, we cannot escape the fact that once Federal control is interjected into any portion of an area, it rapidly extends to control the whole area. No one can maintain that Federal concern over possible segregation will stop at that point. The HEW bureaucrats have a totalitarian mentality. They distort the entire educational process because their only priority is to achieve mathematical desegregation. But for most private schools the whole issue of race has very little priority at all. It is simply no big thing. There are so many aspects of education that are so much more important that they of necessity crowd out racial issues. To adopt HEW's ideological and social priorities would completely distort the educational process.

This problem is emphasized by section 3 of this bill, which provides for the Secretary of the Treasury, the Secretary of HEW, and the Attorney General to report on the effectiveness of IRS procedures on civil rights. This in itself is an ominous provision; in effect, it gives the Secretary of HEW oversight on certain private school activities. We have seen how HEW in dealing with public schools looks at everything through the myopic lens of desegregation, and distorts its requirements accordingly. Now HEW is supposed to become an advisor to IRS to "enhance enforcement * * * of public policies against racial discrimination and other forms of discrimination which are contrary to law or against public policy." The three Cabinet officers are also supposed to report to Congress on "Revenue Ruling 71-447, Revenue Procedure 75-50, and any other rulings, procedures, directives, or memoranda designed to enhance civil rights enforcement by the Service."

This is not a narrowly draw directive. It is an open invitation to the Federal Government to invent any kind of rulings it wishes on the basis of its interpretation of public policy. Nor is the directive limited to racial discrimination. It embraces "rulings, procedures, directives, or memoranda designed to enhance civil rights enforcement." Thus even if a problem does not involve racial discrimination per se, it comes within HEW's orbit if it merely enhances enforcement of discrimination.

It does not take too much imagination to see HEW demanding coed sports programs, coed dormitories, the hiring of homosexual teachers, the availability of abortion counselors, and the abolition of male and female choirs, and so forth, all erected upon some pretext of public policy.

Indeed, the very directives mentioned in section 3 are directives which themselves have no legislative foundation. They are directives which were invented out of the air by the admission of the Director of Internal Revenue, Mr. Jerome Kurtz. Mr. Kurtz himself said so in a public speech only 8 months ago on January 9. He said:

> We have almost no specific statutory guidance; our authority and obligations on racial issues derive from the constitutional doctrine announced in *Brown* v. *Board of Education in 1954*, and cases enforcing and interpreting it, and from the broad national policy announced in the 1964 Civil Rights Act.

In the same speech, Mr. Kurtz also describes the role of the IRS in permitting tax exemption to churches. He points out that IRS is making rulings in the definition of what constitutes a "church" without any statutory authority:

> For many years, and now with increased frequency, the Service has been required to rule regularly and with far-reaching consequences on a term about which we have received no guidance from Congress.

Mr. Kurtz goes on to detail the revenue procedures which are mentioned in section 3 of the bill before us today, and points out that they are interrelated with tax implications for church-sponsored schools and the churches themselves:

> Church related private schools are covered within this policy, as well as the churches that operate and control them.

Finally, Mr. Kurtz describes the IRS as being "on the cutting edge of developing national policy."

Mr. President, this bill appears to give sanction to the extraordinary assertions of Mr. Kurtz. But even if section 3 were not in the bill, his statements give full evidence of the tendency to totalitarian control inherent in the bureaucratic mind. For if both the churches and the schools are equally subject to civil rights enforcement, then we are preparing the way for doctrinal and ritual intervention by HEW against religious practices and beliefs involving the roles of the sexes and the morality of sexual practices.

From that kind of intervention, it is only a step to demanding HEW-approved curricula, HEW standards for teachers, HEW approved textbooks, and so on. What can stop "the cutting edge of developing national policy"?

Mr. President, I admit that this trend is already well-advanced, whether or not this bill is passed. But the Senate should not approve—it must not approve—the principle that a tax credit to an individual is a Federal contribution to an institution, thus placing that institution in line for all kinds of Federal control. The area of private action must be jealously safeguarded, and that has not been done in the Senate version of the bill.

Mr. President, I ask unanimous consent that the speech by Mr. Jerome Kurtz, Commissioner of the IRS, be printed in the RECORD.

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

REMARKS BY JEROME KURTZ

DIFFICULT DEFINITIONAL PROBLEMS IN TAX ADMINISTRATION: RELIGION AND RACE

Of all the interpretative judgments the Internal Revenue Service must make in administering the tax laws, probably none is more difficult and none demands more sensitivity than those concerning tax consequences affected by questions of religion and civil rights. These questions are far afield from the more typical tasks of tax administrators—determining taxable income. Nevertheless, our tax law places the IRS near the forefront in making delicate decisions involving definitions of "religion" and "church" and also places on the Service a substantial responsibility in making determinations relating to racial discrimination.

I'd like to discuss briefly why we must take positions in these areas and the factors considered by the Service in attempting to resolve these problems.

Statutory terms involving religion are found throughout the Code. Significant tax benefits follow from a determination that an organization is a "religious sect." For example, under section 1402(g) it is exempt from payment of Social Security taxes. Donations made to a group "organized and operated exclusively for religious . . . purposes" under section 170(c)(2)(B) qualify for deductions at higher limits.

Moreover churches today have only minimal demands made on them by the Service. For example, they are not required to seek exemption, they have no filing requirement, and they receive the benefit of the restraints imposed on the Service prior to an audit by section 7605(c).

Fundamental to most (but not all) of these usages in the Code is (1) the characterization of an organization's purposes as "religious" as that term is used in section 501(c)(3), and (2) qualification of an organization as a "church."

All of government—including the IRS—is constrained in the largest context by the First Amendment's Free Exercise and Establishment Clauses. In the Supreme Court's words, religious exercise must be permitted "to exist without sponsorship and without interference." (*Walz* v. *Tax Commission*, 397 U.S. 664, 669 (1970)). Exemption of religious institutions, whether from property or income taxes, has been characterized by the Court as representative of a "benevolent neutrality towards churches and religious exercise generally" that is "deeply imbedded in the fabric of our national life." (*Id.* at 676–77). In addition to the constraint implicit in neutrality, government must ensure as well that the *effect* of otherwise appropriate decisions does not result in an "excessive entanglement" with religion.

The most fundamental perception we have of our role then is to administer these provisions with unimpeachable neutrality, using as our premise Justice Douglas' eloquent phrase that this society will "make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary." (*Zorach* v. *Clausen*, 343 U.S. 306, 313–14 (1952)).

Having said that, however, does not mean that these First Amendment rights are absolutes or can be asserted as a screen for any kind of conduct. While the Court has found within the religious clauses of the First Amendment both a freedom to believe and a freedom to act, it has also found that the former is absolute while the latter is not. (Reyonds vs. U.S., 98 U.S. 145 (1878))

The Service, of course, has no concern with an individual's privately held beliefs, but it cannot always avoid concern with actions based on such beliefs. When a group makes its beliefs and programs a basis for seeking preferential tax treatment, then the Service has an obligation to inquire whether such preferences should appropriately be extended to such group.

From this distinction, the Service has constructed the first of two basic inquiries it makes of an individual or organization seeking to meet the "religious purpose" test of section 501(c)(3): Are the practices and rituals associated with the belief or creed illegal or contrary to clearly defined public policy? If a group's actions, as contrasted with its beliefs, are contrary to well established and clearly defined public policy, then tax preferences are inappropriate. The group will fail to meet the religious purpose test. Because "Religious Purpose" implies the absence of activities which are illegal or harmful in an important way to others. Under this test the Service revoked an exemption granted for ostensibly conventional charitable and religious purposes when we learned the group was actually organized to carry out a vicious, anti-semitic campaign.

The second inquiry, which is rather limited, is whether the particular belief is truly held. The Supreme Court ruled more than a generation ago that citizens may not be put to the proof of their religious doctrines or beliefs:

"The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect." U.S. vs Ballard, 322 U.S. 78, 87 (1943).

Nevertheless, the Court did hold that to enjoy a benefit based on a religious belief, the belief must be truly and sincerely held. This determination is tilted in favor of the applicant by the Service in this manner: In the absence of a clear showing that the beliefs or doctrines under consideration are not sincerely held by those professing them, the Service will not question the religious nature of those beliefs.

For example, within recent years the Service has ruled favorably on a sect that worshipped pagan dieties. The members of the sect consider themselves pagans engaged in the practice of witchcraft, magic, healing, and clairvoyance. There was no evidence that the beliefs were not sincerely held and none of their activities violated any law or clearly-defined public policies. Their beliefs appeared to serve the same function in the lives of their adherents as the beliefs of a more conventional religion serve in the lives of its adherents, the "functional equivalence" test enunciated by a California appellate court some twenty years ago in upholding exemption for a secular humanist society. *Fellowship of Humanity* vs. *County of Alameda*, 315 p. 2d 394, 409–10 (1957)).

Often associated with the determination of "religious purpose" is the question of whether the organization is a "church." For several reasons, more controversy has been generated in recent years about this part of the religion question than any other. Prior to 1970 all religious organizations and exempt organizations "operated, supervised, or controlled by or in connection with a religious organization" were excused from virtually all accountability to the public. Congress, in the Tax Reform Act of 1969, narrowed the exceptions from filing an information return and indirectly attached greater significance to classification of an organization as a church or an integrated auxiliary of a church. Of less obvious significance than accountability, but of great practical consequence to qualifying as a church under section 170 (b)(1)(A)(i), is the absence of the public support tests to avoid private foundation classification.

For many years, and now with increased frequency, the Service has been required to rule regularly and with far-reaching consequences on a term about which we have received almost no guidance from Congress. Frankly, it is a difficult and thankless task, but one that we cannot avoid because of the significant tax implications that follow when an organization qualifies as a church.

In determining whether an admittedly religious organization is also a church, the Service follows the principles enunciated by the Court in *De La Salle Institute* vs. *United States*. In holding that a religious order operating schools and a novitiate was not a "church," and therefore not exempt from the tax imposed on unrelated income generated by a winery operated by the corporation, the Court was terse and direct:

"To exempt churches, one must know what a church is. Congress must either define 'church' or leave the definition to the common meaning and usage of the word; otherwise, Congress would be unable to exempt churches. It would be impractical to accord an exemption to every corporation which asserted itself to be a church. Obviously Congress did not intend to do this." *De La Salle Institute* vs. *U.S.*, 195 F. Supp. 891, 903 (N.D. Cal. 1961).

The Tax Court carried that concept further in *Chapman* vs. *Commissioner*, 48 T.C. 358 (1967) when it determined that Congress used "church" more in the sense of a denomination or sect than in a generic or universal sense.

Consistent with these principles, the Service does not accept any and every assertion that an organization is a church. We have adopted a ruling position based on historical and practical considerations in arriving at what the Court in *De La Salle* called "the common meaning and usage" of the word "church." As important as these historical and practical considerations, however, have been our attempts over the years to isolate and distill from authoritative judicial sources those indicia of the existence of a church that are the most objective and least involved with particular beliefs, creeds or practices. But beliefs and practices vary so widely that we have been unable to formulate a single definition. The determination whether a particular organization is a church must, therefore, be made on a case-by-case basis. It may be helpful to list the characteristics we utilize:

(1) A distinct legal existence,

(2) A recognized creed and form of worship,

(3) A definite and distinct ecclesiastical government,

(4) A formal code of doctrine and discipline,

(5) A distinct religious history,

(6) A membership not associated with any other church or denomination,

(7) A complete organization or ordained ministers ministering to their congregations,

(8) Ordained ministers selected after completing prescribed courses of study,

(9) A literature of its own,

(10) Established places of worship,

(11) Regular congregations,

(12) Regular religious services,

(13) Sunday schools for the religious instruction of the young,

(14) Schools for the preparation of its ministers.

We are aware that few, if any, religious organizations—conventional or unconventional—could satisfy all of these criteria. For that reason, we do not give controlling weight to any single factor. This is obviously the place in the decisional process requiring the most sensitive and discriminating judgments. We are aware of this and that awareness is, perhaps, the best guarantee that we are trying to administer this difficult area carefully and evenly.

While I don't want to overstate the case, the alternatives to this admittedly imperfect process would weaken fundamental tax administration principles. Acceptance at face value of the assertion that an organization is a church would invite abuse. We must, for example, make preliminary determinations of bona fides in determining the application of section 7605(c) audit restraints.

A description of a current tax avoidance device illustrates the problem. Some individuals and organizations are marketing and promoting "plans" to avoid income taxes. While the "plans" vary in certain respects, a common theme calls for an individual taxpayer to obtain minister's credentials and a charter for a church or religious order by mail for a fee from churches that may or may not be recognized as exempt from Federal income tax under IRC 501 (c)(3). No profession of adherence to a creed, dogma, or moral code is required and no duties or fiduciary responsibilities are undertaken in order to receive and administer these charters or credentials.

The "plan" then calls for the individual to take a "vow of poverty" and to assign his assets (house, car, savings account, etc.) and the income earned from current employment to the purported church or order. A major portion of the income assigned to the church or order from this unrelated occupation is

set aside for housing, food, clothing, and other items for the individual. Most of the remaining income is set aside for the upkeep of the premises in which he resides, the maintenance of the individual's car which is provided for his unrestricted use, and for occasional "spiritual retreats", by the individual to traditional vacation areas. Under the "plan," less than 10 percent of the remaining assigned income is utilized for gifts to the poor, prayer books, bibles, and other church functions.

Typically, the solicitations conclude that a vow of poverty can make a person rich.

Those interested in protecting the preferences for churches must agree that the Service has an obligation to be vigorous in stopping such schemes.

We have been criticized for the scope and breadth of the criteria we use and it has been implied that the Service has been trying in recent years to discourage new religions and new churches. I can assure you that that is not the case with the IRS. But the protection of church preferences requires that such preferences not be distorted.

We will do our best to administer this difficult area with tact and discretion. We may err occasionally but I remind you that Treasury and the Service were among the most vigorous advocates of the declaratory judgment procedures for exempt organizations so that there would be prompt judicial resolution of disputed rulings.

RACE

Equal in difficulty to the religious issues are those involving race. Again, the Service has been pulled from both directions, being criticized at the same time for doing too little and too much. Guidance on racial issues is less clear than that on religious issues. We have only a little more than 25 years of history and development of the law and Federal policy on school integration compared with 200 years of history on religious issues.

We have almost no specific statutory guidance; our authority and obligations on racial issues derive from the constitutional doctrine announced in *Brown* v. *Board of Education* in 1954, and cases enforcing and interpreting it, and from the broad national policy announced in the 1964 Civil Rights Act.

Our policy and administration in this area is developing. As in the case of the religious issue, this is not an area with which tax administrators typically deal. Our experience is limited. We are, however, moving to fulfill our responsibility as promptly as we reasonably can. As I will relate in a moment, the Service has taken significant steps in recent years to improve compliance with its private school policy. We expect further guidance from the courts since we are presently involved in litigation about our enforcement program.

The most demanding tax administration problem for the Service is in determining whether private schools have adopted and implemented a racially nondiscriminatory student admissions policy. While this is obviously not the only tax problem involving race, it is the one that has received most attention from the Service and its constituency in recent years. Service ruling policy is found in Revenue Rulings 71–447 and 75–231. Guidelines and procedures are found in Revenue Procedure 75–50. Essentially, these three documents deny tax exemption to private schools that discriminate in their admissions policy on the basis of race or ethnic origin. Church-related private schools are covered within this policy, as well as the churches that operate and control them.

These rulings positions had their origins in the early part of this decade when a Federal court enjoined the Secretary and the Commissioner from granting exemption to private schools in the State of Mississippi that discriminated on the basis of race in their admissions policies. The first ruling in this area extended a similar prohibition to all private schools in the United States. Schools were notified of this ruling and given an opportunity to adopt a suitable admissions policy and publicize it to the communities they served. More than 100 schools chose not to adopt such a policy, resulting in the revocation of their exemptions.

In 1975, the Service announced that that policy was equally applicable to schools operated or controlled by churches and, in the same year, issued Revenue Procedure 75–50 articulating important standards and guidelines by which both Service agents and the affected schools could determine whether the latter were in compliance. A brief background discussion about the evolution of these latest developments may be helpful.

In the fall of 1974 a Task Force composed of IRS and Chief Counsel personnel undertook to evaluate, in the broadest context, Service policy affecting private schools. They studied every part of the IRS responsibility, from rulings policy in the National Office to examination practices in the field. They discovered what appears to be almost a truism: translating policies and guidelines about race into compliance and enforcement practices presented the Service with the most difficult kind of tax administration judgments. The basic charge to the Task Force was to prepare recommendations to give field agents specific and objective guidance both in considering exemption applications and in conducting examinations of private schools. Within the past few weeks, the final item resulting from the Task Force's work has been issued to the field. In addition to the revenue rulings and procedures, our private school program includes the following:

An internal management reporting system to record and track complaints, audit results, and exemption letter activity.

Specific and detailed examination guidelines and a checksheet to assist field agents.

A revised Schedule A to Form 1023 (Application for Exempt Status) to conform it to the informational requirements established by Revenue Procedure 75–50.

A revised Form 990 to provide for the annual certification required by Rev. Proc. 75–50 that the school is complying with all aspects of the Rev. Proc. and to collect information to assist us in selecting private school returns for examination.

Revised basic training materials for exempt organizations specialists to reflect the new guidelines.

Audit coverage of private schools has increased dramatically in the past two years. In fiscal year 1977 784 private school returns were examined, representing approximately 10% of the private schools with individual rulings in each Key District. That coverage includes a number of church-related private schools as well.

Notwithstanding that the Service is committed to removing tax exemption from schools that discriminate racially, and has devoted significant resources to ensure that its enforcement activity is equal to the task of assuring nondiscriminatory admissions policies, certain troublesome questions persist. One question is how we should evaluate the bona fides of the admission policy of schools located in communities subject to desegregation orders that operate over a long period of time without actually enrolling any minority students. Does that fact create a presumption calling for more careful scrutiny? Might a similar rule be applicable even in the absence of local desegregation orders? And, on the other side of that question, what steps can an exempt school take in such a situation to establish that it, in fact, has been open to children of all races and ethnic groups?

An equally serious question is whether and how far the issue of racial nondiscrimination extends beyond private schools to other exempt activities. Congress gave some intimations of its feelings on this question in 1976 when it added section 501(h) to the Code prohibiting certain social clubs from discriminating in their governing instruments on the basis of race, color, or religion.

Questions in this area are obviously sensitive and put the IRS, in some cases, on the cutting edge of developing national policy. But this is where we find ourselves and we will do our best.

I appreciate this opportunity to share with you some of our views on matters of as great concern to the Service as they are to the public we serve.

Mr. PERCY. Mr. President, I support the amendment offered by Senator HOLLINGS to remove the elementary and secondary school provisions from H.R. 12050, the Tuition Tax Relief Act of 1978. The provision of a tax credit for sectarian elementary and secondary school tuition is clearly, in my judgment and that of many constitutional authorities, unconstitutional. It would be a cruel hoax on many families for the Senate to approve this tax credit, recognizing that the Supreme Court will strike it down.

The evidence for the unconstitutional nature of this tax credit would appear to be conclusive. It is true, as argued by proponents of the tax credit, that the Federal Government is already providing certain subsidies to elementary and secondary sectarian schools. And I fully supported these subsidies. However, the basic distinction which the Court makes in determining the unconstitutional nature of a subsidized activity is whether the educational and religious aspects of that activity can be separated.

Thus, for example, the Court has upheld the use of public funds where it is possible to make the distinction between educational and religious purposes. The most recent finding of the Court in this regard was Wolman against Walter, a case decided in 1977. In this case, the constitutionality of an Ohio law which authorized various forms of aid to nonpublic schools, most of which were sectarian, was challenged. The Court held that—

> Those portions (of the law) authorizing the State to provide nonpublic school pupils with books, standardizing tests and scoring, diagnostic services, and therapeutic and remedial services are constitutional. Those portions relating to instructional materials and equipment and field trips are unconstitutional.

In this decision, those activities with either specific educational and secular purposes, such as books for secular subjects and standard tests, or general welfare services, such as diagnostic services, were ruled constitutional. Those activities, though, where no clear distinction could be made between the educational and religious aspects, such as instructional materials and equipment which could be used for teaching both secular and nonsecular subjects, were ruled unconstitutional. This is the case with any type of tuition assistance. In Lemon against Kurtzman, Superintendent of Public Instruction of Pennsylvania, a case decided in 1971, the Court developed three tests regarding the use of public funds for sectarian schools:

> Every analysis in this area must begin with consideration of the cumulative cri-

teria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive government entanglement with religion."

Under the first—the determination of secular purpose—the tuition tax credit would fail because it would be impossible to distinguish nonsecular from secular purposes, since the subsidy is not for a specific educational and secular activity. Under the second test—a determination of primary effect—the tuition tax credit would fail because the Court has already ruled, in a definitive manner, that even indirect aid cannot be used to subsidize sectarian schools when the primary effect of such aid is to advance religion. Under the third test—the determination of excessive entanglement—the tuition tax credit would fail because it would undoubtedly result in a greater, and unwanted, Government involvement with sectarian schools.

Proponents of the tax credit for elementary and secondary school tuition also argue that it is intended to benefit the students and their parents, not the schools themselves, and therefore it is constitutional. However, the Court has specifically rejected this argument on two separate occasions, in its ruling on Committee for Public Education and Religious Liberty against Nyquist, Commissioner of Education of New York, and Sloan, Treasurer of Pennsylvania against Lemon. Both cases were decided in 1973.

In Nyquist, New York State had designed two programs to aid parents who wanted to send their children to private elementary and secondary schools. The programs would have provided a direct reimbursement for a certain amount of tuition costs for low-income families, and a tuition tax relief plan, including both a credit and a deduction, for higher-income families.

In Sloan, Pennsylvania had developed a program to reimburse parents for a portion of nonpublic elementary and secondary school tuition expenses. Although, in Nyquist, the State argued that the tuition subsidies would benefit the parents and not the schools, the Court held that:

1. The propriety of a legislature's purpose may not immunize from further scrutiny a law that either has a primary effect that advances religion or fosters excessive church-state entanglements.

2. The maintenance and repair provisions of the New York State statute violate the Establishment Clause (of the First Amendment) because their inevitable effect is to subsidize and advance the religious mission of sectarian schools. Those provisions do not properly guarantee the secularity of state aid by limiting the percentage of assistance to 50% of comparable aid to public schools. Such statistical assurances fail to provide an adequate guarantee that aid will not be utilized to advance the religious activities of sectarian schools.

The tuition reimbursement grants, if given directly to sectarian schools, would similarly violate the Establishment Clause, and the fact that they are delivered to the parents rather than the schools does not compel a contrary result, as the effect of the aid is unmistakably to provide financial support for nonpublic, sectarian institutions.

The fact that the grant is given as reimbursement for tuition already paid, and that the recipient is not required to spend the amount received on education, does not alter the effect of the law. . . .

The system of providing income tax benefits to parents of children attending New York's nonpublic schools also violates the establishment clause, like the tuition reimbursement program, it is not sufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools.

Because the challenged sections have the impermissible effect of advancing religion, it is not necessary to consider whether such aid would yield an entanglement with religion. But it should be noted that, apart from any administrative entanglement of the State in particular religious programs, assistance of the sort involved here carries grave potential for entanglement in the broader sense of continuing and expanding political strife over aid to religion.

The Court made a similar ruling in Sloan, finding that—

There is no constitutionally significant difference between Pennsylvania's tuition grant scheme, with its intended consequences of preserving and supporting religion-oriented institutions, and New York's tuition reimbursement program held volative of the Establishment Clause in (Nyquist).

In short, the Court has definitively ruled that the effect of tuition relief subsidies, in any form, is to provide financial support for sectarian elementary and secondary schools because it has the immediate effect of supporting and advancing religious activities.

In addition, as I have previously stated, sectarian elementary and secondary schools do receive some public funds. This subsidy, for specific educational programs, amounts, I believe, to approximately $61 per pupil. This compares with $115 per pupil in Federal funds received by public elementary and secondary schools. These figures are congressional budget office estimates. Public schools serve 90 percent of our elementary and secondary school students. Thus, from a policy standpoint, I cannot approve of a bill which would provide private schools with a possible $278 per pupil subsidy when the per pupil subsidy for public schools, which are in great financial distress, is only $115 per pupil.

I have long supported private elementary and secondary schools. These schools do provide an invaluable service and a quality education to their students. They provide to us an invaluable yardstick against which to judge the quality of public education, other than to students and parents of those in institutions of higher education. Private schools, parents, and their students need and deserve additional Federal assistance. However, the tuition tax credit is not a constitutionally sound way to provide this assistance.

We can successfully address this problem in a constitutional manner. Through the Elementary and Secondary Education Act and the school food programs, we already provide much needed assistance. When the ESEA authorization and the Labor-HEW appropriations is considered by the Senate, we should seriously consider increased assistance through these channels.

For these reasons, I will vote for the Hollings amendment.

Mr. STEVENS. Mr. President, I would like to express my support for the Tuition Tax Relief Act of 1978 as reported by the Senate Finance Committee. I believe that an excellent case has been made by the proponents of the bill and I commend them on their efforts to promote the concept of tax credits as a means of alleviating the burdensome cost of education. To reiterate the stated arguments would be pointless at this stage of the debate. I feel that my colleagues are all aware of the major issues involved and will take each into account.

There is, however, one subject that has received little, if any, attention and one which I would like to address at this time. The subject is the effect of the present student aid programs on the relationship between the student and his or her parents. While this issue might seem extraneous to the topic discussed today, it is nonetheless important and deserving of consideration. It is my contention that the tuition tax credit concept is a preferable program to the present student aid programs conducted by the Department of HEW with regard to its effects on the student-parent relationship and the whole structure of the family unit.

Mr. President, any proposal which the Senate considers must be viewed in light of its alternatives. We cannot expect to judiciously pass judgment without first reviewing the alternatives. What we are debating today is not the existence of a problem—we all recognize that some relief is needed from the high cost of education. What we are discussing is the method by which this problem can be best addressed.

The cost of education has increased at all levels, in both private and public institutions, and is pricing many students out of the market. Starting with the assumption that education is a desirable commodity, both for the individual and society as a whole, Congress must reaffirm its commitment to insure adequate educational opportunities for all Americans by enacting that proposal which provides education that is both affordable and of the highest possible quality. All aspects of the alternatives must be viewed and it is for this reason that I wish to elaborate on the familial aspects of the tuition tax credits and the existing student aid program.

It has traditionally been assumed that the family has the basic responsibility to provide for a child's education, either directly through tuition payments or indirectly through taxation. The Government's student aid programs were established to provide equal educational opportunities by offering aid based on financial need. The education programs were not intended to shift this basic responsibility or assume the family's role, but merely to provide for education when the family resources are not adequate. I am concerned, however, that the effects of these programs have been to contribute to the breakup of the family unit, a phenomena which disturbs me a great deal. The main contributing factor is the program's encouragement of students to claim independency from their parents for the purposes of eligibility for these Government programs.

The chances of students receiving aid increases with their independent status because the needs analysis does not consider the potential family support for independent students and since most independent students have few resources, they get higher awards. The average award given to an independent student is generally about 60 percent higher than that for the average dependent student. This, of course, is an incentive for students to disassociate themselves from their parents, especially those coming from middle-income families where there is some question as to whether or not they can qualify for aid. This phenomena has been occurring more and more since the early 1970's when the present definition of "independent student" was established for the student aid programs.

From 1974 to 1975 alone, there was actually a 100-percent increase in the number of independent students qualifying for aid in most of these programs, including the BEOG. Students are realizing more and more that independence allows them to receive larger awards and with the increased cost of education, this fact becomes a sufficient inducement for the change in status. The mass media is also helping to encourage this type of claim. For example, Women's Day magazine ran an ad stating:

If your son or daughter has been self-supporting, he or she may be eligible for college aid, regardless of your ability to pay.

One immediate effect of more students claiming independence and receiving higher awards is, of course, that there will be fewer dollars for other eligible and perhaps more needy students. And the results may well be the opposite of what is intended in that lower income students will not receive adequate levels of aid and be priced out of the opportunity for education. There are other ramifications stemming from the eligibility requirements besides the obvious financial ones.

For example, in these student aid programs, "independent student" is defined as one who: First is not claimed as a dependent by anyone except his or her spouse; second, has not and will not receive more than $600 from his or her parents in the calendar year in which aid is received and the calendar year prior to the academic year for which aid is requested, and third, has not and will not live for more than 2 consecutive weeks in the home of a parent during the year in which aid is received and during the year prior to the academic year for which aid is requested.

By disallowing any parental financial assistance in excess of $600 and by not permitting the student to live with the parent for more than 2 consecutive weeks, one can hardly expect that a strong parent-child relationship will be maintained. Those students who are no longer living at home will probably experience some loss of emotional support and declaring independence may well serve to exacerbate the problem. In addition, some tests required by the program in order to establish independence makes things harder.

In order to qualify, many middle-income students have to either get their parents to lie or disclaim them. Also, Government standards are such that some parents refuse to submit the necessary confidential financial information to establish eligibility protesting that it is an invasion into their private lives. Others feel it is degrading to have to establish for one's children that one is too poor to provide the necessary financial educational assistance.

Independence for the student is not necessarily describing a group of individuals whose status as "independent" has been traditionally recognized. Basically, the concept has been created legislatively, through the 26th amendment fixing the age of majority at 18, and through regulatory fiat setting arbitrary parameters for independence. It must be kept in mind, however, that for students, independence means simply that dependency has shifted from the parents to the Government. Through financial incentives, students are encouraged to look to the Government for the assistance traditionally supplied by the parents.

While initially claiming independence may be strictly for the purposes of receiving aid and is based solely on legal technicalities, there are certain to be other psychological effects on the student and the parent relating to their general attitude toward each other and the Government. The situation I have just described is only one example of the trend in our country toward greater reliance on the Government. We look to the Government for financial assistance through social security, economic development, disaster assistance, public housing, old age assistance, and child welfare. The Government further influences our behavior and guides our actions through health and safety guidelines, environmental and energy controls, minimum standards on food and nutrition, and requirement for the activities of both business and labor. And mostly, as a result of the areas of Government involvement I have just mentioned, the Government provides regulation management and enforcement and legal advice and services. As Government continues to grow and invade our private lives, reliance on the Government to provide us with what we need or want will continue to grow and continue to curtail our traditional reliance on the family structure.

In addition to the student aid program, there are other assistance programs which encourage Government dependence such as the food stamp program which requires independency for students. Another example is the welfare program which guarantees a minimum income to poor families. I do not have to remind my colleagues of the famed Seattle-Denver income maintenance program which was found to have actually contributed to family breakups. I understand that the intent of these programs is meritorious, yet, I do not believe they serve the best interests of the students and their families. Mr. President, I do not mean to infer that the student aid program is necessarily leading to the breakup of the family unit, I merely mean to bring my colleagues' attention to the possible consequences of this type of educational aid.

As I stated earlier, every proposal must be viewed in light of its alternatives and if one alternative appears to create an effect we view as detrimental, then let us consider that fact when assessing the overall merits of the proposal. I believe that the tax credit approach to providing aid is preferable for numerous reasons and in light of its familial effects, it is certainly the better alternative. The tax credits will encourage the students to look to their parents for aid instead of the government. The Tuition Tax Relief Act, as reported by the Finance Committee, allows a taxpayer to claim a credit equal to 50 percent of certain education related expenses incurred by himself, his spouse, or his dependent. The credit can only be claimed by a taxpayer and most student's incomes are such that they do not pay any taxes. Therefore, in most cases, the students would have to be a dependent of his parents in order for the credit to apply toward his education. With the tax credit, there is no incentive for the student to disassociate himself from his parents for the purposes of receiving educational assistance.

Another advantage of the tax credit relative to the student aid program is its simplicity and lack of Government intrusion. A family need not submit confidential financial statements to HEW; there are no long and complex application forms to be filled out; there is no uncertainty as to whether or not the assistance will be granted; and the decision rests with the taxpayer, not HEW.

Mr. President, I support the concept of tuition tax credits as a means of alleviating the increasing cost of education. I feel it is a far superior mechanism, especially with regard to its effects on such a fundamental unit in our society as the family, and I would certainly hope that my colleagues will not ignore this effect when voting on this legislation.

Mr. MOYNIHAN. Mr. President, I move that the pending amendment be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New York.

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays on that motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I ask for the yeas and nays also on the amendment, if the motion to table fails.

The PRESIDING OFFICER. That would require unanimous consent.

Mr. HOLLINGS. I ask unanimous consent to that effect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HOLLINGS. 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.

Mr. HODGES. Mr. President, assum-

ing the Hollings amendment to my amendment prevails, I ask unanimous consent that it be in order to ask for the yeas and nays on my amendment also.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. I object, Mr. President. I do not know about that amendment.

The PRESIDING OFFICER. Objection is heard.

The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HART), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

The result was announced—yeas 40, nays 57, as follows:

[Rollcall Vote No. 317 Leg.]

YEAS—40

Allen	Hayakawa	Nelson
Anderson	Heinz	Packwood
Biden	Huddleston	Pearson
Curtis	Jackson	Proxmire
Danforth	Laxalt	Ribicoff
DeConcini	Long	Roth
Dole	Lugar	Schmitt
Durkin	Magnuson	Schweiker
Garn	Mathias	Stevens
Goldwater	Matsunaga	Tower
Griffin	McIntyre	Wallop
Hansen	Melcher	Zorinsky
Hatch	Moynihan	
Hathaway	Muskie	

NAYS—57

Abourezk	Domenici	Metzenbaum
Baker	Eagleton	Morgan
Bartlett	Ford	Nunn
Bayh	Glenn	Pell
Bellmon	Gravel	Percy
Bentsen	Haskell	Randolph
Brooke	Hatfield,	Riegle
Bumpers	Mark O.	Sarbanes
Burdick	Hatfield,	Sasser
Byrd,	Paul G.	Scott
Harry F., Jr.	Helms	Sparkman
Byrd, Robert C.	Hodges	Stafford
Cannon	Hollings	Stennis
Case	Humphrey	Stevenson
Chafee	Inouye	Stone
Chiles	Javits	Talmadge
Church	Kennedy	Thurmond
Clark	Leahy	Weicker
Cranston	McClure	Williams
Culver	McGovern	Young

NOT VOTING—3

Eastland	Hart	Johnston

So the motion to lay on the table UP amendment No. 1655 was rejected.

Mr. HOLLINGS. I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from South Carolina. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HART), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 318 Leg.]

YEAS—56

Abourezk	Domenici	Morgan
Baker	Eagleton	Nunn
Bartlett	Ford	Pell
Bayh	Glenn	Percy
Bellmon	Gravel	Randolph
Bentsen	Haskell	Riegle
Brooke	Hatfield,	Sarbanes
Bumpers	Mark O.	Sasser
Burdick	Hatfield,	Scott
Byrd,	Paul G.	Sparkman
Harry F., Jr.	Helms	Stafford
Byrd, Robert C.	Hodges	Stennis
Cannon	Hollings	Stevenson
Case	Humphrey	Stone
Chafee	Inouye	Talmadge
Chiles	Javits	Thurmond
Church	Kennedy	Weicker
Clark	Leahy	Williams
Cranston	McGovern	Young
Culver	Metzenbaum	

NAYS—41

Allen	Hayakawa	Muskie
Anderson	Heinz	Nelson
Biden	Huddleston	Packwood
Curtis	Jackson	Pearson
Danforth	Laxalt	Proxmire
DeConcini	Long	Ribicoff
Dole	Lugar	Roth
Durkin	Magnuson	Schmitt
Garn	Mathias	Schweiker
Goldwater	Matsunaga	Stevens
Griffin	McClure	Tower
Hansen	McIntyre	Wallop
Hatch	Melcher	Zorinsky
Hathaway	Moynihan	

NOT VOTING—3

Eastland	Hart	Johnston

So Mr. HOLLINGS' amendment (UP No. 1655) was agreed to.

(Mr. BIDEN assumed the chair.)

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. STEVENSON). The question is on agreeing to the amendment of the Senator from Arkansas, as amended.

The amendment, as amended, was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD and Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Ohio was seeking recognition. If the Chair will recognize the Senator, then the Senator will yield to me.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

UP AMENDMENT NO. 1656

(Purpose: To provide for a phase out of the credit as adjusted gross income exceeds $30,000 for higher education expenses)

Mr. METZENBAUM. Mr. President, I call up an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1656.

Mr. METZENBAUM. 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:

On page 18, between lines 11 and 12, insert the following new paragraph:

"(4) Phase-out of credit above certain adjusted gross income amounts.—Notwithstanding any other provision of this section, the credit allowable under subsection (a) shall be reduced to the extent that the amount of the credit allowable for the taxable year is attributable to educational expenses other than expenses described in paragraph (2), by 5 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $30,000 ($15,000 in the case of a married individual making a separate return of tax).

Mr. MOYNIHAN. Mr. President, may we have order?

Th PRESIDING OFFICER. The Senate will be in order.

TIME AGREEMENTS ON AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, I wonder whether it would be possible at this time to get some indication from Members as to whether or not they are going to call up amendments, Mr. METZENBAUM has an amendment pending. I understand that Senator DOMENICI has an amendment. Are there any other amendments?

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. If the Senator from Ohio will allow me.

Mr. METZENBAUM. Without losing my right to the floor.

Mr. BUMPERS. I understood that the floor managers were going to offer an amendment on the refundability of this tax credit. Has that been done?

Mr. MOYNIHAN. The floor managers were to have done that, had the tax credit for elementary and secondary schools been retained. It has not been retained.

Mr. BUMPERS. But the Senator does not anticipate offering such an amendment for tuition tax credit. Is that correct?

Mr. PACKWOOD. That is correct.

Mr. BUMPERS. I thank the Senator.

In light of that, I probably will offer an amendment to accomplish that.

Mr. ROBERT C. BYRD. Mr. METZENBAUM has an amendment, Mr. DOMENICI has one, and Mr. BUMPERS probably will offer one. Are there any others?

May we get a time agreement on the amendment?

Mr. METZENBAUM. I am agreeable to a time limit.

Mr. HOLLINGS. I understand that the amendment of the Senator from Ohio refers to higher education and not elementary or secondary.

Mr. METZENBAUM. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the amendment by Mr. METZENBAUM of 30 minutes, to be equally divided in accordance with the usual form. I have discussed this with Mr. METZENBAUM, and he is agreeable.

Mr. PACKWOOD. Mr. President, reserving the right to object, has it been

discussed with Senator LONG? I reserve the right to object, for the moment, because I know he is very interested.

Mr. ROTH. What is that?

Mr. PACKWOOD. A time limit on the Metzenbaum amendment.

Mr. ROBERT C. BYRD. Thirty minutes all together.

Mr. ROTH. That is all right.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the amendment by Mr. DOMENICI of 1 hour, to be equally divided in accordance with the usual form. I have discussed this with Mr. DOMENICI.

Mr. MOYNIHAN. The time to be divided between whom?

Mr. ROBERT C. BYRD. Who opposes it?

Mr. PACKWOOD. I am not sure.

Mr. MOYNIHAN. Shall I accept the opposition time and manage it as seems appropriate?

Mr. DOMENICI. Fine.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, Mr. GLENN has an amendment. How much time does the Senator want on his amendment?

Mr. GLENN. Thirty minutes on a side.

Mr. PACKWOOD. Is that the sunset amendment?

Mr. GLENN. Yes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the amendment by Mr. GLENN of 30 minutes, to be equally divided between Mr. GLENN and Mr. MOYNIHAN.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the amendment by Mr. METZENBAUM there be a time limitation of 40 minutes, instead of 30 minutes, to be equally divided in accordance with the usual form.

Mr. METZENBAUM. I have no objection.

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

Mr. ROBERT C. BYRD. Mr. President, that covers all amendments with the exception of that by Mr. KENNEDY.

Mr. KENNEDY. Mr. President, I have an amendment together with the Senator from New Hampshire (Mr. DURKIN). We intend to offer it, and we would like a brief time for discussion. I do not believe there will be a vote on it. We will be glad to schedule it when it is convenient. If we could have 20 minutes, that would be sufficient.

Mr. ROBERT C. BYRD. Twenty minutes equally divided?

Mr. MOYNIHAN. If the Senator is not going to ask for a vote, I am sure 20 minutes will be sufficient.

Mr. BELLMON. Mr. President, reserving the right to object, I would like to have time on this amendment. Could I have 5 minutes?

Mr. KENNEDY. That is fine.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limit on the amendment by Mr. KENNEDY of 20 minutes, all of which is to be controlled by Mr. KENNEDY.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Mr. President, reserving the right to object, and before the final agreement, I ask that it be repeated, as to how many amendments we have and what we have agreed to, or what we are about to agree to.

The PRESIDING OFFICER. There is 1 hour on the Domenici amendment, 30 minutes on the Glenn amendment, 20 minutes on the Kennedy Amendment, and 40 minutes on the pending Metzenbaum amendment.

Mr. PACKWOOD. So we have 2½ hours, plus votes, and other amendments still to be called up.

Mr. ROBERT C. BYRD. I see no indication of other amendments, except for Mr. BUMPERS, who possibly will call up an amendment.

Mr. KENNEDY. Mr. President, that is not correct. I think it is going to be acceptable to Mr. ROTH. It is a refundability amendment.

Mr. ROBERT C. BYRD. Can we have a time limitation on the amendment by Mr. BUMPERS?

Mr. BUMPERS. I am happy to agree to an hour, with the understanding that we will do our best. I think the amendment may be accepted, and we may be able to do it in 15 minutes. I would like the agreement to be for an hour, equally divided.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a limitation of 1 hour on the amendment by Mr. BUMPERS, to be equally divided in accordance with the usual form.

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

Mr. ROBERT C. BYRD. Mr. President, apparently these are the only amendments that will be offered. Senators, therefore, should be prepared to vote on final passage of the bill this evening. The way it looks now, it will be between 8 and 9 o'clock. I hope it is not that late.

Mr. METZENBAUM. Mr. President, on August 10, the distinguished chairman of the Budget Committee circulated a letter to all Senators in which he warned that passage of this legislation and the Carter tuition grant proposal will make it virtually impossible to achieve the goal endorsed by the Senate of balancing the Federal budget by 1981. "If either of these bills is enacted," Senator MUSKIE wrote, "We will certainly fail to balance the budget by 1981—or even 1983." "Whatever the merits of any of these bills," he added, "we cannot afford them now. We cannot have them and a balanced budget."

And I agree with him that this bill is indeed a budget buster.

According to the Congressional Budget Office, the bill before passage of the Hollings amendment would have added over $8.6 billion to the Federal deficit by the end of 1983, and because the bill has no income limitation on eligibility for credits half of those dollars would have gone to the fewer than 5 percent of the families in this country that earn in excess of $40,000 per year.

Mr. President, the bill as written will give Federal aid to anyone, to everyone, who pays tuition, to the successful doctor, to the lawyer, to the businessman, as well as to the hard-pressed middle-class wage earner struggling to keep children in college.

We talk about legislation of this kind as if it were intended for the middle class. But the fact is that as drafted this bill in its present form really provides a tax bonanza, a giveaway to those who need it the least in our community. It subsidizes elite education for the well-to-do.

It is yet another example of welfare for the rich, and I believe that it is grossly unfair to ask the average American working family in this country to pay additional taxes to provide for it.

Let us not kid ourselves. What comes in must go out, and if you reduce the amount of money coming into the Federal till by reason of the benefits provided in this legislation for those who need it the least, then those who can afford to pay it the least will wind up paying the most, and it will be an unfair piece of legislation.

Mr. President, the amendment by the Senator from South Carolina to exclude elementary and secondary school tuitions from eligibility for the credit will reduce the estimated cost of the legislation between now and 1983 by more than $3 billion.

Mr. HATCH. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. METZENBAUM. I yield.

Mr. HATCH. Mr. President, I ask unanimous consent that Matthew Goldman, Becky Mosely, and Vicki Degges, of my staff, be accorded the privilege of the floor.

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

Mr. METZENBAUM. But even with that reduction, the cost by 1983 for the higher education component of the bill will come to more than $5.25 billion.

That, I am convinced, is still far too high a price to pay and, unless the Senate acts to place an income limit on eligibility for the higher education credits, the most affluent families in our country will get a disproportionate share of the benefits that will be available.

Without an income limit, families earning over $25,000 per year will be the recipients of approximately $2.9 billion in higher education subsidies tuition tax credits by the end of 1983, and families in the $40,000-plus category will receive over $1 billion of that amount. And the 38 percent of American families earning $15,000 or less per year, the ones that we talk about in proposing legislation of this kind, will receive only 12 percent of the benefits, a little more than half of the share that will go to the rich.

Mr. President, the amendment I am offering today is designed to cut the fat out of the tuition tax credit for higher education. It will, quite simply, reduce

eligibility for tuition tax credits by 5 percent of family income above an adjusted gross income level of $30,000.

I point out to the Senate we are not talking about gross income. We are talking about adjusted gross income of $30,000, which is something totally different. If anything, maybe my amendment is too generous, but leaning over on the side of conservatism and trying to be fair we adopted it so that it will start at an adjusted gross income of $30,000 and phase out by adjusted gross income of $40,000.

With this formula, a family earning $35,000 would receive 50 percent of the credit. At an income of $40,000, there would be no credit.

According to the estimate by the Congressional Budget Office, my amendment will reduce the cost of the higher education component of the bill by approximately $2 billion, and that is a saving of $2 billion over and above the $3 billion saved by the passage of the Hollings amendment. We are talking, Mr. President, about savings of over $5.25 billion.

Mr. President, I make no bones about it. I do not intend to vote for the bill in its final passage because I do not believe the Federal Treasury can stand this kind of beneficence. I do not believe that we can come to the floor of the Senate and talk about saving money, talk about economies, and talk about balancing the budget, and then start on the legislation that is before us on that very day.

But the fact is that if the Senate is inclined to move in that direction, and it seems to me there is some sentiment moving in that direction, we should do so in as fair and fiscally prudent a manner as possible.

I believe that my amendment will move the bill in the direction of fiscal prudence by substantially reducing the drain that it would produce on the Treasury, and I believe that it will also move the bill in the direction of fairness by confining tax subsidies to those families that truly need them.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, is the Senator from Louisiana seeking recognition?

Mr. LONG. No.

The PRESIDING OFFICER. Does the Senator from New York yield time to the Senator from Delaware?

Mr. MOYNIHAN. The Senator from New York yields such time as needed. There are 20 minutes on the bill from this side, and the Senator yields the 20 minutes or as much as he may wish to the Senator from Delaware.

Mr. ROTH. I thank the Senator from New York and I ask the Chair to advise me when I have consumed 10 minutes.

Mr. President, I think it is important to keep in mind exactly what we are trying to do through this legislation, that is, to make it possible for Americans to go to college. The problem with the amendment proposed by the distinguished Senator from Ohio is that he is limiting the effect of this legislation so that in effect it is not of great help to most of working America.

Mr. President, I think first of all it is important to recognize what is happening to the cost of college. I just wish to point out in the New York Times on Sunday, July 6, there was an article that says:

> All but people in the very highest income brackets feel the pinch of paying for their children's college education. The effect this is having on college-going is substantial. From the look of things most middle income families are going to need all the help they can get.

Cost of college is rising substantially. According to the Congressional Budget Office total annual college costs increased approximately 75 percent between 1967 and 1976. According to the National Center For Education the average tuition fees at a private university increased 93 percent between 1967 and 1976, from $1,297 to $2,500.05.

It has been estimated for a child 1 year old it will cost something over $83,000 to send that child to private college, or $47,000 at a public school.

And yet, Mr. President, the Senator from Ohio would limit the benefits to those earning more than $30,000.

Mr. President, according to the Joint Committee on Taxation, 78 percent of the benefits will, under our legislation, go to families earning less than $30,000. Only 5 percent of the benefits will go to those earning more than $50,000. Only 11 percent of the benefits will go to those earning more than $40,000.

And I think it should be pointed out that those earning more than $30,000 are paying over 39 percent of the total income tax. So it is inequitable and it is unfair to claim that these people are getting a gift, as has been indicated earlier.

Mr. President, what we are trying to enable working America to do is to keep their own earnings to send their children to college. It makes no sense to put on an income limit, to require paperwork, needs allowances, and invasion of privacy.

I point out that we have many kinds of tax credits. They are not limited by an income limit. We have a home mortgage deduction. We have personal exemptions. We have child care credits. The administration has proposed a home insulation credit and a solar tax credit. But it does not propose that in these cases that there be any income limitation.

Mr. President, in the newspaper just a few weeks ago there was an article that a Congressman, Mr. HARRINGTON, was stepping down from Congress because he could not afford to send his children to college. In this case we are talking about $57,500.

A few years ago, Mr. Bell, the Commissioner of Education, resigned for exactly the same reason. He said he could not afford to send his children to college.

What we are trying to do, Mr. President, is to give some aid to the middle class, to the working Americans, not through an expensive grant form or which requires administrative paperwork but in a manner that enables them, as I say, to keep their earnings, has no expensive administrative costs, will not require and will not be a charge with respect to fraud and waste, as some of the other programs are.

So I would urge the Senate to again vote against this cap, exactly as it did last year.

The House of Representatives, in adopting legislation providing for a tax credit, has no income limitation. I think Senators ought to recognize that the people who are making $30,000 and $40,000, even $50,000, are entitled to some help in sending their children to college.

The facts show that the one group that is sending less children to college today is these middle-income people. The Roper poll recently showed, for example, that the average American considers middle class to be $20,000 to $40,000, and yet under this proposal we would give them no assistance.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. ROTH. I would be happy to yield to the Senator.

Mr. LONG. If I understand the amendment, it would provide that if a man is making $20,000, say—and we have lots of people working right in our office buildings, working for us, who are making that much, and, let us say, his wife is making $20,000, or he is making $30,000 and his wife is making $15,000, and they have four children going to college, they would not be able to get any benefit out of the bill.

Mr. ROTH. That is absolutely correct.

Mr. LONG. I think that the bill ought to be amended to make this a refundable tax credit, and I woulld vote for such an amendment, whoever offers the amendment. It seems to me that if you are going to help parents send their children to school, you ought to do it for all parents, not just some of them. This is a substantial benefit we are talking about. How would you like to go around and have somebody ask you, "Are you one of the Senators who voted for that tuition credit for youngsters to go to college?" If he is a man with four children and if he and his wife have a combined income of $40,000, he makes $25,000 and she makes $15,000, and you say yes, I voted for that credit, you would probably get punched in the nose rather than get thanks.

If you are going to vote for the credit, you should vote to treat all parents alike, and Senators should keep in mind that those couples who make over $40,000 as a couple have a lot of expenses to contend with, and they are paying a lot more taxes.

It is fine to talk about all they make. But if you talk about adjusted gross income, you had better talk about what they have left after getting through paying all these taxes at the Federal, State, county, and city level.

Mr. ROTH. I agree wholeheartedly with the Senator from Louisiana. It is my understanding that there is going to be a refundability provision offered at a later stage. As far as this Senator is concerned I would be happy to accept that so that there is equity built into it. As a matter of fact, we had it in the earlier legislation, but because of questions raised we decided it was better to

take it out and not have it in the bill reported.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ROTH. I yield myself 5 more minutes.

But the Senator from Louisiana makes a very valid point that the people are paying high taxes, they are facing inflation. In many cases, the Senator says, they have one, two or three children, and it is extraordinarily difficult for them to make the after-tax savings to send those children to college.

Mr. LONG. Frankly, I say to the Senator, if we voted for the credit with the Metzenbaum amendment in it, I would think anybody would take his life in his hands to go before a civic club and discuss what he did with the people in that club, because about half of them would benefit and the other half would not benefit. I can imagine that the half who would not benefit would be just as sore as hornets to find out that you voted for something that took care of their neighbor but did not let them, paying as much tax as they pay, participate in that program.

Mr. ROTH. Absolutely.

Mr. LONG. Furthermore, who has the greater burden, the family that has $41,000 and four children to educate or the family that has $40,000 and one child to educate?

Mr. ROTH. That is a difficulty with this kind of an approach. You are getting into all kinds of difficult questions to answer, and you are overlooking basically what we are trying to do, which is to provide this country with well-educated people. I can give the Senator one illustration of exactly what the Senator is talking about.

A teacher came into my office about a year ago. She said she had a full-time job in the daytime, she had a nighttime job, and her husband worked as an administrator, and I gather they made well in excess of $40,000.

But they had three children in college. She said, "Mr. Senator, I cannot afford to pay that. We had to withdraw one of them. What are you going to do about it?" That is the very point the Senator from Louisiana is making now.

Mr. President, I hope the Senate again will reject this cap and provide that this tax credit, which has as its goal that of helping working America send its children to college irrespective of what they have, one, two, three, or four, and I would point out that the cost of this legislation is well within the budget. It has been provided for. It is substantially less than what the President has proposed in his extension of the college grant.

For that reason I urge the Senate to reject the amendment of the Senator from Ohio.

Mr. DANFORTH. Mr. President, will the Senator yield for a question?

Mr. ROTH. I would be happy to yield.

Mr. DANFORTH. I wonder if the Senator or Senator METZENBAUM or anyone has any idea of what the revenue effect would be of Senator METZENBAUM's amendment?

Mr. METZENBAUM. What? The revenue what?

Mr. DANFORTH. The revenue effect.

Mr. METZENBAUM. Two billion dollars.

Mr. DANFORTH. Two billion dollars when?

Mr. METZENBAUM. Between now and 1983.

Mr. DANFORTH. When the program is fully in effect, how much per year would it be?

Mr. METZENBAUM. I will have to give you that answer later.

Mr. ROTH. We do not have the exact figures, but I would say, if I understand these figures—Mr. President, I yield back the floor. We are seeking the figures. As soon as we get them, we will let the Senator know.

Mr. DANFORTH. Mr. President, who has the floor?

Mr. ROTH. Mr. President, I yielded back the floor, without yielding back the time of the Senator from New York.

Mr. MOYNIHAN. Yes. Mr. President, how much time has the Senator from New York?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. MOYNIHAN. Does the Senator from Missouri desire 2 minutes?

Mr. DANFORTH. Well, I would simply like to ask a question, either of the Senator from New York, the Senator from Ohio, or whoever can answer it.

As I understand, the program will be fully in effect 2 years hence; is that correct?

Mr. MOYNIHAN. That is right.

Mr. DANFORTH. What is the total revenue effect of the program, with and without Senator METZENBAUM's amendment?

Mr. MOYNIHAN. I believe those numbers are being computed at this moment by the Senator from Delaware (Mr. ROTH) and his able assistant, Miss Barker.

Mr. METZENBAUM. Mr. President, will the Senator yield? I believe I can answer that question, if the Senator from New York will yield.

Mr. MOYNIHAN. I yield.

Mr. METZENBAUM. It was $8.6 billion before the Hollings amendment. The Hollings amendment saved $3 billion. My amendment would save an additional $2 billion. The cost thereafter would be approximately $3.5 billion. That is between now and 1983. Those figures are cumulative figures between now and 1983.

Mr. DANFORTH. What would be more helpful as far as I am concerned would be not the cumulative figures, because the program does not start for 2 years, but when the program is fully in effect, what would be the revenue loss of the program with and without Senator METZENBAUM's amendment?

Mr. METZENBAUM. The revenue loss for fiscal 1981 of the bill as reported by the Finance Committee is $1.5 billion, rounded.

Mr. ROTH. I have the figures here. For 1979, the figures would be $116 million. In 1980, it would be $199 million. In 1981, when it would go into full effect, it would be $318 million.

Mr. DANFORTH. Three hundred eighteen million dollars?

Mr. ROTH. Yes.

Mr. DANFORTH. What would be $318 million?

Mr. ROTH. The savings.

Mr. DANFORTH. With Senator METZENBAUM's amendment?

Mr. ROTH. Yes.

Mr. DANFORTH. So in 1981 the total cost of the program for college education only, without Senator METZENBAUM's amendment, would be what?

Mr. ROTH. It would be $1.4 billion.

Mr. DANFORTH. And with Senator METZENBAUM's amendment?

Mr. ROTH. It would be $1.5 billion.

Mr. METZENBAUM. Mr. President, if the Senator will yield, let me give you the figures we have received from the Congressional Budget Office.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. ROTH. I would point out that the figures I quoted were from the joint committee.

Mr. MOYNIHAN. I yield the remaining 3 minutes to the Senator from Delaware, if he desires.

Mr. ROTH. I yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I did not hear the Senator. Is he yielding to me?

Mr. ROTH. I yield the floor.

Mr. METZENBAUM. Let me respond to the Senator from Missouri. In 1981, with the Senator's amendment, the cost would be $1.481 billion, and with my amendment in, it would only be $645 million. If I may have the attention of the Senator from Missouri——

Mr. DANFORTH. Yes.

Mr. METZENBAUM. I am only answering for him. In 1983, the cost of the bill in its present form would be $1.523 billion. With my amendment, it would be reduced to $849 million, or approximately half.

Mr. DANFORTH. I thank the Senator.

Mr. PACKWOOD. May I ask how you come to those conclusions? I agree with you on the $1.5 billion for the bill in its present form, but your cap is $480 million?

Mr. METZENBAUM. My figures were from the Congressional Budget Office.

Mr. PACKWOOD. I am looking at——

Mr. METZENBAUM. Mr. President, I reserve the remainder of my time.

Mr. PACKWOOD. I am looking at figures from the Joint Committee on Taxation, which show that 89 percent of the benefits——

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Will the Senator from Delaware yield me 1 minute?

Mr. ROTH. I yield.

Mr. PACKWOOD. Eighty-nine percent of the benefits, according to the Joint Committee on Taxation, go to people making $40,000 or less, 38 percent to people making $30,000 or less, so, sliding from 40 to 30, you have about 49 percent of the benefits to those making between $30,000 and $40,000. So all you are saving is about 13 percent, or $200 million, as I look at it. I do not know where you cut the cost of this in half.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. How much time do the two sides have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Delaware has 2 minutes. The Senator from Ohio has 9 minutes.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. I do not have the floor, do I?

The PRESIDING OFFICER. If neither side yields time, the time shall run equally against both sides.

Mr. ROTH. Mr. President, I ask unanimous consent that if a quorum call is going to be made, the time not be charged against either side. We have only 2 minutes left.

The PRESIDING OFFICER. Is there objection?

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MOYNIHAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MOYNIHAN. What is the rule when neither side wishes to use time and the time is running?

The PRESIDING OFFICER. Under the precedents of the Senate, the time runs equally against both sides.

Mr. MOYNIHAN. Then it is not possible for us to object.

The PRESIDING OFFICER. Then what?

Mr. MOYNIHAN. That is the precedent, and it must be followed.

The PRESIDING OFFICER. The Senator is correct.

Mr. MOYNIHAN. What is the precedent for breaking precedents?

The PRESIDING OFFICER. It requires unanimous consent.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the time——

Mr. GOLDWATER. I object, anyway.

Mr. MOYNIHAN. Objection having been heard, this Senator withdraws any implication he might have made that he might have been going to make a unanimous-consent request.

The PRESIDING OFFICER. The time runs equally against both sides.

Mr. ROTH. Is the Senator from Ohio willing to yield back the remainder of his time?

Mr. METZENBAUM. No; I am considering amending my amendment. That is the reason I am perfectly willing to leave the time as it is.

Mr. BARTLETT. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. BARTLETT. Will some Senator yield me enough time for a unanimous-consent request?

Mr. GOLDWATER. I yield it.

Mr. BARTLETT. Senator Goldwater yields me such time as he has.

Mr. SCHMITT. You may have a minute of my time.

Mr. BARTLETT. Will someone yield me time?

Mr. METZENBAUM. I yield.

Mr. BARTLETT. The distinguished Senator from Ohio, I think, is yielding me a few seconds to ask that Mike Roush of my staff be accorded the privilege of the floor during the consideration of this bill and all amendments.

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

Mr. METZENBAUM. Mr. President, I would like to be heard.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I was quite certain that my amendment achieved a certain objective but I was not positive about it. I wanted satisfactory clarification provided for myself. The amendment has a specific intent. I thought it was drafted in accordance with that intent. I am now satisfied that it is.

Some have indicated a concern that if the earnings of the individual or the family run between $30,000 and $40,000, and if they have four children in college, that still might be an unbearable burden for them because of the high cost of education today.

The intent of this amendment was and is to provide that the tax credit would be applicable between $30,000 and $40,000 and phased out at $40,000 if there was one child in college; it would go to $40,000 to $50,000 if there were two children in college, and proportionately higher as the number of children in college that the particular family had increased. Some Members of the Senate have indicated some concern on that subject. I feel that that was the desirable road to go because that extra $10,000 after taxes would not really provide that much extra funding, particularly in view of the high cost of education at the present time.

I am now satisfied to represent to the Senate that it is both the intent and the structure of the language of the legislation that that indeed is what will occur under this legislation. Should there be any question raised subsequently, the Senator from Ohio would be prepared to see to it that appropriate clarification was made at some point in the legislative process.

I reserve the remainder of my time.

Mr. ROTH. Mr. President, have I any time remaining?

The PRESIDING OFFICER. The Senator has no time remaining.

SEVERAL SENATORS. Vote. Vote.

Mr. METZENBAUM. What did the Senator from Delaware ask?

The PRESIDING OFFICER. He asked how much time he had remaining. He has no time remaining. The Senator from Ohio still has time remaining.

Mr. METZENBAUM. I yield back the remainder of my time.

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

Mr. METZENBAUM. 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 of the Senator from Ohio. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

The result was announced—yeas 39, nays 58, as follows:

[Rollcall Vote No. 319 Leg.]

YEAS—39

Abourezk	Hart	Metzenbaum
Bayh	Haskell	Muskie
Bumpers	Hatfield, Mark O.	Pell
Burdick	Hathaway	Randolph
Cannon	Hodges	Riegle
Chiles	Hollings	Sarbanes
Church	Humphrey	Sparkman
Clark	Jackson	Stafford
Cranston	Javits	Stone
Culver	Kennedy	Talmadge
Durkin	Leahy	Williams
Eagleton	Magnuson	Zorinsky
Glenn	McIntyre	
Griffin		

NAYS—58

Allen	Goldwater	Nelson
Anderson	Gravel	Nunn
Baker	Hansen	Packwood
Bartlett	Hatch	Pearson
Bellmon	Hatfield, Paul G.	Percy
Bentsen	Hayakawa	Proxmire
Biden	Heinz	Ribicoff
Brooke	Helms	Roth
Byrd, Harry F., Jr.	Huddleston	Sasser
Byrd, Robert C.	Inouye	Schmitt
Case	Laxalt	Schweiker
Chafee	Long	Scott
Curtis	Lugar	Stennis
Danforth	Mathias	Stevens
DeConcini	Matsunaga	Stevenson
Dole	McClure	Thurmond
Domenici	Melcher	Tower
Ford	Morgan	Wallop
Garn	Moynihan	Weicker
		Young

NOT VOTING—3

Eastland	Johnston	McGovern

So the amendment (No. UP 1656) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. LEAHY. Will the Senator yield?

Mr. DOMENICI. Yes.

Mr. LEAHY. Mr. President, I ask unanimous consent that Harry Jaffe be granted privilege of the floor during debate and voting on this measure.

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

Mr. MOYNIHAN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOMENICI. Mr. President, I yield to the Senator from Wyoming for a unanimous consent request.

Mr. WALLOP. Mr. President, I ask unanimous consent that Bob Reynolds of my staff be granted privilege of the floor throughout the debate and votes on this measure.

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

Mr. DOMENICI. Mr. President, I ask

unanimous consent that Letitia Chambers of my staff be granted privilege of the floor.

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

UP AMENDMENT NO. 1657

(Purpose: To strengthen participation of private school children in Elementary and Secondary Education Act programs)

Mr. DOMENICI. Mr. President, I have an unprinted amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) proposes an unprinted amendment numbered 1657.

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

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

The amendment is as follows:

On page 13, between lines 18 and 19, insert the following:

TITLE I—TUITION TAX CREDIT

On page 27, after line 4, insert the following:

TITLE II—PARTICIPATION OF PRIVATE SCHOOL CHILDREN IN ELEMENTARY AND SECONDARY EDUCATION ACT PROGRAMS

AMENDMENT RELATING TO PRIVATE SCHOOL PARTICIPATION IN TITLE I PROGRAMS

SEC. 201. Section 141A of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

"SEC. 141A. (a)(1) To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including in projects assisted under this title special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) which meet the requirements of section 122, subsections (a), (b), and (d) of section 124, and subsections (b) and (c) of section 126, and which provide to those children an opportunity to participate in programs and projects assisted under this title on a basis equitable to that provided to similarly deprived children enrolled in public schools.

"(2) Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of those children) to expenditures for children enrolled in the public schools of the local educational agency.

"(3) The Commissioner shall set forth procedures for the determination of the pro-rata share of funds necessary to provide equitable expenditures for educationally deprived children enrolled in private schools, and such other regulations as may be required to implement this section.

BY-PASS ARRANGEMENTS

"(b)(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(2) If a State educational agency does not choose or is unable to provide for participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the State educational agency shall notify the Commissioner at such time as the Commissioner deems appropriate. Upon notification, the Commissioner shall waive the requirements of subsection (a) and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(3)(A) If any private elementary and secondary school determines that the State or local education agency has substantially failed to provide for the participation on an equitable basis of the educationally deprived students enrolled in that school, the private school may appeal to the Commissioner following such procedures as he may establish.

"(B) If the Commissioner determines that a State or local educational agency is not providing for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a) upon which determination the provisions of subsection (a) shall be waived.

"(C) The Commissioner shall decide on any appeal from a private school under this paragraph within 90 days.

"(D) After the decision of the Commissioner pursuant to subparagraph (C) of this paragraph, the Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least 60 days' notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

"(E) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under subparagraph (C) of this paragraph, it may within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(F) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(G) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(c)(1) When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative cost of arranging for the services, from the appropriate allocation or allocations under this title.

"(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Commissioner may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of these services.

"(3) Any determination by the Commissioner under this section shall continue in effect until the Commissioner determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).".

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS IN TITLE IV PROGRAMS

SEC. 202. (a) Section 406(b) of the Elementary and Secondary Education Act of 1965 is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) The Commissioner shall set forth procedures for the determination of the pro rata share of funds necessary to provide equitable expenditures for children enrolled in private schools and such other regulations as may be required to implement this section."

(b) Section 406(d) of such Act is amended by inserting "(1)" immediately after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) If a State educational agency does not choose or is unable to provide for the participation in programs of children enrolled in private elementary and secondary schools as required by this section, the State educational agency shall notify the Commissioner at such time as the Commissioner deems appropriate. Upon notification, the Commissioner shall waive the requirements of this section, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

"(3) If a private elementary and secondary school determines that the State or local educational agency has substantially failed to provide for the participation on an equitable basis of children enrolled in private schools, the private school may appeal to the Commissioner following such procedures as he may establish. The Commissioner shall rule on any appeal from any private school under this subsection within 90 days."

STUDY OF THE IMPACT OF FEDERAL PROGRAMS ON PRIVATE SCHOOLS

SEC. 203. (a) The Secretary of the Department of Health, Education and Welfare shall conduct, either directly or by way of grant, contract, or other arrangement, a thorough study of—

(1) the impact of current Federal assistance programs in elementary and secondary education on private schools; and

(2) the potential impact of a tuition tax credit for private elementary and secondary education on public elementary and secondary schools.

(b) The Secretary shall report to the President and to the Congress, not later than one year after the date of enactment of this Act, on the results of the study required by subsection (a) of this section, together with—

(1) proposals which are considered constitutional for alternative methods of providing assistance to nonpublic elementary and secondary schools; and

(2) such other additional recommendations as the Secretary deems appropriate.

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

Mr. DOMENICI. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, even though I have an hour, I am not going to take much time.

Mr. MOYNIHAN. Mr. President, if I may interrupt the Senator, I suggest it is an hour on his amendment, equally divided.

Mr. DOMENICI. I understand.

Mr. President, I yield myself 10 minutes.

Mr. President, the bill before us today provides fiscal relief for two purposes. First, it contains a provision establishing a tuition tax credit for higher education, as originally introduced by Senator ROTH. This proposal has passed the Senate three times, and on each occasion I have actively supported and voted for this much needed relief from the spiralling costs of college tuition for middle-income families. The second purpose of the bill is to provide a tuition tax credit for parents of private school students. The policy questions inherent in these two provisions are quite different, and for that reason I believe the merits of both should be considered separately.

The cost of higher education has increased significantly over the past 10 years. At the same time, disposable income available to middle- and lower-income families to spend on a college education for their children has actually decreased due to inflation and increased tax liability. The resultant squeeze on families sending their children to college is a major problem. This country has made a strong commitment to the proposition that all who wish to go to college should have access to it. The Congress has clearly adopted this policy through the provision of student grant and loan programs.

The basic educational opportunity grant and other student aid programs have made access to higher education possible for children at the lower end of the income scale. We are now faced with a situation where the poor have access to college, the rich certainly are able to send their children to college, but many middle-income families, ineligible for student aid and without the needed disposable income, are unable to afford college for their children, without great sacrifice.

I believe the Congress should continue the established policy of seeing that all qualified persons have access to higher education if they so desire. The easiest, least entangling and least bureaucratic way of providing fiscal relief to these middle-income families is through a tax credit. I am firmly convinced that a tax credit for higher education is a sound and desirable public policy.

The issues raised by the elementary and secondary tax credit are of a different nature. In this country children already have access to elementary and secondary education through the public schools. Private schools provide an option or choice for families who desire, for their children, an education that is different than the public school provides. I myself am a product of a private parochial school. Because I place great stock in the values inculcated by parochial schools, several of my own children attend parochial school. I have exercised this option because I want my children to learn the values that I adhere to, as they are taught in church schools.

Not only am I a product of Catholic education, but I happen to have members of my family who have given their entire lives as educators in the parochial school system. My older sister has been a teacher, a principal and a nun for almost 30 years.

As a supporter of private education, I recognize that inflation and increased taxes on middle- and lower-income families have made it more and more difficult to opt for a private education. I am also sympathetic to the plight of private institutions Most private schools are struggling to make ends meet. Inflation has made the cost of education more expensive and many private schools are in the sad situation of having to reduce services or raise tuition.

Mr. President, I am a strong supporter of education. An examination of my record on educational issues will show that, as a legislator, I have given high priority to education. As a fiscal conservative with a commitment to a balanced budget, I have felt that support for education should not be diminished, but in fact that it should be increased substantially. I believe an investment of Federal dollars in the education of our children is a sound investment in the future. If we have schools, public and private, who are doing their jobs well, we can eliminate many of the social problems of this country.

Federal support for education has risen dramatically over the past few years, but it still constitutes less than 10 percent of the total funds used to operate our public school system. Procedures for financing education vary from State to State, and it should be stressed, Mr. President, that education is and should remain primarily the responsibility of State and local officials.

In recent years the Federal Government has provided programs for special purposes targeted at specific students. That aid flows to the public schools, and private school children are eligible for these services through the public schools. Unfortunately, while the system for serving private school students with Federal money is constitutional, it is not working. While the average per pupil Federal expenditure for students in public schools is $128 per pupil, the average per pupil Federal expenditure for private school students is estimated by HEW to be only $40, and I am told that figure is overstated.

Private school students are not receiving their fair share of Federal programs. I believe this fact has been partially responsible for the push for tuition tax credits for the parents of private school students.

Since the mechanism for providing Federal programs to private school students is not adequate, I believe it is appropriate to explore other methods to see that private school involvement in Federal programs is equitable.

Tuition tax credits for elementary and secondary education would certainly help hard-pressed families who wish to send their children to private schools. For that reason, I am sympathetic to such a tax credit. When elementary and secondary credits were first proposed I was taken by the idea. It seemed an ideal way to help taxpayers and to provide some fiscal relief for struggling private institutions. The fact that private school students are not receiving a fair share of Federal funds made the idea even more appealing.

In studying the issue, which I have now done in depth, I found that there were several policy issues to be considered. Federal policy in education has centered around access—access to higher education for all students regardless of income level, access to public schools for the handicapped, access to the public school classroom through compensatory programs and bilingual programs, access for all students to needed materials and books.

The elementary-secondary tuition tax credit does not provide basic access to education, but rather provides choice for those who already have access. I believe in freedom of choice. Our system should and does allow choice. It is a far different issue, however, to ask the Federal Government to provide choice in addition to access.

Mr. President, I have serious questions concerning the Federal Government's involvement in private education. I know that most private school educators favor the elementary and secondary tax credit. I have strong reservations, however, about allowing a Federal "foot in the door" of private schools. The entanglement which could occur in regard to administration of the tax credit is not to be taken lightly.

Another area of concern to me was the level of the proposed tax credit. The current Federal average-per-pupil expenditure is $128. The tuition tax credit would provide up to $250 per pupil. I recognize that private school students are not now getting their fair share, and I believe it is encumbent upon the Congress to see that they do.

However, tax credits of $250 will overcompensate for the inequity that exists and could provide an average Federal expenditure on private school students that is twice as much as the average per pupil expenditure for public education.

From the standpoint of public policy, I cannot justify in my mind this disparity. Perhaps some means other than a $250 tuition tax credit, which is general aid, can be found to provide private school students with a fair share of the targeted programs which the Federal Government provides for education.

Mr. President, my amendment proposes to increase the participation of private school students in existing Federal elementary and secondary school programs. The purpose of this amendment is to decrease the disparity between Federal expenditure on public and private school students. Since the current mechanism for serving private school students is not adequate, I have worked to develop a plan to improve the mechanism so it will work.

Mr. President, this issue is very complex, due to the fine line between what is

and what is not constitutional in regard to aid for private school students. Of the two major proposals the Senate will consider this year to aid private elementary and secondary schools, I believe one, the new title XII to the Elementary and Secondary Education Act, which has been reported by the Human Resources Committee, is clearly unconstitutional.

It provides direct grants to private schools, which I believe offers a false promise to parents of children enrolled in private schools. I also believe the other proposal, tuition tax credits for elementary and secondary education, is unconstitutional, though that is a debatable point.

The amendment I propose, which is constitutional, will provide an increase in participation in Federal programs for private school students. The amount of the increase is difficult to project. While the disparity in per pupil expenditure between public and private students will not be eliminated, I do believe my amendment will significantly increase private student participation in existing Federal programs for elementary and secondary education.

The current mechanism for private school participation puts the burden for service on the local public education agency. The public schools get the funds, plan the programs to meet their own needs, and then allow eligible private school students to participate in the program. This mechanism works well in some school districts and does not work at all in others. Some districts refuse to provide service or offer only token assistance. Even in the local districts that do meet the responsibility of serving private school students, the programs are planned around public school and not private school needs.

In an effort to rectify the disparity in service, the administration has recently taken several steps to increase participation of private school students. In addition, the Human Resources Committee in the Education Amendments of 1978 requires State and local education agencies under titles I and IV of the Elementary and Secondary Education Act to provide for equality of service. However, if we are to be certain that eligible private school students receive a fair share, additional action will be necessary.

My amendment proposes several steps in order to insure service for private school students. The first step directs that the Commissioner of Education shall establish, by regulation, procedures to be followed in determining a pro rata share of service for private school students. Thus, public and private education agencies will be clear on what constitutes equitable service.

If a private school determines that its students are not receiving a fair share of services, it can appeal to the Commissioner. My amendment defines the appeals process and directs the Commissioner to rule on all appeals within 90 days. The Commissioner is directed to waive the State or local education agency requirement to serve students and to bypass the State or local education agency, providing service directly through whatever arrangements the Commissioner deems appropriate. The public education agency allocation shall be reduced by the private schools' "fair share" of expenditure in order to fund these direct services.

In several States it is illegal for local education agencies to serve private school students. In order to provide services in these States, the Elementary and Secondary Education Act contains a bypass provision under which the Commissioner of Education makes other arrangements to serve private school students. This is usually accomplished by contracting with a private nonprofit, nonsectarian organization to provide the services directly to the private school students.

The bypass arrangements, where they exist, have several advantages. The private school students get their fair share of the funds, the programs are planned around the needs of the private school students, and the local education agencies are relieved of the responsibility to serve such students.

The bypass mechanism works to the advantage of all. My amendment will expand this bypass mechanism in ESEA in title I which provides compensatory services, and in title IV, which provides for materials, equipment and innovative programs.

The amendment will allow any State on behalf of itself and all its local education agencies to invoke the bypass arrangement. The State will simply notify the Commissioner of Education that it does not intend to serve private school students.

The Commissioner, by regulation, will set the deadline for such notification prior to the school year. Upon notification, the Commissioner will reduce the grant award for the State education agency by the private schools' pro rata share based upon regulations promulgated by the Commissioner. The Commissioner will then make arrangements for the provision of services using the private schools' pro rata share.

This expansion of the bypass to any public education agency which wants it will provide an option in areas where the present system is not working.

My amendment then provides three situations where the bypass will be used:

First. In States where it is unlawful for the public school to serve private school students (as in current law);

Second. In State education agencies which choose not to offer such services; and

Third. In State or local education agencies which assume the responsibility for serving private school students but fail substantially to do so.

The final portion of my amendment directs the National Institute of Education to conduct a study of the impact of current Federal assistance on private schools, and an analysis of the potential impact on public schools of a tuition tax credit for private elementary and secondary school students.

This study is necessary for several reasons. The debate concerning elementary and secondary tax credits has suffered from both a lack of valid data concerning current private school involvement in Federal programs, and lack of objective analyses on the potential impact of tax credits. Claims that tax credits would destroy public education are certainly cause for lengthy and detailed analysis. Tuition tax credits are popular though controversial, and I do not expect the issue to disappear. Congress needs real information, not emotional arguments, concerning the impact of elementary and secondary tax credits.

In summary, my amendment is designed to increase participation of private school students in Federal education programs. This is accomplished through stronger requirements, an appeals procedure, and through expansion of the bypass mechanism which insures that the private school gets its fair share and allows programs to be based upon the needs of the private school students.

This amendment does not expand the eligibility of private school students or add any new programs for which they were heretofore ineligible. It simply deals with the mechanism for providing service that these children are already eligible for under the Elementary and Secondary Education Act.

Several sets of contradictory figures have been bandied about in the debate on tuition tax credit. However, the one thing that everyone agrees on is that the Federal Government programs are not providing equal services to eligible private school students. My amendment is designed to rectify this fact. I urge all Senators, regardless of position on elementary-secondary credits, to support my amendment which provides for additional service to private school students in a manner that is constitutional.

Mr. President, this is a difficult issue. As a strong supporter of education, both public and private, I have given long and careful thought and study to this matter, as have many of my colleagues. While this is not an easy issue, I want to commend my colleagues on the Finance Committee for their attention to and their support for education.

In closing, Mr. President, let me summarize briefly, once again, the provisions in my amendment:

First, it directs the Commissioner of Education to establish procedures for determining the pro rata share of funds necessary to provide equitable expenditures under title I and title IV of the Elementary and Secondary Act.

Second, it establishes an appeal process for use by private or parochial schools which feel that their students are not getting their fair share as mandated by Congress.

Third, we expand the public school bypass mechanism which currently exists in States where service to private or parochial school students is prohibited by State law. The bypass mechanism will be expanded to any State which prefers to use that mechanism for serving private school students.

That merely means that, in some States, a nonprofit entity can be established to accept and distribute Federal money to private schools in a constitutional manner.

Fourth, there has been much concern on the part of public schools that aid to private and parochial schools, by way of

the tax credit which was defeated today, might have an adverse impact on the public schools. My amendment directs the Secretary to study the impact of Federal programs on private school students, constitutional methods of increasing aid to private schools, and an analysis of the potential impact on public schools of a tuition tax credit for private elementary and secondary education.

I am a strong proponent of tax credits for higher education. I have no questions concerning the need for and the appropriateness of the original Roth proposal for higher education credits.

I understand and appreciate what Senators PACKWOOD and MOYNIHAN were trying to do for private school students. I had reservations, however, concerning the elementary-secondary tuition tax credit. I fear that the controversy over the elementary-secondary portion could have the effect of killing the higher education portion. Since the President has indicated he will veto the measure, I was concerned that Senators opposed to the elementary-secondary portion will be hesitant to vote for a veto override.

In addition, I was concerned about the constitutionality of the elementary and secondary credit. The amendment I am offering will provide programs in a manner known to be constitutional. Thus, the current inequity to private school students can be lessened. I ask the Senate to adopt this important amendment as a part of H.R. 3946.

It is here and now, while we are in the midst of a thorough debate on Federal support for private school students, that we should let our intent be known. Past inequities to private school students must be corrected. I urge passage of this amendment.

Mr. MOYNIHAN. Mr. President, although I can speak only for myself, I believe it would be the disposition of those of us who have joined in sponsoring this legislation to accept and to vote for the amendment of the Senator from New Mexico.

I take the time of the Senate to draw attention to a certain anomaly in the proposal before us.

We have heard through the better part of 3 days of debate about the unconstitutional nature of our tuition tax credit, which would provide aid to the parents of students in nonpublic schools. It is evident that that position has prevailed. The members of my party, it seems, voted 2-to-1 that any such aid would be unconstitutional.

Now we proceed to the next step, proposing a large effort to increase the flow of direct aid, in one form or another, to these very schools, to which indirect aid was held to be unconstitutional. It is a fact, then, that just as the opinions of the Court in this matter are in disarray, so is the practice of the Government.

The position I would find most favorable—not surprisingly—is that stated by Chief Justice Burger in his opinion in the Nyquist decision. He said:

> The establishment clause does not forbid governments, State or Federal, to enact a program of general welfare under which benefits are distributed to private individuals, even though many of those individuals may elect to use those benefits in ways that "aid" religious instruction or worship.

The Chief Justice concluded:

> However sincere our collective protestations of the debt owed by the people generally to the parochial school systems, the wholesome diversity they engender will not survive on expressions of good will.

We have chosen today not to provide aid to students in order that the enrollments in these schools might be maintained or even, conceivably, increased. Now the proposal of the Senator from New Mexico would increase the flow of HEW program funds in the manner contemplated by the Democratic Party platform in 1964, in the plank which I wrote. I still think is is a good thing to do.

There was a small office in the Office of Education that looked after this matter. One of the first steps the current Secretary of HEW took when he came to office was to abolish it. Then when our bill was put forth he announced that he was creating the office which in fact he had been busy abolishing. So this measure will undoubtedly add to the bureaucracy. We know that.

I have one concern: what this measure will in large measure accomplish is simply to add to the slack and waste in the school system which now accounts for the fact that the average public systems generally cost four times as much per capita as nonpublic systems. We will get more nonsense this way. I doubt that we will get more education. But it will do little harm, I suppose.

However, I would like to make one further suggestion, and for that reason I send to the desk a perfecting amendment to the amendment of the Senator from New Mexico.

The PRESIDING OFFICER. Until the time on the pending amendment either has been used or yielded back, the amendment would not be in order.

Mr. MOYNIHAN. I withhold my request. I will yield my time back very shortly.

I should like to describe the amendment, which I think the Senator will find rather simple.

This amendment simply adjusts section 203 of his proposal, which asks that the Secretary of the Department of Health, Education, and Welfare conduct the study he discusses and that he report the results to Congress a year later.

Mr. President, I regret to say this, but I have no confidence that a study conducted by the incumbent Secretary of Health, Education, and Welfare in this matter would be unbiased. An unbiased man would never have requested of the Attorney General that he rule on the constitutionality of this matter by selecting from our bill only the provision for aid to nonpublic schools, so as to make certain that the response of the Attorney General would be that our bill was unconstitutional. In fact, only a caricature of our bill was being considered.

Mr. DOMENICI. The Senator is going to ask that the Comptroller General do that?

Mr. MOYNIHAN. I ask that.

Mr. DOMENICI. That is what I was also going to propose. I will have no objection.

Mr. MOYNIHAN. That is fine. The Comptroller General is an officer of Congress, and we have the highest regard for the personal capacities of the incumbent and for the continued performance of his good office.

With that change, I am happy to support the Senator from New Mexico.

I suggest one further change. His section 203, subparagraph 2 reads:

> The potential impact of a tuition tax credit for private elementary and secondary education on public elementary and secondary schools.

I wonder if he will agree to change that wording to "public and private elementary and secondary schools," because we have been asked by both the Senator from Minnesota and the Senator from California about the impact of tuition tax credits on both the public and nonpublic sector.

Mr. DOMENICI. I say to my friend from New York that we modify my amendment to provide that the "Comptroller General" not the Secretary of HEW will undertake these studies. I also agree to add "public" and on line 18, page 8 of my amendment.

Mr. MOYNIHAN. That is fine.

Will the Senator submit those amendments when we are through and yield back our time?

Mr. DOMENICI. I will shortly, that is right.

Mr. MOYNIHAN. In that case, Mr. President, I wonder if there is another Senator who wishes to speak on this matter?

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that Mr. Tom Cator, of Senator HUMPHREY's staff, be accorded the privilege of the floor during the debate and votes on the present bill.

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

Mr. DOMENICI. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 2 minutes.

Mr. DOMENICI. Mr. President, I greatly appreciate the comments of the distinguished Senator from New York, and I simply wish to make this point.

We are not adding new programs. I tend to agree with the Senator that there probably is a better way to spend the dollars we do spend. My amendment seeks to change some of these laws so Federal dollars will be spent more effectively.

We do not add any new constitutional issue because the kinds of services presently being received in the United States by some students in parochial schools have been ruled constitutional. We are just trying to direct some attention to the problem areas where eligible students are not getting assistance, in that respect nothing else changes. I am merely saying since we do not have the tax credit we should do everything we can to see that the original intention of Congress be carried out in terms of students with special needs. We should

make certain that they receive the services they need in a constitutional manner.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, I thank the Senator from New Mexico for his initiative.

I take this opportunity to note that the senior Senator from Rhode Island is in the Chamber and that he proposes a new section. He informed us yesterday that there will be a new title XII to the ESEA bill which he will be bringing forward shortly. It will provide up to a half billion dollars in aid for nonpublic schools, according to schedules that will be discussed and reported on by the Senator from Rhode Island when he brings the bill to the floor. I believe that will occur immediately after we dispose of the legislation before us now.

Mr. DOMENICI. Mr. President, will the Senator from New York yield for just a moment?

Mr. MOYNIHAN. I am happy to yield to the Senator from New Mexico, and then I will yield to the Senator from Rhode Island.

Mr. DOMENICI. I understood that the Senator wanted to go ahead and modify the amendment before we proceeded any further.

Mr. MOYNIHAN. I do think we are going to proceed. I think the Senator simply wants to make a comment.

Mr. DOMENICI. Let me see if we can do it this way.

I send a modified version of my amendment to the desk which complies and comports with the request of my good friend the Senator from New York and I ask unanimous consent that the modified amendment be in order.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request by the Senator from New Mexico that the amendment which he has offered be modified in accordance with what he sent to the desk?

Hearing none, it is so ordered. The amendment is so modified.

The modified amendment is as follows:

"(3) If a private elementary and secondary school determines that the State or local educational agency has substantially failed to provide for the participation on an equitable basis of children enrolled in private schools, the private school may appeal to the Commissioner following such procedures as he may establish. The Commissioner shall rule on any appeal from any private school under this subsection within 90 days."

STUDY OF THE IMPACT OF FEDERAL PROGRAMS ON PRIVATE SCHOOLS

SEC. 203. (a) The Comptroller General shall conduct, either directly or by way of grant, contract, or other arrangement, a thorough study of—

(1) the impact of current Federal assistance programs in elementary and secondary education on private schools; and

(2) the potential impact of a tuition tax credit for public and private elementary and secondary education on public elementary and secondary schools.

(b) The Comptroller General shall report to the President and to the Congress, not later than one year after the date of enactment of this Act, on the results of the study required by subsection (a) of this section, together with—

(1) proposals which are considered constitutional for alternative methods of providing assistance to nonpublic elementary and secondary schools; and

(2) such other additional recommendations as the Comptroller General deems appropriate

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

Mr. DOMENICI. I thank the Senator.

Mr. MOYNIHAN. I thank the Senator, and I thank the Chair.

I yield to the Senator from Rhode Island such time as he may desire.

Mr. PELL. I thank the Senator very much.

Mr. President, the bill which immediately follows this, the College Opportunity Act, S. 2539, will contain provisions for increasing the income limitations of the families of those students who now get basic grants from $12,500 to approximately $25,000.

The bill we are talking about, however, of concern to the Senator from New Mexico is S. 1753, the Education Amendments of 1978, which we have reported out of the Committee on Human Resources and which is on the calendar, I am informed by the leadership that it will be taken up within the next week. That is the expectation.

Mr. MOYNIHAN. Fine.

Mr. PELL. That legislation contains in it two items I think of very real interest to the discussion in the Chamber here today. It contains a bypass provision in title I of the Elementary and Secondary Education Act. By chance if any Senators have it before them, it is at page 59. This provision contains many of the elements of the amendment of the Senator from New Mexico. In addition to that S. 1753 contains another provision in title XII that would provide a half billion dollars for textbooks, instructional materials, guidance and counseling, speech and hearing services, psychological services, testing services, and transportation services, all previously approved as being constitutional. It would simply enlarge the amount of money going there.

So that is another way of helping the private schools, the students, and their parents who certainly need help.

I recognize the merit of the amendment of the Senator from New Mexico and I intend to support it, but I add that if any perfecting amendment is needed, or we may want to examine it in greater length, we will have another go-round within a week as we go over the bypass provisions in our act.

Mr. MOYNIHAN. I thank the Senator from Rhode Island, who has been as staunch and effective in this matter as he was in founding the Pell grants, which he hopes now to expand.

Having become excessively sensitive to the problems of constitutionality in the course of this debate, I wish to warn him that under the provisions of Wolman against Walter, decided last June, we may provide textbooks but not teaching aids. Teaching aids are unconstitutional. Textbooks are different. They are apparently not teaching aids these days. The Court is passing on the quality of textbooks as well as on the Constitution.

Mr. PELL. The Senator may have noticed I very carefully did not mention teaching aids.

Mr. MOYNIHAN. I did notice, and I warn: do not let any careless staff work slip "teaching aids" in.

If you will read the debate of the House of Representatives in 1787, it was then held that textbooks are constitutional, and that teaching aids are not. A map, for instance, is a teaching aid. A book of maps, which is an Atlas, poses a deep problem. But I do not think we can resolve this today.

Mr. PELL. Teaching aids, and "aides" spelled with an "e" between the "d" and "s."

Mr. MOYNIHAN. Teaching aides could consist of the Sisters of Mercy, and then the roof would certainly tumble down.

Mr. PELL. So aids or aides are not constitutional; is that correct?

Mr. MOYNIHAN. I think that is the present standing in the Court. But we have not heard so for sure. The Court is in recess, so I think we are safe in that judgment, at least until October.

I would like to ask one last question of the Senator from New Mexico. Would he have any judgment about the approximate extent of the flow of additional funds which might proceed under this? It is not possible to assess?

Mr. DOMENICI. No.

Mr. MOYNIHAN. That is something we might learn from the Comptroller General?

Mr. DOMENICI. That is correct. I believe if it turns out that this is a more equitable flow, it may put us in a posture of needing additional funds. Of course, it would be to the overall cost of the program not to any one phase of it, to the private or to the public. It could be that equalizing these services will cause us to need to put more money into the overall appropriation.

I want to say to the Senator from Rhode Island that I am most appreciative of his support here today. I clearly understand that we have a chance to perfect and make much improvement on the amendment the Senate will vote on here today. I hope it will help the Senator's bill when the Senate tonight, as I think they will, indicates its support for more equity in terms of special needs of our Nation's children, whether they are in private or parochial schools.

● Mr. JAVITS. Mr. President, I believe the Domenici amendment is based on a sound principle, to wit, nonpublic school children should participate fully in the existing Federal education programs in the Elementary and Secondary Education Act (ESEA).

Later this month, the Senate will turn to S. 1753, the Education Amendments of 1978, which will reauthorize ESEA. During 2 years of consideration of these amendments by the Human Resources Committee, I and other members have carefully reviewed the participation of nonpublic school children in these programs. We have found that participation to be woefully low in terms of numbers of students and in terms of dollars per student. I have authored or cosponsored over 15 amendments now

contained in S. 1753, as reported by the Committee on Human Resources, which strengthen and will increase the participation of nonpublic school students.

I submit for the RECORD the list of these nonpublic school related amendments prepared by the Human Resources Committee.

Mr. President, this amendment is a means for the Senate to express its desire to use ESEA programs to aid nonpublic school students who qualify. Between today and the floor consideration of S. 1753, we can review in detail the provisions of the Domenici amendment and determine if any improvements are advisable. For these reasons, I will vote for this amendment.

The material follows:

[From the Human Resource Committee staff paper]

PROVISIONS FOR PARTICIPATION OF CHILDREN IN PRIVATE, NON-PROFIT SCHOOLS IN FEDERAL ELEMENTARY AND SECONDARY EDUCATION PROGRAMS AS AMENDED BY S. 1753, THE EDUCATION AMENDMENTS OF 1978

TITLE I: SPECIAL EDUCATIONAL PROGRAMS AND PROJECTS FOR EDUCATIONALLY DEPRIVED CHILDREN

The largest single program of aid to elementary and secondary schools, Title I will provide well over $2 billion to local school districts for the 1978–79 school year. School districts receive aid according to their numbers of children in low-income families. Within the districts, aid goes to the schools with the greatest numbers or proportions of such children. The aid is used for special compensatory programs designed to contribute to the cognitive, emotional, social, or physical development of educationally disadvantaged children.

Current law

The Title I legislation currently enacted requires that local public schools which receive Title I funds extend the services provided from those funds to children in non-public schools who live within the attendance area served by the public school. Non-public school children must participate on an equitable basis with the public school children. When a public school system fails to include such children as the law requires, or is prohibited from doing so by state law, then the U.S. Commissioner of Education must by-pass the public agency and arrange for appropriate services to the non-public school children. Funds for this purpose are to be derived from the local school system's allocation.

Additional provisions in S. 1753

S. 1753 supplements the existing law with the following provisions:

Where a public school provides compensatory services to its own students from state or local funds and therefore is excluded from the Title I program, Title I services must be made available to eligible non-public school students who otherwise would have participated in that school's Title I services.

When the Commissioner of Education arranges for a by-pass and deducts funds from the public school system's allocation to provide services to non-public school children, he must deduct the administrative costs as well as the actual costs of the services.

If a complaint has been filed or an investigation is underway regarding insufficient participation of non-public school children, the Commissioner of Education may withhold from the public school system in question the amounts of Title I funds necessary to fund appropriate non-public school services pending final resolution of the complaint or investigation.

The Commissioner's determination that a by-pass of services is necessary will remain in effect until the Commissioner determines that the local education agency will properly meet the requirements for serving non-public school students.

When a complaint has been filed against a state or local education agency regarding inadequate participation of non-public school children, the amount of time allowed for the agency to show cause before the Commissioner makes a determination is reduced from sixty to forty-five days.

The state education agency must have a plan for monitoring and enforcing local school systems' compliance with Title I requirements. This plan must describe how the state education agency will determine whether local school systems are serving non-public school children as required. It must also contain procedures for resolving complaints that non-public school children are not receiving services for which they are eligible.

The Commissioner of Education must develop and implement written procedures both for resolving appeals of state complaint resolutions, and for conducting independent onsite investigations. These procedures must include the following elements:

specific time limits for resolving a complaint or for completing a review and any necessary independent investigation within sixty days;

opportunity for the complainant to present evidence;

requirement that the complainant and others involved be notified in writing within ten days after the resolution of the appeal of the nature of the resolution, the reasons therefor, and the right to an administrative appeal;

dissemination of information concerning the procedures.

TITLE II: BASIC SKILLS AND EDUCATIONAL PROFICIENCY

This is a new program of aid proposed to help state and local education agencies improve the skills of children in reading, mathematics, and written and oral communication.

In order to receive funds, state and local education agencies must consult with non-public school officials and design their funding proposal to take into account the needs of children in non-public schools and provide an opportunity for them to participate on an equitable basis with public school children.

TITLE III: SPECIAL PROJECTS ACT

This Act provides funds to state and local education agencies, other public and private agencies, organizations and institutions, and to individuals, to carry out projects which meet special educational needs or place particular emphasis on national education priorities, or to disseminate information to state and local education agencies. The Act is an umbrella for a number of specific program areas, including separate funds for metric, arts, consumers law-related, environmental, health, correction, and population education, plus funds for preparing disadvantaged youth to pursue training in the biomedical sciences, and for preparing young people for jobs.

S. 1753 adds the following new provision which is applicable to all programs under the Special Projects Act:

In order to receive funds, state and local education agencies must consult with non-public school officials and design their funding proposals to take into account the needs of children in non-public schools and provide an opportunity for them to participate on an equitable basis with public school children.

TITLE IV: EDUCATIONAL IMPROVEMENT, RESOURCES, AND SUPPORT

Title IV provides funds to state and local education agencies for a number of different purposes, including acquisition of instructional materials and library resources; improvement of educational practices (such as meeting special local educational needs, or involving parents more in the education of their children); guidance, counseling, and testing; and special programs for gifted and talented children.

Current law

Existing law for Title IV mandates the equitable participation of non-public school children in programs operated by public school systems. When the local school system is prohibited by state law from providing, or has substantially failed or is unwilling to extend its Title IV programs to non-public school children on an equitable and comparable basis, the Commissioner of Education is authorized to by-pass the public school system and pay for the cost of services to these children from the state's allotment of Title IV funds. The findings of the Commissioner with respect to proper participation of non-public school children are to be conclusive, except that the courts may remand a case to the Commissioner for further action if deemed appropriate. In addition, the guidance and counseling programs newly incorporated under Title IV by S. 1753 contain provision for institutes, workshops, and seminars to improve the qualifications of teachers and counselors in non-public schools as well as in public schools.

Additional provisions in S. 1753

S. 1753 retains the above provisions of existing law and adds the following new provisions:

Pending final resolution of an investigation or complaint, the Commissioner may withhold from the state or local education agency the amount of their Title IV funds necessary to pay the cost of appropriate services to non-public school children.

The Commissioner's determination that a by-pass of funds to serve non-public school children is necessary is to remain in effect until the Commissioner determines that there will no longer be a failure of the state or local education agency to meet the requirements of equitable and comparable participation of non-public school children.

The amount of time allowed for a local or state education agency to show cause or submit objections before the Commissioner make a determination in response to an allegation of insufficient non-public school participation is reduced from sixty to forty-five days.

When a local school district receives no Title IV funds for acquisition of library and learning resources, the state education agency is to arrange for services to non-public school children in that district when such services are requested.

Title IV funds for "improvement in local educational practices" can be used to meet the need of children in non-public schools for improved educational services, and to diagnose learning problems and asseess educational problems of children in such schools.

In order to qualify for funds for acquiring library and learning resource materials and for programs for gifted and talented children, local education agencies must consult with private school officials in order to take into account the needs of non-public school children in the design of their proposal.

TITLE V: STATE LEADERSHIP

This is a new title which provides funds to state education agencies for administering ESEA* programs and for strengthening education agency management. The title contains the following provisions with respect to participation of non-public school children in ESEA programs:

A state education agency may withhold ESEA funds from local education agencies which do not comply with requirements for

*Elementary and Secondary Education Act.

participation of non-public school children.

A state education agency may use Title V funds for strengthening management for:

Assessing the educational progress of children in non-public as well as in public schools;

Coordinating public school programs with non-public school programs;

Monitoring participation of non-public school children in Federal education programs.

States must make information and technical assistance available to private school officials who desire to arrange for children in their schools to participate in Federal education programs.

State Advisory Councils on Quality Education must include representatives of non-public elementary and secondary schools.

TITLE VI: EMERGENCY SCHOOL AID ACT

This Act provides assistance to local school systems and certain organizations for instructional services, human relations efforts and other activities related to the purposes of preventing, reducing and eliminating minority group isolation and the resulting educational disadvantagement.

Current law

S. 1753 extends the provisions currently in the law regarding participation of non-public school children and staff in ESAA programs. The law requires that there be equitable participation of children, teachers, and other educational staff in non-public schools when such schools meet certain non-discrimination criteria and when their participation would help achieve the purposes of ESAA.

Current law provisions continued by S. 1753 also require that there be a by-pass of the local public school system and direct provision of services to non-public school children and education staff when the local education agency fails to provide for their appropriate participation or when the agency is prohibited by state law from doing so.

TITLE VII: BILINGUAL EDUCATION ACT

The Bilingual Education Act supports programs in local school systems which demonstrate effective ways of helping children with limited English proficiency progress through the educational system.

Current law

The law currently requires that services funded under this act must be extended to non-public school children whose educational needs are of the type the program is intended to serve and who attend schools in the area to be included in the public school program.

Additional provisions in S. 1753

S. 1753 retains the requirements of existing law and adds the following new provisions.

When a public school system which applies for funds is unable or unwilling to provide for the required participation of non-public school children, the Commissioner of Education may either withhold approval of the application until the school system demonstrates compliance with the requirements, or reduce the amount of the grant by the amount required to assess the needs of the non-public school children and to carry out a program for them.●

Mr. MOYNIHAN. Mr. President, on the strict understanding that no teaching aids will be authorized under any of these companion measures, I yield back the remainder of my time and I call for the yeas and nays on the amendment.

Mr. DOMENICI. They are already ordered.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from New Mexico. The yeas and nays have been ordered on the amendment, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

The result was announced—yeas 85, nays 10, as follows:

[Rollcall Vote No. 320 Leg.]

YEAS—85

Allen	Hansen	Moynihan
Anderson	Hart	Muskie
Baker	Haskell	Nelson
Bartlett	Hatch	Nunn
Bayh	Hatfield, Mark O.	Packwood
Bellmon	Hatfield, Paul G.	Pearson
Bentsen	Hathaway	Pell
Biden	Heinz	Percy
Brooke	Helms	Proxmire
Burdick	Hodges	Randolph
Byrd, Robert C.	Hollings	Ribicoff
Cannon	Humphrey	Riegle
Case	Inouye	Roth
Chafee	Jackson	Sarbanes
Chiles	Javits	Sasser
Church	Laxalt	Schmitt
Clark	Leahy	Schweiker
Cranston	Long	Sparkman
Culver	Lugar	Stafford
Danforth	Magnuson	Stevens
DeConcini	Mathias	Stevenson
Dole	Matsunaga	Stone
Domenici	McClure	Talmadge
Eagleton	McGovern	Thurmond
Ford	McIntyre	Tower
Garn	Melcher	Wallop
Goldwater	Morgan	Williams
Gravel		Young
Griffin		Zorinsky

NAYS—10

Bumpers	Glenn	Scott
Byrd, Harry F., Jr.	Hayakawa	Stennis
Curtis	Huddleston	Weicker
	Metzenbaum	

NOT VOTING—5

Abourezk	Eastland	Kennedy
Durkin	Johnston	

So Mr. DOMENICI's amendment (UP No. 1657) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SARBANES). The Senate will be in order. Senators will please take their seats.

Mr. MOYNIHAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MOYNIHAN. May I call up the amendment of the Senator from Ohio?

The PRESIDING OFFICER. The Senator may call up an amendment of another Senator, yes.

Mr. MOYNIHAN. In that case, Mr. President, I do so. I call up the amendment of the Senator from Ohio, and ask for its immediate consideration.

Mr. President, I regret that the amendment is not at the desk. Senator GLENN is on his way to the Chamber. As soon as he comes in, he will be able to proceed.

Mr. President, does the Senator from Louisiana desire the floor?

UP AMENDMENT NO. 1658

(Purpose: To provide for the refunding of credit in excess of tax liability)

Mr. LONG. Mr. President, I send an amendment making this tax credit refundable to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment No. 1658.

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

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

The amendment is as follows:

On page 18, strike out lines 5 through 11.

On page 23, between lines 2 and 3, insert the following:

(b) Refund of Excess Credit.—Subsection (b) of section 6401 of such Code (relating to excessive credits) is amended—

(1) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof "43 (relating to earned income credit), and 44C (relating to credit for educational expenses),", and

(2) by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44C".

On page 23, line 3, strike out "(b)" and insert in lieu thereof "(c)".

On page 23, line 19, strike out "(c)" and insert in lieu thereof "(d)".

On page 25, line 3, strike out "(d)" and insert in lieu thereof "(e)".

On page 25, line 15, strike out "(e)" and insert in lieu thereof "(f)".

On page 25, line 21, strike out "(f)" and insert in lieu thereof "(g)".

Mr. MUSKIE. What was the unanimous-consent request?

The PRESIDING OFFICER. That further reading of the amendment be dispensed with.

Mr. LONG. Mr. President, if we pass a tuition tax credit, the vote of the Senate on the Metzenbaum amendment indicates that it is the judgment of the Senate that no one should be denied a tax credit because he is too rich.

I believe that the counterpart of that judgement is that no one should be denied this tax credit because he is too poor.

Mr. President, many times I have voted against measures that seemed meritorious to me. I have voted that some measures were not germane; because I thought we should stick to a germaneness rule. I have lost several times in recent years because of that. It has happened two times during this last month.

Here, Mr. President, it would be a complete travesty if we say, "You cannot be denied the tax credit because you are too rich, but you can be denied it because you are too poor and do not owe quite enough in taxes."

I have no doubt what the Senate's view would be if the Senators vote on the merits—of my amendment.

The Senate would decide to give the tax credit whether it is a credit against your income tax, or whether it is more than your tax, if you did not owe enough to get the full credit.

A refundable tax credit is already in the law. This credit is called the earned income credit. We provide it for the working poor. We give a working poor man a right to a refundable tax credit because he is working and trying to support his family, instead of being on the welfare. The same thing, Mr. President, ought to be true if a poor working man wants to send his youngster to college. Sending a child to college is a great sacrifice for a low-income family. But if they want to do it, they ought to have the help of a refundable tuition credit.

Mr. President, I suppose an objection will be raised that my amendment does not comply with the Budget Act.

Well, that may be so. But in this case, Mr. President, I just do not feel like standing still for the kind of miscarriage of justice which would occur if that objection defeated my amendment. It would be unfair to deny the tax credit to the least well off of all Americans. I may be compelled to appeal the ruling of the Chair in this case. I think we would be justified in doing so.

Mr. President, I would point out that the cost of this amendment to benefit lower income people would be only $45 million in fiscal year 1979, $81 million in fiscal year 1980, $133 million in fiscal year 1981, $204 million in fiscal year 1982, and $196 million in fiscal year 1983. It would not work out to more than about 10 percent of the cost of the bill.

For my part, I would prefer that those who are less fortunate have the benefit of this bill just as those who are more fortunate. I am pleased to vote so that no one would be denied the credit because he is in reasonably good circumstances. I think that we also should not deny the credit to someone because he is in less fortunate circumstances.

Mr. MATSUNAGA. Will the Senator yield?

Mr. LONG. I yield.

Mr. MATSUNAGA. I rise in support of the amendment offered by the Senator from Louisiana. We have been talking here about helping the poor, helping the poor, that is what this is all about, that the poor are unable to send their children to college. This amendment would take care of the really poor, as the Senator has so well put it, who are unable to take advantage of the tax credit because they are so poor, their earnings are so small, that they do not pay enough taxes to even take advantage of the credit provided by the bill.

If we are going to provide credit to the rich, as this bill would, and we are saying we are intent upon helping the poor to send their children to college, the amendment which the Senator from Louisiana offers is one which just fits the bills. I rise in support of this amendment.

(Mr. PAUL G. HATFIELD assumed the chair.)

Mr. MUSKIE. Mr. President——

The PRESIDING OFFICER. There is no time remaining.

Mr. MUSKIE. Mr. President, I raise a point of order.

First of all on procedural grounds, which I will explain as extensively as I can within the time limitation I have. The first tuition tax credit bill reported by the Finance Committee had this provision included. The Finance Committee also reported out a waiver resolution as required under the Budget Act. The waiver resolution is required in part because of this refundable provision. That waiver resolution, as required by the Budget Act, was sent to the Budget Committee. The Budget Committee rejected it on other grounds. The Finance Committee reconvened and reported the bill we have been considering on the Senate floor, striking the provisions that met with the disapproval of the Budget Committee.

So if the distinguished chairman of the Finance Committee really intends to fight for a principle, why did he not fight it through the Budget Committee in accordance with the procedures of the Budget Act, face the waiver resolution, which was reported unfavorably, and face the fight on that resolution?

Unfortunately for those who are concerned with the budget process, this amendment is subject to a point of order just as would the original bill have been subject to a point of order if it had been referred to the Budget Committee.

So this is the Finance Committee chairman's final act in a strategy to get around the Budget Act, to get around the Budget Committee, and to bring this proposal to the Senate.

I warned the Senate yesterday that this was coming. Another Senator gave consideration to offering it and rejected it on the basis of the next point I am going to make. In any case, this is a clear case of a strategy which backed off the bill the Finance Committee really wanted, a bill that would have cost $5.3 billion a year by 1983. That is the bill they really wanted, but they knew the Budget Act required a waiver resolution. They reported it out, it came to the Budget Committee, we debated it at length, reported it unfavorably by a vote of 9 to 4 to the Senate floor.

After that action was taken by the Budget Committee and in order to avoid a fight on that waiver resolution, the Finance Committee chose this other route, with a bill with lower benefits, a lower cost, and without this refundable provision.

That is what has taken place, and I cannot think, if I said nothing more, of a clearer way for the Senate to repudiate the budget process than to support this proposal by the chairman of the Committee on Finance.

I make another point: Under the provisions of this bill, a family would be eligible for a tax credit up to $250. However, recipients of direct categorical assistance for education, low- and moderate-income families will receive little, if any, assistance from the tax credit since the amount of the grant is deducted from the prospective tax credit. So that, for the poor, this refundable credit provision will provide no assistance, because the bill itself trades off the tax credit against the direct categorical aid programs.

So we are being asked to go through a procedure in defiance of the budget process to provide no benefit to the people that the chairman of the Finance Committee will tell us he is intending to help.

To take up the time of the Senate at this late hour on this bill for those purposes, seems to me to be indefensible. I do not think I need to say anything more on this bill, so I yield the floor.

Mr. LONG. Mr. President, if there is any question about an offset in the credit bill which affects welfare or other aid, we can take care of that matter when the Finance Committee acts on the welfare bill. If it is the judgment of the Senate that low-income people should have the same benefit as those who are better fixed, we shall provide that result in the bills within the jurisdiction of the Finance Committee. That is no problem.

The problem, Mr. President, is with the budget process. I voted for that budget process. I helped to establish it. I was on the original committee that worked on it. But, the one thing that I recognized about the budget process was that it would always be the decision of the Senate whether it wants to observe or waive the budget procedures.

Now under the Budget Committee procedures, if we think something is just, or unjust, but voting on it on the floor violates the Budget Act, we have to send it to the Budget Committee first.

Mr. MUSKIE. Will the Senator yield? The Senator knows that the waiver resolution comes to the Senate and whether it is unfavorable or favorable, the Budget Act makes the Senate the final actor. But the Senator chose not to go that route.

Mr. LONG. I do not know about that.

Mr. MUSKIE. I think the Senator knows that very well.

Mr. LONG. I just happen to think that I am a better witness about what I know than somebody else is. But I know something about the Budget Act, because I helped to write that act—I played a part in some of the early negotiations on that bill and some of the first versions that were reported out. In the Budget Act, we posed a great number of procedural difficulties for somebody who wants to do something that the Budget Committee does not want done. But in the last analysis, the decision whether or not to do something is the decision of the Senate and not the decision of the Budget Committee. It is not the Finance Committee's decision, not the Appropriations Committee's decision; it is the full Senate's decision.

Now this bill now creates an obvious miscarriage of justice. No one will be denied the tax credit because he is too rich. The bill takes care of that group—the rich—very well. And I am proud that I have voted that way. But the bill does not allow some people the credit because they are too poor. That result is not fair.

As far as this Senator is concerned, I have tried to comply with the budget process. The Senate sent the bill to the Budget Committee, and to the Appropriations Committee. Then they sent it back to the Budget Committee. By the time everyone got through kicking it between one committee and another, it

was decided that it could not contain the refundable feature.

So we said that we will try to add it on the floor. Then we come out to the floor and we are told there will be an objection on a point of order.

In the last analysis, if the majority of the Senate wants to do something, they will do it—notwithstanding the objections of the Budget Committee and notwithstanding the objections of some other committee. At some point, I say to the Senators, you just ought to vote your conscience on the merits of the issue in spite of all the procedural impediments that may be posed in front of you.

This refundable credit is not a big budget item. It adds less than 10 percent to the cost of the bill. At some point, we ought to go ahead, do what is right, and make the credit refundable.

Has the Chair ruled on the point of order?

Mr. MUSKIE. Mr. President, I have not yet made the point of order.

Mr. LONG. I will make that point of order that this is out of order under the Budget Act. I appeal the ruling of the Chair.

Mr. MUSKIE. Mr. President, may I make the proper point of order? I understand the Senator from Louisiana wants to cut me off by using the rules in spite of the fact that he is just arguing that every Senator——

The PRESIDING OFFICER. The Senator from Louisiana has made a point of order which is not debatable——

Mr. MUSKIE. What is the parliamentary situation?

The PRESIDING OFFICER. The Senator from Louisiana has made a point of order which is not debatable.

Mr. MUSKIE. I have another parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. I understood earlier, when I inquired of the Parliamentarian, that a point of order could not be raised until all time is expended. The time on this amendment has not been expended.

The PRESIDING OFFICER. There is no time limit on this amendment.

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

Mr. DOLE and Mr. MOYNIHAN. Regular order, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

A point of order having been made that, under section 401 of the Budget Act, new spending authority is created by this amendment and further that section 303 of the Budget Act is violated, the point of order is sustained.

Mr. LONG. Mr. President, I appeal the ruling of the Chair. 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, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

The result was announced—yeas 75, nays 21, as follows:

[Rollcall Vote No. 321 Leg.]

YEAS—75

Allen	Goldwater	Muskie
Anderson	Griffin	Nelson
Baker	Hart	Nunn
Bartlett	Haskell	Pearson
Bellmon	Hatfield, Mark O.	Pell
Bentsen	Hathaway	Percy
Bumpers	Helms	Proxmire
Burdick	Hodges	Randolph
Byrd, Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Humphrey	Sasser
Case	Inouye	Scott
Chafee	Jackson	Sparkman
Chiles	Javits	Stafford
Church	Kennedy	Stennis
Clark	Laxalt	Stevens
Cranston	Leahy	Stevenson
Culver	Lugar	Stone
DeConcini	Magnuson	Thurmond
Dole	Mathias	Tower
Domenici	McClure	Wallop
Eagleton	McGovern	Weicker
Ford	McIntyre	Williams
Garn	Metzenbaum	Young
Glenn	Morgan	Zorinsky

NAYS—21

Bayh	Hatfield, Paul G.	Packwood
Biden	Hayakawa	Ribicoff
Brooke	Heinz	Roth
Curtis	Long	Schmitt
Danforth	Matsunaga	Schweiker
Gravel	Melcher	Talmadge
Hansen	Moynihan	
Hatch		

NOT VOTING—4

Abourezk	Eastland	Johnston
Durkin		

So, the ruling of the Chair was sustained as the judgment of the Senate.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the ruling of the Chair was sustained as the judgment of the Senate.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1659

(Purpose: To provide for the refunding of credit in excess of tax liability)

Mr. LONG. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 1659.

Mr. LONG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with. I will explain it.

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

Mr. MUSKIE. Mr. President, reserving the right to object, does the Senator have a copy of his amendment we can read?

Mr. LONG. It has the same basic effect as my earlier amendment. I have made a few changes. I have stricken some of the cross references and the conforming references. This amendment stands for the same moral principle as the earlier one, but it changes the legislative language, for parliamentary reasons.

Mr. MUSKIE. The vote just taken indicates that those technicalities can be very significant.

Mr. LONG. The Senator can appeal the ruling of the Chair, if he wishes.

Mr. MUSKIE. How long is the amendment? I am not inclined to object. I am reserving the right to object. I would like some clear idea——

The PRESIDING OFFICER. The Senator from Maine has a right to have the amendment read.

Mr. MUSKIE. I am not asking for that at this point. I am hoping that the distinguished sponsor of the amendment might give us enough of a clue in advance so that—Mr. President, a parliamentary inquiry. Could I ask to have the amendment read later?

Mr. LONG. Of course, I am just trying to save the time of the Senate. I will explain the amendment.

Mr. MUSKIE. I am willing to go that route, until I find it unsatisfactory.

The PRESIDING OFFICER. If the Senator does not waive the reading, he may have it read later.

Mr. MUSKIE. I do not insist that it be read now. I reserve the right to have it read later and will permit the Senator from Louisiana to proceed.

Mr. LONG. Mr. President, I ask unanimous consent that the amendment can be read any time the Senator wants it read.

Mr. MUSKIE. That is satisfactory.

The PRESIDING OFFICER. The Senator has that right.

The amendment is as follows:

On page 18, strike out lines 5 through 11.

On page 23, between lines 2 and 3, insert the following:

(b) Refund of Excess Credit.—Subsection (b) of section 6401 of such Code (relating to excessive credits) is amended—

(1) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof "43 (relating to earned income credit), and 44C (relating to credit for educational expenses),", and

(2) by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44C".

Mr. LONG. Mr. President, I wish to comply with the budget resolution. But, I do not want to do a grave injustice to some poor people, just because they do not happen to be well fixed financially. And we will do such an injustice, if we do not agree to this amendment.

Mr. President, the Senator pointed out what he thought was the right way to obtain a waiver of the budget rules. The Budget Committee has pointed out its procedures. We tried to follow that. At least we thought we did. We sent our proposal to the Budget Committee. The Budget Committee sent it on to the Appropriations Committee, and the Appro-

priations Committee sent it back to the Budget Committee. The last I heard of it, the Budget Committee was not willing to grant a waiver.

Mr. MUSKIE. Mr. President, will the Senator yield for a point of clarification?

Mr. LONG. That is my impression.

Yes; I yield to the Senator.

Mr. MUSKIE. The Budget Act requires certain provisions go to the Appropriations Committee. We did not arbitrarily refer it to the Appropriations Committee. The Budget Act provides that because it involved the spending of money or at least a budgetary cost. The Budget Committee exercised the responsibility with which it is charged under the Budget Act and so did the Appropriations Committee. There is nothing arbitrary about it.

Mr. LONG. Yes; I am not complaining about that. I did not say the Budget Committee did not do everything it is supposed to do and did not exercise its conscience. All I am saying is that we on the Finance Committee followed the procedure as we understood the procedure, we were asking for a waiver and did not receive it.

But I read, Mr. President, under the Budget Act, section 904(b) which is the provision from which I appeal because I am trying to do what is right for those who are not so fortunate:

> Any provision of title 304 may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by unanimous consent of the Senate.

Obviously we would not obtain unanimous consent on this waiver. However, a quorum is here. By majority vote, the Senate can waive section 303, which is the section that we have to request to waive.

So, Mr. President, so that not only rich and middle-income parents have the benefit of the tax credit, but so that lower income parents may have it, also, it will be necessary to ask the Senate for a waiver.

Mr. President, the Senator from Maine said there were provisions in the bill that kept the poor from receiving as much benefit as some of us think they should out of this legislation. But, the cost estimates for this amendment show that these people would be helped. The fact is that only if they are getting a fellowship for a scholarship or Government grant or something of that sort, they cannot get the credit.

By adopting my amendment, the Senate would increase the cost of the bill only $45 million in fiscal 1979; $81 million in fiscal 1980; and $133 million in fiscal 1981. But this additional cost would help a lot of low-income people who could participate in this if the Senate wants to let them participate in it.

I hope that this is the proper way to act, Mr. President. I move that under section 904(b) the requirements of section 303 of the Budget Act be waived so that the amendment can be considered.

Mr. MUSKIE. Mr. President, a parliamentary inquiry.

Mr. PACKWOOD and Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield for that purpose?

Mr. LONG. Yes; I yield for that purpose.

The PRESIDING OFFICER. The Senator will state it.

The Senator from Maine.

Mr. MUSKIE. I ask whether or not there has been a sufficient change in the amendment to make it in order at this point under the Senate rules, not under the Budget Act?

The PRESIDING OFFICER. Under the precedents of the Senate once an amendment has been rejected or ruled out on a point of order it can not be reoffered unless it is substantially different.

Mr. MUSKIE. I make that point of order, Mr. President.

The PRESIDING OFFICER. Does the Senator yield for the point of order?

Mr. LONG. I yield for the point of order.

The PRESIDING OFFICER. It is the ruling of the Chair that there is no substantial change in the amendment, therefore, the point of order is sustained.

Mr. LONG. Then I will make some more changes.

Mr. President, send it back to me and I will make some more changes.

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

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

UP AMENDMENT NO. 1660

(Purpose: To provide for the refunding of credit in excess of tax liability)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Louisiana (Mr. LONG) proposes unprinted amendment numbered 1660.
>
> On page 18, strike out lines 5 through 11.
>
> On page 23, between lines 2 and 3, insert the following:
>
> (d) refund of excess credit.—subsection (b) of section 6401—

Mr. LONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with except for the change that was penciled in. Please read the change on the second page.

The assistant legislative clerk read as follows:

> (1) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof "43 (relating to earned income credit) and 44C (relating to credit for educational expenses incurred after September 30, 1980),", and
>
> (2) by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44C".

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

The amendment is as follows:

> On page 18, strike out lines 5 through 11.
>
> On page 23, between lines 2 and 3, insert the following:
>
> (b) Refund of Excess Credit.—Subsection (b) of section 6401 of such Code (relating to excessive credits) is amended—
>
> (1) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof "43 (relating to earned income credit), and 44C (relating to credit for educational expenses incurred after September 30, 1980),", and
>
> (2) by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44C".

Mr. LONG. Mr. President, under section 904(b) I move that section 303 of the budget rule be waived in order that the amendment might be considered.

Mr. MUSKIE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. I still do not have a copy of this amendment. I do not know whether a substantial change has been made. We had a decisive vote on the point of order relating to the Budget Act under section 401 and section 303. I do not know how many times we have to go through this exercise, but a reading of the amendment such as we have had from the clerk is not a sufficient basis for me to make a judgment on whether or not we are being asked to vote on substantially the same amendment.

So I put the parliamentary inquiry to the Presiding Officer.

The PRESIDING OFFICER. The Chair at this point will state that this amendment is substantially different than the last amendment; therefore, it is in order under the Senate rules and precedents. As to the Budget Act, that is another matter.

Mr. LONG. Mr. President, I renew my motion under section 904(b) of the Budget Act, that the provision of section 303 of the Budget Act be waived in order that this amendment might be considered.

Mr. MUSKIE. Mr. President, I will make the point of order, but before I do I think I owe the Senate some explanation of section 904.

In the first place, with respect to this amendment, I have not seen it. Only one Senator has seen it. This subject of refundable credits was considered at length by the Finance Committee. It was included in legislation which was referred under the Budget Act from the Budget Committee to the Appropriations Committee. They had specific language before them dealing with this proposal. They acted on it. Both committees, overwhelmingly reported unfavorably on it. And the language was actually reported. Before those reports could get to the Senate floor so that the Senate could consider the waiver resolution which had been acted on unfavorably, the Finance Committee changed its legislative vehicle and did not include this language at all. I have no idea whether the language the distinguished chairman of the Finance Committee has just sent to the desk is the same language that came to the Budget Committee at one point or not. There is no basis for me to make a comparison. There is no basis whatsoever.

Now, what I have said goes to section 904.

As a member of the Government Operations Committee I spent most of a year writing the Budget Act, and spent the time in conference with the House of Representatives. I know that section 904 is intended to state only what is obvious, that the Senate can at any time suspend the Budget Act. So the question before us now is do we do that casually, do we do it when the Budget Act itself provides an orderly procedure for considering the issue in question?

There is an orderly procedure under the Budget Act to consider the very subject of this amendment. It was used by the Finance Committee.

It went through the Budget Committee. The Budget Committee reported it to the floor. That report is before the Senate. But the Committee on Finance backed off that because, following the procedure set down by the Budget Act, it did not give them the result they wanted. They wanted a favorable report, and because they did not get it they pulled back from that procedure and came back to the Senate without the refundable credit, which the chairman of the Committee on Finance now sends to the desk in language that no other Senator has seen, in language that may or may not be the same as that which the Budget Committee and the Appropriations Committee considered, and now the chairman of the Committee on Finance says we ought to get away from the specific procedure which was provided to handle just this kind of a problem, and waive the Budget Act altogether, which is what section 904 is.

It says that any time the Senate wants to it can suspend the Budget Act altogether and, of course, that is a statement of fact. It did not have to be written into section 904.

So now the chairman of the Committee on Finance puts it as boldly and as blatantly as he has wanted to for a long time. He does not like the Budget Act, and he wants to suspend the Budget Act so that he can do in his own way what the Budget Act makes possible for him to do in an orderly way.

So I oppose the motion and I hope the Senate will support my opposition.

Mr. LONG. Mr. President, I dare say, 90 percent of the Senators, and maybe more than 90 percent of the Senators, will find the same difficulty with which I am confronted. They will be confronted with all the parliamentary obstacles placed in the way of getting something to a vote, if they always have to go past the Budget Committee and the Budget Act.

But if you are right, Mr. President, it only takes 51 votes to sustain your position.

Why should we provide that everybody, except those who need it the most, will have the tax credits? Under the bill, the very rich will have it. I voted for that. But why deny the poor the credit, why deny the credit to the working poor, the least of them all, merely because of a technicality? Well, not if we have it within our power to do something about it.

I am no longer trying to overrule the Chair, I am not talking about that. I tried that. I was badly defeated. I accept the verdict and do not complain about that.

The ruling that the Chair made is not involved here. What is involved here is doing what is right. I find I have precedent for what I seek to do.

In April 1976, the Senate considered food stamp legislation which created new entitlement authority. Senator MUSKIE made a point of order against it under section 401 of the Budget Act. Senator TALMADGE then moved to suspend the provisions of the Budget Act under section 904(b), the same section I am referring to here.

The motion was carried by a vote of 63-to-27. So you voted in favor of that waiver, Senators, at least two-thirds of us voted that way. We did it so that we could vote on a proposal dealing with food stamps. So the precedents are on my side this time.

I am just asking that we waive the Budget procedures for this worthy amendment. I am not asking to suspend the Budget Act as Senator TALMADGE did. I am just asking that we waive it enough so that we can offer one little amendment. I am not talking about a $1 billion amendment, but talking about an amendment that costs about $133 million the first year. By comparison, that is a small amount of money. I am asking that we waive the Budget Act provision so that the Senate can consider the amendment.

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.

Several Senators addressed the Chair.

Mr. PACKWOOD. I might say further in support of the motion that when we waived the Budget Act during the food stamp consideration, the Senator from Maine had several comments, and I might quote what he said:

> Under the Budget Act, a procedure open to him is a motion to suspend section 401 (b) with respect to this point of order, and I should support that motion, for the reasons that I have outlined here briefly . . .
>
> But the Senate also has a procedural right under the act which enables it to say: "We are going to take it up on the floor of the Senate, notwithstanding the point of order." That is not a waiver of the procedures. It is an exercise of rights that the Senate has under the procedures.
>
> If we had so structured the Budget Act as to absolutely prohibit Congress from considering any change in entitlement programs, including this bill by these months of delay, I doubt that Congress would have adopted the Budget Reform Act.
>
> So when the Senator says that somehow the Budget Committee ought to deprive the Senate of that option, I say to the Senator in all respect that I do not think that it is what the Budget Act says. If we tried to impose that rigid a discipline in the process, the process would break down before the year was up.

So, Mr. President, what we are back to again is a whose-ox-is-gored argument. At the time that the Senator from Maine wanted to waive the Budget Act to consider an amendment by Senator DOLE under the food stamp bill, he was in favor of waiving it under the procedures, as is allowed. When he is opposed to this whole act, and he has made it clear from time immemorial—I will give him credit for consistency—that he is opposed to primary credits, secondary credits, college credits, vocational credits, part-time credits, graduate credits, and all other kinds of credits, he is opposed to it, so he does not want to follow the procedures of the Budget Act and allow us to vote on this, to do the very same thing that he endorsed doing on a bill making an issue of a waiver when he supported it.

It is simply a question of whether or not you agree with the issue of refundability and want to consider it. If you do not, that is fine. Leave it out. But we should not think that we are making a change in the Budget Act, that we are doing anything we have not done before or we are doing anything that the Senator from Maine has not supported before when the issue that he wanted to consider was one that he supported.

Several Senators addressed the Chair.

Mr. MOYNIHAN. Mr. President, a brief word on the substance of the amendment of the Senator from Louisiana. With the elementary and secondary school provisions eliminated, the legislation before us is, of course, different legislation.

On the 1st of October 1980, the bill moves up to a different level altogether: there is at that point a potential refund tax credit of $500 at the college and university levels.

This amendment would take effect on October 1, 1981. We are talking about quite a substantial sum of money that persons will receive if we accept this, and will not receive if we fail to do so. This is, therefore, an important amendment.

Mr. MUSKIE. Mr. President, first of all, in response to the distinguished Senator from Oregon, I think my memory is pretty good, and I would not try to reconstruct the circumstances to which he speaks.

Mr. President, I am as sure as I am that I am standing here that those circumstances were no precedent for these. Here a route was deliberately not taken, under the Budget Act, by the Finance Committee, a route open to accomplish precisely what the Senator from Louisiana seeks to accomplish today, and he backed off; with what consequence? Leaving us in doubt as to precisely what legislative language we are considering, leaving us in doubt as to the cost, unless he chooses to presume that he ought to be the final authority on cost, and without the benefit of CBO's analysis of the cost in the light of the changes that have been made in the bill on the Senate floor.

The whole purpose of this process is to make sure the Senate has complete information on costs when it votes on legislation with these long-term cost implications. There is precedent for that.

As to what weight ought to be given to that precedent, I would not presume to try to suggest, without being able to review the record myself, before the tactic of the chairman of the Finance Committee is adopted. But I know if we were to approve what he has proposed, if we were to support his motion, we would set a

precedent with much more significant, serious, and lasting implications for the viability of the budget process than the one to which the Senator from Oregon refers.

The second point I would make, that I made in my discussion of the Senator's first amendment—we are now considering his third one—his first one did not eliminate an offset provision, which means that students would lose any direct assistance they get from Federal programs, dollar for dollar, for the tax credit relief they get up to $250.

That was a weakness in the Senator's first amendment. He has not discussed it in connection with the second one, but if the weakness has not been corrected, then it still stands, and the amendment would not do the poor any good.

But the final point I make, Mr. President, is that the Senator justifies this because it is needed to correct an obvious injustice. Well, if the injustice is that obvious, why did the Finance Committee, in its deliberations, put this offset provision in? Earlier the Senator from Louisiana said, "Oh, well, that is within our jurisdiction, we can correct it."

I ask him, why did you not correct it when it was before you? My understanding is that the offset provision was put in deliberately, because there were those in the committee who felt that not to have it would mean that there would be people who would get benefits under both the tax credit option and the direct assistance, and they did not want to subject the bill to that criticism.

I say much of this on the basis of hearsay, because I do not have the benefit of the Finance Committee report, which was before us with respect to the original bill, which gave us the Finance Committee's arguments, which evaluated the bill for us so that we could have the benefit of their deliberations.

I have to act ad hoc, on the basis of the third amendment the Senator from Louisiana was able to put together this afternoon, without seeing the language, without being able to compare it with what we had before. I have the responsibility, whether the Senator from Louisiana likes it or not, and I am going to discharge that responsibility even if no one on this floor listens. I have the responsibility of giving the Senate the benefit of my best advice. This is the way I see it, and I would appreciate the Senate's support.

Mr. PACKWOOD. Mr. President, the Senator has asked why we did not preserve the offset. I can tell the Senator why. It was to prevent double dipping. We offered the Department of HEW this provision, and they turned it down out of hand.

The matter is very simple. If somebody, in September, when starting school if students feel they are so desperately poor and are entitled to a grant, and they get it, and they could not go or they do not think they could get through school without the grant, this would let them take it, and then, when it comes time to sign the tax return in April, they can offset the amount they got as a grant against the credit, but they cannot take a grant and also take a tax credit if they paid tuition.

Conversely, if you think you can make it until April without a grant, if you take the tax credit you cannot also take the grant. It was designed to offer the students a choice, and to offset the cost of the bill, which the Finance Committee tried to do in a number of respects.

That was all this offset provision was. It had to do with preventing double dipping, and with the philosophy that I think the Finance Committee, almost to a man, shared: It endeavored to give the recipients a choice, in September, as to whether they wanted to go the grant route or the credit route. Pay your money and take your choice.

I think the reason we were turned down by the Department of HEW is that they did not want these two programs side by side, because I think I know what will happen. For most students going to school, and who are dependent on their parents, when they are faced with this situation, if the parent pays any tax at all, and they look at the BOEG form and what they have to reveal, they say, "To heck with it, I will pay it now and take it off the tax next April."

When this measure has been in effect 3 or 4 years, and HEW finds they prefer to go the tax credit route instead of the BOEG route, I believe HEW will be disappointed. But that is all that offset provision is about. It should not even be discussed in connection with this refundability and waiver of the Budget Act tonight.

Mr. LONG. Mr. President, I would hope the Senate by now understands what this is all about.

When we try to debate a tax credit so people can send their children to college, we are confronted with the argument, "Oh, that only helps those who are taxpayers; the poor will not benefit; you are going to help the rich people with this, and the poor could not enjoy it. How could you be so unfair?"

If we pass this bill without the amendment I am trying to offer, and if the President decides to veto the bill, as sure as I am talking to you, the President will come down on the fact that the bill would not benefit the poor. It will not be available to the poor because they do not pay any tax, or not enough tax to take advantage of the credit. We want to help the poor, but so far the poor are left out of this bill. When we tried to help the poor, we were confronted with every complexity that the Budget Committee can devise.

The Budget Committee is not against the poor; that committee is against this bill. Their chairman might deny it, but if he had his way he would deny the Senate the opportunity to make this bill applicable to all American children and their parents, rich or poor.

The chairman of the Budget Committee has made his position clear. He is going to work to defeat this bill however he can. He has talked about the cost of this amendment. But this amendment's cost is small in the totality of things. The Senator says he cannot rely on my estimates. Mr. President, all I have ever been able to rely on is the Joint Committee on Internal Revenue Taxation, now known as the Joint Committee on Taxation. I always have regarded that staff as the most reliable group anywhere for estimating the impact of a revenue measure whether on the House side or the Senate side of the Hill. I stand by their estimate.

Mr. President, I have stricken fiscal years 1979 and 1980 from my amendment; it would not apply for the next couple of years. That is a substantial change in the amendment. So, parliamentarywise, we are within the rule. We are following precedent; we are seeking to invoke the same precedent that Mr. MUSKIE himself approved on the food stamp bill.

We are trying to address the merits of the issue. Why not just vote on the amendment? The technicalities are finally behind us. It is just a question of whether the Senate wants to let us vote on the amendment.

As I say, we tried to follow the procedures of the Budget Committee and did not have any luck there. We did the best we could. We now seek to invoke the precedent the Senator has recognized. We now ask for a vote on the amendment.

(Mr. DECONCINI assumed the chair.)

Mr. MUSKIE. Mr. President, I will undertake to do my best to give the details on that precedent, and provide the Senate with as much information as I can. We would have been able to provide more if regular procedures had been followed.

As to that precedent—and it may have been a mistake—let us understand what it was. It had to do with the 1976 food stamp reform. My good friend from Kansas would probably remember that.

It involved another amendment which had been sanctioned by the budget resolution and taken into account by the budget resolution, and upon the adoption of the budget resolution by Congress, it effected the sanction.

So it is not outside the budget resolution.

The point of order was raised that the McGovern amendment had an immediate effective date rather than October 1. Under the budget resolution, section 401, any entitlement legislation which takes effect before October 1 or the next fiscal year, is not in order.

The fact is that because of the complexity of the food stamp bill, this judgment came to us on the basis of Senator DOLE's advice and Senator TALMADGE's advice. It was not possible to draft the McGovern amendment in another form to eliminate that technical objection.

We could not see at that point that any Budget Act purpose could be served by the point of order. The point of order would simply have obstructed a bill that had been assumed by the budget process.

That is the best and clearest reconstruction I can give of the circumstances at that time.

To me, those circumstances are far different from these.

With respect to the offset provision,

the basic education opportunity grant program for the income group $5,000 to $10,000, the average grant, is $1,132. As I understand it, the amount of the grant is deducted from the prospective tax credit. As a result an average grant recipient from a family with an income below $10,000 would not get any benefit under the tax credit, since his BEOG's grant of $1,132 would greatly exceed the prospective $250 tax credit. The refundability provision, cannot restore the tax credit to these students.

For people in the income group up to $10,000 there is no injustice being corrected here. The result I am told the offset provision would have would still obtain. So we are being asked to set a serious precedent under the Budget Act which does not accomplish what its sponsor proposes. That is the simple fact.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered——

Mr. LONG. Mr. President, if this would not help the poor, why does it cost $81 million in fiscal year 1980, and $133 million in fiscal year 1981? Those are the budget estimates. They show what it would cost to help the poor.

If this amendment leaves anything to be desired, if there is anything in this bill or in this amendment that would deny some poor person a benefit to which he is entitled, we still have the right to correct it. I would be glad to support an amendment to do that or support further legislation to achieve a proper result. But, we will not have the opportunity to do anything about an obvious injustice in this bill affecting the poor unless my motion prevails, and we are offered the opportunity to vote on my amendment.

Mr. PACKWOOD. Mr. President, one last clarifying point, so we understand who is saving money and who is not saving money. When we waived this provision on the food stamp bill 2 years ago, what happened is that the Agriculture Committee had worked extensively in trying to cut down food stamp expenditures. We had a program then estimated to cost about $6.5 billion. The Agriculture Committee, with GEORGE MCGOVERN and BOB DOLE leading the fight, came up with reforms that would have cut it to about $6 billion but they would not have gone into effect until October 1 of that particular year. At the same time, the Department of Agriculture announced regulations to go into effect immediately which would have cut the annual cost of the food stamp program to $4.8 billion.

This Senate, I was one and most of the other Senators were on final passage, let alone the budget waiver, thought that cut, which was legal under the existing law, was too deep. So by virtue of waiving the rules we cost ourselves and this country about $1 billion during that year, money we thought justifiable was to be spent. But let no one think that by that waiver we saved money from what would have been cut from the food stamp program had we not waived it. We would have cut an additional $1.2 billion by administrative action. It is because our ox collectively was being gored. We did not want to cut it that far and we waived it.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), the Senator from Texas (Mr. JOHNSTON), and the Senator from Mississippi, Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Virginia (Mr. SCOTT) is necessarily absent.

The result was announced—yeas 31, nays 62, as follows:

[Rollcall Vote No. 322 Leg.]

YEAS—31

Allen	Hansen	Melcher
Anderson	Hatch	Moynihan
Bentsen	Hatfield, Paul G.	Packwood
Biden	Hathaway	Ribicoff
Brooke	Hayakawa	Roth
Cannon	Heinz	Schmitt
Case	Long	Schweiker
Curtis	Mathias	Sparkman
Danforth	Matsunaga	Talmadge
DeConcini	McIntyre	Williams
Gravel		

NAYS—62

Baker	Griffin	Nelson
Bartlett	Hart	Nunn
Bayh	Haskell	Pearson
Bellmon	Hatfield, Mark O.	Pell
Bumpers	Helms	Percy
Burdick	Hodges	Proxmire
Byrd, Harry F., Jr.	Hollings	Randolph
Byrd, Robert C.	Huddleston	Riegle
Chafee	Humphrey	Sarbanes
Chiles	Jackson	Sasser
Church	Javits	Stafford
Clark	Kennedy	Stevens
Cranston	Laxalt	Stevenson
Culver	Leahy	Stone
Dole	Lugar	Thurmond
Domenici	Magnuson	Tower
Eagleton	McClure	Wallop
Ford	McGovern	Weicker
Garn	Metzenbaum	Young
Glenn	Morgan	Zorinsky
Goldwater	Muskie	

NOT VOTING—7

Abourezk	Inouye	Stennis
Durkin	Johnston	
Eastland	Scott	

So Mr. LONG's motion was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, what is the parliamentary situation at this point?

The PRESIDING OFFICER. The amendment of the Senator from Louisiana is the pending question.

Mr. MUSKIE. Then, Mr. President, I raise a point of order as to the amendment under the budget.

The PRESIDING OFFICER. The waiver not having been granted, this amendment, like the predecessor, violates section 303 of the Budget Act. Therefore, the point of order is sustained.

The Senator from Massachusetts.

UP AMENDMENT NO. 1661

Mr. KENNEDY. Mr. President, I send an amendment to the desk on behalf of myself, the Senator from New Hampshire (Mr. DURKIN), and Senator from South Dakota (Mr. MCGOVERN).

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mr. DURKIN and Mr. MCGOVERN, proposes unprinted amendment No. 1661.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tuition Advance Fund and Tax Credit Act".

SEC. 2. TUITION ADVANCE FUND; REPAYMENT

Title IV of the Higher Education Act of 1965 is amended by adding immediately after part C thereof the following new part:

"Part D—TAX COLLECTABLE TUITION ADVANCES TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

"STATEMENT OF PURPOSE AND AUTHORIZATION OF APPROPRIATIONS

"SEC. 451. (a) It is the purpose of this part to authorize the Commissioner to establish a program for the making of advances to cover costs of tuition and other education-related expenses to students at institutions of higher education and to provide for the referral to the Secretary of the Treasury for collection under the Internal Revenue Code of 1954 of those obligations which are in repayment status.

"(b) (1) There is hereby established in the Treasury a trust fund which shall be available, without fiscal year limitation, to the Commissioner for purposes of this part. There shall be deposited in such fund amounts appropriated pursuant to paragraph (2) and all amounts collected pursuant to section 5 of the Internal Revenue Code of 1954.

"(2) There is authorized to be appropriated, for each fiscal year beginning on or after the effective date of this part, to the fund established by paragraph (1) an amount sufficient to fulfill the purposes of section 452 of this Act, not to exceed $4,500,000,000 adjusted by the inflation adjustment factors established by the Commissioner under section 454(b)(2). Such authorization shall not apply to any fiscal year which is more than two fiscal years after the fiscal year (hereinafter referred to as the 'break-even year') in which the income from the unused portion of such funds plus the amount collected pursuant to section 5 of such Code for such break-even year exceeds the amount necessary to fulfill the purposes of section 452 of this Act for such break-even year.

"(3) If the sums available in any fiscal year for making advances to students under this part are not sufficient to pay in full the total amounts which all students are entitled to receive under this part for such fiscal year, the maximum amounts which all students are to receive for this year shall be ratably reduced. In case additional funds become available for making such advances for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"ELIGIBILITY OF STUDENT BORROWERS AND TERMS OF OBLIGATIONS

"SEC. 452. (a) An advance shall be made by the Commissioner under the provisions of this part only to a student—

"(1) who has not successfully completed a program of undergraduate education and is thirty-five years of age or younger;

"(2) who is enrolled in such a program at an eligible institution, has successfully completed the first year of such program, and is in good standing as determined by the institution; and

"(3) who is carrying at least one-half the normal full-time academic workload as determined by the institution.

"(b) No advance made under this part to any student for any academic year shall exceed $5,000, adjusted by the inflation adjustment factors established by the Commissioner under section 454(b)(2) or the allowable tuition and expenses, whichever is less. The aggregate unpaid principal amount for all such advances made to any student shall not at any time exceed $15,000, adjusted by the inflation adjustment factors established by the Commissioner under section 454 (b)(2).

"(c)(1) An advance made under this part shall be evidenced by a note or other written agreement which—

"(A) is made without security and without endorsement;

"(B) provides for disbursement of the proceeds of the advance by check, payable to the institution at which the advance recipient is in attendance, requiring endorsement by such recipient;

"(C) provides that the portion of such proceeds allocable to nontuition expenses described in subsection (d)(2) shall be paid by such institution to the advance recipient upon presentation of satisfactory evidence to the institution that such portion shall be used for such expenses;

"(D) provides for repayment in accordance with section 5 of the Internal Revenue Code of 1954 during the period in which such student is in repayment status;

"(E) provides for repayment of the total principal amount of advances under this part plus an amount equal to 50 per centum thereof, subject to the limitations contained in paragraph (2);

"(F) entitles the advance recipient to accelerate without penalty repayment of the whole or any part of the advances, plus an amount equal to 50 per centum thereof, in accordance with regulations prescribed by the Commissioner; and

"(G) contains such other terms and conditions, consistent with the provisions of this part, as may be required by the Commissioner and agreed to by the borrower.

"(2) For purposes of this subsection and section 453, an advance recipient shall be deemed to be in repayment status from the beginning of the first calendar year which begins after such recipient ceases to carry at an eligible institution at least one-half the full-time academic workload as determined by the institution and certified to the Commissioner until the earlier of (A) the beginning of the calendar year in which such borrower will become sixty-five years of age, or (B) the date on which the total principal amount of advances made to the borrower, plus an amount equal to 50 per centum of the total of such advances, is paid in full.

"(d) For purposes of subsection (b), the term 'allowable tuition and expenses' means—

"(1) the tuition charged by the eligible institution at which the borrower is enrolled, plus

"(2) an amount determined, in accordance with regulations prescribed by the Secretary, as necessary to cover education-related expenses such as transportation, room, board, and materials, but not exceeding $1,000.

"COLLECTION PROCEDURES

"SEC. 453. (a) The Commissioner shall, not later than January 1 of each year, certify to the Secretary of the Treasury for each borrower in repayment status on such date an amount equal to the sum of the total principal amount of advances made to such borrower plus an amount equal to 50 per centum of such total minus the sum of any amounts collected pursuant to section 5 of the Internal Revenue Code of 1954. A copy of such certification with respect to a borrower shall be sent by the Commissioner to such borrower.

"(b) Any borrower who receives a notice of certification under subsection (a) and who believes such notice to contain an error of statement or omission, or asserts a debt for which the borrower is not obligated or to which he desires to raise a defense or excuse, shall file an objection thereto with the Commissioner within sixty days after receipt of such notice. The Commissioner shall, within thirty days of receipt of such an objection, affirm, adjust, or withdraw such certification and send notice thereof to the borrower and to the Secretary of the Treasury. Such decision shall be reviewable by an appropriate district court of the United States as a final agency decision.

"DEFINITION

"Sec. 454. (a) The term 'eligible institution' means an institution of higher education as defined in section 1201 (a)—

"(1) which has not, except under circumstances certified by the Commissioner as vital to the mission and purpose of such institution, increased undergraduate enrollment—

"(A) by more than 2 per centum in any academic year beginning after the enactment of this part; or

"(B) by more than 10 per centum in all the academic years beginning after such enactment;

"(2) which has not imposed any excess charges in any academic year beginning after the date of enactment of this part, except under circumstances certified by the Commissioner as vital to the mission and purpose of such institution.

"(b)(1) For purposes of subsection (a)(2), the term 'excess charges' means any amount charged by an eligible institution for tuition which exceeds the tuition charged by such institution in the academic year which ends in the calendar year preceding the calendar year in which this section is enacted (hereafter referred to as the 'base tuition') plus an amount equal to the sum of—

"(A) such base tuition adjusted by the inflation adjustment factors determined under paragraph (2), plus

"(B) in the case of eligible public institutions, an amount not to exceed 10 per centum of such base tuition.

For purposes of applying subparagraph (B), no additional amount of tuition at any eligible public institution shall be taken into account unless the Commissioner determines that such additional amount is available to such institution to carry out its educational purposes.

"(2) The Commissioner shall prescribe a schedule for the calculation of inflation adjustment factors for purposes of paragraph (1) for each academic year beginning after enactment of this section which shall be based upon the increase in the Consumer Price Index as determined by the Secretary of Commerce for the calendar year preceding the calendar year in which such academic year ends.".

SEC. 3. REPAYMENT

(a) IN GENERAL.—Part I of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to tax on individuals) is amended by redesignating section 5 as section 6 and by inserting after section 4 the following new section:

"SEC. 5. TAX IMPOSED FOR REPAYMENT OF FEDERAL TUITION ADVANCES.

"(a) IMPOSITION OF TAX.—In addition to the other taxes imposed by this chapter there is hereby imposed on the includible adjusted gross income of every Federal tuition advance recipient in repayment status for the taxable year a tax equal to the lesser of—

"(1) the amount equal to the applicable percentage of such includible adjusted gross income, or

"(2) the sum of the aggregate amount payable on all Federal tuition advance of such recipient plus an amount equal to 50 per centum of such aggregate amount payable.

For purposes of paragraph (2), the aggregate amount payable on any such advance shall be determined as of the last day prescribed by law for filing the return of tax imposed by this chapter for the taxable year.

"(b) Applicable Percentage.—For purposes of subsection (a) the applicable percentage with respect to any Federal tuition advance recipient in repayment status shall be determined in accordance with the following table:

[In percent]

	Annual income of recipient					
	Up to $5,000	$5,000 to $10,000	$10,000 to $15,000	$15,000 to $17,500	$17,500 to $20,000	$20,000 and above
Total tuition advance fund obligation:						
Up to $3,750	0	2	2	2	2	2
$3,750 to $5,250	0	2	2	2	2	2
$5,250 to $6,750	0	2	2	2	2	2
$6,750 to $8,250	0	2	2	2	2	2
$8,250 and up	0	2	2	2	2	2

"(c) DEFINITIONS.—For purposes of this section—

"(1) Tuition advance.—The term 'tuition advance' means any advance made pursuant to part D of title IV of the Higher Education Act of 1965.

"(2) Tuition advance recipient in repayment status.—The term 'tuition advance recipient in repayment status' means for any taxable year any individual from whom a certification has been received by the Secretary pursuant to section 453(a) of the Higher Education Act of 1965 and has not been withdrawn pursuant to section 453(b) of such Act.

"(3) Includible adjusted gross income.—The term 'includible adjusted gross income' means—

"(A) in the case of a single individual the adjusted gross income of such individual,

"(B) in the case of married individuals filing a joint return under section 6013, where both spouses are tuition advance recipients, an amount equal to the adjusted gross income of such individuals,

"(C) in the case of a married individual filing a separate return, or a married individual filing a joint return under section 6013 where the spouse of such individual is not a tuition advance recipient, the greater of—

"(i) the adjusted gross income of such individual, or

"(ii) an amount equal to one-half of the sum of the adjusted gross incomes of such individual and such individual's spouse.

"(d) SPECIAL RULES.—

"(1) TAX TREATED AS INCOME TAX.—For purposes of this title, the tax imposed by subsection (a) shall be treated, under regulations prescribed by the Secretary, as an income tax imposed by this chapter.

"(2) MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 143.

"(3) CERTIFICATION BY SECRETARY OF ADVANCE AMOUNT REPAID.—The Secretary shall certify to the Commissioner of Education the amount of tax paid under subsection (a) for the taxable year with respect to each tuition advance recipient in repayment status.".

(b)(1) CONFORMING AMENDMENTS.—The table of sections for such part I is amended by striking out the item relating to section 5 and inserting in lieu thereof the following:

"Sec. 5. Tax imposed for repayment of Federal tuition advances.

"Sec. 6. Cross references relating to tax on individuals.".

(2) Subsection (a) of section 6012 of such Code (relating to persons required to make returns of income) is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(8) Every individual who, at the close of the taxable year, is a Federal tuition advance recipient in repayment status (as defined in section 5(c)(2)).".

(3) Subsection (a) of section 3402 of such Code (relating to income tax collected at source) is amended before the period in the third sentence by inserting "and to reflect an additional amount of tax to be deducted and withheld by reason of the tax imposed by section 5".

(c)(1) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) of this section shall apply to taxable years ending on or after the first day of the first calendar year beginning after the date of the enactment of this Act.

(2) The amendment made by subsection (b)(3) shall apply to wages paid on or after the first day of the first calendar year beginning after the date of the enactment of this Act.

(d) BANKRUPTCY.—For the purpose of section 17 of the Bankruptcy Act, any tax imposed by section 5 of the Internal Revenue Code of 1954 shall be deemed to be a tax which became legally due and owing by the bankrupt to the United States within three years preceding bankruptcy.

(e) REPORT.—The Secretary of the Treasury and the Commissioner of Education shall, not later than January 15 of each year, submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate any recommendations for changes in the rates or methods of collection of the taxes imposed by section 5 of the Internal Revenue Code of 1954 that may be necessary to insure the continued solvency and availability of the trust fund established pursuant to section 451(b)(1) of the Higher Education Act of 1965.

Mr. KENNEDY. Mr. President, I yield myself such time as I might need.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Massachusetts is entitled to the attenion of the Senate.

Mr. CHILES. Will the Senator yield?

Mr. KENNEDY. Yes, for a unanimous consent.

Mr. CHILES. Mr. President, I ask unanimous consent that Rick Brandon and Carnie Hayes of my staff be granted privilege of the floor.

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

Mr. KENNEDY. Mr. President, I offer this amendment on behalf of myself, the Senator from New Hampshire, and the Senator from South Dakota. We are considering ways in which we might meet the problems of higher tuition costs. I think the tuition advance fund provides a new, creative and financially responsible way of dealing with this problem.

This proposal has not had the consideration of the Education Subcommittee, although I have talked to the chairman of the Education Subcommittee and he has given assurances that we will have the opportunity for hearings on this proposal in the next session.

Basically, Mr. President, what this amendment would do is provide for a tuition advance fund which would make enough money available to allow people to go to college and to continue in college. The tax credit is only for $250 and we know that the burdens of tuition far exceed that.

It would also provide additional resources for room and board. It would be generally available to all of those who seek higher education.

The loan would be paid back over a period of years during which the particular student that took advantage of the program is working and earning. These funds would go back into a revolving fund for use by future students.

This fund would be self-sustaining after a period of years and would no longer drain the Federal Treasury, as a tax credit program would or even as a scholarship does.

And, it puts the responsibility on the one who will benefit, the student, rather than the parent.

Mr. President, this particular concept has been placed forward by a distinguished educator in my own State, President John Silber, president of a great university, Boston University. He has given it a great deal of thought, a great deal of study.

It seems to me to be both the financially responsible and the educationally responsible approach toward meeting the extraordinary burdens of higher tuition on the young people in this country, and their families.

Mr. President, I would now like to more formally list the virtues of this proposal for my colleagues.

Mr. President first, the tuition advance fund would make enough money available to allow people to continue in college. It is difficult for students to meet the burden of tuition, room and board today. Average tuition alone in a private college is now $2,500; room and board costs $1,000 or more. The proposed tuition tax credit would return only $250 a year in tax savings to the family which was putting someone through college—and this money would be returned some 10 months after the close of the school door for the year. It is obvious that $250 10 months late is not going to make much of a difference.

Second, the tuition advance would be available to all people who are going to accredited colleges, the 925,000 in private schools and the 3.7 million in State schools. People with financial needs would not have to search through a variety of programs and hope that, in the year in which they are applying, enough money remains in the program, or that they meet that year's eligibility criteria. It is thus as comprehensive as the tax credit.

Third, the proposal recognizes that students who go through college are the primary beneficiaries of a college education. They owe something to a society which has allowed them the resources to enjoy that education. They begin to pay society for the benefit which has been extended to them through this bill. In turn, they make it possible for society to award similar funds to students who follow in their path. It is fair that they do so. Those who go to college enjoy far greater earnings over the course of their lifetime than those who do not. The bureau of the census reports a $232,000 difference between the wages of a college and a high school graduate. They enjoy the other benefits that education bestows. They should be paying for that education when they can afford to do so, to help those who subsequently need assistance.

Fourth, the bill promotes, societal values through a payback scheme which does not force people into taking jobs purely because those jobs offer higher salaries. Those people who wish to take lower paying jobs which might be of service to society—those people who want to enter VISTA after their graduation, or those who cannot find higher paying jobs would only pay a flat percentage of their salary that year, rather than an amount calculated purely on the basis of the amount that they borrowed. This compares to the present system where, like a home mortgage, people must pay back their loans in a certain period regardless of their incomes. Gaging payback rates to income will also probably lead to fewer outright defaults.

Fifth, the program would eventually be self-sustaining. During the first few years, we would have to spend more money on the educational loans than we now do. But within a few years college graduates would begin paying back loans. As compared to the social security system, the tuition system would result, over the next few decades, in a larger and larger proportion of people graduating and paying back the amount they borrowed as they moved into jobs. There are always far more people in the work force, who are there for a 40-year period, than in college, where they are eligible for a tuition advance for a 3-year period.

Mr. President, the tuition advance fund is simply a better way to insure a college education to all the people in America who want one. It is simply a fairer way of allocating the cost of guaranteeing a college education.

I hope we will be able to test out these thoughts in the Education Committee

and come back and make a recommendation to the Senate.

● Mr. DURKIN. Mr. President, our amendment strikes those portions of the tuition tax credit bill dealing with tax credits to parents paying tuition to colleges and universities. In place of those provisions, my amendment substitutes an alternative college financing plan.

There is little doubt that a $250 tax credit would be welcomed by any person struggling to meet the high costs of tuition. But that $250 which comes in the spring will be of cold comfort when a $3,000 tuition bill arrives in the fall. For this reason, I am offering an amendment which establishes a program covering up to $5,000 of tuition and related expenses while placing responsibility for repayment where it belongs—squarely on the shoulders of the person who benefits from that education, the student. Repayment will be made over the borrower's working lifetime.

My amendment, which is cosponsored by the Senator from Massachusetts, Mr. KENNEDY and the Senator from South Dakota, Mr. MCGOVERN, is identical to the Tuition Advance Fund Act which I introduced earlier this year. Similar legislation has been introduced in the House by Congressman HARRINGTON, who helped develop the plan along with President John Silber of Boston University.

There is no question that a comprehensive program is needed now if a college education is to be a realistic goal for those who are not wealthy.

The cost of sending a child to college has risen by more than 77 percent in the last 12 years. The average cost of tuition, room, and board at a nonpublic institution of higher education is more than $19,000 over 4 years, and still rising. The costs at taxpayer supported colleges have also risen considerably to the point where it now costs an average of $2,500 per year to cover education expenses for students at these schools.

Federal loan and grant programs have been a partial solution to the problem of rising costs but have not been enough to place a college education within reach of all who wish to attend. The primary Federal program to assist middle class students, the guaranteed student loan program, has been of considerable help, but has not been a universal answer. Some lenders have been unwilling to write such loans at all or have set aside an insufficient amount to meet the needs of all those wishing to borrow. Other Federal student assistance programs are not available to middle class because their incomes are supposedly too high. For instance, 94 percent of all basic education opportunity grants go to persons with family incomes under $15,000. We all know that the financial burden on families with incomes over this level is great, too great, and as a result they may not be able to offer their children the opportunity of a higher education.

Our proposal authorizes the commissioner of education to make advances of funds to students to cover the costs of tuition and certain other related expenses such as room and board up to a limit of $5,000 annually. The loans would be made to undergraduates in their sophomore, junior, or senior years, that is, to students who have made a commitment to their education. Also, to be eligible for an advance, the student must be in attendance on at least a half-time basis at an eligible institution. An eligible institution is one which has allowed only reasonable increases in its charges to students.

The repayment method contained in our amendment is also simple and will avoid the problem of defaults found with current student loan programs. Recipients will repay the money advanced to them during their working lifetime through the Federal income tax system. The student will begin payments once he or she ceases to be in school on at least a half-time basis and will continue until the amount borrowed plus a 50-percent surcharge has been repaid or until the recipient reaches age 65.

The funds will be withheld from the advance recipient's salary as a tax, and, as such, are not avoidable by declaring bankruptcy. The abuses which exist under the present student loan programs would not be possible.

Two other aspects of the proposed repayment plan are important to note. First, students with an annual income of less than $5,000 during their repayment period will not be taxed during the years their income is below that level. Second, married individuals with a tuition advance obligation will repay 2 percent annually on the greater of (A) his or her individual earnings or (B) half of the combined income of both spouses.

Mr. President, we are fond of saying that education has made this country great, and that human capital is our most important asset. It is time we backed rhetoric with action. This plan recognizes that an investment in education is an investment in human capital. Just as the Federal Government subsidizes other capital investments through tax credits and other incentives, so should we recognize investments in human capital. Just as we amortize our other capital investments, so should we allow the amortization of human capital investments, that is investments in education.

The system provided for in our amendment will give all students a chance to pursue higher education, a chance to invest in their future. I urge its consideration by the Senate.●

Mr. BELLMON. Will the Senator yield?

Mr. KENNEDY. Yes, I yield such time as the Senator from Oklahoma wants.

Mr. BELLMON. I thank the distinguished Senator from Massachusetts for yielding.

Mr. President, I want to begin by saying that I agree with the position the Senator has taken favoring student loans.

On last Friday, I introduced a National Student Loan Bank Act (S. 3403) bill intended to provide source of funds to young people whose families cannot or will not furnish needed support.

It is a loan program. It is not grants. The loans are to be fully repaid at the cost of interest to the Treasury.

I agree with Senators DURKIN and KENNEDY that affordable loans are the answer to the cash crunch problem confronted by middle-income families, particularly if their children want to attend high cost private schools or colleges.

S. 3403, the National Student Loan Bank Act is different from the Durkin-Kennedy plan in both its repayment requirements and its structure.

Mr. President, this matter is of great import, both from a budgetary and a humanitarian standpoint, because it does offer the students what they might have at a minimal cost to the Treasury.

I hope we could have hearings on both the Kennedy-Durkin bill and on S. 3403.

I think we can learn a lesson from our experience this week. The Senate has had under consideration two bills—the tax credit now on the flooor and the President's proposed expansion of the basic education opportunity grant program, which we will soon consider. It is plain that a more orderly, more workable, more inclusive system of student aid is needed.

I join Senators DURKIN and KENNEDY in calling for hearings, hopefully one set of hearings which will address both their bill and S. 3403.

I hope hearings could occur early next year, so the product of such hearings can be considered in conjunction with the reauthorization of all existing higher education programs, which is due to occur next year.

Mr. President, I believe that this is the first step toward a reasonable, comprehensive, affordable program for student loans which will offer a solution to the problems of students from middle income families when they attempt to seek higher education.

Mr. KENNEDY. I just want to express my appreciation to the Senator from Oklahoma for his suggestions.

We are approaching this in a similar way by a revolving loan fund with a payback provision. It seems to me to be sound education policy as well as financial policy.

I want to give assurance to the Senator from Oklahoma as a member of the Education Committee that we will certainly consider his approach to it with Senator DURKIN'S, Senator MCGOVERN'S and mine.

I yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, I congratulate the Senator from Massachusetts for bringing up this matter for discussion. I know it is a very interesting approach and a very novel and sensible one.

I have had several conversations—at least one long one—with President Silber, of Boston University, and think the idea has a great deal of merit.

I look forward in the coming session of Congress—if it does not pass this session, it may pass in the next session, although I make no commitments in that regard—but I am looking forward to a hearing and a discussion on it in our Education Subcommittee.

Mr. KENNEDY. I thank the Senator.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 1662

(Purpose: To provide a termination date for the tax credit)

Mr. GLENN. Mr. President, I send to the desk an unprinted amendment for myself, Mr. EAGLETON, Mr. MUSKIE, Mr. BELLMON, and Mr. KENNEDY.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN), for himself and others, proposes an unprinted amendment numbered 1662.

At the end of the Act insert the following: "SEC. —. TERMINATION DATE. No credit shall be allowed under this Act for any taxable year beginning after December 31, 1983."

Mr. GLENN. Mr. President, the House-passed version of the tuition tax credit bill provided for a termination date for the credit at the end of 1980, thus allowing for review of the legislation by the Congress 2 years after enactment. The bill reported by the Senate Finance Committee would not provide for a termination date and thus would enact the credit in perpetuity.

My amendment would provide for a termination date of December 31, 1983, thus rejecting the in perpetuity feature of the committee bill but allowing for a more realistic review schedule than that provided by the House.

It is my view that as a general rule major tax credits or incentives—and major authorizations for that matter—ought to be reviewed routinely after they have been in operation for a time period long enough to enable us to evaluate them. Only by adopting this principle will we be able to establish control of our budget deficits and, more than that, control of government as a whole.

The college tuition tax credit, whether attractive to the Congress at this time or not, ought to be no exception to this rule. The House acknowledged this by providing for a termination date in its bill. My view, however, is that the review schedule provided by the House is too tight and that more effective review would be possible 5 years after enactment. Accordingly, my amendment would terminate the credit at the end of 1983 with the understanding that at that time Congress could leave the credit at the level provided in the legislation or revise it upward or downward.

Mr. President, every Senator in this body is very concerned about budgetary controls and the resulting impact on inflation—inflation that erodes not only our buying power but which is literally seeing the dollar drift to a second-rate currency around the world. The most uncontrollable part of our Federal budgeting process has been the rapid increase over the last 10 years of tax incentives, deductions, and credits, which all lumped together have been called tax expenditures, or in other words, Federal-revenues-not-realized.

The revenue loss through tax expenditures has grown rapidly. It amounts to an estimated $124 billion in 1978, and is estimated to increase to $187 billion by 1983. While these figures point the need for sunset tax legislation which I have previously proposed and will propose again as part of the broader sunset legislation, I believe we must address this revenue loss problem on each major addition to tax expenditures which come before us, including this bill.

The House has addressed this problem in their version of this tuition tax credit legislation by placing a 2-year sunset provision in their bill. I believe 2 years is an insufficient time in which to properly assess a change in educational patterns of this magnitude, and my amendment would propose a sunset provision in the Senate version of 5 years. Certainly 5 years is an adequate time period to assess the impact and value of this legislation. I think the House has correctly specified that they also intend to review the credit and may revise or adjust it. If the legislation is working satisfactorily at that time, Congress could extend the credit beyond the cutoff date. If, however, the tax credit is not working as planned and has some adverse impacts not foreseen at this time, then it should be sunsetted, terminated.

Mr. President, I understand that the floor managers of the bill are prepared to accept this amendment, and I would be prepared, upon their acceptance, to yield back the remainder of my time. I urge acceptance of this amendment.

Mr. HART. Mr. President, will the Senator yield?

Mr. GLENN. I yield.

Mr. HART. Will the Senator add my name as a cosponsor?

Mr. GLENN. Mr. President, I ask unanimous consent that the name of the Senator from Colorado (Mr. HART) be added as a cosponsor of this amendment.

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

Mr. PACKWOOD. We accept the amendment.

Mr. MOYNIHAN. Mr. President, the Senator from Ohio is correct. The managers of the bill are happy to accept his amendment and do so.

I yield back the remainder of my time.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. GLENN. I yield.

Mr. BELLMON. Mr. President, I ask unanimous consent that Carol Cox, Peter Boyd and George Merrill, of the Budget Committee staff, have the privilege of the floor during the debate and votes on this bill.

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

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

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

The amendment was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. Mr. President, the Senator from California has asked for the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. HAYAKAWA. Mr. President, some of my colleagues may be surprised at what I am about to say. I intend to vote against final passage of the tuition tax credit bill.

Because my career in education was at the university level, many people have assumed that my support for the so-called Packwood-Moynihan bill was based on a desire to provide tuition tax credits at the college level. However, I have indicated throughout the months of discussion on tuition tax credits that my real interest was in providing the credit for elementary and secondary education. Now that we have eliminated the credit for elementary and secondary education, I find that I can no longer support the bill.

Mr. President, we have dealt private education a severe blow today. Despite empty gestures that we may make through other amendments, I believe that parents who chose the alternative of private education for their children will not be fooled.

But most important, Mr. President, by accepting the Hollings amendment, the Senate has made this bill as regressive and as racist as it could be. Whether we make the credit refundable or not, whether we accept an income limitation or not, this bill is regressive.

It is regressive because those who need the assistance of a tuition tax credit the most are those less fortunate parents whose children's futures are held captive to poor quality public schools in the ghetto. Their children do not go to college. They don't make it that far. And they do not make it that far because their parents cannot afford to provide them with an alternative to the miserable neighborhood public schools.

These are the students that drop out of high school before they graduate. They drop out because of a lack of discipline. They drop out because their schools are not safe. They drop out because their minds are not challenged.

Mr. President, I want these children to go to college, too. But they will never be able to so long as we do not do something meaningful to help them get a decent education at the primary and secondary levels.

I in no way wish to imply any dissatisfaction with my distinguished colleague from Delaware. I commend his efforts to secure some relief in these times of high taxes for those who pay college tuition for themselves or their children. And I appreciate his efforts to help secure the same consideration for parents of elementary and secondary students. But I cannot in good conscience turn my back on those I most wish to help. So I must therefore cast my vote against final passage of this bill.

Mr. MOYNIHAN. Mr. President, I ask for third reading of the bill.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. HAYAKAWA. I yield.

Mr. GOLDWATER. Mr. President, I asked the Senator to yield just to say that I agree with his remarks completely.

I think I was the first one to have introduced this bill in the Senate, way back in 1958.

The way this bill has been butchered and amended and changed, it is not going to help the young student who wants to go to college, and I therefore will vote against it.

Mr. MOYNIHAN. Mr. President, I ask for third reading.

Mr. MORGAN. Mr. President, since last Thursday the Senate has been engaged in debate over the most appropriate method of providing additional relief to students and families from college costs. We have before us two proposals, one sponsored by Senators MOYNIHAN and PACKWOOD, and the other by Senator PELL, and if we choose one over the other, it will have significant consequences for the future of educational assistance in this country.

This is an important debate, but I am greatly disturbed by its implicit assumption, that the Federal Government needs to increase appropriations for tuition assistance, exclusive of the GI bill, by 40 percent. And that is what both of the proposals before us would do. We are proposing to increase our spending for tuition assistance from $3.8 billion to about $5.3 billion, an increase that cannot be justified when one looks at the change in the cost of a college education, and one that cannot be justified when one looks at the size of the Federal deficit and at the many other pressing problems requiring action and money from the Federal Government.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order.

Will the Senate please come to order? Senators will cease from talking and those on the floor will take their seats.

Mr. MORGAN. Mr. President, I realize the hour is late, but I listened patiently for about a week to all the others and I have a few things I wish to say before passage of this bill.

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order.

Mr. ROBERT C. BYRD. The Senator is entitled to be heard also regardless of what the hour is or what stage of the proceedings the Senate has reached.

I hope the Chair will protect the Senator.

Mr. MORGAN. Mr. President, I think we should look at some facts.

Between 1967 and 1976, the cost to the student of attending college, whether public or private, increased by about 75 percent. At the same time, the median income rose by 88.6 percent, and Federal appropriations per college student increased by an astounding 262 percent, from $87 per student to $315 per student. Taxpayers pay about 14 percent of the cost of educating each student in a private school, and three-quarters of the cost in public colleges.

A glance at college enrollment figures also fails to support the need for a 40-percent increase in Federal financial aid to students, whether it be through tax credits or a grant and loans program. The percentage of dependent 18- to 24-years-old attending college was virtually the same in 1976 as it was in 1967—about 39 percent. The percentage of 18- to 24-years-olds attending college has risen about equally at all income levels following the major drop when the draft ended in 1973. These figures all indicate that young people who wish to attend college are able to do so.

While some additional assistance to students, however distributed, may be justified because of the inflation that has taken place in the last year, a 40-percent increase over 1 year does not seem to be justified.

We have to remember that college education is still a personal responsibility. Maybe one day, it shall be national policy to provide everyone with a free college education, but the country does not want to nor can afford to do this today. We should also remember that going to college is a highly profitable investment. The average income for high school graduates is 70 percent of that for college graduates. A college degree is worth well over $150,000, even including the cost of the college education. A person profits greatly from going to college, and he should be willing to pay for it, even if he or she must initially go into debt. Thus, I am greatly disturbed by the proposals before us, which would greatly increase grants, whether it be through the tax system or a program run by the Department of Health, Education, and Welfare.

The administration originally did not feel that such an increase could be justified, for they proposed a $200 million increase when the budget proposal was released last January. This increase, over 5 percent, in my view, is more in line with the realities of the situation. Maybe an increase somewhat larger than 5 percent can be justified, but not 40 percent.

The country will be lucky if Congress holds the budget deficit to below $50 billion for the upcoming fiscal year. Interest on the national debt will be over $40 billion. Very little progress has been made with regard to reducing Federal spending in the last 4 or 5 years, although a number of Senators, notably the distinguished chairman and ranking minority member of the Budget Committee have spent innumerable hours working on this.

I, too, am greatly concerned about the cost of college education. I will shortly be paying for two daughters to attend college, and it is roughly estimated if this bill were to pass I probably would stand to gain or benefit at least $7,000 or $8,000 during their college days. But I do not feel a 40-percent increase in student aid is justifiable, and believe we will be doing the country a favor by not supporting any such proposal.

Earlier this year, when discussing a proposal to use general revenues to finance the social security system, the distinguished chairman of the Finance Committee was quoted as saying, "What general revenues?" I think the same logic applies today to these proposals.

I was greatly impressed by what the chairman of the Budget Committee said yesterday when he pointed out that if we enact these proposals, or either of them, we might as well throw to the wind any idea of balancing the budget in years to come.

Finally, Mr. President, let me say this, that I had my staff do a little research which many Senators probably have already done, but if they add up all of the assistance that the Federal Government makes for college students today, taking the basic grants of $1,439 million, supplemenal grants of $248 million, the work-study program, which is one of the finest, of $358 million, the Federal loans, the GI bill, and the social security student benefits, the total comes to more than $7 billion, nearly $7.25 billion.

Then if we take the tax expenditures, the exemptions for fellowships and scholarships, the GI bill exclusions, and so forth, we have another $1.25 billion.

Senators know there are not but 4.6 million students in the whole of the United States in college. There are 925,000 in private colleges and there are 3,700,000 in the public colleges.

Take the total Federal aid of $8.5 billion and a tax loss of $1.2 billion and grants and loans, we spend in this country about $1,843 for every college student.

My State of North Carolina appropriates somewhere between $2,000 and $3,000 for every college student. It occurred to me that it might be better if we just took all this money and shipped our students over to Oxford or somewhere in England and educated them there.

I think somewhere there has to be a limit. If there were unlimited funds in Congress then I would be willing to vote for either one of these bills. But, Mr. President, I wish to voice my objection to increasing further expenditures in this area as long as we are running a $50 billion deficit.

Thank you, Mr. President.

Mr. MOYNIHAN. Mr. President, I ask for the third reading of the bill.

● Mr. BAKER. Mr. President. the revised tuition tax credit bill now before the Senate is designed to provide tax relief to individuals for college fees and tuition and to parents for tuition paid to private elementary and secondary schools. It has strong support because inflation has increased tuition costs at all levels of education, impacting heaviest upon low- and middle-income families. I sympathize with those who see their tax bills climb simultaneously with the cost of living and who are finding it increasingly difficult to provide the best possible education for their children.

As revised by the Finance Committee, the bill provides an immediate tax credit for up to 50 percent of tuition and fees for full-time students in colleges and post-secondary vocational schools with a maximum of $250. By October 1, 1980, the bill would increase the credit to $500 and would extend a credit of up to $250 for tuition at private elementary and sec-

ondary schools. Students attending college at least one-half time, but less than full time, would also become eligible for the credit.

Clearly, college tuition costs have risen enormously in the last few years. Since the 1970–71 school year, average fees and tuition for 4-year colleges rose 54 percent at private institutions and 57 percent at public institutions. Similar increases have occurred at 2-year colleges. Yet existing Federal student assistance programs are aimed primarily at low-income families. Only those with income under $15,000 are eligible for the Basic Educational Opportunity Grant program, and only students from families with adjusted income below $25,000 are eligible for subsidized interest payments on a federally-guaranteed student loan. As a result, thousands of families find themselves ineligible for any existing student assistance program even though the burden of rising tuition costs has become increasingly severe.

Since I began my first term in the Senate, in 1967, I have cosponsored legislation, including bills offered by the distinguished Senator from Connecticut (Mr. RIBICOFF) providing income tax credits for college tuition expenses. In 1975, I cosponsored a measure introduced by the junior Senator from Texas (Mr. BENTSEN) providing an income tax credit for savings for the payment of post-secondary educational expenses. I regret that none of these proposals have been enacted into law, because I believe that the time to provide some relief to middle-income families for the expenses of college tuition is long overdue. The tax credit approach provides this relief in a simple and effective way. By allowing a credit against tax due rather than a simple deduction for a portion of tuition, it benefits all taxpayers equally. It eliminates the need for students and their parents to file long and complex applications for assistance from HEW—a task which many families find demeaning. And it eliminates the costs associated with administration of a grant program.

Operating in conjunction with existing student aid programs which primarily assist low-income families, the college tuition tax credit will provide needed relief to middle-income citizens who shoulder an inordinate share of the tax burden.

While many proponents of tuition tax credits compare assistance at the college and postsecondary level with assistance to elementary and secondary schools, I believe that tax credits for elementary and secondary school tuition raise several different issues which must be weighed carefully.

First, while college tax credits benefit those attending both public and private institutions, elementary and secondary education tax credits would be available only for children attending private schools. Existing programs of Federal aid to precollege public schools are targeted at specific areas of need, such as education of disadvantaged students and the handicapped, rather than individual students. The tax credit proposed in the bill is not need based. It would equal $250 for every private school child whose parents pay taxes. This is significantly more than the average Federal expenditure per student in the public schools.

Second, I believe that we must examine the potential impact of tax credits for private schools on our national commitment to providing low-cost, high quality education for all. Our public school system is hardly the monolithic creature some have described it. It is a system administered by thousands of independent, locally selected school boards whose decisions reflect the wishes of the individual communities they serve. This system is utilized by 90 percent of children in the United States and it represents a combined local-State-Federal commitment of billions in public funds.

It is important, Mr. President, during our consideration of this bill, to distinguish between tax relief and tax incentives. As my colleagues are well aware, I am strongly committed to providing relief for all taxpayers in the form of an across-the-board reduction in Federal income tax rates. The virtue of an across-the-board reduction is that it will benefit all taxpayers and will permit them to make their own decisions as to how their income will be spent, rather than leaving those decisions to the Federal Government.

The tax incentive recommended by the Finance Committee affords relief only to those parents who send their children to private schools. To the extent that the tax credit would encourage parents to utilize private schools for educating their children, the tax credit most certainly has the potential for weakening the public schools, whose continued quality and success depend on the willingness of local taxpayers to provide the necessary financial support.

While the impact of these tax credits may be small at first, it seems likely that, once the precedent has been established, the effect as well as the amount of the tax credit can be expected to increase in the future. Bearing in mind the financial difficulties confronting many public school systems today, I am not persuaded that it would be wise public policy for Congress to offer incentives that may undermine institutions which governments at all levels are firmly committed to support.

Third, I am concerned about the potential impact of elementary and secondary school tuition tax credits upon desegregation of the public schools. Proponents of the tax credit cite statistics showing a decline in enrollment at private schools throughout the country as evidence of a need for Federal support of alternatives to public education. The fact remains, however, that in many urban areas, enrollment in private schools has increased in recent years as school busing and other tools to achieve racial integration have been implemented.

My own State of Tennessee affords an excellent example of this development. In the city of Memphis, the school system has experienced a loss of 45,000 white students since busing was initiated in 1972. At the same time, more than 20 new private academies have been established in the city's suburbs, and their enrollement is increasing. As a result, problems of racial concentration in the public schools have increased and taxpayer support for public schools has dropped as more affluent families flee the public school system. Yet it is the public schools upon which we rely to educate the poor, the handicapped, and those who do not meet the entrance standards of private schools.

I am aware that the tax credit bill contains a provision designed to restrict eligibility for tax credits only to those institutions which qualify for tax exempt status under section 501(c)(3) of the Internal Revenue Code, and have nondiscriminatory policies. As a practical matter, however, private schools which have been established to evade school desegregation will hardly prove attractive to inner-city families, most of whom would find tuition costs out of reach even with the limited tax credit available in the bill.

The implications of adopting a Federal policy which may operate to exacerbate the problems public schools are already experiencing as they undergo desegregation are far-reaching, Mr. President. While I would be the first to acknowledge the importance of private and parochial schools in sustaining and contributing to the diversity of thought and point of view which has made this country great, we must bear in mind that it will always be the public schools upon which we rely to provide educational opportunities to the vast majority of American children. It is the public schools which we will expect to bear the burden of training our future generations to deal with the problems our Nation will confront in the decades ahead. And it is the public schools which we hope will help the disadvantaged escape poverty by providing them with the training necessary to secure meaningful jobs.

In conclusion, Mr. President, I will support a tax credit for postsecondary education because I believe that it is necessary and because it will apply equally to students attending public and private institutions. I will oppose extending tax credits for private elementary and secondary school tuition because I feel they will assist only a small minority of taxpayers and that they will conflict with our national commitment to public education. The potential for harm to public schools and desegregation, in my view, outweighs the benefits to be derived from alleviating some of the burden of tuition at private schools. For this reason, I will support the amendment offered by the distinguished Senator from South Carolina (Mr. HOLLINGS) to delete from the bill tax credits for elementary and secondary education. I hope that his amendment will be approved.●

● Mr. DOLE. Mr. President, H.R. 12050, the Tuition Tax Credit Act, presents the Senate with some very difficult decisions. I believe a majority of the Senate agrees with the Senator from Kansas that some assistance must be given to help deal with skyrocketing educational costs.

The Senator from Kansas has been a long-time supporter of the college tax

credit. When this issue has been presented to the Senate in the past, I have consistently voted for the creation of a college tax credit. The prospects for enactment appear brighter than ever. The House has approved legislation similar to the bill now before the Senate. Despite President Carter's veto threat, enactment of some form of tuition tax credit is likely.

NEED IS CLEAR

Mr. President, the Senator from Kansas believes there needs to be some form of tuition relief to maintain the vitality of the American educational system. Middle-income families are pushed to the limit of their resources by large tuition bills. The National Center for Education Statistics reports that the average tuition and fees in both public and private universities increased 93 percent between 1967 and 1976. During that same period, the after-tax income for middle-income taxpayers only increased 66 percent. The ability of the average American family to send children to college has slipped dramatically in the past 10 years.

QUALITY EDUCATION IS IMPORTANT

Further declining enrollment due to increased education costs threatens to deprive our country of a valuable resource—its well-educated citizens. The diversity in the American educational system has not only promoted healthy competition but insured that individual needs are met. Private and public institutions have complemented each other in the task of educating our youth. This basic freedom of choice in education should be available to all students without high costs foreclosing middle-class students.

EFFECT ON PUBLIC SCHOOLS

One of the most difficult questions that has been raised is the impact of a tuition tax credit on public school systems. I might point out that public colleges and universities have competed with private institutions for years. The Senator from Kansas is certain that all of higher education, both public and private, would benefit greatly from a tuition tax relief. The benefits would not favor one system over the other.

ELEMENTARY AND SECONDARY CREDIT

A tax credit for tuition to elementary and secondary schools presents a more complex issue. Traditionally, Federal aid to private education has been very limited. Some have questioned the constitutionality of a tax credit for elementary and secondary schools associated with religious groups. Others have contended that public schools would be faced with reduced community support and, as a consequence, their educational quality would decline. These claims are legitimate and should be considered.

Proponents of extension of credits to pre-college students respond that the financial burdens of those who send their children to these schools will still be high. The credit will not be of sufficient size to approach parity in costs. Those parents who select private education will bear an extra cost in any case.

COST OF THE PROGRAM

As with any major program, the costs and benefits of this legislation must be carefully weighed. The Finance Committee has made several alterations in the credit designed to hold the cost to a minimum. The maximum elementary and secondary credit will only be $250 per student rather than the $500 for college or post-secondary vocational school. Graduate and less than half-time students will no longer be eligible for a credit. Unlike earlier versions, this credit would not be refundable. In addition, the amount of the credit would be reduced by certain need-based Federal aid.

PROPER ROLE OF FEDERAL EDUCATION AID

A tuition tax credit provides support to education without requiring any significant new Government regulation or expansion of present regulations. Some argue that, with the tuition tax credit, the Federal Government will lose control over how this education aid is disbursed. To the Senator from Kansas, giving individual citizens a greater choice of educational opportunities is a primary benefit of the tax credit approach. Removing the Federal Government from the process of determining the shape of educational programs is a very commendable accomplishment of the tuition tax credit.

CONCLUSION

Mr. President, the tuition tax credit legislation now before the Senate represents a chance for the Senate to reaffirm the importance of education to America. Students and their parents are looking to the Senate to help them insure that a quality education remains available to everyone who is dedicated to pursuing it. There is no greater tragedy than denying an opportunity for education to a young person. Passage of this legislation will be an important step toward guaranteeing educational opportunities for everyone.●

● Mr. BARTLETT. Mr. President, while I have long been a firm believer in the value and necessity of private schools, I do not believe a convincing case has been established for a massive program of Federal assistance to elementary, secondary and private schools in the form of a tuition tax credit.

My objections to this form of aid to education are not constitutional in nature. In fact, I believe that, as written, H.R. 12050 would be found constitutional. My objections are primarily pragmatic ones.

First, supporters of this legislation have attempted to justify tuition tax credits for private school attendance by claiming that the declining enrollment in private schools is a result strictly of higher tuition costs. Such declining enrollments are more plausibly the result of a smaller student population than in the past. All schools are experiencing declining enrollments because of the demographic changes in our population. There is also a distinct possibility that with such an across-the-board subsidy as proposed by this bill, tuition rates might be increased because of it, potentially negating the benefits of a tuition tax credit.

I also oppose this section of the Tuition Tax Relief Act because it is enormously expensive and yet unfocused in its assistance. The cost of proposed tax relief to parents of private school students would ultimately total approximately $900 million annually. Unlike the many other forms of Federal educational assistance, tuition tax credits would be extended without regard to the student's need or scholastic merit. I believe these are legitimate criteria which should be applied to any form of Federal aid to education.

Finally, the tuition tax credit for private, elementary, and secondary school attendance would create a new dimension of Federal involvement in the educational system. Many conservatives have been attracted to this proposal in the belief that it will get the Government out of the education business, thereby lessening the direct paper work burden on effected tax payers and lessening the justification for bureaucrats and bureaucratic regulation. Unfortunately, this will not be the case. The tuition tax credit does not replace the current Federal programs, it merely supplements them. In fact, the paper work burden and bureaucratic complexities of obtaining an education would probably be increased by this proposal.

Although Federal policy in the area of education should certainly not abridge the right of individuals to send their children to private schools, the Federal responsibility does not and should not extend to subsidizing the cost of private education.

For these reasons I support the Hollings amendment to delete provisions of the Tuition Tax Relief Act relating to private, secondary, and elementary schools.●

● Mr. CLARK. Mr. President, the tuition tax credit legislation currently being considered in the Congress is a genuine attempt to relieve the heavy burden of education costs on middle-income families. I fully recognize the need for middle-income family support, and as both a legislator and a parent will seek the most equitable and effective approach to assisting students and families in meeting educational costs. However, I am not convinced that the tuition tax credit proposal is the best approach.

Tuition tax credits are costly and uncontrollable. In the Senate version of the bill, a tax credit would result in an aggregate revenue loss of approximately $9.2 billion by fiscal year 1983, and an additional loss of at least $2.8 billion for each fiscal year thereafter. During a time when we all must be particularly concerned about balancing the Federal budget, this approach unnecessarily contributes to the Federal deficit.

Tuition tax credits are not targeted to those families and students most in need. The Congressional Budget Office estimates that 50 percent of the benefits will go to families with annual incomes exceeding $25,000, and of that 17 percent would be to families with incomes exceeding $40,000. Families with annual incomes less than $9,000 would receive only 6 percent of the benefits.

Tuition tax credits would threaten existing student aid programs. Because of the significant loss in Federal revenues due to a tax credit, the Congress will be hesitant to continue and increase support to current student aid programs such as the basic educational opportunity grant program and the college

work-study program. These programs are often the only means by which many middle- and low-income students can continue their education.

Tuition tax credits are a flat grant received after the cost of education has been incurred. The credit is partial reimbursement for an expenditure most families cannot bear at the outset. A credit does nothing to assist with the initial registration costs for the student, and comes months after tuition and fees are due.

Tuition tax credits are not indexed to the actual costs of education. Because the tax credit is neither income-tested nor cost-tested, it distributes benefits to those able to bear the costs as well as those who need support.

These, in general, are reasons that I remain unconvinced that the tuition tax credit will benefit those who need it the most. In addition, I have specific concerns about the effect of tuition tax credits at the elementary and secondary levels.

I have thought long and hard about the extent to which the Federal Government can and should provide support to nonpublic education for grades kindergarten through 12, and about the form which that support should take. I know that nonpublic elementary-secondary education is in serious financial need and am fully supportive of Federal efforts to help fulfill that need in ways which are consistent with the Constitution. I also believe in freedom of choice, and for an individual's right to choose between private and public education. However, I cannot support subsidization of private education at the expense of the American taxpayer. It is the right and voluntary choice of the individual to use a nonpublic school. It is an involuntary choice conferred upon the taxpayer to pay once for public education and again for a subsidy to private education. It is this double taxation that I cannot support.

Additional concerns that I have with respect to the tax credit for grades K–12 focus on constitutional and equity questions. While I am aware that the Supreme Court has not decided on circumstances that are identical to those presented in the bill, I am also aware that the bill does closely resemble those circumstances in the 1973 Nyquist case for which the Court ruled Federal aid was unconstitutional. It is my understanding that such aid is constitutional only when it provides general welfare and health services, textbooks, and transportation to all children, and when it does not contribute to the operational budget costs of the nonpublic institutions. Because the tax credit proposal would provide benefits to those parents of nonpublic school students and not those of public school students, and because the credit would be a direct subsidy to the parent for the operational costs of the nonpublic school—85 percent of which are church-related—providing a tax credit for private education raises serious constitutional questions.

The tax credit for grades K–12 would also provide for at least twice as much Federal Government support for private education as for public education. This strikes me as highly inequitable. The Federal money currently going to nonpublic education is in the form of school lunch programs, and moneys from title I of the Elementary and Secondary Education Act for disadvantaged students with learning problems. I support this type of Federal assistance to nonpublic schools, and will vote for increases in such funding as they are proposed in the reauthorization of ESER bill. I cannot, however, support the expenditure of public funds at twice the rate for private education as for public education.

Tuition tax credits at the elementary-secondary levels might also lead to a drain on our public schools, and a resegregation of the public school system. A tax credit would make it easier and cheaper to attend a de facto segregated school for those parents who wish to avoid an integrated system. I recognize and applaud the Catholic Church in its efforts to achieve racial integration throughout the Nation at large, and credit the church with the success of integration in many parts of the South, in particular. But I must still recognize the advent of private "protest schools" which have risen in objection to racial integration, and which may be encouraged by a tax credit. I must do what I can to guard against such an occurrence.

I am also most reluctant to support with Federal funds nonreligious elite private schools that exclude students for class reasons as well. I am unwilling to help perpetuate race and class divisiveness within the American education system.

Instead of the tuition tax credit approach, I prefer the College Opportunity Act of 1978, S. 2539 which is scheduled for floor activity before the Labor Day recess. This approach expands the eligibility to include middle-income families for such student aid programs as the basic educational opportunity grant program, college work study, supplemental educational opportunity grant, State student incentive grants, and guaranteed student loans.

For the BEOG program, S. 2539 significantly changes the family contribution schedule. Under this bill, the family will be expected to contribute, at most, only 10.5 percnt of their "discretionary income" for the cost of higher education. "Discretionary income" is that income that remains after Federal income taxes and necessary family and catastrophic expenses. Currently the contribution rate is 20 percent for discretionary incomes less than $5,000, and 30 percent for discretionary incomes in excess of $5,000. This change in the family contribution rate would allow an additional 1.5 million students in the BEOG program. Under this bill, a student from a family of four with an annual income of $25,000 will be eligible for a grant.

Further, the Guaranteed Student Loan Program is expanded under S. 2539, making students eligible for a subsidy interest on their loans during their in-school period, regardless of their families' incomes. Currently, subsidized loans are available only for those students of families of adjusted gross incomes less than $25,000. This bill no longer discriminates in the ability of a student to secure a GSL loan on the basis of family income.

Additionally, the other existing student aid programs are also expanded to provide financial assistance to students of middle-income families. It is for these reasons I prefer this bill to the tuition tax credit proposal. The provisions in this bill are indexed to family need and the cost of tuition, and will cost $1.4 billion per year. This approach is more equitable, less costly, and more efficient than the tuition tax credit proposal.

I have seriously studied the pros and cons of both sides of the middle-income assistance issue and have concluded that the tuition tax credit proposal is not the best means by which we can support middle-income families.●

● Mr. LUGAR. Mr. President, I recently received a letter from Rev. Henry R. Mascotte, pastor of St. Augustine Catholic Church in South Bend, Ind., in support of tuition tax credits. In his letter, Father Mascotte speaks not only for his parishioners, but for low-income innercity residents throughout the country who look to tuition tax credits to provide them greater economic freedom in educating their children. I ask that Father Mascotte's letter be printed in the RECORD.

The letter follows:

ST. AUGUSTINE CATHOLIC CHURCH,
South Bend, Ind., August 7, 1978.

Senator RICHARD LUGAR,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LUGAR: The enclosed lists indicate a portion of our peoples interest in the Packwood-Moynihan bill. St. Augustine's is a small inner-city parish of 150 families, that is 65% black. The history of nonprofit schools has played a major role in moving people out of poverty in the United States. Many blacks look to those kinds of schools to help them but they are fast fading from lack of funds. This bill could change that.

Competition is the hallmark of the American way. Public schools financed with taxes, we all pay, have an advantage that puts them out of competition. This bill will improve education by providing that competitive edge.

We appreciate your support of this bill.

Sincerely,

HENRY R. MASCOTTE,
Pastor.●

● Mr. KENNEDY. Mr. President, I am opposed to the use of the Internal Revenue Code as a backdoor source of new Federal spending for education at any level—whether in colleges or secondary schools.

In my view, the longstanding and carefully structured system of Federal aid to education should be built upon and strengthened, not bypassed and undermined by an expensive and untried new method of assistance through the tax laws.

The tax credit proposals in the pending legislation would be expensive, inefficient, and inequitable methods of providing Federal aid to education. The proposals would result in losses of nearly $3 billion a year to the Federal Treasury when fully phased in. These are real dollars that will cost American taxpayers real money, at a time when the Federal Government is awash in red ink and budget deficits. It is ironic that so many

in Congress who call themselves fiscal conservatives and who consistently vote for balanced budgets and against increased spending in other areas are so quick to support this sort of wasteful spending through the Internal Revenue Code. If we have $3 billion in tax money to spend on education, we ought to spend it fairly and wisely.

I am also deeply concerned about the harmful impact of the tax credit proposals on one of our Nation's most valuable resources—our public schools. Constitutional scholars are overwhelmingly of the view that tax credits for the costs of private elementary and secondary school education would be unconstitutional under the first amendment. Therefore, in addition to the policy reasons for opposing such a credit, there is also the strong likelihood that it will be ruled invalid by the Supreme Court.

In the sensitive area of Federal education, Congress ought to be struggling to find imaginative new ways to meet the requirements of the Constitution, rather than simply defying the Supreme Court's recent decisions or asking the Court to change its mind. Unfortunately, the inevitable result of enactment of this legislation will be to raise public expectations, only to have them dashed once the Supreme Court rules on the proposal.

Expectations of relief are likely to be proved ephemeral in another major respect as well. Even if this legislation successfully runs the gauntlet of a Presidential veto and the Supreme Court's ruling, the proffered relief will be short-lived. As many economists have observed, the immediate result of enactment of this legislation is likely to be an irresistible incentive for schools and colleges to "capture" the credit by raising their tuition costs by amounts equal to the credit. As a result, parents and students will get little or no real benefit from the admitted burden of rising tuition costs.

An additional inequity in this legislation is its failure to make the tax credits "refundable." The effect is to deny the benefits of the credit to the lowest income groups and to many parents with large families, since they are the ones who will not have sufficient tax liability to take advantage of the tax credit. Yet these are precisely the parents and families who need the relief the most and who deserve to share in the benefits of this legislation if it goes forward. Unfortunately, the Finance Committee bill unfairly denies them this opportunity.

A much sounder approach to providing Federal education assistance is the College Opportunity Act of 1978, which provides a comprehensive approach to meeting the increased needs for educational assistance, with special emphasis on the needs of hard-pressed, middle income families. The Nation's basic Federal education programs have served us well in the past. With these significant 1978 improvements, they will serve us far better in the future than the unproved tax credit approach. The last thing we need in American education is to bring the Internal Revenue Service into the classroom of our schools and colleges.●

● Mr. WILLIAMS. Mr. President, the Senate has before it a difficult group of decisions as to the best means to provide assistance to families in their pursuit of education for their children. These decisions are made the more arduous by the common knowledge that our financial resources are limited and must be spent carefully, that our actions affect inflationary and recessionary potentials, and that our ability to sustain additional taxes has been exhausted.

The providing of elementary and secondary education is the primary responsibility of State and local governments. The Federal Government has always maintained a secondary role and has avoided placing itself in the position of controlling the States or the school districts of our Nation or the families who utilize educational services. The Federal Government has always refrained from involvement in curriculum, uniform standards or uniform approaches in the field of education. The Federal Government has only become involved to protect the special needs of the most disadvantaged. We have sought to minimize the Federal role and we have staunchly refused setting a National education policy beyond this limited scope.

It is, therefore, not the role of the Federal Government to intervene in State policies with respect to the kind of schools and the sources of support of those schools beyond monitoring compliance to constitutional standards and supplementing assistance for special populations such as the poor and the handicapped. It is certainly not the role of the Federal Government to equalize Federal benefits granted for those special purposes with subsidies to nonpublic institutions, directly or indirectly, in any local community or taken as a while throughout the Nation.

The history of the development of public education is instructive in this regard. Education developed in the States under the powers delegated by the 10th amendment which reserves to the States the governance of matters not otherwise singled out for Federal concern in the Constitution. Education is one of those matters.

During the late 18th century education was debated in the States, initially with different emphases and different results. Thomas Jefferson, for example, devoted 3 years of his work after the Declaration of Independence to the passage in Virginia of a compulsory and universal education law which would have provided education for 3 years in the basic skills. His efforts were successful insofar as adoption of the principle by the Virginia legislature, but the counties were free to implement the act voluntarily. The idea was too unfamiliar, and no counties implemented the measure.

Soon thereafter, however, the role of education in assuring the economic and political development of the Nation won acceptance. State after State began to develop systems of universal education. As the agrarian society gave way to our industrial society, compulsory education was enacted by the States under the powers granted them by the Constitution. Indeed, many State constitutions emphasize the regulation of education as a primary State interest.

Compulsory school attendance was enforced by the States and was implemented through school facilities and the employment of school personnel. The supreme court in State after State rejected suits brought against the institution of public education in the second half of the 19th century. Challenges to the tax system which supported public education were also overruled. The famous Kalamazoo case in 1874 brought in the Michigan Supreme Court a landmark decision that a school district cannot be restricted in its efforts to offer education opportunities and to underwrite their costs.

By the beginning of this century, universal, free public education through high school had been accepted widely, and compulsory school attendance was the established rule of law prompting and expanding that system of education. The Federal role in elementary and secondary education was virtually nonexistent until the mid-1960's when special populations such as poor children and the children of minority groups were accorded supplemental Federal assistance as part of our antipoverty and civil rights efforts.

In the bill before us. we are now being asked to reverse Federal policies with respect to elementary and secondary education and to establish a National policy with far-reaching and unforeseen implications. To what extent for example, would such a policy reversal dampen the State efforts and local willingness to underwrite education? We are all aware that the property tax is of great concern across the Nation. To what extent would tripling the Federal support to private education in the form of tuition tax credits impose greater burdens on the property tax if huge incentives were generated to favor private education? And to what extent will our efforts to bring equal opportunity to the disadvantaged and minority groups be undercut by the tuition tax policy urged upon us by the tax credit bill?

Respected authorities differ, but I cannot help but be concerned by the most recent study of this matter emanating from Johns Hopkins University. That study predicts that a tuition tax credit would prove to be an incentive to segregation. While such projections cannot contain the certainty of experience, I am concerned about the possible dangers posed.

In my opinion, Mr. President, it is unwise to accept the invitation of H.R. 12050 to embark on a National education policy through tuition tax credits for elementary and secondary education. Education should and must remain a State and local responsibility and when given the opportunity to respond to tuition tax credits, an overwhelming majority of Americans in the most recent and respected poll of public opinion rejected the approach. Two respected committees of this Senate have raised serious reser-

vations about such an approach, reservations which need not be recounted here given the recent, repeated statements of our colleagues. And finally grave constitutional issues cloud the validity of this measure.

Accordingly, I urge this body to consider alternative assistance to pupils whose economic or personal circumstances warrant special assistance; assistance which is available through the time-tested approach of Federal categorical support and which emphasizes the primacy of the State and local roles in education.

I urge this body to consider such approaches—which are financially controllable, which permit the Congress to periodically review the efficacy and the effectiveness of Federally authorized programs, and which annually adjust levels of Federal spending directly through the budget and appropriations process. In my opinion, the use of the taxing device is not the best approach to solving the problems of the spiraling costs of education for elementary and secondary school expenses. In this era of economic concern, we should not open the door to new policies depending upon the vagaries of backdoor spending.

H.R. 12050 concerns postsecondary education as well. And here we have different issues and different concerns. Here we have different policies by tradition and past congressional actions.

When higher education student assistance was first authorized in the mid-1960's, the Federal objective was to open access to college for America's capable, low-income students. We had earlier, through veteran's education programs and through the National Defense Education Act, taken the position that it was Federal policy to promote higher education for certain worthy groups such as veterans, older learners and the disadvantaged.

It is timely now to provide access to middle-income families whose ability to bear college burdens is strained by spiraling costs. The question facing us is selection of the best means to achieve that end.

In vivid contrast to our posture respecting elementary and secondary education, our higher education policy has been geared to a Federal role and a pluralistic group of programs to achieve that leadership.

Accordingly, a tuition tax credit program would be consonant with our policies and actions in the higher education field, even if it is not the sole or preferred means to implement those policies.

Tuition tax credits at the post-secondary level are not nearly so clouded by constitutional issues. Their principal advantage is the simplicity of their administration. Their principal disadvantage is that they provide significantly less assistance to middle income families than provided through the basic grant and loan programs.

For example, we could provide $700 a year for a family of four earning $19,000 adjusted income with one child in college under the basic grant program but only $250 as a tuition tax credit for that family. In addition, the basic grant program is more efficient economically and more realistic for family finances. However, it does require far too much paperwork, and that is one reason that the addition of tax credit device may be a useful device in our arsenal of higher education programs.

It was for this reason that I voted in favor of the Roth amendment to the Social Security Act in the first session of this Congress. That amendment passed the Senate and would have provided tuition tax relief to families with college students. It is for this reason that I am disposed to vote for the college tuition tax credit portion of H.R. 12050. For I believe that college credits can promote diversity of support for our national college student assistance policy.

In conclusion, Mr. President, we should reject tuition tax credits as an education policy at the elementary and secondary level, but consider favorably the adoption of this approach to enhance the Nation's higher education assistance programs.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Several Senators addressed the Chair.

Mr. MOYNIHAN. Mr. President, I yield to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. CURTIS. Mr. President, I shall not delay the Senate more than 2 or 3 minutes.

I rise to compliment the managers of this bill. They have taken care of it for the rest of us on the Finance Committee. Their debate has been learned and eloquent, and I especially mention Senators PACKWOOD, ROTH, and MOYNIHAN, and others who have participated in the debate.

Mr. President, I view this proposal as a tax matter and not an educational bill. We are dealing with money that belongs to individual taxpayers. It is a matter of tax reform, tax equity, and nothing more.

At the present time all taxpayers pay to support the public schools. That is correct. Taxpayers who are single individuals, taxpayers who are couples who have no children, corporations, trusts, all others pay taxes to support the public schools, not for the purpose of educating their children but because it is in the public good to do that.

Now, parents who send their children to private and church schools pay the tax to support the public schools. That is their duty and obligation as citizens. That is as it should be.

When the parents do that, when they spend their money to support a church and private school, they are saving the taxpayers the costs of buildings, gymnasiums, classrooms, equipment, teachers' salaries, supervisors, and books.

If the parents thus save the public expense by this expenditure they ought to have a tax deduction.

Now, this bill is written as a credit. I wish it were a deduction. I think all of these things should be handled that way.

I call attention to the fact that if you make a contribution to a charitable organization the reason back of that is that if that charitable organization takes care of widows, orphans, the poor and the homeless they relieve the public expense by that amount, and because they do it we give the donor a tax benefit.

Likewise when parents pay the full tax to support the public schools and then they make a further payment in order to lessen that expense on the public, they should be encouraged with a tax benefit.

It is not new. At the present time an employer can send his employees to school to upgrade his training and take a deduction for it. Why should we not permit parents to do the same thing?

Mr. President, I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. The Senator from Rhode Island has asked for the floor. May we have order so that the Senator from Rhode Island may be heard?

The PRESIDING OFFICER. The Senator is correct, and the Senate is not in order.

The Senator from Rhode Island.

Mr. PELL. Mr. President, I would like to remind my colleagues we will have immediately following this bill, S. 2539, which also seeks to help middle-income America, and does it by raising the limitation for the basic educational opportunity grants from about $13,000 a year to $25,000 a year.

We will also have coming up very shortly, within a week the leadership indicated, S. 1753, which seeks to assist nonpublic schools by giving money to them in accordance with the present methods that have been ruled constitutional.

So in casting our vote at this time, we should bear in mind that we have these two anchors to windward to help the youngsters of hard-pressed middle America.

Mr. ROBERT C. BYRD. Mr. President, has the bill advanced to third reading yet?

The PRESIDING OFFICER. It has been advanced to third reading.

Mr. ROBERT C. BYRD. Mr. President, I will not delay the Senate. I want to make an announcement.

S. 2539, HELP TO HIGHER EDUCATION BILL

Mr. President, the bill which will immediately follow final action on this bill tonight is S. 2539, the help to higher education bill. There will be no more rollcall votes today after the final vote on this bill, it being now 6 minutes until 9 p.m.

Now, I would like to, if I could, find out how many Senators wish to offer amendments to the higher education bill. The opening statements will be made tonight, there will be no more rollcall votes tonight.

I ask unanimous consent that when the Senate convenes tomorrow it convene at 10 a.m.—no, Mr. President, I will

leave the meeting time at 9:30 as it now stands. Rollcall votes will be occurring early.

Mr. MOYNIHAN. Mr. President, on behalf of the managers of the bill I would like to express our appreciation to Senator CURTIS for his generous remarks.

I move passage of the bill.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Virginia (Mr. SCOTT) is necessarily absent.

(Mr. SASSER assumed the chair.)

The result was announced—yeas 65, nays 27, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—65

Allen	Hansen	Nunn
Anderson	Haskell	Packwood
Baker	Hatch	Pearson
Bayh	Hatfield, Paul G.	Percy
Bentsen	Hathaway	Proxmire
Biden	Heinz	Randolph
Brooke	Helms	Ribicoff
Byrd, Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Sasser
Case	Jackson	Schmitt
Church	Laxalt	Schweiker
Curtis	Long	Stevens
Danforth	Lugar	Stevenson
DeConcini	Magnuson	Talmadge
Dole	Mathias	Thurmond
Domenici	Matsunaga	Tower
Eagleton	McClure	Wallop
Ford	McIntyre	Weicker
Garn	Melcher	Williams
Gravel	Moynihan	Zorinsky
Griffin	Nelson	

NAYS—27

Bartlett	Goldwater	Metzenbaum
Bellmon	Hart	Morgan
Bumpers	Hatfield, Mark O.	Muskie
Burdick	Hayakawa	Pell
Chafee	Hodges	Sarbanes
Chiles	Javits	Stafford
Clark	Kennedy	Stone
Cranston	Leahy	Young
Culver	McGovern	
Glenn		

NOT VOTING—8

Abourezk	Inouye	Sparkman
Durkin	Johnston	Stennis
Eastland	Scott	

So the bill (H.R. 12050), as amended, was passed.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PACKWOOD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the bill H.R. 12050 be printed with the amendments of the Senate numbered and that in the engrossment of the amendments of the Senate to the bill the Secretary of the Senate be authorized to make necessary technical and clerical changes and corrections, including corrections in sections, subsections, and so forth, designations and cross-references thereto.

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

Mr. MOYNIHAN. Mr. President, I move that the Senate insist upon its amendments to the bill H.R. 12050 and ask for a conference with the House thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. LONG, Mr. RIBICOFF, Mr. BENTSEN, Mr. MOYNIHAN, Mr. PACKWOOD, Mr. ROTH, and Mr. DOLE conferees on the part of the Senate.

Mr. MOYNIHAN. I thank the Chair.

INTERNATIONAL BANKING ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 995.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 10899) to provide for Federal regulation of participation by foreign banks in domestic financial markets.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

There being no objection, the Senate proceeded to consider the bill (H.R. 10899) which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment to strike all after the enacting clause and insert the following:

SHORT TITLE; DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1. (a) This Act may be cited as the "International Banking Act of 1978".

(b) For the purposes of this Act—

(1) "agency" means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) "Board" means the Board of Governors of the Federal Reserve System;

(3) "branch" means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) "Comptroller" means the Comptroller of the Currency;

(5) "Federal agency" means any agency of a foreign bank established and operating under section 4 of this Act;

(6) "Federal branch" means a branch of a foreign bank established and operating under section 4 of this Act;

(7) "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this Act the term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) "foreign country" means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) "commercial lending company" means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act, organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) "State" means any State of the United States or the District of Columbia;

(11) "State agency" means an agency of a foreign bank established and operating under the laws of any State;

(12) "State branch" means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms "bank", "bank holding company", "company", "control", and "subsidiary" have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(14) "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied.

DIRECTORS OF NATIONAL BANKS

SEC. 2. Section 5146 of the Revised Statutes (12 U.S.C. 72) is amended by striking out the period at the end of the first sentence and adding the following new provision: ", except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors.".

EDGE ACT CORPORATIONS

SEC. 3. (a) It is the purpose of this section to eliminate or modify provisions in section 25(a) of the Federal Reserve Act that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. In furtherance of such purpose, the Congress believes that the Board should review and revise its rules, regulations, and interpretations issued pursuant to section 25 (a) of the Federal Reserve Act to eliminate or modify any restrictions, conditions, or limitations not required by section 25(a) of the Federal Reserve Act, as amended, that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad, or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. Rules and regulations pursuant to this subsection and section 25(a) of the Federal Reserve Act shall be issued not later than 150 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued.

(b) Section 25(a) of the Federal Reserve Act is amended by adding after the first paragraph (12 U.S.C. 611), the following new paragraph:

"The Congress hereby declares that it is

the purpose of this section to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry, and agriculture in general, at all times a means of financing international trade, especially United States exports; to foster the participation by regional and smaller banks throughout the United States in the provision of international banking and financing services to all segments of United States agriculture, commerce, and industry, and, in particular small business and farming concerns; to stimulate competition in the provision of international banking and financing services throughout the United States; and, in conjunction with each of the preceding purposes, to facilitate and stimulate the export of United States goods, wares, merchandise, commodities, and services to achieve a sound United States international trade position. The Board of Governors of the Federal Reserve System shall issue rules and regulations under this section consistent with and in furtherance of the purposes described in the preceding sentence, and, in accordance therewith, shall review and revise any such rules and regulations at least once every five years, the first such period commencing with the effective date of rules and regulations issued pursuant to section 3(a) of the International Banking Act of 1978, in order to ensure that such purposes are being served in light of prevailing economic conditions and banking practices.".

(c) The second sentence of the fourth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 614) is amended by striking out ", all of whom shall be citizens of the United States" after "to elect or appoint directors".

(d) The first sentence of the sixth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 615(a)) is amended by striking ", but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital stock and surplus"; and the first sentence of the twelfth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 618) is amended by inserting a period after "and in section 25 of the Federal Reserve Act as amended", and by striking the remainder of the sentence.

(e) The third sentence of the sixth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 615(a)) is amended by striking ", but in no event less than ten per centum of its deposits" and inserting in lieu thereof "for member banks of the Federal Reserve System".

(f) The thirteenth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 619) is deleted and the following paragraph is inserted in lieu thereof:

"Except as otherwise provided in this section, a majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States. Notwithstanding any other provisions of this section, one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the States of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the prior approval of the Board of Governors of the Federal Reserve System and upon such terms and conditions and subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, own and hold 50 per centum or more of the shares of the capital stock of any corporation organized under this section, and any such corporation shall be subject to the same provisions of law as any other corporation organized under this section, and the terms 'controls' and 'controlling interest' shall be construed consistently with the definition of 'control' in section 2 of the Bank Holding Company Act of 1956. For the purposes of the preceding sentence of this paragraph the term 'foreign bank' shall have the meaning assigned to it in the International Banking Act of 1978.".

(g) The Board shall report to the Congress not later than 270 days after the date of enactment of this Act its recommendations with respect to permitting corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act, to become members of Federal Reserve Banks.

(h) As part of its annual report pursuant to section 10 of the Federal Reserve Act, the Board shall include its assessment of the effects of the amendments made by this Act on the capitalization and activities of corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act, and on commercial banks and the banking system.

FEDERAL BRANCHES AND AGENCIES

SEC. 4. (a) Except as provided in section 5, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(b) In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this Act or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) the requirements of section 5240 of the Revised Statutes (12 U.S.C. 481) shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year; (2) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the parent bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (3) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 1 of the Federal Reserve Act; and (4) a Federal agency shall not be required to become an insured bank as that term is defined in section 3(h) of the Federal Deposit Insurance Act.

(c) In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g)(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 6(a) of this Act, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 5136 of the Revised Statutes, as amended, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve Bank if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitation and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch

or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 7(a) of this Act, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to insure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) A foreign bank with a Federal branch or agency operating in any State may (1) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establisment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (2) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(i) Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j)(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

INTERSTATE BANKING OPERATIONS

SEC. 5. (a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly establish and operate a Federal branch outside of its home State unless (A) its operation is expressly permitted by the State in which it is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such Federal branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act under rules and regulations administered by the Board; (2) no foreign bank may directly or indirectly establish and operate a State branch outside of its home State unless (A) it is approved by the bank regulatory authority of the State in which such branch is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such State branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act under rules and regulations administered by the Board; (3) no foreign bank may directly or indirectly establish and operate a Federal agency outside of its home State unless its operation is expressly permitted by the State in which it is to be operated; (4) no foreign bank may directly or indirectly establish and operate a State agency or commercial lending company subsidiary outside of its home State, unless its establishment and operation is approved by the bank regulatory authority of the State in which it is to be operated; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in, or substantially all of the assets of a bank located outside of its home State if such acquisition would be prohibited under section 3(d) of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State. Notwithstanding any other provisions of Federal or State law, deposits received by any Federal or State branch subject to the limitations of an agreement or undertaking imposed under this subsection shall not be subject to any requirement of mandatory insurance by the Federal Deposit Insurance Corporation.

(b) Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 26, 1978.

(c) for the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board.

INSURANCE OF DEPOSITS

SEC. 6. (a) No foreign bank may establish or operate a Federal branch which receives deposits of less than $100,000 unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act.

(b) After the date of enactment of this Act no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act, or unless the branch will not thereafter accept deposits of less than $100,000.

(c)(1) The Federal Deposit Insurance Act (12 U.S.C. 1811–1832) is amended as set forth hereinafter in this subsection, in which section numbers not otherwise identified refer to sections of that Act.

(2) Section 3(h) is amended by inserting "(including a foreign bank having an insured branch)" immediately after "(h) The term 'insured bank' means any bank".

(3) Section 3(j) is amended by inserting "or of a branch of a foreign bank" immediately before the period at the end thereof.

(4) Section 3(m) is amended (A) by changing "(m) The" to read "(m)(1) Subject to the provisions of paragraph (2) of this subsection, the", and (B) by adding at the end thereof the following new paragraph:

"(2) In the case of any deposit in a branch of a foreign bank, the term 'insured deposit' means an insured deposit as defined in paragraph (1) of this subsection which—

"(A) is payable in the United States to—

"(i) an individual who is a citizen or resident of the United States,

"(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

"(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act;

and

"(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.".

(5) Section 3(q) is amended to read as follows:

"(q) The term 'appropriate Federal banking agency' shall mean—

"(1) the Comptroller of the Currency in the case of a national banking association, a District bank, or a Federal branch or agency of a foreign bank;

"(2) the Board of Governors of the Federal Reserve System—

"(A) in the case of a State member insured bank (except a District bank),

"(B) in the case of any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

"(C) in the case of any foreign bank which does not operate an insured branch,

"(D) in the case of any agency or commercial lending company other than a Federal agency, and

"(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act, and

"(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured Bank (except a District bank) or a foreign bank having an insured branch.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. For the purposes of subsections (b) through (n) of section 8 of this Act, the term 'insured bank' shall be deemed to include any uninsured branch or agency of a foreign bank.".

(6) Section 3 is amended by adding at the end thereof the following new subsections:

"(r) The terms 'foreign bank' and 'Federal branch' shall be construed consistently with the usage of such terms in the International Banking Act of 1978.

"(s) The term 'insured branch' means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of this Act.".

(7) Section 5 is amended (A) by changing "SEC. 5." to read "SEC. 5. (a)" and (B) by adding at the end thereof the following new subsections:

"(b) Subject to the provisions of this Act and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

"(1) the financial history and condition of the bank,

"(2) the adequacy of its capital structure,

"(3) its future earnings prospects,

"(4) the general character of its management, including but not limited to the management of the branch proposed to be insured,

"(5) the convenience and needs of the community to be served by the branch,

"(6) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this Act, and

"(7) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this Act.

"(c)(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

"(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

"(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

"(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund agains the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under his subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

"(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5 of the United States Code, and may not be made an issue in an action for an injunction under this paragraph.".

(8) The first sentence of section 7(a)(1) is amended by inserting "and each foreign bank having an insured branch which is not a Federal branch" immediately before "shall make to the Corporation".

(9) The first sentence of section 7(a)(3) is amended (A) by inserting "and each foreign bank having an insured branch (other than a Federal branch)" immediately before "shall make to the Corporation" and (B) by inserting ", each foreign bank having an insured branch which is a Federal branch," immediately before "and each insured district".

(10) Section 7(a) is amended by adding at the end thereof the following new paragraph:

"(7) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.".

(11) Section 7(b) is amended (A) by changing "(4) A bank's assessment base" to read "(4)(A) Except as provided in subparagraph (B) of this paragraph, a bank's assessment base" and (B) by adding at the end thereof the following new subparagraph:

"(B) in determining the assessment base and assessment base additions and deductions of a foreign bank having an insured branch, such adjustments shall be made as the Board of Directors may by regulation prescribe in order to provide equitable treatment for domestic and foreign banks.".

(12) Section 7(j)(1) is amended (A) by changing "(j)(1) Whenever" to read "(j)(1)(A) Except as provided in subparagraph (B) of this paragraph, whenever", and (B) by adding at the end thereof the following new subparagraph:

"(B) The Board of Directors may by regulation exempt from the reporting requirements of subparagraph (A) of this paragraph any transaction in the stock of a foreign bank to the extent that the making of any such report would be prohibited by the laws of the country of domicile of the foreign bank in effect at the time such bank makes its application under section 5(b) of this Act, or rendered impracticable by the customs and usages of such country, but the Board of Directors shall weigh the existence of any such prohibition or impracticability in connection with its consideration of the factors enumerated in sections 5(b)(4) and 5(b)(7).".

(13) Section 7(j)(2) is amended by changing "(2) Whenever" to read "(2)(A) Except as provided in subparagraph (B) of this paragraph, whenever" and by adding at the end thereof the following new subparagraph.

"(B) The requirements of subparagraph (A) of this paragraph shall not apply in the case of a loan secured by the stock of a foreign bank if the lending bank is a foreign bank under the laws of whose domicile the report otherwise required by subparagraph (A) would be prohibited.

"(C) No foreign bank under the laws of whose domicile a report in compliance with subparagraph (A) of this paragraph would be prohibited in the case of a loan to acquire the stock of an insured bank which is not a foreign bank may make, acquire, or retain any such loan. Each report of condition filed under subsection (a) by any foreign bank to which this subparagraph applies shall contain either a statement of the amount of each loan made, retained, or acquired by the foreign bank in violation of this subparagraph during the period from the date it became an insured bank or the date of its last report of condition, whichever is later, to the date of the report of condition, or a statement that no such loans were made and no such loans were outstanding during such period.".

(14) The first sentence of section 8(a) is amended by inserting ", a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 6 (a) or (b) of the International Banking Act of 1978," immediately after "(except a national member bank".

(15) Section 8 is amended by adding at the end thereof the following new subsection:

"(r)(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

"(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

"(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which,

in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

"(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

"(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

"(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

"(5) Any service required or authorized to be made on a foreign bank may be made on any branch located within any State, but if such service is in connection with an action or proceeding involving one or more branches located in any State, service shall be made on at least one branch so involved.".

(16)(A) The first sentence of section 10(b) is amended (i) by inserting "any insured State branch of a foreign bank, any State branch of a foreign bank making application to become an insured bank," immediately after "(except a District bank)", and (ii) by inserting "or branch" before the comma after "any closed insured bank".

(B) The second sentence of section 10(b) is amended by inserting ", insured Federal branch of a foreign bank," between the words "national bank" and "or District bank".

(C) The third sentence of section 10(b) is amended by inserting ", and in the case of a foreign bank, a binding commitment by such bank to permit such examination to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act shall be required as a condition to the insurance of any deposits" immediately before the period at the end thereof.

(17) Section 11(c) is amended by inserting ", insured Federal branch of a foreign bank," immediately before "or insured District bank,".

(18) The first sentence of section 11(e) is amended by inserting "or any insured branch (other than a Federal branch) of a foreign bank" immediately before "shall have been closed".

(19) The second sentence of section 11(e) is amended by changing "such insured State bank," to read "such insured State bank or insured branch of a foreign bank,".

(20) Section 11(f) is amended by inserting "or insured branch of a foreign bank" immediately before "shall have been closed".

(21) The first sentence of section 11(g) is amended by inserting ", insured branch of a foreign bank," immediately before "or District bank,".

(22) The third sentence of section 11(g) is amended by changing "In the case of any closed insured bank," to read "In the case of any closed insured bank or closed insured branch of a foreign bank,".

(23) Section 12(a) is amended by inserting ", branch of a foreign bank," immediately after "a closed national bank".

(24) Section 13 is amended by adding at the end thereof the following new subsection:

"(g) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen a closed insured bank or to avert the closing of an insured bank may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the closing of such branch substantially outweighs any additional risk of loss to the insurance fund which the exercise of such powers would entail.".

(25) Section 18(c) is amended by adding at the end thereof the following new paragraph:

"(11) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.".

(26) Section 18(d) is amended by inserting the following new sentence immediately after the first sentence thereof: 'No foreign bank may move any insured branch from one location to another without such consent.".

(27) The first sentence of section 18(g) is amended by inserting "and in insured branches of foreign banks" immediately after "in insured nonmember banks".

(28) Section 18(j) is amended by adding at the end thereof the following new sentence: "The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and and affiliate thereof.".

(29) Section 21 is amended by adding at the end thereof the following new subsection:

"(i) The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.".

(30) The first sentence of section 25(a) is amended by inserting "insured branch of a foreign bank," immediately after "No insured bank,".

AUTHORITY OF FEDERAL RESERVE SYSTEM

SEC. 7. (a)(1)(A) Except as provided in paragraph (2) of this subsection, subsections (a), (b), (c), (d), (f), (g), (i), (j), (k), and the second sentence of subsection (e) of section 19 of the Federal Reserve Act shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 1 of the Federal Reserve Act; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under section 19 of the Federal Reserve Act and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(b) Section 13 of the Federal Reserve Act is amended by adding at the end thereof the following new paragraph:

"Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 7 of the International Banking Act of 1978. In exercising any such powers with respect to any such branch or agency, each Federal Reserve bank shall give due regard to account balances being maintained by such branch or agency with such Reserve bank and the proportion of the assets of such branch or agency being held as reserves under section 7 of the International Banking Act of 1978. For the purposes of this paragraph, the terms 'branch', 'agency', and 'foreign bank' shall have the same meanings assigned to them in section 1 of the International Banking Act of 1978.".

(c)(1) The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.

(2) Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to paragraph 20 and the provision requiring the reports of condition contained in paragraph 6 of section 9 of the Federal Reserve Act (12 P.S.C. 335 and 324) to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 4 of this Act, each Federal branch and agency shall be subject to subparagraph (a) of section 11 of the Federal Reserve Act (12 U.S.C. 248(a)) and to paragraph 5 of section 21 of the Federal Reserve Act (12 U.S.C. 483) to the same extent and in the same manner as if it were a member bank.

(d) On or before two years after enactment of this Act, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this Act, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this Act.

NONBANKING ACTIVITIES

SEC. 8. (a) Except as otherwise provided in this section (1) any foreign bank that

maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956, and to sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 in the same manner and to the same extent that bank holding companies are subject thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956.

(b) Until December 31, 1985, a foreign bank or other company to which subsection (a) applies on the date of enactment of this Act may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on the date of enactment of this Act or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) After December 31, 1985, a foreign bank or other company to which subsection (a) applies on the date of enactment of this Act may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection (c) on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection (c) if it determines having due regard to the purposes of this Act and the Bank Holding Company Act of 1956, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection (c) may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which engages in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States. Except in the case of affiliates described in the preceding sentence, nothing in this subsection (c) shall be construed to authorize any foreign bank or company referred to in this subsection (c), or any affiliate thereof, to engage in activities authorized by this subsection (c) through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection (c) but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term "domestically-controlled affiliate covered in 1978" shall mean any affiliate the majority of whose voting shares is owned by a company or group of companies organized under the laws of the United States or any State thereof, if it has been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks does not own or control directly or indirectly, 25 percent or more of its voting shares.

(d) Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956, or section 105 of the Bank Holding Company Act Amendments of 1970, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c), (1), (2), (3), and (4) to any foreign bank or other company to which subsection (a) applies.

(e) Section 2(h) of the Bank Holding Company Act of 1956 is amended (1) by striking out "(h) The" and inserting in lieu thereof "(h)(1) Except as provided by paragraph (2), the", (2) by striking out the proviso, and (3) by inserting at the end thereof the following:

"(2) The prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such exempt foreign company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that a bank holding company may do so under this Act and under regulations or orders issued by the Board under this Act, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 4(c)(8) or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such exempt company on terms more favorable than those afforded similar borrowers in the United States.".

STUDY OF FOREIGN TREATMENT OF UNITED STATES BANKS

SEC. 9. The Secretary of the Treasury, in conjunction with the Secretary of State, the Board, the Comptroller, and the Federal Deposit Insurance Corporation shall within 90 days after enactment of this bill commence a study of the extent to which banks organized under the laws of the United States or any State thereof are denied, whether by law or practice, national treatment in conducting banking operations in foreign countries, and the effects, if any, of such discrimination on United States exports to those countries. On or before two years after enactment of this section, the Secretary of the Treasury shall be required to report his findings, conclusions, and recommendations from such study to the Congress and describe the efforts undertaken by the United States to eliminate any foreign laws or practices that discriminate against banks organized under the laws of the United States or any State thereof, or that serve as a barrier to the financing of United States exports to any foreign country.

REPRESENTATIVE OFFICES

SEC. 10. (a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after the date of enactment of this Act or the date on which the office is established, whichever is later.

(b) This Act does not authorize the establishment of any such office in any State in contravention of State law.

CEASE-AND-DESIST ORDERS

SEC. 11. Subsection (b) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 (b)) is amended by adding at the end thereof the following new paragraph:

"(4) This subsection and subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1978 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under subparagraph (3) of this subsection. For the purposes of this subparagraph, the term 'subsidiary' shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956.".

AMENDMENT TO THE BANKING ACT OF 1933

SEC. 12. Section 21 of the Banking Act of 1933 (12 U.S.C. 378) is amended by striking clause (B) of paragraph (2) of subsection (a) thereof and inserting in lieu thereof the following: "(B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subjected by the laws of the United States, or such State, territory, or district to examination and regulations or,".

REGULATION AND ENFORCEMENT

SEC. 13. (a) The Comptroller, the Board, and the Federal Deposit Insurance Corporation, are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this Act and to administer and carry out the provisions and purposes of this Act and prevent evasions thereof.

(b) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this Act or any amendment made by this Act may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency as defined in that Act.

(c) In the case of any provision of the Federal Reserve Act to which a foreign bank or branch thereof is subject under this Act, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act, whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the

Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

REPORT ON M'FADDEN ACT

SEC. 14. (a) The President, in consultation with the Attorney General, the Secretary of the Treasury, the Board, the Comptroller, and the Federal Deposit Insurance Corporation, shall transmit a report to the Congress containing his recommendations convening the applicability of the McFadden Act to the present financial, banking, and economic environment, including an analysis of the effects of any proposed amendment to such Act on the structure of the banking industry and on the financial and economic environment in general.

(b) The report required by subsection (a) shall be transmitted to the Congress not later than one year after the date of enactment of this Act.

Mr. McINTYRE. Mr. President, I ask unanimous consent that the committee amendments be agreed to and treated as original text.

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

The committee amendments were agreed to.

UP AMENDMENT NO. 1663

(Purpose: To require a report on State consultation, and for other purposes.)

Mr. McINTYRE. Mr. President, on behalf of Senator HEINZ and myself I send amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. McINTYRE) for himself and Mr. HEINZ, proposes an unprinted amendment numbered 1663.

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

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

The amendment is as follows:

On page 84, line 13, after the period insert the following: "Not later than 180 days after the enactment of this Act, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a) (1) (B).".

On page 65, line 23, before the period insert a comma and the following: "or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts".

On page 68, line 8, before the period insert a comma and the following: "or unless the Federal Deposit Insurance Corporation determines by order of regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts".

On page 56, line 19, strike out "parent" and insert in lieu thereof "foreign".

On page 58, line 6, strike out "(a)".

On page 69, line 4, before the period insert "or any commercial lending company owned or controlled by a foreign bank".

On page 77, line 5, after "branches" insert "or agencies".

On age 77, line 7, after "branches" insert "or agencies".

On page 77, line 9, after "branches" insert "or agency or agencies".

On page 77, line 15, after "branch" insert "or agency".

On page 77, line 17, after "branches" insert "or one or more agencies".

On page 77, line 18, after "branch" insert "or agency".

On page 89, line 25, strike out "two years" and insert in lieu thereof "one year".

On page 65, lines 11 and 12, insert the following:

Strike out "July 26, 1978" and insert in lieu thereof "July 27, 1978".

Mr. McINTYRE. Mr. President, the first of these amendments would require the Federal Reserve to report to the Congress within 180 days of the steps it has taken to consult and cooperate with State bank supervisors under the reserve setting authority granted section 7(a)(1)(B).

The second amendment would give the FDIC authority to determine that in a particular case the mandatory deposit insurance provision of the legislation is inappropriate because of the wholesale nature of the business of the foreign branch's depositors and their deposits.

There follows a series of technical corrective amendments clarifying inaccuracies and perfecting the venue provisions of the legislation.

Another amendment would require the Secretary of the Treasury to report back to the Congress within a year on his study of the treatment of American banks in foreign countries.

The final amendment, sponsored by Senator HEINZ, would move the grandfather date under section 5 of the legislation forward 1 day to July 27, 1978, the date the committee had been scheduled to complete its markup on H.R. 10899.

Mr. President these amendments have been cleared with the leadership on both sides in the committee.

Mr. President, I move the amendment be agreed to en bloc.

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

The amendment was agreed to.

Mr. McINTYRE. Mr. President, on July 26, 1978, the Committee on Banking, Housing and Urban Affairs ordered reported legislation (H.R. 10899, with an amendment) to provide for Federal regulation of participation by foreign banks in domestic financial markets and on August 8, 1978, the committee filed its report.

Foreign banks have become a significant factor in our domestic banking markets. In 1973, there were approximately 60 foreign banks operating banking offices in the United States with assets of about $37 billion. By 1978, 122 foreign banks were operating in the United States with assets of $90 billion. Moreover, these U.S. offices of foreign banks had more than $26 billion in commercial and industrial loans. This was equal to about 20 percent of similar loans by large banks that report weekly to the Federal Reserve. Foreign banks in this country are not specialized institutions engaged principally in foreign trade financing on the periphery of our banking system. They are in the mainstream of our domestic banking system. This growth of foreign banking institutions operating in this country has created the need to subject their operations to monetary policy controls and to Federal regulatory oversight over their affairs.

Our policy respecting foreign enterprises doing business in the United States is one of national treatment. Under this policy foreign enterprises operating in the host country are treated as competitive equals with their domestic counterparts. There is, at this time, no uniform national policy concerning foreign banking operation in this country. As a result, foreign banks enjoy many competitive advantages over our domestic banks. This bill establishes the principle of competitive equality under law between foreign and domestic banks.

Fortunately, the climate in which this bill has been considered is one of relative calm. Foreign banks doing business in the United States have behaved in a responsible manner, and their presence here has been a benefit to the banking industry as a whole. Enactment of a rational framework of Federal regulation at this time is appropriate and will serve to avoid future problems while enhancing the competitive environment.

Mr. President, this legislation establishes a fair Federal framework within which foreign banks may continue to participate as a strong competitive force in our domestic financial markets. This Federal framework is essentially as follows: First, availability of Federal deposit insurance for deposits of branches of foreign banks to safeguard depositors funds; second, monetary policy controls over the funds of branches and agencies of foreign banks to enable the Federal Reserve to better implement monetary policy although only after consultation and cooperation with State supervisory authorities in the case of State branches and agencies in keeping with our dual banking system; third, residual authority to examine foreign bank operations in the United States by Federal regulatory authorities to insure the safety and soundness of the banking system; and fourth, authority for foreign banks to continue to operate across State lines but in a manner that insures competitive equality between foreign and domestic banks while encouraging foreign bank entry in those States that desire a foreign bank presence.

The bill provides in section 6 for FDIC insurance of deposits in branches of foreign banks for the first time. Several witnesses testified that FDIC insurance of deposits in branches of foreign banks, should be made mandatory. On the other hand, other witnesses, most notably the FDIC, urged that such insurance be voluntary, not mandatory, citing insufficient legal and regulatory controls over the parent foreign bank itself.

While deposit insurance may be viewed as a competitive consideration, given the costs involved, there is a con-

sensus that deposits in branches of foreign banks are by and large "wholesale" in nature. In this regard, most proponents of mandatory insurance concede that the primary concern is for the protection of the individual retail, not commercial depositors. The committee struck a balance here in requiring FDIC insurance protection for retail operations while permitting FDIC insurance on a voluntary basis for foreign banks in the United States which engage only in wholesale banking. In those instances where such branches do accept "detail" deposits, defined to be deposits of less than $100,000, FDIC insurance of all deposits in such branches is made mandatory.

Section 7 of this legislation provides the Federal Reserve with authority to set reserves for Federal and State branches and agencies. This authority extends over all branches and agencies of foreign banks that have $1 billion or more in worldwide assets. Those branches and agencies for which the Federal Reserve holds reserve balances also have access to Federal Reserve discount, borrowing, and clearing facilities subject to such restrictions, limitations, and regulations as may be imposed by the Federal Reserve Board. The financial institutions in the size category have the ability to significantly affect fund flows in and out of the country and to make sizable loans. Federal Reserve monetary authority over these institutions should provide the Federal Reserve with the ability to better control monetary policy.

In keeping with our dual banking system of Federal and State authority, the Federal Reserve Board may establish reserve requirements for State licensed branches and agencies only after consultation and cooperation with State bank supervisory authorities. While the committee felt that reserve setting authority over State-licensed foreign bank branches and agencies was necessary for monetary policy purposes, the committee did not impose reserve requirements over State chartered bank subsidiaries and commercial lending companies. This decision was in keeping with existing practice under the duel banking system whereby State chartered institutions retain the option for joining the Federal Reserve and being subject to monetary controls.

The committee retained the present Federal-State regulatory framework in providing the Comptroller, the FDIC, and the States with primary examining authority over such operations within their jurisdiction. But the committee amended the House bill to provide the Federal Reserve Board with residual examining authority over all banking operations of foreign banks, including branches, agencies, commercial lending companies, and bank subsidiaries. The committee has provided the umbrella of one Federal agency over all domestic operations of foreign banks. Thus, Federal branches and agencies will be subject to examination by the Comptroller, federally insured State branches will be examined by the State agencies and by the FDIC, and non-federally insured State branches and all State agencies and commercial lending companies will be examined by the appropriate State authorities or, if not so examined, by the Federal Reserve. All such organizations will however be subject to special examination by the Federal Reserve.

It is intended that if the Federal Reserve deems it necessary to review the activities of a branch agency, or commercial lending company, the Federal Reserve, in order to avoid duplicative regulation, will make as much use as possible of relevant reports of examination made by the Comptroller, the FDIC, and the States. It is to be expected that, the Federal bank regulatory agencies will cooperate with one another and with State banking authorities so as to develop and implement consistent and effective examination standards.

The most controversial aspect of this legislation concerned the matter of interstate branching by foreign banks. Foreign banks have been able to branch across State lines because they are not subject to the limitations on branching that are imposed on domestic banks under the McFadden Act. The heart of the controversy is competitive equality between domestic and foreign banks; however, other important issues of competitive equality between States and discriminatory treatment of domestic banks abroad are also involved.

It is clear that foreign banks do enjoy privileges not extended to domestic banks under our laws—the ability to receive deposits, make loans, and pay checks at banking offices located in several States. The extent to which this opportunity gives foreign banks a competitive advantage over their domestic counterparts is a matter of some earnest dispute. The essence of banking is the ability to receive deposits, and it is in this that foreign banks do enjoy a growing, significant interstate advantage over domestic banking organizations, which cannot receive domestic bank deposits outside of their home State. The real culprit is the McFadden Act which prohibits U.S. banks from competing across State lines for deposits. Nevertheless, until the McFadden Act is changed the committee felt that similar restrictions should apply to foreign banks as applicable to domestic banks. However, it would be unwise in attempting to establish competitive equality between domestic and foreign banks to impose restrictions so rigid that they would confine foreign banks to a single state of operations, and consequently reduce foreign capital inflows and the development of international banking centers throughout the country. Such a solution would also be inconsistent with this Nation's dual banking system which has served local, national, and international credit needs well throughout our history.

The committee reconciled these issues in a way that it believes equitably takes into account the interests and concerns of Federal and State officials, and domestic and foreign banks. The committee struck a compromise that it believes will establish the general rules for future competitive equality between domestic and foreign banks, preserve and enhance the ability of the States to attract foreign capital and develop international banking centers, and give the United States some leverage to secure more equitable national treatment for U.S. banks abroad.

Under section 5(a) foreign banks would be able to establish branch or agency offices in any State where this is permissible. The decision to attract foreign bank entry is, as now, left to the individual States. However, in the case of a branch to be established and operated outside of a foreign bank's home State of operations, which State would essentially be determined by the foreign bank, such branch would be able to accept such credit balances as agencies would be able to accept under relevant State and Federal law, but, with respect to deposits, would be limited to accepting the types of foreign-source and international banking and finance related deposits permissible for international banking corporations organized under section 25(a) of the Federal Reserve Act—the Edge Act.

Mr. President, as I have said, the real culprit is the McFadden Act which was enacted over 50 years ago and whose ghost limits competition in our banking system.

Various proposals to amend this act have been discussed for many years but no action has been taken to remove this anachronism from our laws.

Therefore, section 14 was added to the bill which directs the President in consultation with the Secretary of the Treasury, and the Attorney General and the appropriate Federal bank regulatory agencies, to present a set of recommendations to the Congress with regard to the applicability of the McFadden Act to the current banking structure. These recommendations are to be made within 1 year of the enactment of the bill.

This provision will serve to keep the pressure on for meaningful change in the outdated McFadden Act.

I commend this legislation to my colleagues.

● Mr. BROOKE. Mr. President, today we consider the International Banking Act of 1978 (H.R. 10899), a landmark piece of legislation which will provide a national framework for involvement by foreign banks in domestic banking activities. During the past several years, studies have been conducted and legislation has been considered regarding the activities of foreign banks in the United States. This bill represents a culmination of the Banking Committee's efforts to promote domestic involvement by foreign banks in a regulatory setting which insures competitive equality between such banks and domestic financial institutions.

Trying to reach agreement on such complex and farreaching legislation is not an easy task, and I think one reason why the committee unanimously ordered this bill to be reported was the fine work done by Senators McINTYRE and STEVENSON on the legislation. Senator McINTYRE as chairman of the Subcommittee on

Financial Institutions, has ably guided the international banking bill through the committee, and Senator STEVENSON, providing expertise on the technical aspects of the bill, proposed important revisions to the legislation which have strengthened it and broadened its acceptability among all committee members.

In the past few years, foreign banks have played an increasingly important role in our nation's banking system. Federal Reserve Board statistics indicate that, as of April 1978, 122 foreign banks operated banking facilities in the United States and that such U.S. offices had more than $26 billion in commercial and industrial loans.

This bill will establish uniform national treatment of foreign banks in the United States and place them on a more equal footing with domestic financial institutions. Under this legislation, the ability of foreign banks to conduct an interstate banking business will be restricted with respect to deposit-taking functions, but will not be limited with regard to lending or other banking activities. The interstate banking provisions of the bill are of particular concern to me because my home State of Massachusetts is interested in increasing its share of foreign financing business. While I was reluctant to impinge at all on the ability of States to attract foreign banks to their communities, I believe the compromise reached in the Banking Committee regarding the interstate activities of foreign banks will help assure States like Massachusetts that they can continue to compete with the large money center States for foreign bank business.

In addition to providing a uniform national policy on interstate banking by foreign banks, the bill provides that non-U.S. citizens may serve on the boards of directors of Edge corporations and national banks; revises the Edge Act—enacted in 1919—to make Edge corporations more attractive as export financing vehicles; mandates FDIC insurance on retail deposits of foreign branches; limits domestic nonbanking activities of foreign banks; and provides the Federal Reserve Board with reserve setting authority over foreign branches and agencies. The committee also added two provisions to the bill directing that studies be made on the treatment of U.S. banks abroad and on the interstate banking restrictions of the McFadden Act. The former study should be of assistance in determining the extent to which other nations are regulating American banks in the same manner as they regulate their own banks. The latter study should provide facts and legislative recommendations on the whole issue of interstate banking.

The bill has been carefully studied by the Banking Committee, and I believe we have presented the full Senate with a piece of tightly drawn legislation. I also should note that the committee was very ably assisted in its work on the bill by our staff. Jeremiah Buckley, John Collins, James Reinhardt, William Weber, Charles L. Marinaccio, and Gary Welsh deserve special recognition for providing sound counsel and technical expertise to the committee on this bill.

Mr. President, the rapid increase in foreign bank activity in the United States during the past few years necessitates that we establish national policies with respect to such activity. The international banking bill will provide uniform standards under which foreign banks may engage in domestic banking activities in a manner comparable to U.S. banking organizations. It is a good bill whose time has come, and I urge my fellow Senators to act on it promptly.●

● Mr. PROXMIRE. Mr. President, I support passage of this legislation to provide a Federal regulatory framework over the activities of foreign banks operating in the United States.

This legislation provides a fair solution to some knotty problems. Under its provisions foreign banks will retain an incentive to establish multistate operations. This will provide healthy competition for loans, bring in new capital, and foster our export trade with its consequent benefits. At the same time, this bill should insure that our own domestic banks are not subjected to unfair competition by the activities of foreign banks that are forbidden to domestic banks.

The legislation also provides the Federal Reserve with the authority it needs to better control monetary policy by subjecting branches and agencies of foreign banks to reserve requirements. In the case of State branches and agencies this must be done after consultation and cooperation with State regulatory authorities.

The legislation further provides the Federal Reserve with residual examinations authority over foreign banks operating in the United States. The Federal Reserve must to the extent possible use the reports of other regulatory bodies. Nevertheless, this legislation provides the public with the umbrella of a single bank regulatory agency over the operations of foreign banks operating in domestic financial markets.

I commend Senator MCINTYRE for his leadership in guiding this landmark legislation and I commend this bill to my colleagues.●

● Mr. STEVENSON. Mr. President, I commend the distinguished Senator from New Hampshire—Mr. MCINTYRE—for his outstanding leadership and hard work on H.R. 10899, the International Banking Act of 1978. Legislation to regulate the growing operations of foreign banks in the United States has been before the Congress since 1975. The plethora of issues raised by such legislation has spanned every aspect of our banking system—State/Federal regulation and supervision, interstate banking, deposit insurance, nonbanking activities, Federal Reserve monetary controls, and the international banking operations of our own U.S. banks. H.R. 10899, as reported by the Committee on Banking, Housing and Urban Affairs, under the leadership of the Senator from New Hampshire—(Mr. MCINTYRE), deals with each of these issues as they affect foreign banks in an intelligent and equitable manner that takes into consideration and resolves the interests and concerns of State and Federal officials and domestic and foreign banks.

I believe the Banking Committee's report on H.R. 10899 is an excellent summary of the major issues involved in regulating foreign banks and ably describes the reasons supporting the committee's actions on the bill. I would like, however, to discuss briefly and, in some cases, clarify certain amendments which I proposed to the bill and which were accepted by the committee.

Section 3 of the bill, as reported, contains the first amendments to the Edge Act since its enactment in 1919. The principal purpose of the Edge Act was to facilitate U.S. exports by providing for the Federal chartering of international banking and financing corporations at locations throughout the United States. These Edge Act corporations presently operate under an antiquated set of statutory and regulatory restraints that disadvantage them in competing with foreign banks both here and abroad and impede their primary mission of financing U.S. exports. The amendments adopted in committee should bring these corporations into the competitive and banking realities of the present era and make them a greatly improved vehicle for facilitating U.S. exports. In particular, I believe the amendments should make it easier for non-bank concerns involved in exporting, including domestic trading companies, to own or organize such corporations and use them to provide necessary financing for exports throughout the world.

The need for these Edge Act changes was made clear in the comprehensive hearings that have been conducted this year by the Subcommittee on International Finance on U.S. export policy, and their passage today is an important step in the process of reorienting our trade and financing laws toward the elimination of unnecessary export impediments that we impose from within.

Section 5 of the bill, as reported, compromises the controversial interstate banking issue by letting foreign banks establish banking offices wherever they can find a receptive State, subject only to the limitation that outside of their home State of operations they accept the same types of foreign source and international deposits that can be accepted by our own banks outside of their home State of operations. Since this section is discussed at length in the committee's report, I only state here my concurrence with the report language and stress in particular that the "choice of home State" privilege afforded in section 5(c) should be interpreted by the Federal Reserve Board in a manner consistent with the limitations imposed under section 5(a), namely to limit full-service deposit-taking to one State only, except where there are grandfathered operations. For those foreign banks that currently have no deposit-taking facilities in the United States, their home State should be the State where they establish their initial full-service deposit-taking branch or subsidiary. However, I believe that under section 5(c), a foreign bank with a single

branch office in the United States at time of enactment which is eligible for grandfathering under section 5(b), could not thereafter establish a branch in another State, designate that second State as its home State, and thus seek to have full-service branch offices in two States. In my judgment, that type of manipulative use of section 5(c) is not intended to be permitted.

Section 9 of the bill as reported by the committee provides for a study by the Secretary of Treasury of the treatment afforded U.S. banks abroad, and in particular the effects, if any, of such treatment on U.S. exports. This study is necessitated by the fact that several foreign countries, whether by law or practice, do not afford U.S. banks national treatment in their operations in those countries. In proposing this section of the bill, it was not my intent to require the Secretary to study the treatment accorded U.S. banks in every foreign country abroad. Rather, I believe the Secretary should focus his study on those countries from which foreign banks have come to do a banking business in the United States. In fact, I believe it would be valuable each time a new foreign country were represented in our banking market, if the Treasury would provide to each of the Federal and State banking authorities an analysis of the treatment of our banks in such country.

I conclude by recognizing that George W. Mitchell, former Vice Chairman of the Federal Reserve Board and now a consultant to the Board on electronic banking matters, recommended Federal legislation to regulate foreign banks some 5 years ago. Our action today is a belated recognition of George Mitchell's wisdom and foresight on this issue. I will always think of this bill as the Mitchell bill, in honor of the distinguished public servant who brought this subject to our attention.●

● Mr. TOWER. Mr. President, the International Banking Act of 1978 represents a significant development in the regulation of foreign banks in this country. This legislation establishes the framework for Federal regulation of foreign banking activities in the United States and attempts to create an environment in which foreign and domestic banks can operate on a competitively equal basis.

The issues raised in this legislation are extremely complex and very controversial. On the one hand, there is the legitimate interest on the part of the State bank regulators in seeking legislation that would allow foreign banks to operate in their State. Their interest in this matter reflects a concern that restrictions on the multi-State activities of foreign banks would result in a concentration of foreign banking operations in only one or two States, New York and California in particular. This would deny other States the benefits which foreign banks can offer in the way of fostering international trade and a more diversified banking system.

On the other hand, there is the equally legitimate concern of American bankers and others that the absence of restrictions on the operations of foreign banks in this country would give foreign banks a competitive advantage over domestic banks, particularly with respect to deposit taking authority in more than one State. A related concern is that the unrestricted operation of foreign banks in this country would be unfair because domestic banks do not face unrestricted access to banking markets abroad.

The committee has attempted to resolve these issues by adopting a compromise that will allow foreign banks to establish and operate branches in more than one State, providing those branches only accept deposits that are incidental to foreign trade. It also would eliminate certain existing restrictions on the foreign trade activities of domestic banks.

This is a reasonable resolution to a difficult problem. It will allow foreign banks to operate in more than one State for the purpose of promoting and facilitating international trade. This could be particularly important to Texas, where international trade is an important and growing sector of the State's economy, and to cities like Houston and Dallas, which will undoubtedly become major money market centers in the future.

At the same time, the legislation addresses the need to establish a competitive situation in which both domestic and foreign banks can operate equitably. Finally, the legislation calls for the further study of related issues, including the McFadden Act—dealing with the branching of domestic banks—and the treatment of U.S. banks abroad. This will allow Congress to reassess the issue of foreign banking in the United States and determine the need for any additional legislation in the future.●

● Mr. HEINZ. Mr. President, as section 5 of the International Banking Act of 1978 was reported from the Senate Committee on Banking, Housing, and Urban Affairs, it prohibits interstate State branch banking by foreign banks unless: First, the State branch's operation is approved by the bank regulatory authority of the State in which the State branch is to operate and second, the foreign bank agrees to take only those deposits which an Edge Act corporation is permitted to take. In addition, the Senate committee version grandfathers foreign branch banks which commenced lawful operations or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority on or before July 26, 1978.

I know of at least one example, in my home State of Pennsylvania, where this arbitrary date—fixed to coincide with the date on which we happened to markup this bill, rather than the day that we were scheduled to complete markup—will by 1 day's time deprive a foreign branch bank of its ability to do business in as fully a manner as it might have if we had fixed a more rational cutoff date.

The application of the foreign branch to which I have referred was received in the Commonwealth's Banking Department in Harrisburg on July 27, 1978, the date that markup was scheduled to be completed. The actual committee markup date is too arbitrary a grandfather date for the cutoff on this section, especially when it is realized that the Committee markup might just as easily have been completed, as scheduled, a day later, on July 27, 1978.●

The PRESIDING OFFICER. The bill is open to further amendment. If there is no further amendment to be offered, the question is on the engrossment of the amendment and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 10899), as amended, was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. McINTYRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, may we proceed to the next order, please?

COLLEGE OPPORTUNITY ACT OF 1978

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Calendar Order 585, S. 2539, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 2539) to amend the Higher Education Act of 1965 to improve the basic educational opportunity grants program and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Human Resources with amendments as follows:

On page 2, line 3, strike "14" and insert "10.5";

On page 2, line 6, after "411(b)(5)" insert "(B)";

On page 2, line 7, strike "subparagraph (B)";

On page 2, line 8, strike "$600,000,000" and insert "$500,000,000";

On page 2, beginning with line 9, insert the following:

(c)(1) Section 411(b)(5)(A) of that Act is amended by striking out "$130,093,000" and inserting in lieu thereof "$370,000,000 for the fiscal year 1979, and $450,000,000 for the fiscal year 1980, and thereafter".

(2) Section 413(b)(1) of that Act is amended by striking out "and for each of the succeeding fiscal years ending prior to October 1, 1979" and inserting in lieu thereof the following: "and for each of the five succeeding fiscal years, and $250,000,000 for the fiscal year ending September 30, 1979".

(d) Section 415(b)(4) is amended by inserting before the semicolon at the end thereof a comma and the following: "except in any State in which participation of nonprofit institutions of higher education is in violation of the Constitution of the State".

On page 3, beginning with line 21, insert the following:

(f)(1) Section 425(a)(1)(A) of that Act is amended by striking out "section 428(a)(2)(C)(i)" and inserting in lieu thereof "section 428(a)(2)(B)(i)".

On page 3, line 24, strike "(f)" and insert "(2)";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "College Opportunity Act of 1978".

SEC. 2. (a) Section 411(a)(3)(B) of the Higher Education Act of 1965 is amended by adding at the end thereof the following new division:

"(iv) Beginning with the academic year 1979–1980 and thereafter, in determing the expected family contribution under this subparagraph no rate in excess of 10.5 per centum shall be applied to parental discretionary income.".

(b) Section 411(b)(5)(B) of that Act is amended by striking out "$237,400,000" and inserting in lieu thereof "$500,000,000".

(c)(1) Section 411(b)(5)(A) of that Act is amended by striking out "$130,093,000" and inserting in lieu thereof "$370,000,000 for the fiscal year 1979, and $450,000,000 for the fiscal year 1980, and thereafter".

(2) Section 413A(b)(1) of that Act is amended by striking out "and for each of the succeeding fiscal years ending prior to October 1, 1979" and inserting in lieu thereof the following: "and for each of the five succeeding fiscal years, and $250,000,000 for the fiscal year ending September 30, 1979".

(d) Section 415(b)(4) is amended by inserting before the semicolon at the end thereof a comma and the following: "except in any State in which participation of nonprofit institutions of higher education is in violation of the Constitution of the State".

SEC. 3. (a) Section 428(a)(2)(A) of that Act is amended to read as follows:

"(2)(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which he is in attendance in good standing (as determined by such institution), which—

"(i) sets forth such student's estimated cost of attendance, and

"(ii) set forth such student's estimated financial assistance.".

(b) Section 428(a)(2)(B) of that Act is repealed.

(c) Subparagraphs (C) and (D) of section 428(a)(2) of that Act, and all cross references thereto, are redesignated as subparagraphs (B) and (C), respectively.

(d) Section 428(a)(2)(B) of that Act (as redesignated by subsection (c) of this section) is amended by striking out the semicolon at the end of clause (iii) and inserting in lieu thereof a period, and by striking out clause (iv) of such section.

(e) Section 428(a)(9) of that Act is repealed.

(f)(1) Section 425(a)(1)(A) of that Act is amended by striking out "section 428(a)(2)(C)(i)" and inserting in lieu thereof "section 428(a)(2)(B)(i)".

(2) Section 423 (b)(1)(A)(i) of that Act is amended by striking out "section 428(a)(2)(C)(i)" and inserting in lieu thereof "section 428(a)(2)(B)(i)".

Mr. PELL. Mr. President, I ask unanimous consent that the following members of the staff of the Human Resources Committee be granted the privileges of the floor during the debate and votes on S. 2539, the College Opportunity Act of 1978; Richard Jerue, Jean Frohlicher, David Evans, Alexander Crary, Christine Fruggiero, Stephen Paradise, Franklin Zweig, Sven Groennings, Gregory Fusco, Polly Gault, and Nancy Barrow.

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

Mr. PELL. Mr. President, the bill now before the Senate is S. 2539, the College Opportunity Act of 1978.

The purpose of this bill can be very simply stated—it is to make college affordable once again for our Nation's middle-income families.

I think all of us here recognize the problems middle-income America is facing in its attempt to secure a college education for her children.

We have seen the efforts made in the last couple of days by the Senate. We have seen a bill just passed, a bill that I believe will be correctly vetoed by the President. So we will still be left trying to find some alternative way to help middle-income families who find themselves pinched to the bone by college costs.

Middle-income families find themselves so pinched, yet, while they are finding it harder and harder to finance their children's college education, they are also finding that they are not eligible for most governmental programs that would assist them in this financing.

We all know the contributions middle-income America makes in our country. These families go through life doing the work of our society, paying the bills of our society, and bearing the brunt of the taxes. Rarely do they seek governmental help. But they need our help now.

If we fail to help middle-income America with the cost of college, we will be allowing the doors of higher education to be slammed shut on a large segment of our society. We will be in danger of creating a system of higher education available only to the rich—who can afford to pay their own way—and to the poor—who are eligible for Federal financial aid.

We cannot let this happen.

If we pass this legislation, Mr. President, we will be taking a giant step toward preventing that occurrence.

S. 2539 is a very simple bill, Mr. President. It does not create any new Federal programs. What it does is build upon the basic building blocks of already existing Federal student aid programs. These programs—the basic educational opportunity grant programs, the supplemental educational opportunity grant programs, college work-study, State student incentive grants, and guaranteed student loans—are already well known to students and parents throughout the country. They are programs which high schools and colleges understand and are able to deal with. S. 2539 takes what we already have and makes it better. I think that is a very worthwhile approach.

I want to also point out that S. 2539 is totally supported by President Carter. It reflects his concerns and beliefs. It focuses aid on students who need our help the most. Eighty-nine percent of the benefits of this bill will go to families with incomes of $25,000 or less. Sixty-four percent of its benefits will go to middle-income families, families with incomes within the $15,000 to $25,000 range. These are the families who need our help the most. These are the families toward whom we should be directing our assistance.

I think two of the provisions of S. 2539 require the most attention. These provisions deal with two important programs, the basic educational opportunity grant programs and the guaranteed student loan program.

With respect to basic grants, this legislation will expand that program so that families with incomes of $25,000, and one child in college, will be eligible for a basic grant of at least $250. Currently, the cutoff point for the basic grant program is approximately $13,000. Above that point, a family is usually not eligible for a basic grant. S. 2539 would significantly reduce the amount a family is expected by the Federal Government to contribute to their child's education under the basic grant program. The result would be that an additional 1.5 million students would be eligible for basic grants. For an average family of four, with one child in college, it would mean the following—with an income of $12,000, a basic grant of almost $1,300; with an income of $15,000, a basic grant of about $1,000; with an income of $21,000, a basic grant of $540; and with an income of $24,000, a basic grant of about $300.

I think from this brief analysis, one can see the merits of the basic grant portion of this legislation. It is need-based. It takes into account a family's relative ability to pay for their child's education. It is sensitive to a family's financial situation. It does not give all familes the same amount, for it recognizes that different families have different needs. I think this is the best approach for any student assistance program.

We make a significant change in the guaranteed student loan program through this legislation. We repeal entirely the unsubsidized portion of the guaranteed loan program. This program is the primary program that is today available to middle-income families to pay for their children's college education. Under this program, the Federal Government will guarantee the college loan that the lender makes. Also, if a family has an adjusted gross income of less than $25,000, the Federal Government will pay the interest on the loan while the student is in college.

President Carter requested that we raise this gross income figure to $40,000 as an attempt to provide more loan assistance to middle-income families. We decided to remove the ceiling completely, since those who would be covered under the President's proposal would represent 98 percent of our Nation's population. We felt that 98 percent of our people should not have to go through the paperwork required to determine their need so that 2 percent of our population could be kept out of the program. By removing the ceiling entirely, which S. 2539 does, we will both help our middle-income families and reduce the paperwork requirements of the guaranteed student loan program.

Mr. President, I would like to point out one other significant feature of this legislation. No additional paperwork will be required by this legislation. This legislation builds upon already existing programs. The forms and procedures of those programs, already in existence and

already familiar to families who send their children to college, will be utilized. No new data items or forms would have to be filled out by parents.

In addition, no new bureaucracy would be required to administer or monitor this legislation. The change made in basic grants would only require a computer change at the Office of Education. Staff to administer and monitor the program are already in place.

Mr. President, I think this bill will represent a very significant step in our efforts to assist middle-income America meet the high costs of college education. It is supported by the President. It is the foundation of his middle-income college assistance efforts. It is a good bill, and I urge that my colleagues act favorably upon it.

I believe the most important point in it is that it does not create a new bureaucracy, a new set of forms, new paperwork. It is a simple program seeking to achieve the objective we all have of helping middle-income America and doing it by building on already tested and proved-successful programs.

Mr. President S. 2539 was reported by the Human Resources Committee on February 28, 1978. Its primary purpose it to make college affordable once again for our Nation's middle-income families.

Mr. President, over the past decade the costs of sending a child to college have skyrocketed. Between 1967 and 1976, the cost of sending a child to an average college has increased by 77 percent.

Today, the average yearly cost of tuition, room, and board at a nonpublic college is $4,800. The equivalent average costs at public institutions is nearly $3,000 a year. And, the prospects of those costs increasing are definite.

If a family has a child, today, who is 1 year old, it is estimated that that family will have to save an average of $1,570 a year so that they will have the funds to pay for 4 years of education at a public university when their child becomes old enough to enter college. If that same family decides they want to send their child to a private college, they will have to save about $2,700 a year.

The projected cost of what 4 years of public college will cost when today's 1-year-old reaches college age is $47,380. For private college, the equivalent figure is $82,830.

These figures are startling. Yet, I think they accurately represent the harsh reality many American families are experiencing in their attempts to secure the American dream of a college education for their children.

I think all of us here today are aware of the fact that many American families are finding it increasingly difficult to pay for a college education for their children. Middle-income families are most severely affected by this development.

These families find themselves pinched to the bone by college costs. Yet, they are the very same families who are not eligible for most of the existing Federal grant and loan programs.

These middle-income families go through life doing the work of our society, pay the bills of our society, and bearing the brunt of the taxes. Rarely do they seek our help. But, they need our help now. If we fail to help them, we will be allowing the doors of higher education to be slammed shut on a large segment of our society. We will be in danger of creating a system of higher education available only to the rich—who can afford to pay their own way—and to the poor—who are eligible for Federal financial aid. We cannot let this happen.

With the passage of this bill, Mr. President, we will be taking a giant step toward preventing that occurrence.

This bill is designed to meet the overwhelming need of that unserved segment of our society, the middle income. S. 2539 builds upon the basic building blocks of already existing Federal student aid programs—basic educational opportunity grants, supplemental educational opportunity grants, college work-study, State student incentive grants, and guaranteed student loans—programs which are already familiar to schools, college, students, and parents across the country.

I must point out that this bill is supported by the President. It reflects the concerns that he expressed that any Federal student aid program provide assistance to those students who need our help the most. Under this bill, 89 percent of the assistance it provides will go to families with incomes of $25,000 or less. Sixty-four percent of the benefits of S. 2539 will go to middle-income families, those with incomes within the $15,000 to $25,000 range. I raise this fact because I think it distinguishes this bill quite clearly from the college tax credit legislation. Under the tax credit bill, 55 percent of the benefits would go to families with incomes in excess of $25,000. In my opinion, these families need our help a lot less than those who are in the $15,000 to $25,000 range.

Let me give you a little example of what S. 2539 will mean to the average family. I shall only consider the basic grants portion of our bill, since it is the major component of our legislation. Under that portion of our bill, a family of four, with one child in college, and an average income of $12,000, would receive a basic grant of almost $1,300. That grant would come at the beginning of the college year, when the family needs the help the most. On the other hand, that same family would receive under the tax credit proposal a credit of only $250, and they would have to wait until the spring of the year following the beginning of college to receive it.

If that same family had an income of $15,000, it could receive a basic grant of approximately $1,000. They would still only receive $250 under tax credits.

That same family at $21,000 would receive a basic grant of $540. Under the tax credit, again, they would only receive $250.

At $24,000, that family would receive a basic grant of about $300. Under the tax credit, they would receive $250.

I think from this brief analysis, one can see the merits to the legislation now before us. It is need-based. It takes into account a family's relative ability to pay for their child's education. It is sensitive to a family's financial situation, and it considers the large variations in the costs of attending different schools. Tax credits, on the other hand, are flat grants, with the same amount going to each family. I think the approach of S. 2539 is far preferable.

Now, I should like to briefly explain the principal features of this bill. The largest item in the bill would amend the basic educational opportunity grant program. This program was originally enacted in 1972. The guiding principle behind basic grants is that the student is the consumer. He or she takes their basic grant eligibility to the institution of his or her choice and has their basic grant award applied to the cost of that particular college. A student is not at the mercy of the college for student aid, but is able to choose himself.

Section 2(a) of this legislation amends the basic grant program. It provides that, beginning with the academic year 1979–80 and thereafter, the Commissioner of Education may apply a rate no higher than 10.5 percent in determining a family's expected contribution from parental discretionary income under the basic grant program. Currently, the rate applied is 20 percent of the first $5,000 of parental discretionary income and 30 percent of any excess. The change made by this legislation would add approximately 1.5 million students as being eligible for basic grants. It would cost approximately $1.2 billion over the current level of $2,054 million. Under this legislation, a family of four, with one child in college, no unusual expenses, and an annual income of $25,000, would be eligible for a basic grant of approximately $250. A family with a smaller income, more children in college, and a different family circumstance, would receive a larger grant This legislation would provide a new and much needed middle-income focus to the basic educational opportunity grant program.

Subsection 2(b)—College work-study: This section increases from $237,400,000 to $500 million the minimum amount which must be appropriated for the college work-study program before funds may be made available under the basic grant program. The college work-study program pays 80 percent of a student's salary for a part-time job for his or her institution of higher education or other nonprofit organization.

Subsection 2(c)—Supplemental educational opportunity grants: This section increases the mandatory minimum funding for the supplemental educational opportunity grant program from $130,093,000 to $370 million for fiscal year 1979 and to $450 million for fiscal year 1980 and thereafter. These levels, again, must be met before funds can be made available for basic grants. The section also increases the authorization for initial year supplemental grants—those available to first year students—from $200 million to $250 million. Supplemental educational opportunity grants are intended to supplement the basic grant program, providing grants to qualified students of exceptional financial need,

and allowing student financial-aid officers to make available additional grant assistance to students in special circumstances which the basic grant program is unable to measure. Grant size, based on the student's need as determined by the higher educational institution, ranges from $200 to a maximum of $1,500 for an academic year, or one-half of the total of financial aid provided to the student by the institution, whichever is the lesser amount.

Subsection 2(d) State student incentive grants: This section makes a technical amendment to the State student incentive grant program to allow continued participation in that program of States which have constitutional prohibitions against participation of nonprofit institutions of higher education in State grant programs. Under the State student incentive grant program, the Federal Government provides grants to States on a 1-to-1 matching basis, to assist them in providing individual grants, based on financial need, to undergraduate students attending institutions of higher education.

Section 3—Guaranteed student loans: This section repeals the unsubsidized portion of the guaranteed student loan program, making students eligible for a subsidy of interest on their loans during their in-school period, regardless of their families' income. For more than a decade, the guaranteed student loan program has been the primary program available to middle-income families to finance their children's education. Yet, even these loans have not always been easy to get.

Until 1976, only families with adjusted gross incomes of less than $15,000 per year were eligible for subsidized guaranteed loans, the subsidy meaning that the Federal Government paid the student's 7 percent interest charge during the period the student was in school. Above the $15,000 income level, families were theoretically eligible to receive federally guaranteed loans without the interest subsidy for the in-school period.

These loans were all too often unavailable, however, as they were unattractive to lenders. Subsidized loans in a lender's portfolio could have all interest subsidies billed as a single item to the Federal Government. Each unsubsidized loan meant that a lender would have to undertake the paperwork necessary to collect interest from the borrower on a monthly or quarterly basis. Given the size of the loans—about $1,000 on the average—and the rate of return—7 percent—many lenders simply refused to make unsubsidized loans.

In 1976, Congress recognized that the $15,000 adjusted gross income level for an interest subsidy was far too low and raised that level to an adjusted gross income of $25,000.

The President, on February 8, 1978, proposed to raise this ceiling to an adjusted gross income of $40 000. Since those who would be covered by the revision proposed by the President would make up 98 percent of our Nation's population, it was decided to remove the ceiling completely. This legislation does not.

Mr. President, in my opinion, S. 2539 is the best approach to help our Nation's middle-income families with the high costs of college. It provides assistance to the families who need our help the most. With its passage, college will be affordable once again for all Americans. I urge the passage of this important legislation.

I wish some amendments might be called up, if there are any.

Mr. BAKER. Will the Senator yield to me briefly?

Mr. PELL. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I might say to the distinguished managers of the bill on both sides of the aisle, as well to the distinguished majority leader, that I have done a canvass on this side since all amendments appear to be on my side of the aisle, but none of them appeared to be ready at this moment.

So while I had hoped we could call up an amendment and at least make it the pending question for the morning, that does not appear possible at this time.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. PELL. I yield.

Mr. ROBERT C. BYRD. Mr. President, I want to thank the minority leader for the efforts he has put forth to locate Senators who indicated they would be calling up amendments. He has tried to locate them. They, understandably, cannot be located at this hour of 9:35 p.m. I thank him and we will just hope they will not call them up tomorrow.

I yield.

Mr. STAFFORD. Mr. President, I understand the Senator from South Carolina would like 5 seconds. I am glad to yield him 10 seconds.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Lockimer, of my staff, be granted privilege of the floor during consideration of this bill and the vote on it.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no further time be charged against the bill today.

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

Mr. WILLIAMS. Mr. President, I support the College Opportunity Act of 1978 and urge my colleagues to view it as an essential and universally applauded effort to provide college access for the children of middle-income families.

This measure builds upon the proven and effective foundation of our national student assistance policy for higher education. The elements in that policy are the basic educational opportunity grant program, the supplemental educational opportunity grant program, the college work study program and the guaranteed student loan program. These programs constitute an organic whole and are depended upon by our citizens. These programs work hand in glove and in combination weave together a basic fabric of educational access and opportunity for those pursuing higher education. Together, they make giant strides in assuring college for our citizens who have the motivation and capability of improving their knowledge, their skills and the Nation's quality of life.

The bill as reported from the Committee on Human Resources would expand the basic grants program to assure educational opportunity for an additional 1.5 million students from middle-income families. It would promote attendance at the more expensive colleges and universities for lower- and middle-income persons by expanding in two installments the supplemental opportunity grant program. It would add another 280,000 students from middle-income families who combine earning and learning in higher education. It would remove the cap from the guaranteed student loan program and permit any qualified family or person to borrow from private lenders funds for education which would be amortised and repaid through the private loan market with 100 percent payment guarantees by the Federal Government.

The total cost of these improvements and extensions to our middle-income families is $1.46 billion in authorized funds. The entire package is arranged and orchestrated to provide balance and coverage for middle-income persons, those families earning between $15,000 and $25,000 a year after taxes and major, essential expenses. The components have been established and linked to provide economic assistance to families, economic stimulus for the economy and financial stability for our higher education policy.

For example, while increased grant would cost the Treasury $1.2 billion, enhanced tax returns of graduated students will be leveraged by such expenditures. Moreover, the stimulus given to the private loan market through the guaranteed student loan program builds capital availability for education in the private sector and comprises a source of risk-free investment for qualified lenders. This federally generated economic stimulus is multiplied many times over by State education loan and grant programs now operated in almost every State in the Nation. Thus, our Federal investment yields important economic and human resources returns.

The package presented in S. 2539 has been endorsed by virtually every responsible spokesperson for higher education. It has been endorsed, by the administration which has emphasized the importance of higher education expenditures within a long-term perspective of fiscal constraint.

Recent actions of the Appropriations Committee in maintaining previous levels of spending for these programs may defer our ability to implement a middle-income package by 1979. That committee has preferred to wait until this body has acted and looks toward a supplemental appropriation for middle-income college assistance if the Congress enacts this measure. I am confident that the Appropriations Committee will view such a supplemental appropriation favorably and I urge the Senate's favorable action of this measure.

In conclusion, Mr. President, the bill before us, S. 2539, the College Oppor-

tunity Act of 1978, presents an excellent means for the Senate to provide essential assistance to middle-income families based on our proven higher education policies and programs.

PAYING COLLEGE COSTS—A SOUND ALTERNATIVE

Mr. JAVITS. Mr. President, today I join with our colleague, the distinguished chairman of the Subcommittee on Education, Arts, and Humanities, in bringing to the Senate legislation to amend the basic educational opportunity grants and the guaranteed student loan programs. I believe this legislation is a preferred alternative to an untargeted tax credit available regardless of financial circumstances. In my opening statement on tuition tax credits, I detailed my reasons in support of S. 2539 and opposition to H.R. 12050.

Mr. President, I believe that this bill gives us the very viable, feasible, and wise alternative to the bill which was just adopted, the tuition tax credit. I have stated my reasons for opposing a tuition tax credit for some years. My reasons are fully detailed in the debate which I inserted respecting the bill just passed.

Mr. President, my reasons are: First, that the tuition tax credit does not give consideration to the financial needs of a family—it gives benefits where they really are not needed when we consider the needs of others; second, the incentive provided simply will cause most colleges and universities to lift their tuition fees, making the taxpayer no better off than he is now; and third, the cost is very much higher than the cost of building up and fortifying the basic educational opportunity grants, as done in S. 2539.

We are definitely moving aid up into the middle class, which is the whole claim for the tuition tax credit the opportunity for basic educational opportunity grants.

We adopted in the Human Resources Committee, and I am a ranking member and I have been for some years, the principle that we would equip the student with the ability to shop around seeking what he considered to be best in terms of his own education. We believe that this would have the healthiest effect upon the higher education system of the United States.

I still believe that principle to be valid. The bill which Senator PELL and I, and Senator STAFFORD, are submitting here follows that principle. It is for that reason that I voted against the tuition tax credit. I deeply believe this bill is much to preferred as a course for higher education and as a cost of financial soundness in this country.

The bill under consideration today provides that an individual family at the $25,000 annual income level will receive approximately the same level of benefit in the form of a basic grant, $250 per year. Families with lesser financial resources will receive proportionately greater benefits. If enacted, this proposal can be implemented quickly, because it requires only an adjustment in the existing and highly successful Basic Educational Opportunity Grant program. Because the benefits are not available to everyone, colleges will be constrained from tuition increases. The benefits will accrue to individuals based on their economic need and the cost of the education which they choose. Students who have higher costs because they have chosen a nonpublic college will receive proportionately greater assistance. In the present price structure of higher education, this seems a reasonable approach.

Mr. President, I fear that the long debate over tax credits has obscured the understanding of S. 2539. I believe that many Senators are not familiar with its provisions. It is a simple bill to expand two highly successful programs—the Basic Educational Opportunity Grants Program, BEOG—also known as Pell grants—and the Guaranteed Student Loan Program, GSLP. The major provisions of S. 2539 can be summarized as follows:

The basic educational opportunity grant program would be amended under this bill so that the benefits of that program will become available to middle-income families. The current breakpoint for the basic grant program for an average family of four with one child in college is approximately $13,000. If a family has a larger income than $13,000, it most likely would not be eligible for a basic grant under the existing program. S. 2539 would change that, thus making the same average family eligible for a basic grant of $250 if it has an income of $25,000. Its basic grant would be larger if it had a smaller income.

The guaranteed student loan program would be amended to eliminate the income limit on interest-subsidized guaranteed loans. Currently, families with adjusted gross incomes of $25,000 or less are eligible to have the interest on their guaranteed loans paid by the Government while their child is still in college. President Carter has requested that the income ceiling be raised to $40,000. This would make approximately 98 percent of the population eligible for this subsidy. Since only 2 percent of the population would not be covered, and since a great deal of paperwork would be required to perform a needs analysis for the 98 percent that would be eligible, S. 2539 would remove the income ceiling completely.

Under the revisions made by the committee, H.R. 12050 no longer overlaps with the BEOG program. I believe that the tuition tax credit bill may be vetoed and may not become law. But if it does become law, either this year or in the future, it is important to realize that there can be no "double dipping" with a single individual receiving both a tuition tax credit and a BEOG. This underscores the need for S. 2539, regardless of the final disposition of the tax credit issue.

Mr. President, unlike tax credits, the provisions of S. 2539 have the support of the administration, which proposed a similar approach and has requested full funding for fiscal year 1979. Unlike tax credits, S. 2539 enjoys broad support among the higher education leadership in our country. I ask unanimous consent that the letter of support for S. 2539 from nine leading higher education associations be printed at the conclusion of my remarks.

Regarding costs, I believe we must look at three aspects: the annual costs of S. 2539 compared to tax credits; the distribution of funds by income group; and the ability to review annually the Federal assistance in education. The Congressional Budget Office estimates that S. 2539 will cost $1.464 billion in fiscal year 1979 and $1.630 billion in fiscal year 1983. The estimates for tax credits begin with only $667 million in fiscal year 1979 because it would not then be fully implemented, but rise to $2.88 billion in fiscal year 1983. When fully in effect, the tax credits would cost almost twice as much as S. 2539, and most importantly, not be subject to annual review.

The Senate has on several occasions passed college tuition tax credit measures, although none has become law. The President has clearly stated his opposition to tax credits and his firm intention to veto any tuition tax credit measure sent to him. I believe that if we are to provide tuition relief to middle-income families, we must pass S. 2539 and also provide the necessary funds to implement its provisions. I have not supported tax credit proposals because of the reasons I have already given. I very much hope that my colleagues will support this alternative as a much better approach.

May I say finally, Mr. President, there are millions of dollars which we are dealing with in the budget. These cuts of $100 million or $50 million or $10 million which we spend infinite time on people may pride themselves on feeling that they are great economizers, do not begin to measure up. You have to have 50 of them to equal what is at stake here.

For all of those reasons, Mr. President, I commend the bill to the Senate and hope the Senate will pass it.

I yield to my colleague from Vermont, if Senator PELL will indulge us, who wishes to put some remarks into the record, to follow the remarks which I have made, which will follow those of Senator PELL.

Mr. STAFFORD. Mr. President, I join in what my distinguished colleague, the senior Senator from New York (Mr. JAVITS) has said.

Mr. President, I wish to express my support for S. 2539, the College Opportunity Act. Its purpose coincides with that stated by most Members of this body. It is to reduce the financial strain upon middle-income families with children in college. The main effect of this bill would be to increase the participation of students from middle-income families in the basic grant program.

More than 6 years ago, as a new member of our Education Subcommittee, I supported the effort that established the program of basic educational opportunity grants. This program now aids more than 2 million young Americans. It gives them the chance to go to virtually any college where they qualify for admission, regardless of poor economic circumstance. Because the assistance is based on need, which is of course related to educational cost, it effectively provides freedom of choice, enabling students to attend the institutions which can best fulfill their aspirations. This program has been an enormous success in provid-

ing opportunity to our young people. More students from poor families have been able to continue their education beyond high school than ever before in our history.

However, as is well known, increasing college costs, which now total $2,000 to $7,000 per year, have created extraordinary burdens for many middle-income families. Probably all of us have received many letters of concern. I wish to offer the perspective that just as it was unfair to deny the opportunity for college education to the poor, it is unfair to compel the sons and daughters of middle-income Americans to lower their educational sights solely for economic reasons. It makes sense to safeguard their opportunities.

It also makes sense to utilize the present mechanism to provide assistance to middle-income students. It is successful. It is based on the right principles for our public policy. It is well established and well understood. It requires no new bureaucracy and no new types of forms or data items. The aid goes directly to the student when he or she needs it at the beginning of the school year. It provides no incentive for colleges and universities to increase their tuition.

The bill eases the requirements of the present law with regard to parental discretionary income. It requires that parental discretionary income not be assessed in excess of 10.5 percent in determining eligibility for grants, effective 1979–80. The mechanical effect is to change the computer's calculations of families' ability to pay. The impact is that Federal grants would be available to help pay the educational costs of a student from a family with an annual income of up to approximately $25,000, and nearly one and a half million additional students would be served.

This bill also builds upon another advantage of the present law; namely the flexibility of being able to create combinations of different kinds of assistance to meet the differing needs of individual students. It would increase authorized funding for the college work-study program in order to help provide work opportunities for additional students from middle-income families especially. It also would increase authorized funding for supplemental opportunity grants, with the anticipated effect of providing grants to some 180,000 additional students from middle-income families. These would complement the States' student grant programs, which are on a one-to-one matching basis with Federal funding.

Finally, it would expand the guaranteed loan program, which has been the main program available to middle-income families to finance their children's education. These are subsidized loans. The Federal Government pays the interest charge during the years of study. The family-income ceiling for eligibility for a subsidized loan is currently an adjusted gross income of $25,000. Today that ceiling is too low, especially in light of our proposal to extend eligibility for minimum grants to that level. The present administration, which supports S. 2539, proposed increasing that figure to $40,000, which equals a net income of approximately $47,500. As this ceiling would cover 98 percent of the population, and as it would not be sensible to submit that huge majority to a needs test in order to keep the other 2 percent from getting subsidized loans, the Committee on Human Resources voted to lift all income ceilings on subsidized loans. That decision will save a lot of paperwork. That saving is a trade-off against the relatively few loan subsidies which would go to the relatively affluent. On balance, this is a sensible trade-off. No members of the Human Resources Committee had difficulty accepting the concept of lifting the income ceiling for this program completely.

During the last year I have received letters from numerous professional associations in the field of higher education as well as from leaders of numerous colleges and universities. Every one of them has favored this bill and preferred this approach to any other approach for providing relief from the burdens of college expenses. Confirmation of their analysis is to be found in the college board's just-published report entitled "Middle-Income Students: A New Target for Federal Aid?" It says:

> The proportion of new benefits going to middle-income ($15,000 to $25,000) families under the student-aid proposals would be nearly twice that of any of the tax-credit bills, which provide a disproportionate share of assistance to families with incomes above $25,000.

Finally I would like to cite the new public opinion poll by the Roper Organization which was released at the end of July and showed that, by a margin of more than 3:1, people prefer grants and loans to tuition tax credits as the means to help students from middle-income families meet college expenses.

Mr. President, with my fellow members of the Committee on Human Resources and with the overwhelming support of the higher education community, I wish to recommend this measure very positively to my colleagues. It is the logical and needed next step in our long quest to provide equality of educational opportunity to the sons and daughters of all Americans.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business with Senators allowed to speak for up to 3 minutes therein.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

HOUSE JOINT RESOLUTIONS SIGNED

At 9:33 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolutions:

H.J. Res. 682. A joint resolution to provide for the designation of a week as "National Lupus Week";

H.J. Res. 946. A joint resolution to designate October 7, 1978, as "National Guard Day"; and

H.J. Res. 963. A joint resolution designating July 18, 1979, as "National P.O.W.–M.I.A. Recognition Day".

The enrolled joint resolutions were subsequently signed by the Acting President pro tempore (Mr. MORGAN).

At 12:31 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House disagrees to the amendments of the Senate to H.R. 13468, an act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. NATCHER, Mr. GIAIMO, Mr. MCKAY, Mrs. BURKE of California, Mr. CHARLES WILSON of Texas, Mr. BENJAMIN, Mr. MAHON, Mr. BURGENER, Mr. KEMP, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, without amendment:

S. 405. An act for the relief of Chong Cha Williams; and

S. 1335. An act for the relief of Chin Myong Yo Purdom, also known as Myong Yo Sin.

ENROLLED BILL SIGNED

At 6:30 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the Speaker has signed the following enrolled bill:

H.R. 10732. An act to authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal year 1979, to provide for the regulation of foreign fish processing vessels in the fishery conservation zone, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. MORGAN).

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4140. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on

rescissions and deferrals, August 1978; to the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on Human Resources, and the Committee on the Judiciary, jointly, pursuant to order of January 30, 1975.

EC-4141. A communication from the Assistant Secretary of Defense, reporting, pursuant to law, the intent to obligate $73.5 thousand of funds available in the Marine Corps Stock Fund and $11.0 million in the Army Stock Fund for war reserve stocks; to the Committee on Appropriations.

EC-4142. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Israel for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4143. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Spain for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4144. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, concerning 10 construction projects to be undertaken by the U.S. Army Reserve; to the Committee on Armed Services.

EC-4145. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to the Republic of China for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4146. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army proposed Letter of Offer to the Republic of China for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4147. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4148. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4149. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to Korea for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4150. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to Thailand for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4151. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on real and personal property of the Department of Defense, as of September 30, 1977; to the Committee on Armed Services.

EC-4152. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on 2 construction projects to be undertaken by the Army National Guard; to the Committee on Armed Services.

EC-4153. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to approve the sale of a certain naval vessel, and for other purposes; to the Committee on Armed Services.

EC-4154. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to approve the sale of a certain naval vessel, and for other purposes; to the Committee on Armed Services.

EC-4155. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to approve the sale of a certain naval vessel, and for other purposes; to the Committee on Armed Services.

EC-4156. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to approve the sale of certain naval vessels, and for other purposes; to the Committee on Armed Services.

EC-4157. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Secretary of Commerce for the fiscal year ended September 30, 1977; to the Committee on Commerce, Science, and Transportation.

EC-4158. A communication from the General Counsel, Department of Energy, reporting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-4159. A communication from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with IRT Corporation, San Diego, Calif., for a research project entitled "Development of an Ion Implantation System for Surface Alloying"; to the Committee on Energy and Natural Resources.

EC-4160. A communication from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with Eagle Crusher Co., Galion, Ohio, for a research project entitled "Portable Crusher For Underground Mining Applications: Phase II—Construction and Testing and Phase III—Production Test in Underground Mine"; to the Committee on Energy and Natural Resources.

EC-4161. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report of changes in the market shares of the statutory categories of retail gasoline marketers; to the Committee on Energy and Natural Resources.

EC-4162. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report of changes in the market shares of the statutory categories of refined petroleum products; to the Committee on Energy and Natural Resources.

EC-4163. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a study report on the Great Bear Wilderness Study Area in the Flathead and the Lewis and Clark National Forests in Montana, a final environmental statement, and a draft of proposed legislation to designate the Great Bear Wilderness, Flathead National Forest, and enlarge the Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests, State of Montana; to the Committee on Energy and Natural Resources.

EC-4164. A communication from the Administrator, United States Environmental Protection Agency, transmitting, pursuant to law, the first annual Report of the Task Force on Environmental Cancer and Heart and Lung Disease; to the Committee on Environment and Public Works.

EC-4165. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus for 2025 M Street NW., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4166. A communication from the Secretary of the Army, transmitting, pursuant to law, a final environmental impact statement and supplemental information on the Mobile Harbor (Theodore Ship Channel), Ala., project; to the Committee on Environment and Public Works.

EC-4167. A communication from the Acting Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, a report on Inventory of Nonpurchased Foreign Currencies as of March 31, 1978; to the Committee on Foreign Relations.

EC-4168. A communication from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within 60 days after the execution thereof; to the Committee on Foreign Relations.

EC-4169. A communication from the Chairman, Civil Service Commission, transmitting, pursuant to law, a report on a new personnel record system for use by the U.S. Civil Service Commission; to the Committee on Governmental Affairs.

EC-4170. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "A Management Concern: How To Deal With the Nonproductive Federal Employee," August 10, 1978; to the Committee on Governmental Affairs.

EC-4171. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 11, 1978, which would amend the Rental Housing Act of 1977 (Act 2-251); to the Committee on Governmental Affairs.

EC-4172. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 11, 1978, which would amend the property tax deferral mechanism, and for other purposes (Act 2-249); to the Committee on Governmental Affairs.

EC-4173. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 11, 1978, which would order the closing of part of an east-west public alley abutting on Lot 64 in Square 140, bounded by 18th, L, 19th and M Streets, N.W. (S.O. 74-46) (Act 2-248); to the Committee on Governmental Affairs.

EC-4174. A secret communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the data, methodology, and conclusions in the Joint Chiefs of Staff report entitled "Report on Strategic Mobility Requirements and Programs"; to the Committee on Governmental Affairs.

EC-4175. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Questionable Suitability of Certain Salt Caverns and Mines for the Strategic Petroleum Reserve," August 14, 1978; to the Committee on Governmental Affairs.

EC-4176. A communication from the Assistant Secretary for Administration, Department of the Treasury, transmitting, pursuant to law, reports of changes to three Bureau of Engraving and Printing Systems of Records in accordance with the Privacy Act of 1974 and OMB Circular A-108 Transmittal Memorandum No. 1, dated September 30, 1975; to the Committee on Governmental Affairs.

EC-4177. A communication from the

Chairman, Council of the District of Columbia transmitting, pursuant to law, an act adopted by the Council on July 11, 1978, which would amend the District of Columbia Relocation Regulations (Regulation 73-4) to increase the maximum allowable Replacement Housing Payment for homeowners (Act 2-252); to the Committee on Governmental Affairs.

EC-4178. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an Act adopted by the Council on July 11, 1978, which would amend Chapter V of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1156; D.C. Code, sec. 35-701 et seq.) to update the standard valuation and nonforfeiture laws and to adopt a standard nonforfeiture law for individual deferred annuities (Act 2-250); to the Committee on Governmental Affairs.

EC-4179. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on July 11, 1978, which would amend the District of Columbia Business Corporation Act to permit the incorporation of certain insurance companies, and for other purposes (Act 2-247); to the Committee on Governmental Affairs.

EC-4180. A communication from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend the Abandoned Property Act, as amended (40 U.S.C. 301); to the Committee on Governmental Affairs.

EC-4181. A communication from the Chairman, U.S. Nuclear Regulatory Commission, transmitting, pursuant to law, the third quarterly report on full-time permanent employees hired and promoted; to the Committee on Governmental Affairs.

EC-4182. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Region at the Crossroads—The Pacific Northwest Searches for New Sources of Electric Energy," August 10, 1978; to the Committee on Governmental Affairs.

EC-4183. A communication from the Acting Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, Final Regulations—Handicapped Research and Demonstration Programs; to the Committee on Human Resources.

EC-4184. A communication from the Acting Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, Final Amendment for Part 185, Emergency School Air—Suspension, Termination, and Voiding of Assistance; to the Committee on Human Resources.

EC-4185. A communication from the Secretary of Labor, transmitting, pursuant to law, a report pertaining to fair labor standards in employment in and affecting interstate commerce; to the Committee on Human Resources.

EC-4186. A communication from the Acting Executive Secretary to the Department of Health, Education, and Welfare, transmitting Final Regulation for Part 173—Community Service and Continuing Education Programs; to the Committee on Human Resources.

EC-4187. A communication from Acting Assistant Secretary for Indian Affairs, Department of the Interior, transmitting, pursuant to law, a proposed plan for the use and distribution of Seneca Nation judgment funds in Docket 342-G before the Indian Claims Commission; to the Select Committee on Indian Affairs.

EC-4188. A communication from the Deputy Assistant Secretary for Indian Affairs, Department of the Interior, transmitting, pursuant to law, a proposed plan for the use and distribution of the Lake Superior and Mississippi Bands of Chippewa Indians judgment funds in two cases in Dockets 18-C and 18-T before the Indian Claims Commission; to the Select Committee on Indian Affairs.

EC-4189. A communication from the Principal Deputy Under Secretary of Defense (Research and Engineering), transmitting, pursuant to law, a report on procurement from small and other business firms for October 1977-December 1977; to the Select Committee on Small Business.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-774. A resolution adopted by the Better Roads and Transportation Council, Denver, Colo., regarding highway/transit funding legislation; to the Committee on Commerce, Science, and Transportation.

POM-775. A resolution adopted by the Legislature of the Territory of Guam; to the Committee on Energy and Natural Resources:

"RESOLUTION No. 347

"Be it *resolved* by the Legislature of the territory of Guam:

"Whereas, in Public Law 86-664, the United States granted to the territory of Guam the areas known as the Paseo de Susana and Agana Boat Basin; and

"Whereas, use of this land was restricted for 'civic, park and recreational purposes'; and

"Whereas, the territory, in an effort to become more self-sufficient, has encouraged the development of agricultural and small fishing industires on the island; and

"Whereas, the only feasible location for certain facility of benefit to recreational boatsmen and small commercial fishermen is within the restricted land; and

"Whereas, presently, a very hazardous situation exists because small boatsmen must carry fuel on the most heavily traveled highway in Guam to the Basin and fuel their boats from containers rather than at a fuel station; and

"Whereas, it is feared that continuation of this practice necessitated by the lack of a fuel station could result in a disastrous explosion; and

"Whereas, the land proposed for use of the boatsmen has disintegrated into a 'junk yard' for the storage of abandoned hulls and boats; and

"Whereas, the Guam Fishermen's Cooperative Association has proposed the construction of a facility for use by all small boatsmen which would include a fueling center, a cold storage plant and ice plant, an easy loader, a scale platform and a headquarters building for the Guam Fishermen's Co-Op; and

"Whereas, this facility could be used by recreational boatsmen as well as fishermen; and

"Whereas, construction of this facility is compatible with the original intent that the area be for recreational and civic purposes because the only use of the Agana Boat Basin is for recreational boating and small commercial fishermen whose boats do not exceed forty feet; and

"Whereas, the government proposes to lease an area not to exceed one acre to the Guam Fishermen's Cooperative Association; and

"Whereas, the initiative and self-sustaining effort of the Guam Fishermen's Co-Op is applauded in Guam; now, therefore, be it

"*Resolved*, that the Fourteenth Guam Legislature, on behalf of the people of Guam, respectfully requests the United States Congress to amend Public Law 86-664 to provide for use of a portion of the land granted to the territory of Guam for construction of the proposed facility; and be it further

"*Resolved*, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Speaker of the United States House of Representatives; to the President of the Senate; to Congressman Philip Burton; to Congressman Antonio B. Won Pat; to the Secretary of Interior; to the Director, Office of Territories; to the Guam Department of Parks and Recreation; to the Guam Fishermen's Cooperative Association; to the Chairman, Economic Adjustment Committee and to the Governor of Guam."

POM-776. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 13

"Whereas, The overwhelming endorsement by California voters of Proposition 13 has spurred a nationwide taxpayer's revolt against high taxes and excessive government spending; and

"Whereas, While numerous local governments and states, including Texas, are sincerely responding to citizen demands for tax limitations coupled with responsible spending, the federal government, where budget restraint is most needed, has reacted to the message of Proposition 13 in a halfhearted and disappointing manner; and

"Whereas, The federal budget is increasing at an alarming rate, several times that of inflation, as seen by a 140 percent increase since 1970; and

"Whereas, The federal government through many years of deficit spending has incurred a national debt of astronomical and dangerous proportions; the gross national debt is currently estimated to be almost $800 billion, over twice the figure for 1962 and about 40 percent of the nation's gross national product; and

"Whereas, Statutorily imposed 'permanent' debt ceilings repeatedly raised by Congress, have proved to be no impediment to the monstrous growth of the national debt; this disgraceful legacy for future generations has swollen by $177 billion over the past three years and has fostered an interest payment of $50 billion for this year; and

"Whereas, Persistent deficit financing is a major factor contributing to income-robbing inflation, high interest rates, and an unstable, unpredictable economy, and results in the funding of government programs of questionable benefit and need; and

"Whereas, Texas' enviable financial position among state governments is largely due to its 'pay-as-you-go' constitutional provision restricting deficit spending by the legislature; and

"Whereas, During the 1977 regular session, this legislature adopted House Concurrent Resolution No. 31 memorializing congress to initiate a constitutional amendment that would similarly prevent deficit spending and therefore halt the growth of the national debt, the greatest threat to this nation's future well-being; now, therefore, be it

"*Resolved by the House of Representatives of the State of Texas, the Senate concurring*, That the 65th Legislature, 2nd Called Session, hereby reaffirm the provisions of House Concurrent Resolution No. 31 calling for an amendment to the United States Constitution requiring a balanced annual federal budget and hereby request the Texas congressional delegation to sponsor this vital amendment; and, be it further

"*Resolved*, That this amendment require the achievement of a balanced budget within a reasonable period after adoption and establish a procedure for amortizing the national debt; and, be it further

"*Resolved*, That the Governor of Texas be hereby requested to actively seek the

sponsorship of the amendment by the Texas congressional delegation and to use the financial resources of his office to promote support for the amendment; and, be it further

"Resolved, That the governor, the lieutenant governor, and speaker of the house be hereby requested to contact government leaders of other states to solicit and encourage support for the amendment; and, be it further

"Resolved, That the lieutenant governor and speaker of the house be authorized to designate separate or joint committees or individual legislators to represent them and the state in this endeavor and that reasonable expenses incurred by them or their designees in efforts to initiate the amendment be paid from the contingent expense fund of the appropriate house; and, be it further

"Resolved, That official copies of this resolution be prepared and forwarded to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, and to all members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America."

ORDER FOR STAR PRINT—S. 2236

Mr. BAYH. Mr. President, I ask unanimous consent that we have a star print made of S. 2236, relative to international terrorism, so that we may make technical changes in the Intelligence Committee's amendments on the bill.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHILES, from the Committee on Governmenal Affairs and the Committee on the Judiciary, jointly, with an amendment:

S. 3178. A bill to provide for the resolution of claims and disputes relating to Government contracts awarded by executive agencies (Rept. No. 95–1118).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Nicholas A. Veliotes, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Hashemite Kingdom of Jordan.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Nicholas A. Veliotes.

Post: Amman, Jordan.

Nominated: June 26, 1978.

Contributions, amount, date and donee:

1. Self: $25.00, March 1974, Doug Bennett for Congress Committee; $25.00, February 1976, Citizens with Celeste; $25.00, March 1976, Jack Calkins Congressional Committee; and, $25.00, February 1977, Citizens with Celeste.

2. Spouse: $25.00, March 1974, Doug Bennett for Congress Committee; $25.00, February 1976, Citizens with Celeste; and, $25.00, March 1976, Jack Calkins Congressional Committee.

3. Children and Spouses: Christopher, none; Michael, none.

4. Parents: Irene Zoobrick (mother), none. Loucille Horrom (mother-in-law), $5.00, summer of 1976, Local Democratic Campaign Committee.

5. Grandparents: None.

6. Brothers and Spouses: John Otis, none; Phyliss Otis, none.

7. Sisters and Spouses: Dorothy Chessari, none; John Chessari, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

James David Isbister, of Maryland, to be an Associate Director of the International Communication Agency.

Harold F. Schneidman, of Pennsylvania, to be an Associate Director of the International Communication Agency.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. NELSON:

S. 3410. A bill to amend the Internal Revenue Code of 1954 to provide an exclusion from gross income of the first $1,500 of net capital gains; to the Committee on Finance.

By Mr. GLENN:

S. 3411. A bill to provide for the employment and compensation of employees of the General Accounting Office without regard to certain provisions of title 5, United States Code, and for other purposes; to the Committee on Governmental Affairs.

S. 3412. A bill to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes; to the Committee on Governmental Affairs.

By Mr. THURMOND:

S. 3413. A bill for the relief of Emi Ohta; to the Committee on the Judiciary.

By Mr. WALLOP (for himself, Mr. YOUNG, Mr. CHAFEE, Mr. EASTLAND, Mr. CULVER, Mr. SCOTT, Mr. HODGES, Mr. FORD, Mr. ANDERSON, Mr. MORGAN, Mr. CURTIS, Mr. HATCH, and Mr. DOLE):

S. 3414. A bill to amend the Internal Revenue Code of 1954 to provide that nonresident aliens are taxable on gain from the sale or exchange of farming property and undeveloped real property at capital gains rates; to the Committee on Finance.

By Mr. PACKWOOD:

S. 3415. A bill for the relief of George D'Souza; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON:

S. 3410. A bill to amend the Internal Revenue Code of 1954 to provide an exclusion from gross income of the first $1,500 of net capital gains; to the Committee on Finance.

CAPITAL GAINS EXCLUSION

● Mr. NELSON. Mr. President, last week by an overwhelming vote of 362 to 49 the House passed H.R. 13511, the Revenue Act of 1978. The House bill includes provisions which would reduce taxes on capital gains. The House bill would repeal the alternative tax on capital gains of individuals and remove capital gains from the list of tax preference items for purposes of applying the minimum and maximum tax. Thus, under the House bill the rate of tax on capital gains would be reduced from a maximum of 49.125 percent to 35 percent.

In the Senate, over 60 Senators have cosponsored similar legislation, S. 3065. The Senate version would reduce the maximum rate of tax on capital gains to 25 percent. Obviously, the Congress intends to pass some form of capital gains tax relief this year.

However, under both the House and Senate bills, over 90 percent of the tax relief benefits go to taxpayers with adjusted gross incomes of over $50,000. This group comprises less than 2 percent of the total number of taxpayers in this Nation.

Mr. President, today I am introducing an alternative capital gains tax relief bill which is far more equitable to the average middle-income taxpayer as well as all taxpayers, than any other proposal for capital gains tax reduction that has been advanced so far.

This proposal targets a major portion (over 72 percent) of its relief to taxpayers with adjusted gross incomes of less than $50,000, a group which comprises over 98 percent of the Nation's taxpayers. Under the proposal, a single taxpayer would be entitled to exclude the first $1,500 of capital gains from income. A married taxpayer filing a joint return would be entitled to a $3,000 exclusion. Moreover, this proposal will not add complexity to our present tax system since it does not affect the rate of tax, present exclusion or minimum/maximum tax. It merely provides that an individual will take an initial capital gains exclusion equal to a maximum of $1,500 ($3,000 in the case of a joint return).

Unlike the House bill, however, this proposal offers the average taxpayer a substantial tax benefit. The table below compares the House bill with my proposal:

NELSON CAPITAL GAINS TAX RELIEF BILL[1]

Adjusted gross income	Total individuals with a tax decrease		Percent distribution of tax benefits	
	House[2]	Nelson	House	Nelson
Up to $5,000	700	49,100	0.1	0.1
$5'000 to $10,000	0	539,200	0	4.2
$10,000 to $15,000	0	566,700	0	7.5
$15,000 to $20,000	10,500	681,700	.2	11.0
$20,000 to $30,000	29,200	985,900	.8	22.4
$30,000 to $50,000	98,600	867,200	5.5	27.0
$50,000 to $100,000	123,600	424,700	19.4	20.6
$100,000 to $200,000	43,000	105,800	17.3	5.1
$200,000 or more	21,500	33,700	56.5	2.0
Total	327,200	4,253,800	100.0	100.0

[1] Revenue estimates provided by the Joint Committee on Taxation.

[2] Under the House bill, the maximum capital gains tax rate is cut to 35 percent, which overwhelmingly affects the taxes paid by upper income taxpayers. However, it is possible that these taxpayers can shelter most, if not all, of their adjusted gross income, but have substantial capital gains, With the imposition of a minimum tax of 10 percent on capital gains, these people would appear as lower income taxpayers in the chart.

REVENUE ESTIMATE

	House	Nelson
1978	953,000,000	863,000,000
1979	1,050,000,000	949,000,000

As the chart dramatically discloses, the House bill would benefit only some 327,000 individuals; whereas, this proposal would benefit over 4 million individuals. At a time when millions of middle-income taxpayers are revolting against regressive and inequitable taxation, we cannot in due conscience provide greater tax relief for the wealthy at the further expense of the middle class. Under the proposal, over 72 percent of the total tax benefits would go to taxpayers earning less than $50,000. Moreover, over 49 percent of the benefits would go to taxpayers in the $20,000 to $50,000 bracket. The House bill, however, concentrates over 93 percent of the benefits to the income class of over $50,000 and 74 percent over $100,000. Under the House proposal, the average individual would receive virtually no capital gains tax relief. This bill affords even the small investor with less than $20,000 in adjusted gross income over 22 percent of the tax benefits. The wealthy few, however, would not receive a disproportinate share of the tax benefits.

If Congress is going to have a responsible tax relief package this year, it must benefit the majority in need of relief and at the same time, serve the needs of the country. A capital gains tax reduction concentrated in the $20,000 to $50,000 brackets would make available millions of dollars for capital formation which is currently being channeled to passive savings, tax free municipal bonds, or consumer consumption.

The problem of capital scarcity and its significance to the business community and this country is well documented. For example, the NYSE estimates that over the next 10 years, the United States will require $4.5 trillion of new capital if we are to continue to support a real annual growth rate of 3.6 percent over the next decade. Although $3.9 trillion could be raised from personal savings and retained earnings, a $600 billion capital shortage remains. The exchange estimates that of this $600 billion, $250 billion will have to come from new equity investment, with an essential part of that being provided by individual investors.

The bear markets of the 1970's, 10 percent inflation and high interest rates have been major causes of the individual investor's departure from the marketplace. It is also true that our increasingly restrictive Federal income tax structure has played a significant role in the decline of capital formation. The Tax Reform Acts of 1969 and 1976 restricted the use of the 25 percent alternative rate on capital gains to the first $50,000 in gains and imposed a minimum tax on capital gains which increased the incremental tax rate to a maximum of 49.125 percent. These restrictive measures have become major investment disincentives discouraging the individual investor from productive investment and encouraging consumption.

Our securities industry today has the most serious problems in the history of U.S. financial markets. America's individual investors continue to resist the purchase of common stock. This has a direct impact upon the ability of small- and medium-sized companies to raise desperately needed capital. Arthur Levitt, Jr., chairman of the American Stock Exchange, discussed the extent of the individual investors' participation in his testimony before the Senate Finance Committee on June 20, 1978. He indicated that:

By 1975, the United States shareholder population had dropped . . . more than 18 percent, and the shareholder percentage of the entire population was down to 11.8 percent, or scarcely one in eight. The percentage of shareholders with total investments of under $10,000 fell from 62 percent to less than 50 percent; those with total investments of under $5,000, fell from 41 percent to less than one-third.

This bill is aimed at the very problem posed by Mr. Levitt. Its purpose is to encourage the small- or middle-income investor to get back into the stock market by concentrating over 72 percent of the total tax benefits to taxpayers earning less than $50,000.

If our Nation is to continue its growth in areas of technology, innovation, and production, we need a tax system which encourages individuals and business to continue to invest in America.

We need to encourage investors to invest by providing economic incentives not disincentives. However, these incentives must not be at the expense of the middle-class taxpayer who is already heavily burdened by high interest rates and high inflation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3410

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part I of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (relating to treatment of capital gain) is amended by adding at the end thereof the following new section:

"Sec. 1203. Partial Exclusion of Net Capital Gains.

"(a) EXCLUSION FROM GROSS INCOME.—Gross income of an individual does not include the net capital gain of an individual for any taxable year to the extent that such net capital gain does not exceed $1,500 ($3,000 in the case of an individual filing a joint return).

"(b) EXCEPTION.—Subsection (a) shall not apply to any net capital gain for any taxable year to the extent that such gain is attributable to the sale or exchange of the prinicpal residence (within the meaning of section 1034) of the taxpayer.

"(c) COORDINATION WITH OTHER SECTIONS.—For purposes of determining the amount of the alternative tax under section 1201 and the amount of the deduction under section 1202, net capital gain shall not include any amount which is excluded from gross income under subsection (a).".

(b) The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 1203. Partial exclusion of net capital gains.".

(c) Section 57(a)(9)(A) of such Code (relating to capital gains as an item of tax preference) is amended to read as follows:

"(A) INDIVIDUALS.—

"(i) IN GENERAL.—In the case of a taxpayer other than a corporation, an amount equal to one-half of the net capital gain for the taxable year (other than any amount included under clause (ii)).

"(ii) EXCLUSION.—In the case of an individual, an amount equal to any amount excluded from gross income under section 1203.".

(d) The amendments made by this section shall apply to taxable years beginning after December 31, 1978.●

By Mr. GLENN:

S. 3411. A bill to provide for the employment and compensation of employees of the General Accounting Office without regard to certain provisions of title 5, United States Code, and for other purposes; to the Committee on Governmental Affairs.

S. 3412. A bill to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes; to the Committee on Governmental Affairs.

● Mr. GLENN. Mr. President, I introduce for appropriate reference two bills regarding the General Accounting Office.

The first bill would exempt GAO employees from laws administered by the Civil Service Commission regarding appointments, position classification and certain other personnel actions.

The need for the change in the law, according to the GAO, is to prevent conflict-of-interest situations which could compromise GAO audits. GAO increasingly reviews personnel procedures and management within the executive branch and is sometimes critical of the Civil Service Commission, which controls the personnel system upon which GAO must rely for its staff. CSC now could direct the GAO to reduce the grades and salaries of GAO staff members or refuse to promote or appoint GAO personnel.

The second bill I am introducing today deals with the retirement and survivor benefits of comptrollers general.

A comptroller general who completes his 15-year term is entitled to retire at full salary minus a quarter percent for each month he is under age 65. He may retire at full salary after 10 years service if he has attained the mandatory retirement age of 70 or is permanently disabled.

At present a retired comptroller general receives no cost-of-living increases. Under the bill I am introducing today his retirement would increase according to annuitants under the civil service retirement system. However, the annuity could not exceed the annual rate of compensation of the incumbent comptroller general.

At present 3 percent of the Comptroller General's salary is deducted for survivor benefits, if he so elects. No deductions are made for his own retirement, which is financed out of funds ap-

propriated for the General Accounting Office. Under this bill future comptrollers general would contribute 8 percent of their salary, as Members of Congress do, to finance their own and their survivors' benefits.

The bill also increases benefits for survivors of deceased comptrollers general. These changes are generally comparable to those Congress provided for survivors of Federal judges in Public Law 94-554.●

By Mr. WALLOP (for himself, Mr. YOUNG, Mr. CHAFEE, Mr. EASTLAND, Mr. CULVER, Mr. SCOTT, Mr. HODGES, Mr. FORD, Mr. ANDERSON, Mr. MORGAN, Mr. CURTIS, Mr. HATCH, and Mr. DOLE):

S. 3414. A bill to amend the Internal Revenue Code of 1954 to provide that nonresident aliens are taxable on gain from the sale or exchange of farming property and undeveloped real property at capital gains rates; to the Committee on Finance.

● Mr. WALLOP. Mr. President, today I am introducing legislation that would change the capital gains tax treatment of agricultural lands owned by nonresident aliens. This legislation would add gains from the sale or exchange of agricultural or timber lands to the list of items on which a nonresident alien must pay capital gains. At present, nonresident aliens can avoid paying capital gains tax on the sale or exchange of agricultural property.

The question of foreign investment in U.S. agricultural lands has generated much concern on the part of farmers, who are troubled over the effects these investments will have on escalating land prices. At the same time, consumer organizations question how increased foreign ownership of our agricultural lands could one day affect food prices for all Americans. Mr. President, it is not my claim that all foreign investment in U.S. agriculture either benefits or harms farmers and consumers. I argue, however, that the present favored capital gains tax treatment for foreign investors in U.S. agricultural lands provides an incentive for land investment that is neither needed nor desired. There is no reason to provide foreign investors with the added incentive of a decided tax favor which is unavailable for our American farmers and their families.

Aside from the questions of equity, which are by no means unimportant, there is a strong economic case to make against providing such an incentive to foreign investors. The unequal application capital gains tax on the sale of property only encourages speculation. Foreign investors who seek a quick profit from escalating land prices face no tax deterent. Indeed it results in a built-in foreign advantage of up to 20 percent on initial investment. As such purchases and sales increase in number, there is a ratchet effect of escalating land prices.

The tax incentive given to foreign investors places domestic farmers at a competitive disadvantage when land purchases are required to expand a farm operation. Many American farmers have already been priced out of further land investments. There is no reason why the U.S. Government should retain a tax law which only encourages foreign investment that conflicts with the best interests of the American farmer and consumer.

There are those who are properly concerned with the maintenance of capital flows from OPEC and other balance-of-payments surplus countries. Investments made by those countries in the United States are useful to our economy and the balance-of-payments position of the United States. Altering the capital gains treatment of all foreign investments would jeopardize a source of financing that has become increasingly important over the past few years. To those concerned with this issue, let me point out that this bill affects the capital gains treatment of agricultural land sales alone; it has no effect on the tax treatment of nonagricultural securities or industrial facilities. As such, the balance-of-payments effects of this kind of legislation are minimal, especially when we consider the underlying economic forces that will still encourage foreign investments in U.S. farm lands.

It is evident that the favored capital gains tax exemption on nonresident aliens creates a singular incentive for foreign investors to buy U.S. agricultural lands. This is just one of several incentives which attract foreign investors to our land market. There are economic forces in motion which insure that even without the capital gains tax exemption, there will still be a steady flow, and perhaps excessive flow of foreign investments into U.S. farm lands. The U.S. trade imbalance with the OPEC countries and our industrial trading partners has put billions of dollars in the hands of Arab, Japanese, and German investors. At the same time, the U.S. trade deficit has weakened the dollar in relation to other major currencies. A devalued dollar permits foreign investors to buy U.S. products, securities, and farmlands at a discount. In other words, Mr. President, there has never been a time in our Nation's history in which farmlands could be purchased by foreign investors at such bargain rates as they are today.

The fact that the prevailing rate of inflation in the United States is well below the inflation rate of many other industrial countries creates another incentive to invest in the United States.

What better place is there to invest money than in U.S. food-producing lands? In 1975 agricultural land values rose by 13 percent. In 1976 land values rose again by 14 percent. Last year, the average price increase in U.S. agricultural lands was 17 percent. In a world of expanding food demands, we can be certain that agricultural land investments will remain as good hedge against inflation.

Mr. President, I make these points only to demonstrate that there is already too great an incentive to invest in U.S. agricultural lands without providing a capital gains tax loophole for foreign investors. The capital gains tax treatment of foreign investments in agriculture can only attract the worst kind of speculative investment in our land markets. This bill would close a capital gains tax loophole available to foreign investors and help restore some balance between farmers and nonresident aliens who wish to invest in agricultural lands. I urge the Senate to act quickly to change this unfair and harmful section of the tax code.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 3414

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (2) of section 871(b) of the Internal Revenue Code of 1954 (relating to determination of gross income of nonresident alien individuals which is connected with United States business) and paragraph (2) of section 882(a) of such Code (relating to determination of taxable income of foreign corporations which is connected with United States business) are each amended to read as follows:

"(2) Determination of taxable income.—In determining taxable income for purposes of paragraph (1)—

"(A) gross income includes only gross income which is effectively connected with the conduct of the trade or business within the United States, and

"(B) gain from the sale or exchange of—

"(i) land used in farming (as defined in section 180(b)), 2032(e)(4) land suitable for use in farming (as defined in section 182(c)(2)), or other undeveloped land (as defined by the Secretary in regulations), or

"(ii) stock in a corporation, or interest in a partnership, determined by the Secretary to have been formed or availed of for the purpose of acquiring, holding, or selling such land, shall be treated as gross income which is effectively connected with the conduct of a trade or business within the United States.".

(b) Paragraph (1) of section 337(b) of such Code (relating to definition of property for gain or loss on sales or exchanges in connection with certain liquidations) is amended—

(1) by striking out "and" at the end of subparagraph (B).

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and the word "and", and

(3) by adding at the end thereof the following new subparagraph:

"(D) property described in section 882(a)(2)(B)(i).".

Sec. 2. The amendments made by the first section of this Act shall apply with respect to sales and exchanges in taxable years beginning after the date of enactment of this Act.●

ADDITIONAL COSPONSORS

S. 2856

At the request of Mr. MORGAN, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 2856, the Uniformed Services Survivor Benefit Plan Amendments Act of 1978.

S. 3007

At the request of Mr. DOLE, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 3007, a bill to disregard, for the purpose of certain taxes imposed by the Internal Revenue Code of 1954 with respect to employees, certain changes since 1975 in the treatment of individuals as employers.

S. 3178

At the request of Mr. CHILES, the Senator from Ohio (Mr. METZENBAUM) was added as a cosponsor of S. 3178, the Contract Disputes Act of 1978.

S. 3408

At the request of Mr. INOUYE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 3408, the National Aquaculture Policy Act of 1978.

SENATE JOINT RESOLUTION 65

At the request of Mr. KENNEDY, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of Senate Joint Resolution 65, to amend the Constitution to provide for representation of the District of Columbia.

SENATE JOINT RESOLUTION 151

At the request of Mr. HEINZ, the Senator from Minnesota (Mr. ANDERSON), the Senator from Tennessee (Mr. BAKER), the Senator from Florida (Mr. CHILES), the Senator from Arizona (Mr. DECONCINI), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Indiana (Mr. LUGAR), the Senator from Illinois (Mr. PERCY), the Senator from Maryland (Mr. SARBANES), the Senator from New Mexico (Mr. SCHMITT), the Senator from Alaska (Mr. STEVENS), the Senator from South Carolina (Mr. THURMOND), the Senator from Wyoming (Mr. WALLOP), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Joint Resolution 151, authorizing and requesting the President to designate November 11 through 17, 1978, as "Vietnam Veterans Week."

AMENDMENT NO. 3446

At the request of Mr. HUDDLESTON, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of amendment No. 3446 intended to be proposed to S. 3073, the Federal-Aid Highway Act of 1978.

SENATE RESOLUTION 526

At the request of Mr. DOLE, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of Senate Resolution 526, commemorating the 10th anniversary of the invasion of Czechoslovakia.

SENATE CONCURRENT RESOLUTION 92

At the request of Mr. GOLDWATER, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of Senate Concurrent Resolution 92, to seek the resurrection of the Ukrainian Orthodox and Catholic Churches and other religions in Ukraine.

SENATE CONCURRENT RESOLUTION 102—SUBMISSION OF A CONCURRENT RESOLUTION ON THE NEED FOR CAPITOL HILL CHILD CARE CENTER

Mr. McGOVERN submitted the following concurrent resolution, which was referred to the Committee on Governmental Affairs:

S. CON. RES. 102

Whereas it has been documented that 150 employees of the Senate, the House of Representatives, the Library of Congress, and the Supreme Court have expressed the need for a child care center for their children and are willing to offer moral and financial support to the effort;

Whereas it has been documented that 190 children of these Capitol Hill employees need this service;

Whereas a child care center would strengthen family ties by bringing parents and children together at the workplace; and

Whereas reduction of absenteeism and improved work productivity result from the improved psychological well-being of those parents whose children are provided quality child care at the site of work; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that a child care center should be established on Capitol Hill for the children of employees of the Senate, the House of Representatives, the Library of Congress, and the Supreme Court.

CAPITOL HILL CHILD CARE CENTER

Mr. McGOVERN. Mr. President, I have long been concerned for the children of Capitol Hill employees, having learned through my own conversations that quality child care facilities are not always available to them. In conjunction with the Congressional Clearinghouse on Women's Rights I recently sent a questionnaire to employees of the Senate, House of Representatives, Library of Congress, and Supreme Court, to specifically determine the extent to which child care is needed on Capitol Hill. The responses bear out my suspicions. They indicate an overwhelming need for this service. One hundred and fifty parents responded that at least one of their children would attend a child care center if it were located at, or near their place of work. Results of the questionnaire show that 190 children need this service. In order to respond to this need, I am today submitting a resolution to establish a child care center for the children of Capitol Hill employees.

There is not a Member of the Senate that is not aware of the increasing pressures placed on the American family. Unfortunately, Government policies can often exacerbate family burdens. High taxes, inflation, education costs, high medical bills, unemployment, and inadequate child care for children of working parents all help to contribute to family problems. Statistics bear out the bad situation: over 14 nations have a lower infant mortality rate than the United States; we continue to incarcerate young juvenile offenders when most should remain with their families; every year 1 million children are victims of child abuse, with 5,000 children dying as a result of these injuries; and it is estimated that one-fifth of our children have no regular source of health care.

Furthermore, we cannot ignore the fact that over 6.4 million children under the age of 6, and 22.5 million children ages 6 to 17, have mothers in the labor force. These children, for most of their waking hours, do not have their mother at home to take care of them. Many people contend that mothers seek employment because they are tired of raising their children. This is not true; most women are forced to work in order to support their families, in order to give them the things they need.

We know it can be difficult for families where both parents work. For many generations our society has described a good family as one where the father makes enough money to allow the mother to stay home and care for the children. Although social scientists tell us that children of working mothers are not necessarily disadvantaged, working parents fear that their children are being neglected. And unfortunately, in too many cases this is true. Children are neglected not because their parents are negligent, but because proper child care is not available.

There are millions of children in this country who come home after school to a locked, empty house. These "latch key" children have no relatives to take care of them; babysitters often have proved to be untrained or unavailable on a regular basis, and there are very few afterschool child programs available to them. The situation is worse for parents with preschool children. In the questionnaire that was sent to our employees, many parents commented that a child care center on Capitol Hill would be preferable to their present arrangement because their child is usually alone all day with a babysitter who is merely putting in time, and who pays very little attention to the child. Other parents wrote that they worry about the child being miles away from them during the day. If an emergency arises, mother or dad cannot be there to help and comfort their child.

We are all aware of the controversy surrounding Government funding of child care. Many legislators, parents, and concerned citizens are understandably skeptical of the Government's involvement in their lives. I appreciate this concern. But this would not be charity or welfare. All of the Capitol Hill employees interested in this service are paying for their present child care arrangements, and responded favorably to the questionnaire knowing that a Capitol Hill child care center would not be free of cost.

It is evident, however, that most parents who need this service for their children cannot afford the initial startup costs of a day care center. The U.S. Senate houses the restaurant, the credit union, the barber shop, and the Senate beauty salon services our employees need. Now we have substantial evidence of what would seem to be a more fundamental need for more adequate child care facilities to serve the children of our employees while their parents are at work.

Mr. President, we in the U.S. Senate have an opportunity to assist our staffs and their families. This effort is not without precedent. There are seven Government agencies in this city operating child care centers for the children of their employees. Many of these centers are operating successfully, experiencing

low drop-out rates, and have long waiting lists. By establishing a child care center on Capitol Hill, the home, in a sense, can be brought to the work place, bringing children and parents together. Lunch hours and/or coffee breaks could afford parents the opportunity to be with their children; eat lunch with them, participate in their activities. If a child becomes ill, the parent is immediately available. The psychological well-being of children and parents is supported in these ways. Parental work attendance also becomes more stable.

Mr. President, for these reasons I urge my colleagues to support this resolution creating child care facilities for Capitol Hill employees. The distinguished chairman of the Committee on House Administration, my longtime friend and colleague, Congressman FRANK THOMPSON of New Jersey is introducing a companion resolution in the other body.

AMENDMENTS SUBMITTED FOR PRINTING

DISTRICT OF COLUMBIA REPRESENTATION—HOUSE JOINT RESOLUTION 554

AMENDMENT NO. 3475

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR. submitted an amendment intended to be proposed by him to House Joint Resolution 554, proposing, an amendment to the Constition to provide for representation of the District of Columbia in the Congress.

(The remarks of Mr. HARRY F. BYRD, JR.) when he submitted the amendment appear elsewhere in today's proceedings.)

FEDERAL-AID HIGHWAY PROGRAMS—S. 3073

AMENDMENT NO. 3476

(Ordered to be printed and to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed to S. 3073, a bill to amend title 23, United States Code, to authorize Federal-aid highway programs through fiscal year 1980, and for other purposes.

TARIFF TREATMENT OF FILM, STRIPS, SHEETS, AND PLATES OF CERTAIN PLASTICS OR RUBBER—H.R. 5285

AMENDMENT NO. 3477

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for himself, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, and Mr. HATHAWAY) submitted an amendment intended to be proposed by them, jointly, to H.R. 5285, an act to amend the tariff schedules of the United States with respect to the tariff treatment accorded to film, strips, sheets, and plates of certain plastics or rubber.

HOSPITAL COST CONTAINMENT

● Mr. KENNEDY. Mr. President, last year when I introduced the Hospital Cost Containment Act of 1977, I indicated that "Americans can no longer afford to pour unlimited dollars into our fragmented nonsystem of health care." In the intervening year, without any cost containment effort on the part of the hospitals, the cost of hospital care has gone up at a remarkable 16 percent—almost three times the rate of inflation in the general economy. In real dollars that is almost $10 billion. Unfortunately, this was not an isolated phenomenon—over the last 3 years the costs of hospital care have jumped almost 50 percent with no evidence that hospitals are making people healthier or that the quality of care has improved.

We can no longer just sit back and watch health costs continue to escalate at past rates. For too long we have allowed hospitals to be reimbursed at whatever level they wanted. Their budgets have been open-ended, and they have had no economic incentive to hold down cost. Ironically, our reimbursement system tends to encourage hospitals to add expensive new facilities, personnel, and technologies. We have encouraged more hospital beds than are needed, and today the consumer is bearing the burden of paying for the cost of greatly underutilized facilities, services, and equipment. A study by the prestigious Institute of Medicine documented that this Nation as a whole has at least 100,000 more hospital beds than it needs. These beds, which should be closed or used for other purposes are costing all of us well over $2 billion per year. We have been pouring so much money into hospitals for these extra beds, for unneeded tests, and for unnecessary surgery that we have not had money to spend on basic preventive health care.

The Hospital Cost Containment Act of 1977 that was ordered reported by the Committee on Human Resources on August 2, 1977, was designed to constrain the rate of increases in inpatient hospital costs through various incentives and limitations in hospital revenues. The bill, which was designed to be implemented quickly and simply, contained provisions for the development of permanent reforms that would increase efficiency, effectiveness, and quality of health care in the United States. It specifically provided for phasing in to a system that would classify hospitals according to size, geographical location, and other criteria which would reflect efficiency and services provided. The bill also provided that a system that more accurately measured the changes in hospital costs associated with changes in hospital volume, and a system that monitors, on a concurrent basis, shifts in case mix were to be developed. A cornerstone to the bill was the development of an inflation index specific to the hospital industry that would accurately reflect the rate of increases in prices of the inputs necessary for the production and delivery of hospital services.

Today, more than a year later, in part due to the lobbying efforts of the hospital industry and the AMA, we still have not enacted a bill that would constrain the rate of increase in hospital costs; tragically, instead we have watched the costs of hospital care continue to escalate at an alarming rate—$1 million an hour—$24 million a day—$168 million a week—and almost three-quarters of a billion dollars a month.

In the period since the Committee on Human Resources has reported the bill by a vote of 11 to 3, I have been working with new data in an attempt to further strengthen the bill and address the hospitals' assertions that the cost containment provisions would be applied retrospectively, and that they were not sensitive to the needs of the individual institutions. I believe that, because of the changes in the state of data collection and the greater sophistication within the Health Care Financing Administration, that we are now in a position to modify some of the original provisions, and some of these changes are included in a bill to be introduced by my distinguished colleague, Senator NELSON.

Mr. President, the Subcommittee on Health and Scientific Research held 5 days of hearings on S. 1391, "The Hospital Cost Containment Act of 1977" and after deliberations in both the subcommittee and in the Committee on Human Resources, the bill, as amended, was ordered reported to the Senate on August 2, 1977.

At that time a detailed report on that legislation was prepared and distributed as a committee print because, under the Senate Rules, legislation such as this which is jointly referred to two or more committees must be jointly reported. This effective cost containment bill has been left on the floor of the Senate Finance Committee.

Last week, the Senate Finance Committee reported a bill, H.R. 5285, which includes provisions that affect hospital reimbursements; unfortunately, those provisions will not significantly affect hospital cost escalation. The bill reported from the Committee on Human Resources would save almost $60 billion over the next 5 years. The Finance Committee bill reported last week would save less than 1 percent of that amount—less than $400 million over the next 5 years.

Mr. President, today I am submitting an amendment to H.R. 5285. This amendment is title I of the bill reported by the Committee on Human Resources—a bill which would save $60 billion. My distinguished colleagues Senators WILLIAMS, PELL, NELSON, CRANSTON and HATHAWAY have joined me as cosponsors. I am hopeful that this amendment will be enacted so that we can begin to effectively slow down the rising costs of health care.

Mr. President, so that my colleagues and their staffs may have the benefit of the deliberation of the Committee on Human Resources, I ask unanimous consent that the amendment and portions of an analysis prepared by the Committee on Human Resources of title I of the bill reported by the committee be printed in the RECORD.

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

AMENDMENT NO. 3477

Beginning on page 3, line 1, strike out through line 19, page 20, and substitute the following:

REPORT ON PERMANENT REFORM IN THE DELIVERY AND FINANCING OF HEALTH CARE

SEC. 2. The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") shall submit to the Congress, no later than March 1, 1979, a report setting forth his recommendations for permanent reforms in the delivery and financing of health care which will increase the efficiency, effectiveness, and quality of health care in the United States and which will replace the transitional provisions of.

TITLE I—TRANSITIONAL HOSPITAL COST CONSTRAINT PROVISIONS

PART A—PURPOSE OF THE PROGRAM

SEC. 101. It is the purpose of the transitional hospital cost containment program established by this title to constrain the rate of increase in total hospital inpatient costs, beginning January 1, 1979, and continuing until the adoption of the permanent reforms referred to in section , by limiting the amount of revenue which may be received by the hospitals that are subject to the provisions of this title from Government programs, private insurers, and individuals who pay directly for hospital care.

PART B—ESTABLISHMENT OF HOSPITAL COST CONTAINMENT PROGRAM

IMPOSITION OF LIMIT ON HOSPITAL REVENUE INCREASES

SEC. 111. (a) The average reimbursement payable per admission to a hospital by any cost payer, and the average inpatient charges per admission of a hospital for any accounting year any part of which occurs after December 31, 1978, may not (except as provided in subsection (b), or in section 114, 115, 117, 118, 119, 124, or 131) exceed such average reimbursement payable per admission or such average inpatient charges per admission, respectively, for the hospital's base accounting year adjusted by a percentage equal to the product of the following factors—

(1) one hundred plus the percentage by which the hospital's costs for inpatient hospital services (as calculated for purposes of title XVIII of the Social Security Act) would have increased in the period after the close of the hospital's base accounting year and prior to January 1, 1979, if such costs had increased (during that period) at the average annual rate of increase in the hospital's costs for inpatient hospital services (as calculated for purposes of title XVIII of the Social Security Act) during the two-year period ending with the close of such base accounting year, except that such percentage as applied for purposes of this section shall not be more than 15 per centum nor less than 6 per centum.

(2) one hundred plus the percentage by which such average reimbursement payable per admission or average inpatient charges per admission would have increased in the period after December 31, 1978 (or after the close of the hospital's base accounting year, if later), and prior to the first day of the accounting year for which the limit is being imposed if such average reimbursement payable per admission or average inpatient charges per admission had increased (during such period) at an annual rate equal to the inpatient hospital revenue increase limit determined and promulgated under section 112(b), and

(3) one hundred plus the percentage by which such average reimbursement payable per admission or average inpatient charges per admission would increase (or decrease) in the hospital's accounting year (except for any part thereof occurring before January 1, 1979) for which the limit is being imposed if such average reimbursement payable per admission or average inpatient charges per admission increase (or decrease) during such accounting year at an annual rate equal to the adjusted inpatient hospital revenue increase limit applicable to the hospital under section 112(a).

(b) For an accounting year which ends after December 31, 1978, but before December 31, 1979, the ceiling established under subsection (a) for average inpatient charges per admission of a hospital and for average reimbursement payable per admission to that hospital by each cost payer shall be applied only to that percentage of the inpatient charges or reimbursement paid, respectively, as the number of days in that accounting year occurring after December 31, 1978, is of the total number of days in that accounting year.

(c) For purposes of subsection (a), in the case of the admission of an individual whose inpatient hospital services are paid for in part by more than one cost payer, the admission shall be attributed to the cost payer which pays for any such services excluding any amounts paid as a deductible by a cost payer.

DETERMINATION OF ADJUSTED INPATIENT HOSPITAL REVENUE INCREASE LIMIT

SEC. 112. (a) The "adjusted inpatient hospital revenue increase limit" which is applicable to any hospital for purposes of section 111(a)(3) with respect to any accounting year shall (subject to sections 124 and 131) be equal to the inpatient hospital revenue increase limit determined and promulgated under subsection (b) of this section for the twelve-month period in which such accounting year ends, modified by the application of the "volume load formula" which is promulgated under section 113 and applied to that hospital.

(b)(1) Between October 1 and December 31 of each calendar year beginning with 1978, the Secretary shall promulgate a figure which (subject to paragraph 2)) shall be the "inpatient hospital revenue increase limit" applicable to accounting years ending in the twelve-month period beginning January 1 of the next year. Such figure shall be, except as provided in section 131, the sum of—

(A) the rate of increase in the implicit price deflator of the gross national product as calculated by the Bureau of Economic Analysis of the Department of Commerce and published in the Survey of Current Business (hereinafter in this title referred to as the "GNP deflator") for the twelve-month period ending September 30 of such year over the GNP deflator for the previous twelve-month period and

(B) one-third of the difference between—

(i) the average annual rate of increase in total expenditures of hospitals (or distinct parts thereof) which satisfy the requirements of section 121(a) which is found by the Secretary to have occurred during the two previous calendar years, and

(ii) the average annual rate of increase in the GNP deflator for the two previous calendar years.

(2) If the Secretary finds that for any twelve-month period for which a figure is promulgated under paragraph (1) the GNP deflator with respect to such period has exceeded or is expected to exceed by more than 1 percentage point the GNP deflator which was used in making the determination under paragraph (1) (or in making a prior adjustment under this paragraph), the Secretary shall increase (or further increase) the GNP deflator so used by the amount of such excess; except that no adjustment made under this paragraph shall be effective with respect to any accounting year ending prior to the calendar quarter preceding the calendar quarter in which such adjustment is made.

PROMULGATION OF VOLUME LOAD FORMULA

SEC. 113. (a) The volume load formula shall be promulgated by the Secretary within thirty days after the date of enactment of this Act. It shall be defined for any accounting year for which an adjusted inpatient hospital revenue increase limit is determined as the average of—

(1) the per centum change in the number of admissions since the base year, and

(2) the per centum change in the number of patient days since the base year.

(b) The volume load formula shall be applied to generate an adjusted inpatient hospital revenue increase limit for each hospital applicable to the average inpatient charges per admission of the hospital and to the average reimbursement payable per admission to the hospital by each cost payer, and for a hospital whose volume load (in the accounting year to which the adjusted inpatient hospital revenue increase limit applies)—

(1) increases by less than 2 per centum or declines by less than 10 per centum of the total volume load in the hospital's base accounting year, the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted for that accounting year shall equal the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted by the inpatient hospital revenue increase limit if there were no change in volume load,

(2) increases by 2 per centum or more but less than 15 per centum of the total volume load in the hospital's base accounting year, the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted for that accounting year shall equal the sum of (A) the amount specified under clause (1), and (B) one-half of the amount specified under clause (1) multiplied by the increase in volume load above the 2 per centum limit.

(3) declines by 10 per centum or more but by less than 15 per centum of the total volume load in the hospital's base accounting year, the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted for that accounting year shall equal the difference between (A) the amount specified under clause (1), and (B) one-half of the amount specified under clause (1) multiplied by the decline in volume load below the 10 per centum limit,

(4) increases by 15 per centum or more of the total volume load in the hospital's base accounting year, the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted for that accounting year shall equal the greatest maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted under clause (2), or

(5) decreases by 15 per centum or more of the total volume load in the hospital's base accounting year, the maximum total inpatient charges and the maximum reimbursements payable by cost payers permitted for that accounting year shall equal the difference between (A) the smallest maximum total inpatient charges and the smallest maximum reimbursements payable by cost payers permitted under clause (3), and (B) the amount specified under clause (1) multiplied by the decline in volume load below the 15 per centum limit.

BASE ACCOUNTING YEAR AND MODIFICATION OF CHARGES AND REIMBURSEMENT FOR THAT YEAR

SEC. 114. (a) For purposes of this title, a hospital's "base accounting year" is its accounting year which ended in 1977, or, if later, the second accounting year during all of which the hospital has been a hospital as defined in section 121.

(b) For purposes of calculating under section 111(a) the average inpatient charges per admission of a hospital and the average reimbursement payable per admission to the hospital by each cost payer for the base

accounting year, the inpatient charges of the hospital (and the reimbursement payable to the hospital by a cost payer) for the base accounting year shall (except as provided in subsection (c)) be reduced by an amount equal to any inpatient charges (in the case of a cost payer, inpatient charges attributable to that cost payer) for such base accounting year for element of inpatient hospital services which cease to be furnished in an accounting year which is subject to this title, multiplied by the portion of that accounting year (or part thereof) subject to this title during which such services are not furnished.

(c) Subsection (b) shall not apply with respect to inpatient hospital services which have been found to be not appropriate pursuant to section 1523(a)(6) of the Public Health Service Act by the State health planning and development agency designated under section 1521 of such Act for the State in which the hospital is located.

ESTABLISHMENT OF EXCEPTIONS

SEC. 115. (a) Upon request by a hospital, the Secretary may grant exceptions from the limits established under this title to such hospital to the extent that such hospital provides evidence satisfactory to the Secretary—

(1) of the extent to which costs for inpatient hospital services (as calculated for purposes of title XVIII of the Social Security Act) for such hospital in an accounting year exceed such costs in the base accounting year as the result of—

(A) changes in volume load in the range specified in clause (4) or (5) of section 113, or

(B) changes in capacity or in the character of inpatient hospital services available in the hospital, or renovation or replacement of physical plant which changes, renovation, or replacement increase costs for inpatient hospital services per admission by more than the per centum specified in section 112(b)(1)(B) over costs for inpatient hospital services per admission in the previous accounting year; and

(2) that the current ratio of assets to liabilities (determined in accordance with the last sentence of this subsection) is less than two; and

(3) that the changes in volume load, capacity, or character of inpatient hospital services, or the renovation or replacement generating the excess costs described in paragraph (1) have been found, pursuant to section 1523 of the Public Health Service, to be needed or appropriate by the State health planning and development agency designated under section 1521 of such Act for the State in which such hospital is located.

For purposes of paragraph (2), the term "current ratio of assets to liabilities", with respect to any hospital, means the sum of the cash, notes and accounts receivable (less reserves for bad debts), marketable securities, and inventories held by such hospital divided by the sum of all liabilities of that hospital falling due in an accounting year for which the exception is requested under this section.

(b) Upon request by a hospital, the Secretary may grant exceptions from the limits established under this title to such hospital to the extent that such hospital provides evidence satisfactory to the Secretary that—

(1) there has been a change in the inpatient hospital services for such hospital for which reimbursement is payable by a cost payer, or the basis on which the reimbursement payable by a cost payer is calculated has changed, or

(2) the percentage of inpatient charges attributable to any cost payer has changed for such hospital, and such change has reduced the total revenue of such hospital by at least the per centum specified in section 112(b)(1)(B) of the costs for inpatient hospital services (as calculated for purposes of title XVIII of the Social Security Act).

(c) The Secretary shall either approve any request for an exception made by a hospital under subsection (a) or (b), or deny such request, within a period not to exceed ninety days after the hospital has filed in a manner and form prescribed by the Secretary the evidence required by such subsection. (If such hospital has not received written notice within fifteen days that such request has not been filed in such manner and form, such request shall be deemed to have been filed in the prescribed manner and form.) Any such request not denied within such ninety-day period shall be deemed approved.

(d) Any hospital granted an exception under subsection (a) shall make itself available for an operational review by the Secretary. As a result of such review, the Secretary may make recommendations to such hospital for improvements to increase such hospital's efficiency and economy. The Secretary may discontinue, after notice and an opportunity for a hearing on the record, any such exception for failure of the hospital to implement any such recommendation.

(e)(1) If the Secretary grants an exception with respect to any accounting year to a hospital on the grounds set forth in subsection (a)(1)(A), the upper or lower 15 per centum limitation specified in clauses (2) and (3), respectively, of section 113(b) shall be permanently changed for that hospital to the upper or lower per centum limitation determined by the Secretary.

(2) If the Secretary grants an exception with respect to any accounting year to a hospital on the grounds set forth in subsection (a)(1)(B), such hospital shall be allowed increased total revenue for purposes of this title for such accounting year and all subsequent accounting years (and the limit on the allowable rate of increase under section 111 for charges imposed by the hospital and reimbursement from its cost payers shall be adjusted upward accordingly) in an amount no greater than the amount the Secretary estimates, at the time he grants the exception, is necessary to maintain the current ratio of its assets to liabilities (determined in accordance with the last sentence of subsection (a)) at the level specified in subsection (a)(2).

(3) If the Secretary grants an exception with respect to any accounting year to a hospital on the grounds set forth in subsection (b)(1), such hospital shall be allowed increased total revenue for purposes of this title for such accounting year and all subsequent accounting years (and the limit on the allowable rate of increase under section 111 for charges imposed by the hospital and reimbursement from its cost payers shall be adjusted upward accordingly) in an amount equal to the amount the Secretary estimates, at the time he grants the exception, is necessary to offset the loss in revenue caused by the changes for which the exception was granted.

(4) If the Secretary grants an exception with respect to any accounting year to a hospital on the grounds set forth in subsection (b)(2), such hospital shall be allowed increased total revenue for purposes of this title for such accounting year (and the limit on the allowable rate of increase under section 111 for charges imposed by the hospital and reimbursement from its cost payers shall be adjusted upward accordingly) in an amount equal to the amount the Secretary estimates, at the time he grants the exception, is necessary to offset the loss in revenue caused by the changes for which the exception was granted.

(f)(1) Any hospital, or any entity described in section 1842(f)(1) of the Social Security Act, which is dissatisfied with a determination of the Secretary made under this section may obtain a hearing before the Provider Reimbursement Review Board established under section 1878 of the Social Security Act, if the amount in controversy is $10,000 or more and the request for such hearing is filed within one hundred and eighty days after receipt of the Secretary's determination.

(2) The Secretary (notwithstanding section 1878(h) of the Social Security Act) shall appoint five additional members to the Provider Reimbursement Review Board, following the specifications for expertise applicable to the existing five members. Such five additional members shall constitute the Board for purposes of reviewing appeals under this title. The other provisions of subsections (c), (d), (e), (f), (h), and (i) of section 1878 of the Social Security Act shall apply, except that the Board as so constituted shall be considered as reviewing decisions of the Secretary rather than of a fiscal intermediary.

(g) Upon request by a hospital, the State health planning and development agency designated under section 1521 of the Public Health Service Act for the State in which the hospital is located shall make a finding as to the appropriateness of specific institutional health services for purposes of subsection (a)(3) or section 114(c) of this title, after requesting the recommendations of the appropriate health systems agency. The finding of a State health planning and development agency under this subsection shall not be subject to further review.

ENFORCEMENT

SEC. 116. (a) Notwithstanding any provision of title XVIII of the Social Security Act, reimbursement for inpatient hospital services under the program established by that title shall not be payable, on an interim basis or in final settlement, to the extent that it exceeds the applicable limits established under this title or under the program for a State whose hospitals have been excluded under section 117 or 119 from the application of this title.

(b) Notwithstanding any provision of title V or XIX of such Act, payment shall not be required to be made by any State under either such title with respect to any amount paid for inpatient hospital services in excess of the applicable limits established under this title; nor shall payment be made to any State under either such title with respect to any amount paid for inpatient hospital services in excess of such limits.

(c) Notwithstanding any other provision of law, the imposition by any hospital of inpatient charges in excess of the applicable limit established under this title, or any payment by any cost payer (as defined in section 122(e)(2)) for inpatient hospital services in excess of such limit, shall subject such hospital or cost payer—

(1) to the Federal excise tax imposed by section 4991 of the Internal Revenue Code of 1954 (as added by section 128 of this Act), and

(2) to exclusion, at the discretion of the Secretary, from participation in any or all of the programs established by title V, XVIII, or XIX of the Social Security Act.

(d) Any hospital shall be exempt from the penalties set forth in subsection (c) if it holds in escrow an amount equal to its inpatient charges in excess of the applicable limit established under this title multiplied by the percentage of such charges not attributable to cost payers until such time as future inpatient hospital charges fall below the applicable limits established under this title, in an amount equal to the amount in escrow; but any such hospital which fails to do so shall be subject to such penalties.

EXEMPTION FOR HOSPITALS IN CERTAIN STATES

SEC. 117. At the request of the Governor (or other chief executive) of any State the Secretary may exclude from the application of this title except for sections 125 and 126 all hospitals (as defined in section 121(c)) physically located in such State if—

(a) the Secretary finds that such State has in operation as of the date of such request a program capable of containing hospital costs for inpatient hospital services in the State which covers at least 90 per centum of the hospitals in the State which would otherwise be covered under the program established by this title;

(b) the Secretary finds that the State program applies at least to all revenues for inpatient hospital services of hospitals covered by the program and has applied for at least one year prior to the date of such request to at least half of those revenues (excluding revenues received under title XVIII of the Social Security Act);

(c) the Governor (or chief executive) certifies, and the Secretary determines, that the aggregate rate of increase in revenues over the previous accounting year for inpatient hospital services for all hospitals in the State will not (1) exceed 110 per centum of the inpatient hospital revenue increase limit determined pursuant to paragraphs (b)(1) and (b)(2) of section 112, except that, at the option of the State, the above limit shall increase by the amount of increases in revenues attributable to increases in regular wages (as defined in section 124(b)(1)) which are exempt under section 124, nor (2) be less than the increase in the GNP deflator applicable to that fiscal period; and

(d) the Governor (or chief executive) has submitted, and had approved by the Secretary, a plan for recovering any excess of total revenue which (notwithstanding paragraph (c)) may occur.

EXEMPTION FOR HOSPITALS ENGAGED IN CERTAIN EXPERIMENTS OR DEMONSTRATIONS

SEC. 118. A hospital or group of hospitals (as defined in section 121(c)) may be excluded from the application of this title except for sections 125 and 126 if the Secretary determines that (1) such exclusion is necessary to facilitate or continue an experiment or demonstration entered into under section 402 of the Social Security Amendments of 1967, section 222 of the Social Security Amendments of 1972, or section 1526 of the Public Health Service Act, and (2) such experiment or such demonstration is not inconsistent with the provisions of this title.

EXEMPTION FOR STATES WITH COST CONTAINMENT PROGRAMS

SEC. 119. (a) Any State may submit to the Secretary a plan for a hospital cost containment program for approval. The Secretary shall approve such a program and exempt from the application of this title except for sections 125 and 126 all hospitals (as defined in section 121(c)) physically located in such State if the Secretary determines that such program—

(1) designates an identifiable unit of State government which has the authority to supervise the administration of the program;

(2) provides for a methodology to assure that the aggregate rate of increase in revenues for inpatient hospital services over the previous year for all hospitals in the State will not exceed 110 per centum of the inpatient hospital revenue increase limit determined pursuant to paragraphs (b)(1) and (b)(2) of section 112 nor be less than the increase in the GNP deflator applicable to that fiscal period. Such methodology may include alternative methods for classifying hospitals, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate hospitals through positive (or negative) financial incentives to use their facilities and personnel more efficiently without adversely affecting the quality of services;

(3) includes a methodology for the recovery of any excess of total revenues which (notwithstanding paragraph (2)) may occur;

(4) provides for sanctions and enforcement procedures adequate to insure compliance with the program;

(5) provides for uniform definition of all costs;

(6) provides for the evaluation of standards of institutional performance;

(7) provides that the limit specified in paragraph (2) shall increase by the amount of increase in regular wages (as defined in section 124(b)(1)); and

(8) provides for compliance with such other criteria as the Secretary deems necessary to accomplish the purposes of this title and which are not inconsistent with the provisions of this title.

(b) The Secretary may make grants to any State which has an approved program pursuant to subsection (a) to assist such State in the implementation of its program. For the purposes of this subsection, there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1979, and such sums shall remain available until expended.

(c) The Secretary shall promulgate regulations to implement this section within one hundred and eighty days of the date of enactment of this Act.

REVOCATION OF EXEMPTIONS UNDER SECTIONS 117, 118, AND 119

SEC. 120. (a) The Secretary shall review annually any program, experiment, or demonstration that has received an exemption pursuant to section 117, 118, or 119 to determine whether such program, experiment, or demonstration is in compliance with such section and the regulations promulgated thereunder. The Secretary may revoke, after notice and an opportunity for a hearing on the record, any such exemption if he determines that such exemption is no longer justified because the conditions for such exemption are no longer being met.

(b) Upon revocation of an exemption awarded under section 117, 118, or 119 each hospital that would otherwise be subject to this title will be subject to the limits established under this title for each full accounting year as defined by section 122(a)(1) any part of which was not subject to the program, experiment, or demonstration established under section 117, 118, or 119.

PART C—DEFINITIONS AND MISCELLANEOUS PROVISIONS

DEFINITION OF HOSPITAL AND APPLICABILITY OF TITLE

SEC. 121. (a) For purposes of this title (subject to subsection (b), (c), and (d) of this section), the term "hospital", with respect to any accounting year, means an institution (including a distinct part of an institution if the distinct part participates in the program established under title XVIII of the Social Security Act) which—

(1) satisfies clauses (1) and (7) of section 1861(e) of the Social Security Act, and

(2) had an average duration of stay of thirty days or less in the preceding accounting year.

(b) A hospital shall not be subject to this title except for the purposes of sections 125 and 126 for an accounting year if it—

(1) has met the conditions specified in subsection (a) (under present and previous ownership) for less than two years before such accounting year;

(2) derives more than 75 per centum of its inpatient care revenues, disregarding revenues received under title XVIII of the Social Security Act, from one or more health maintenance organizations (as defined in section 1301(a) of the Public Health Service Act) during such accounting year;

(3) has had, in the three accounting years preceding such accounting year, average annual admissions of two thousand or less; or

(4) has had in the three accounting years preceding such accounting year, average admissions that are greater than two thousand and less than four thousand; is a sole community provider, as defined by the Secretary; and, is not physically located within a Standard Metropolitan Statistical Area.

(c) For the purposes of sections 117, 118, and 119, the term "hospital", with respect to any accounting year, means an institution (including a distinct part of an institution if the distinct part participates in the program established under title XVIII of the Social Security Act) which meets the requirements of paragraphs (1) and (2) of subsection (a) except that a hospital shall not be subject to the provisions of such sections if it meets the requirements of paragraph (2) of subsection (b).

(d) A hospital shall not be subject to any provisions of this title if it is a Federal hospital.

OTHER DEFINITIONS

SEC. 122. For purposes of this title—

Accounting Year

(a)(1) The term "accounting year" means except as provided in paragraph (2),—

(A) in the case of a hospital participating in the program established by title XVIII of the Social Security Act, a period of twelve consecutive full calendar months including the same months as the last full reporting period allowed for reimbursement purposes under such title; and

(B) in the case of a hospital not participating in the program established by title XVIII of the Social Security Act, a calendar year, or, if requested by the hospital, such other period of twelve consecutive full calendar months as the Secretary may designate.

(2) The Secretary may establish an "accounting year" of less than twelve months, and make appropriate adjustments in the application of this title to that period, for an entity whose "accounting year" under paragraph (1) is changed from one twelve month period to another or for other reasons that the Secretary deems appropriate.

Inpatient Hospital Services

(b) The term "inpatient hospital services" has the meaning given it by section 1861(b) of the Social Security Act including in addition the services otherwise excluded by paragraph (5) thereof.

Inpatient Charges

(c) The term "inpatient charges" means (1) charges (as defined in section 405.452(d)(4) of title 20 of the Code of Federal Regulations as in effect on the date of enactment of this Act) for inpatient hospital services or (2) except for purposes of subsection (e), the hospitals costs for inpatient hospital services (as calculated for purposes of title XVIII of the Social Security Act), if such costs are greater than the charges as defined in clause (1).

Admission

(d) The term "admission" means the formal acceptance of an inpatient by a hospital, excluding newborn children (unless retained after discharge of the mother) and excluding transfers within inpatient units of the same institution.

Cost Payer

(e) The term "cost payer" means—

(1) a program established under title V, XVIII, or XIX of the Social Security Act, and

(2) any organization which (A) meets the definition in section 1842(f)(1) of the Social Security Act, and (B) reimburses a hospital subject to this title for inpatient hospital services on a basis related to the hospital's costs in furnishing those services or on any other basis other than inpatient charges.

(f) The term "reimbursement payable by a cost payer" means the sum of—

(1) the amounts payable by the cost payer to a hospital for inpatient hospital services, and

(2) the amounts payable by an individual to the hospital for inpatient hospital services if the individual's expenses for such services are payable in part by the cost payer, to the extent that those amounts are calculated as a portion of the costs or other basis on which the amounts payable by the cost payer are determined.

State

(g) The term "State" includes Puerto Rico, Guam, the District of Columbia, and the Virgin Islands.

DETERMINATION OF INPATIENT REIMBURSEMENT

SEC. 123. For purposes of section 111, inpatient reimbursement under a program established under title V, XVIII, or XIX of the Social Security Act shall be determined without regard to adjustments resulting from the application of section 405.460(g), 405.455(d), 405.415(f), or 405.415(d)(3) of title 20 of the Code of Federal Regulations.

EXEMPTION OF NONSUPERVISORY PERSONNEL WAGE INCREASES FROM REVENUE LIMIT

SEC. 124. (a) The Secretary shall modify the inpatient hospital revenue increase limit (for purposes of section 111(a)(2)) and the adjusted inpatient hospital revenue increase limit (for purposes of section 111(a)(3)) otherwise established for any hospital which is subject to the provisions of this title except for those hospitals exempted pursuant to section 117, 118 or 119 for any accounting year beginning before April 1980, as prescribed in subsection (b).

(b) Such modified limits for any accounting year shall be calculated by adding together—

(1) the average percentage increase in regular wages (as that term is used for purposes of the Fair Labor Standards Act of 1938) per employee per hour granted to employees other than doctors of medicine or osteopathy and supervisors (as defined in section 2(12) of the National Labor Relations Act) during that accounting year multiplied by the percentage of total costs for in-patient hospital services (as calculated for purposes of title XVIII of the Social Security Act) attributable to such wages in the preceding accounting year; and

(2) the adjusted inpatient hospital revenue increase limit otherwise applicable to the hospital for that accounting year under this title multiplied by the percentage of such costs attributable to all other expenses in the preceding accounting year; and

(3) 100 percent plus the average percentage increase in regular wages (as defined in clause (1)) per employee per hour granted to employees specified in clause (1), multiplied by the product of (A) the percentage of total costs for inpatient hospital services (as calculated under clause (1)) attributable to such wages in the preceding accounting year, and (B) the fractional increase in the average number of such employees in the accounting year for which the modified limit is calculated over the average number of such employees in the preceding accounting year; provided, that the total percentage determined under this clause may not exceed the difference between the percentage which would be obtained under clause (1) if the adjusted inpatient hospital revenue increase limit were used instead of the average percentage increase in regular wages per employee per hour, and the percentage actually calculated under clause (1).

(c) The modified inpatient hospital revenue increase limit and adjusted inpatient hospital revenue increase limit established under subsection (b) for any hospital with respect to any accounting year shall constitute such hospital's inpatient hospital revenue increase limit under section 111(a)(2) or, as appropriate, the adjusted inpatient hospital revenue increase limit under section 111(a)(3), for such accounting year for all purposes of this title.

DISCLOSURE OF FISCAL INFORMATION

SEC. 125. (a) Every hospital shall submit to the health systems agency designed under section 1515 of the Public Health Service Act for the health service area in which it is located by March 1 and September 1 of each year, a report, in a form prescribed by the Secretary, the rates charged for each of the 30 most frequently used hospital services, as specified by the Secretary, including the average semiprivate and private room rates.

(b) Each such hospital shall submit annually to such health systems agency, within ninety days of the close of each such hospital's accounting year, a report, in a form prescribed by the Secretary, which contains information, as specified by the Secretary, describing the ownership, management, and financial status of each such hospital including:

(1) a balance sheet as of the end of such accounting year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, and depreciation;

(2) a statement of operations for such accounting year, setting forth all operating and non-operating revenues and expenses including the percent increase in wages for nonsupervisory personnel during such accounting year (including a comparison with all previous accounting years subsequent to the date of enactment of this Act);

(3) the name and address of any person—

(A) who has (directly or indirectly) an ownership, lease or rental interest of 5 per centum or more in such hospital, or who is the owner (directly or indirectly) of an interest of 5 per centum or more in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such hospital or any of the property or assets thereof, or

(B) who is an officer or director of the hospital if it is organized as a corporation; and

(4) the name and address of any individual, corporation, partnership or other legal entity with whom the hospital has had, during the previous twelve months, business transactions in an aggregate amount in excess of $5,000 if a person described in paragraph (3) or a person who exercises discretionary authority or discretionary control respecting the financial management of the hospital (A) is such an individual or (B) has (directly or indirectly) an ownership interest of 5 per centum or more in such corporation, partnership or other legal entity; and

(5) the names and annual compensation including salary and benefit increases of the hospital's principal operating personnel, as defined by the Secretary.

(c) Every hospital shall submit annually to such health systems agency all costs reports submitted to each cost payer, as defined in section 122(e) of this Act, and its overall plan and budget described in section 1861(z) of the Social Security Act (if it participates in the program established by title XVIII of that Act).

(d) If a hospital fails to fully comply with the requirements of subparagraph (a), (b), and (c) and any regulation promulgated thereunder, the Secretary shall notify the hospital and any payment due to such hospital pursuant to titles XVIII, XIX, and XX of the Social Security Act or any other program supported in whole or in part by funds supplied by the United States shall be reduced by 10 per centum effective with the date of such notice and such reduction shall continue in effect until the hospital fully complies with the requirements of subparagraphs (a), (b), and (c) or any regulation promulgated thereunder: *Provided*, That if the Secretary finds that the hospital has fully complied with such requirements within ninety days of notification by the Secretary of a violation, the Secretary may, in his discretion, waive all or part of the reduction in payments prescribed herein.

(e) Each such health systems agency shall make available to the public for inspection and copying (at the reasonable expense of the public) the information supplied to the health systems agency pursuant to this section in readily understandable language and in a manner designed to facilitate comparisons among the hospitals in the health system agency's health service area.

IMPROPER CHANGES IN ADMISSION PRACTICES

SEC. 126. Upon written complaint by any person that one of more hospitals has changed its admission practices in a manner that would tend to reduce the proportion of inpatients of such hospital or hospitals for whom reimbursement is less than the anticipated inpatient charges applicable to such inpatients, the Secretary shall investigate the complaint. The Secretary may impose, after notice and an opportunity for a hearing on the record, the sanction set forth in section 116(c)(2) if he determines that such complaint is justified.

REVIEW OF CERTAIN DETERMINATIONS

SEC. 127. Any determinations made on behalf of the Secretary under this title with respect to the application of its provisions to individual hospitals (other than determinations made under section 115 or 126) shall be subject to the provisions of section 1878 of the Social Security Act in the same manner as determinations with respect to the amount of reimbursement due a provider of services under title XVIII of such Act.

EXCISE TAX ON EXCESSVE PAYMENTS FOR INPATIENT HOSPITAL SERVICES

SEC. 128. (a) Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 45—TAX ON CERTAIN EXCESSIVE PAYMENTS FOR INPATIENT HOSPITAL SERVICES

"Sec. 4991. Imposition of tax.

"SEC. 4991. IMPOSITION OF TAX

"(a) IN GENERAL.—(1) There is hereby imposed, with respect to the receipt by any hospital of any payment made by any cost payer for inpatient hospital services in excess of the applicable limit established by , and with respect to any payment made by any cost payer as defined in section 122(e)(2) of such Act for inpatient hospital services in excess of such limit, a tax equal to 150 percent of the amount of such excess. The tax imposed by this paragraph shall be paid both by the hospital and by the cost payer.

"(2) There is hereby imposed, with respect to the inpatient charges of any hospital in excess of the applicable limits established by multiplied by the percentage of such charges not attributable to cost payers, a tax equal to 150 percent of the amount of such excess. The tax imposed by this paragraph shall be paid by the hospital.

"(b) EXCEPTION.—The tax imposed by subsection (a)(2) shall not apply with respect to any hospital so long as it is determined by the Secretary of Health, Education, and Welfare to be taking the corrective action described in section 116(d)(2) of the .

"(c) DEFINITIONS.—Terms used in subsections (a) and (b) have the meanings given them by .

"(d) ADMINISTRATION.—Under and to the extent provided by regulations of the Secretary, the appropriate provisions of subtitle F (relating to procedure and administration) shall be made applicable with respect to the tax imposed by subsection (a) of this section.".

(b) The table of chapters for subtitle D of such Code is amended by adding at the end thereof the following new item:

"Chapter 45. Tax on certain excessive payments for inpatient hospital services.".

EFFECT OF ACT ON PAYMENTS BELOW THE ESTABLISHED LIMITS

SEC. 129. This Act shall not require any Federal or State program or any person to pay a hospital more than that program or person would have been required to pay had this Act not been enacted.

CITIZEN'S CIVIL ACTIONS

SEC. 130. (a) Except as provided in paragraph (b) of this section any person may commence a civil action for injunctive relief, including interim equitable relief, on his own behalf, whenever such action consitutes a case or controversy—

(1) against any person (including the Secretary) who is alleged to be in violation of section 125, 126, 128, or 129 of this title or any regulation promulgated thereunder; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty pursuant to section 125, 126, 128, or 129 of this title or any regulation promulgated thereunder.

The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount of controversy, or of the citizenship of the parties.

(b) No civil action may be commenced—

(1) under paragraph (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation to the Secretary and to any alleged violator in such manner as the Secretary may by regulation require; or

(B) if the Attorney General or the Secretary has commenced and is diligently pursuing judicial proceedings or administrative action with respect to such alleged violation; or

(2) under paragraph (a)(2) of this section, prior to sixty days after the plaintiff has given notice to the Secretary of such alleged failure to perform an act or duty.

(c) In any action under this section, the Attorney General or the Secretary may intervene as a matter of right. The decision and rulings of the court, in any judicial proceeding commenced under this section, shall not be a bar to the institution of any judicial proceeding or administrative action by the Secretary against a party to such judicial proceeding. No factual finding by such court shall be determinative as to any fact in any subsequent judicial proceeding or administrative action brought by the Secretary, unless the Secretary is a party to the proceeding under this section.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including a reasonable attorney's fee, based on the prevailing rates for such services, and expert witness fees) to any party, whenever the court determines that such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or at common law to seek enforcement of any regulation or order or to seek any other relief.

(f) Nothing in this section shall require the disclosure of any trade secret information or any other confidential information except as provided by the Federal Rules of Civil Procedure.

SEC. 131. (a) Within one year of the date of enactment of this Act, the Secretary shall—

(1) after consultation with the Bureau of Labor Statistics of the Department of Labor, the Bureau of Economic Analysis of the Department of Commerce, and other appropriate public and private organizations, promulgate a figure that more accurately reflects the rate of increase in the prices of the inputs necessary for the production and delivery of hospital services. Such figure shall replace the figure promulgated pursuant to section 112 as the new inpatient hospital revenue increase limit; and

(2) make any changes in the exceptions process established by section 115 as deemed necessary or appropriate by the Secretary as a result of the promulgation of the new inpatient hospital revenue increase limit pursuant to paragraph (1) of this section. The Secretary shall make such changes in order to insure that—

(A) only hospitals that are experiencing financial crises, as defined by the Secretary, and that have not incurred expenses in excess of those found to be necessary pursuant to section 1861(v)(1)(A) of the Social Security Act are allowed to receive exceptions; and

(B) exceptions will only be granted to hospitals that qualify under clause (A) and that have—

(i) experienced an unforseeable or unavoidable rise in the price of malpractice insurance, other liability insurance, energy or such other items as the Secretary deems appropriate which result in hospital expenditures in excess of the figure promulgated pursuant to paragraph (1) of this subsection;

(ii) experienced a change in patient mix resulting from expanded institutional capacity provided such expansion has been either found by a State health planning and development agency designated under section 1521 of the Public Health Service Act to be in conformity with applicable standards, criteria, and plans under an agreement pursuant to section 1122 of the Social Security Act or approved by such agency under a certificate-of-need program which is satisfactory to the Secretary under section 1523(a)(4) of the Public Health Service Act;

(iii) experienced unusual increased expenses, as defined by the Secretary, associated with the closing, modifying, or changing usage of all or part of its facilities by eliminating excess bed capacity; discontinuing an underutilized service for which there are adequate alternative sources; or, substituting for the underutilized service some other service which is needed in the area and which is consistent with the findings of an appropriate health planning agency; or

(iv) experienced such other change in condition that the Secretary deems an appropriate justification for an exception:

Provided, That such reasons for hospitals qualifying for exceptions as set forth in clauses (i) through (iv) have been found pursuant to section 1523 of the Public Health Service Act to be needed or appropriate by the State health planning and development agency designated under section 1521 of such Act for the State in which the hospital requesting the exception is located.

(b) The changes in the inpatient hospital revenue increase limit and the exceptions process prescribed by subsection (a) shall apply to hospitals for their accounting years commencing after such changes are in effect.

(c) Any changes made pursuant to sections (a)(1) and (a)(2) shall become effective after sixty days of continuous session of the Congress after the Secretary has submitted such changes to the Congress together with a detailed statement of the reasons underlying such changes, unless either House passes a resolution during such sixty-day period stating in substance that it does not favor such changes.

SEC. 132. The Secretary, after consultation with appropriate public and private organizations, shall establish within one year of the date of enactment of this Act the following:

(a) an accounting and uniform functional cost reporting system (including uniform procedures for allocation of costs) for determining operating and capital costs of hospitals providing services.

(b) a system which will classify hospitals according to size, geographical location, and other criteria which will reflect efficiency and services provided;

(c) a system that more accurately measures the changes in hospital cost associated with changes in hospital volume;

(d) a system that monitors, on a current basis, shifts in case mix including shifts of cases with higher than average costs per admission:

(e) a system that measures the output of hospitals which includes a way to identify hospitals that provide better than average care than hospitals of similar characteristics; and

(f) a system that would reimburse hospitals of similar characteristics differently based on the system established pursuant to subsection (e).

SEC. 133. (a) The Secretary shall arrange for the conduct of a study or studies of methods for controlling the costs of and/or revenue received for hospital outpatient services, long term care services, and ambulatory care services.

(b) The study or studies required by subsection (a) shall be completed within one year of the date of enactment of this Act. Within thirty days of the date of completion of such study or studies, such study or studies and the report or reports thereon shall be submitted to Congress. Such report or reports shall include recommendations, if any, for legislative and administrative action.

SEC. 134. The Secretary shall monitor, on a current basis, the economic impact of all the provisions of this title including sections 117, 118, 119, and 124. He shall report anually to the Congress the results of such monitoring including the percentage of increase in the cost of energy, malpractice and other liability insurance, and the wages for nonsupervisory personnel.

SEC. 135. In carrying out the purposes of this title the Secretary or a State is authorized to enter into contracts with State or national cooperative information centers established under section 304 or 306 of the public Health Service Act.

The table of contents on page 3 is amended by striking item 2 and substituting:

SEC. 2. REPORT ON PERMANENT REFORM IN THE DELIVERY AND FINANCING OF HEALTH CARE.

TITLE I—TRANSACTION HOSPITAL COST CONSTRAINT PROVISIONS

PART A—PURPOSE OF THE PROGRAM

PART B—ESTABLISHMENT OF HOSPITAL COST CONTAINMENT PROGRAM

PART C—DEFINITIONS AND MISCELLANEOUS PROVISIONS

I. SUMMARY OF S. 1391 AS REPORTED BY THE COMMITTEE ON HUMAN RESOURCES

The bill would establish a transitional hospital cost-containment program to constrain the rate of increase in inpatient hospital costs through incentives and limitations in hospital revenues and would provide for the publication and disclosure of information designed to encourage efficient use of available hospital resources. The bill would also provide for the development of permanent reforms on order to increase the efficiency, effectiveness, and quality of health care in the United States.

Beginning January 1, 1979, most acute-care and specialty hospitals would be subject to a limit on increases in their revenues from inpatient services. The revenue increase limit would apply to increases in payments

by each third-party cost payer (for example, medicare, medicaid, and Blue Cross) and to increases in charge-based payments by private health insurance companies and self-pay patients in those States that have effective cost containment programs permitting an exemption to the Federal program.

Application of limit.—Under cost containment, the rate of increase in each hospital's inpatient revenues from average charges imposed or costs paid by each government or nongovernment cost payer would be limited to a fixed percentage of revenues in the hospital's base accounting year. A hospital's base accounting year would be its accounting year which ended in 1977 or, if later, the second year throughout all of which it met the definition of hospital for purposes of cost containment. The precentage limitation would be calculated as the product of (1) the inpatient hospital revenue increase limit currently in effect, as modified by any adjustments or exceptions for which the hospital may qualify, (2) the basic inpatient hospital revenue increase limit in effect in prior cost-containment years (or any higher percentage previously allowed under an exception to reflect major increases in patient load or higher costs associated with major capital expenditures), and (3) the percentage allowable for increases in the hospital's costs between the end of its base year and January 1, 1979, the effective date of cost containment. The interim-period adjustment would be calculated to allow an average annual rate of increase in hospital costs equal to the average annual increase in the hospital's inpatient costs in the base year and the preceding accounting year. The interim period adjustment would, however, be limited to a range of not less than 6 nor more than 15 percent.

These constraints on inpatient revenues would apply to all hospitals which have an average length of stay of 30 days or less, except Federal hospitals, hospitals which derive more than 75 percent of their income from one or more health maintenance organizations, and hospitals which, in the three previous accounting years, had fewer than 2,000 admissions per year or, if they were sole community hospitals, had more than 2,000 but less than 4,000 admissions per year.

Basic limit.—Each year, the Secretary would promulgate a basic limit on increases in inpatient hospital revenues to be effective in the following calendar year. In the first year, the basic limit would be set by a formula reflecting general price trends in the economy as measured by the rate of increase in the implicit price deflator of the gross national product ("GNP deflator") in the 12-month period ending September 30 of the year of promulgation, plus an additional allowance for increases in the intensity or real level of services provided per admission. The intensity factor would be equal to one-third of the difference between the rate of increase in the GNP deflator and the average annual rate of increase in hospital costs in the 2 preceding years.

Within 1 year after enactment, the Secretary would be required to develop and thereafter to promulgate the basic limit in accordance with a methodology which more accurately reflects the rate of increase in the prices of the goods and services which go into the delivery of hospitals services.

Basic limit modifications.—The bill provides for certain adjustments, exceptions, and exemptions from the basic limit on inpatient hospital revenue increases.

Volume load adjustment.—The basic limit would be adjusted to take into account major changes in a hospital's patient load. No revenue adjustment would be made if the hospital's volume, since the base accounting year, had increased by less than 2 percent or decreased by less than 10 percent. Increases or decreases in volume outside these limits would result in allowable revenue increases or decreases, respectively, at the rate of one-half of the allowable per-admission revenue limit for each admission above or below the limit. The full amount of allowable revenue per admission would be deducted for decline in volume below 15 percent, and no recognition would be given to increases in volume above 15 percent except as expressly provided under the exceptions process.

Exceptions.—The Secretary would have authority to grant an exception to the inpatient hospital revenue increase limit otherwise applicable in certain cases where (1) a hospital's volume load had increased by more than 15 percent, or (2) the hospital had undertaken major changes in facilities or services approved by the State health planning and development agency, provided the hospital could also demonstrate a relatively poor financial position. Any hospital granted an exception would be subject to an operational review of its effectiveness and efficiency by the HEW Audit Agency, whose report would be made public. Continuance of the exception would be contingent upon the hospital's implementation of any recommendations arising out of the operational review. A modified exception process may be used in future years under the revised method for determining the basic limit. This modified exception process requires congressional approval.

Nonsupervisory wage increase exemption.—The revenue increase limit otherwise applicable in the case of a particular hospital would be adjusted to reflect increases in the wages of the hospital's nonsupervisory employees.

Exemption for hospitals in certain States.—The Secretary would have authority under section 117 of the bill to exempt from the provisions of the Federal program hospitals in States that have a hospital cost-containment program of demonstrated effectiveness. In order to quality for an exemption, the State program would have to apply at least to those revenues to which the Federal program applies, cover at least 90 percent of the State's hospitals which would otherwise be subject to Federal cost containment, and demonstrate a capacity to contain inpatient revenue increases for all hospitals in the State within a range of not less than the rate of increase in the GNP deflator nor more than 110 percent of the basic inpatient hospital revenue increase limit. The 110-percent limit could, at the State's option, be adjusted to reflect wage increases to nonsupervisory hospital employees.

Similarly, the Secretary would have authority under section 119 of the bill to grant an exemption from Federal requirements to hospitals located in a State which has developed a proposed hospital cost-containment program that the Secretary determines would achieve essentially the same cost-containment objectives as those required under established State programs. Pass-through of nonsupervisory wage increases would be mandatory under new State programs.

The Secretary could also exempt a hospital whose exclusion he determined to be necessary to facilitate the conduct of an experiment or demonstration project consistent with the purposes of cost containment.

Disclosure.—Each hospital (including those exempted under an approved State program) would be required to submit to its health systems agency a semiannual report reflecting its rates for the 30 most frequently used hospital services; an annual report describing its ownership, management, and financial status; and copies of all cost reports submitted to cost payers. All such reports would be made available to the public by the health systems agency.

Enforcement.—Reimbursement above the cost-containment limit would be disallowed under medicare and medicaid. Excess revenues paid by any other cost payer or received by a hospital would be subject to a 150-percent tax on both the hospital and the payer. A similar tax on excess charge revenue would be imposed on a hospital unless the hospital placed the excess amount in escrow until it had incurred a shortfall in allowable charge revenue equal to the amount of excess previously acquired.

Hospitals which fail to provide the reports required to be submitted to the health systems agency would receive a 10-percent reduction in amounts otherwise payable under all programs supported in whole or in part by Federal funds.

Hospitals which seek to reduce costs by altering their admissions practices could be excluded by the Secretary from participation in medicare and medicaid. Moreover, the bill provides that citizens may bring civil suits against the Secretary and any other person or provider alleged to have violated or failed to have carried out various requirements of the bill.

II. NEED FOR THIS LEGISLATION—THE PROBLEM OF HEALTH CARE COST INFLATION

During the past 25 years, national health expenditures have increased not only in aggregate terms and on a per capita basis, but also as a percentage of the gross national product (GNP). In 1950, national health expenditures amounted to $12 billion, or 4.5 percent of the GNP. Preliminary estimates for fiscal year 1976 indicate that total health expenditures amounted to $139.3 billion, or 8.6 percent of the GNP. Expenditures for hospital care are the largest component of national health expenditures, reaching an estimated $55.4 billion in fiscal year 1976 for about 40 percent of total health care expenditures.

Expenditures for hospital care have risen annually at double-digit rates for a decade. During fiscal year 1965, the year prior to enactment of medicare and medicaid, expenditures for hospital care amounted to nearly $13.2 billion. Within 5 years the annual outlay had almost doubled to $25.9 billion, and by fiscal year 1976 expenditures had more than quadrupled to $55.4 billion. The average annual increase from 1965 to 1976 was 13.9 percent; adjusted to reflect constant prices in the general economy, the average annual increase was still 8.6 percent. If this rate of increase continues, total spending on hospital care alone could be $220 billion by 1986.

TABLE 1.—*Expenditures for hospital care, selected fiscal years, 1950–76*

Fiscal year	Total expenditures (billion)	Annual percentage increase
1950	$3.7	
1955	5.7	9.0
1960	8.5	8.4
1965	13.2	9.1
1970	25.9	14.5
1971	29.1	12.3
1972	32.7	12.4
1973	36.2	10.7
1974	41.0	13.3
1975	48.2	17.6
1976	55.4	14.9

A. The effects of health cost inflation

Public opinion polls indicate that rising health care costs are among the top three domestic concerns of the American people—even ranking ahead of rising energy costs. This concern reflects a fundamental fact—rising health costs add significantly to burdens in the taxpayer, on the wage earner, and on those consumers who lack adequate health insurance protection.

Each day American taxpayers pay $48 million for hospital care provided under medicare and medicaid.

Private health insurance premiums have jumped 20 to 30 percent in the last year, cutting into most workers' take-home pay. Indeed, Americans today must work more than 1 full month of every year just to pay for their health care. It takes about 2 weeks' wages to cover hospital costs alone. Higher health insurance premiums paid for fully or in part by employers drain off money that could be provided to workers in the form of higher wage increases or pension benefits

For the 18 million individuals in this country without any health insurance, the 19 million additional individuals with very inadequate insurance policies, and the 115 million people without major medical insurance coverage, rising health care costs—especially spiraling hospital costs—pose the direct threat of financial ruin, and a lifetime of indebtedness.

Rising heatlh care costs have also hampered the ability of Federal and State governments to meet other pressing social problems. For example, between 1966 and 1978, the HEW health budget increased from $3 billion to $44.5 billion. Of this increase, $37.3 billion has gone to pay for benefits under medicare and medicaid, with only $4.2 billion left over for expansion of other governmental health activities beyond their 1966 level. The rapid increases in hospital costs have also made it necessary for many States to make serious cuts in ambulatory care services under medicaid.

TABLE 2.—*Total health expenditures between 1975 and 1980*

[In billions of dollars]

Fiscal year	Percentage of GNP	Amount	Estimated amount
1975	8.4	$122.2	
1976	8.6	139.3	
1977	8.7		$159.7
1978	8.9		181.1
1979	9.0		204.5
1980	9.1		228.8

TABLE 3.—*Expenditures for hospital care between 1975 and 1980*

Fiscal year	Amount	Estimated amount
1975	$48.2	
1976	55.4	
1977		$64.6
1978		74.4
1979		85.7
1980		97.4

B. Causes of hospital cost escalation

The amount spent for hospital care has risen because of increases in cost per patient-day and in the number of hospital days. The former factor is much more important, accounting for about 90 percent of the increase. In spite of the intense and sustained inflationary trends in hospital costs, the demand for hospital care has not abated. A major reason for this is the corresponding growth in health insurance payments, which now account for 91 percent of all hospital revenues. Because private insurers and public third-party payers, such as medicare and medicaid, finance the overwhelming proportion of the care rendered in community hospitals, the actual "net costs" of care for most patients at the time of hospitalization are very small. The patient and his agent, the physician, therefore can elect the most expensive care available—more expensive than they might elect if the third-party payment programs did not exist.

The patient has limited ability to distinguish necessary from unnecessary care. Once in a hospital, he has a strong interest in receiving the best care available, regardless of the cost. The insuring agent has usually chosen not to question the value of or need for the services provided. The physician, who acts on the patient's behalf, is inclined to use all the services that will improve his diagnosis and therapy or reduce the possibility of malpractice suits. The hospital administrator is concerned that the quality of care be of a high standard and that his facilities and equipment be such as to attract physicians to the hospital. The administrator is therefore willing to meet physician's requests to expand the scope and complexity of the services the institution provides. This entails little financial risk for the administrator because the majority of hospital insurance payments are based on the costs incurred. If costs rise because of new or more intensive testing, more complex procedures, or more staff, higher reimbursements will be forthcoming.

This unique set of characteristics has encouraged the following hospital and communitywide inefficiencies in the use of health resources:

Uneconomic hospital operation.—Inefficiency occurs when the combination of resources used to provide hospital services is more costly than necessary.

Uneconomic provision of services.—Inefficiency occurs when services are provided that cannot reasonably be expected to have a medical value that justifies their cost.

Excess community capacity to provide general care.—Even a carefully operated hospital may be relatively uneconomical if demand is low relative to capacity.

Excess community capacity to provide various forms of special-purpose care.—An otherwise economically run hospital may have a special facility that is underutilized because other hospitals in the area have developed the same capability.

Excessive utilization resulting from the existence of excess hospital facilities or equipment.—Unnecessary hospital admissions and utilization of procedures and equipment may be stimulated by the availability of capacity because no participant is motivated to be cost conscious.

C. Prior efforts to moderate hospital costs

The problem of spiraling hospital costs has not gone unnoticed on either the Federal or State levels. Many of the theories mentioned above as to the causes of hospital cost inflation have provided theoretical bases for previous efforts to constrain increases in provider costs. The programs discussed below represent the major examples of past and current efforts to hold down the ever-increasing costs of hospitalization.

1. Economic stabilization program.—The economic stabilization program (ESP) established a series of economy-wide wage and price controls which were designed to reduce inflation by about one-half in the economy as a whole. The program began with a freeze on wages and prices in August 1971 (phase I). The freeze was replaced in December 1971 with control programs for each major sector of the economy (phase II), including health.

For the health care industry, phase II consisted of a ceiling of 6 percent per year (adjusted for changes in volume of services) on increases in price and revenues per inpatient day for institutional providers of health care such as hospitals. Within the overall 6-percent ceiling, a 1.7-percent increase in expenditures for new technology was provided. In adidtion, separate ceilings were applied to wage-related expenses (5.5 percent) and to nonwage expenses (2.5 percent). Non institutional providers, such as physicians and dentists, were allowed a 2.5-percent increase per year in their prices. The effect of the phase II controls was approximtely a 50-percent decline in increases in hospital room and board rates and a 25-percent decline in cost per adjusted patient-day and cost per adjusted admission.

Phase III, which lasted from January 11, 1973, to June 13, 1973, was an extension of phase II for many areas of the economy, including the health care industry. On June 13, 1973, another freeze on the prices of all commodities and services began and lasted until July 1, 1973, when it was superseded by Phase IV. Phase IV covered many industries, including health, until April 30, 1974, when ESP authority expired and the program ended.

The goals of the hospital controls under Phase IV as expressed by then President Nixon were to reduce the excessive rate of increase in the cost of hospital stays; to moderate increases in new services and selectively control capital expenditures; to provide economic incentives for the substitution of less expensive ambulatory care for inpatient hospital care; to provide for the development of State rather than Federal administration of health care controls; to allow internal flexibility and incentives for health care managers to improve productivity; and to be responsive to cost-saving innovations, such as health maintenance organizations.

For the health care industry, phase IV included:

A limitation of 7.5 percent on increases in hospital charges and costs per inpatient admission, with adjustments for volume of services.

A 6-percent-increase limit on outpatient charges per procedure.

A 4-percent-increase limit on medical practitioners' aggregate annual fees, with a 10-percent-increase limit for individual fees over $10 and a $1-increase-limit for fees under $10.

A 6.5-percent-increase limit for long-term care institutions on average realized revenues per day by class of purchaser (for example, medicare, medicaid, and all other) or level of care (for example, skilled nursing care, or existing levels by State or by institutions).

The phase IV controls differed from phase II in their emphasis on the total costs of a hospital stay, also called an admission, rather than the individual price per day. In addition, phase IV treated separately increased costs due to new and approved capital expenditures and separated controls on inpatient and outpatient services.

Before ESP went into effect, the annualized rates of increase in prices of medical care and of hospital charges (semiprivate room) exceeded that of prices in the economy as a whole. During the various phases of ESP (August 1971 to April 1974), not only were the rates of increase for medical care and hospital charges reduced, but the rates of increase dropped below prices in the economy as a whole. In the post-ESP period, after the controls were lifted, the rate of increase for medical care and hospital charges rose above the pre-ESP levels and once again exceeded prices in the economy as a whole (see table 1). This temporary effect in lowering prices was due in part to the fact that ESP did not attempt to address the underlying problems in the process of health care delivery, some of which are the unusual system of supply and demand where the users of health care usually pay only a small portion of the costs they incur; the maldistribution of manpower; and the high costs of medical and technological advances.

2. Hospital reimbursement limits under

medicare and medicaid.—The 1972 amendments to the Social Security Act authorized the Secretary of HEW to establish prospective limits on the costs to be reimbursed under the medicare program. The Secretary was given broad discretion in the selection of the institutions and kinds of costs to which the limits are applied and in the method of setting the limits.

Under present policy, cost limits are established each year for the routine cost portion of hospital costs—essentially, the cost related to bed and board. Individual hospitals are assigned to one of various groups, depending on the hospital's size and the per capita income of the area where it is located. The cost limit for hospitals in each group is set by a formula that establishes the limit high enough to permit the routine costs of well over 80 percent of the hospitals to be covered in full.

In fiscal year 1975, the first full year of implementation, approximately 345 hospitals were reported to be in excess of the limit by a total of $36 million. Fiscal year 1976 data are not yet complete, but thus far 334 hospitals have been reported to be in excess of the limit; it is expected that the total will increase above the fiscal year 1975 number when all reports are in.

The objective of the cost limits provision is to establish ceilings that reasonably prudent and cost-conscious hospitals can be expected to live within. And by setting the limits in advance, it was intended that high-cost hospitals could, if they wished, undertake the cost-reduction measures to avoid loss of reimbursement. Where a hospital exceeds the limit and wishes to make up the lost income by imposing a special charge on the patients, the patients must be advised of the situation in advance.

The 1972 legislation also authorized medicare, medicaid, and the maternal and child health program to withhold reimbursement from hospitals for certain capital expenditures for plant, property, or equipment if the designated planning agency has determined them to be inconsistent with State or local health facility planning requirements. The reimbursement amounts that may be withheld include depreciation, interest on borrowed funds, and other costs related to capital expenditures. Where a proprietary hospital is involved, the return on equity capital is also affected. The provision applies only to expenditures that exceed $100,000, that would change the bed capacity, or that would substantially change the services offered by the hospital unless the State chooses to give the provision wider applicability.

3. Federal experimentation and State programs.—The Department of Health, Education, and Welfare is conducting a range of research and experimental activities relating to reimbursement and is attempting to control costs under experimental authorities included in the Social Security Amendments of 1967 and 1972, and section 1526 of the National Health Planning and Resources Development Act of 1974. The 1972 amendment authorized a broad program of experimentation in prospective reimbursement and other alternative reimbursement and ratesetting methods.

Under its authority, the Department evaluated State and local systems which were already operating without Federal funding, and began supporting demonstrations, evaluations, and developmental projects in other States.

Three principal prospective reimbursement methodologies have been identified, which are generally used in some combination:

(*a*) *Budget review approach.*—Involving setting or approval of reimbursement rates based on a detailed review of the projected budgets of individual hospitals and their departments. This approach is used in Maryland in its ratesetting, and is used in New Jersey and Connecticut in combination with a formula approach. Budget review can be done by exception, involving review only of those portions of an institution's budget exceeding established screens.

(*b*) *Formula methods.*—Involving the use of formulas to determine rates of payment, or to determine ceilings or target rates under current reimbursement practices. New York uses a formula approach, and other States use this approach in combination with the other methods.

(*c*) *Negotiated rates.*—Involving joint decisionmaking by the hospital and the rate setter. Rhode Island uses a negotiated budget methodology.

HEW has identified five elements which it believes are essential in a prospective ratesetting system:

(1) All hospitals within a given system should submit accounting and reporting data based on uniform systems.

(2) Health planning and rate setting should be closely coordinated.

(3) Prospective rate setting systems should focus on total hospital expenditures, including utilization factors.

(4) Prospective rate setting systems should cover all payers.

(5) Hospital participation in prospective rate setting systems should be mandatory.

In addition to evaluations of ongoing activities, HEW is funding a number of demonstration and developmental activities to gather further information on ratesetting systems.

A recent American Hospital Association survey identified 25 rate-regulation programs, including several Blue Cross prospective reimbursement plans. Budget review was the principal method used but often in combination with other methods. A total of 2,070 hospitals and 1,407 nursing homes participated in the programs surveyed. In addition to the 25 programs currently in effect, the survey identified 13 States as contemplating some form of program.

III. HISTORY OF LEGISLATION

The legislation was introduced on April 21, 1977, by Senators Kennedy, Hathaway, and Anderson and was referred to the Committee on Human Resources and the Finance Committee. On May 24, May 26, June 17, June 21, and July 6, 1977, the Subcommittee on Health and Scientific Research held hearings on this legislation and alternative methods of controlling the increasing costs of hospital care.

Testimony was received from the Department of Health, Education, and Welfare which supported the legislation. There was general agreement among the many other witnesses that there is a need to control the increasing costs of health care, although many did not support the legislation in its entirety.

Witnesses included:

May 24, 1977

Hon. Joseph A. Califano, Jr., Secretary, Department of Health, Education, and Welfare.

Hon. Michael DuKakis, Governor, Commonwealth of Massachusetts.

Charles M. O'Brien, Jr., Administrator, Georgetown University Hospital.

Leo J. Gehrig, M.D., senior vice president, American Hospital Association.

May 26, 1977

Douglas A. Fraser, president, International Union United Auto Workers.

Andrew J. Biemiller, Bert Seidman, American Federation of Labor, and Congress of Industrial Organizations.

Michael D. Bromberg, Andrew W. Miller, Federation of American Hospitals.

Jere W. Annis, M.D., William C. Felch, M.D., American Medical Association.

Terrance Pitts, supervisor, Milwaukee County, Wisconsin, National Association of Counties.

June 21, 1977

Mr. Bernard Tresnowski, executive vice president, Blue Cross Association.

Mr. Morton D. Miller, vice chairman of the board, the Equitable Life Assurance Society of the United States.

Mr. Henry DiPrete, second vice president, group operations, John Hancock Mutual Life Insurance Co.

Mr. Robert J. Kilpatrick, president, Connecticut General Life Insurance Co.

Mr. William McC. Hiscock, executive director, Central Maryland Health System Agency, Inc., American Association for Comprehensive Health Planning.

Mr. James M. Hacking, American Association of Retired Persons, National Retired Teachers Association.

June 17, 1977

The Honorable Thomas J. McIntyre, U.S. Senator, State of New Hampshire.

Mr. Joe Czerwinski, National Conference of State Legislatures.

Mr. Mancur Olson, Maryland Health Services Cost Review Commission.

Joanne E. Finley, M.D., New Jersey State Commissioner of Health.

Robert P. Whalen, M.D., Commissioner, New York State Department of Health.

Mr. Stanley Wisnjewski, Services Employees International Union.

Mr. Moe Foner, National Union of Hospital and Health Care Employees.

David D. Thompson, M.D., Director, The New York Hospital, New York City, Chairman, Council of Teaching Hospitals, Association of American Medical Colleges.

Mr. David L. Everhart, President, Northwestern Memorial Hospital, Chicago, Chairman, Council of Teaching Hospitals, Association of American Medical Colleges.

Robert M. Heyssel, M.D., Executive Vice President and Director, The Johns Hopkins Hospital, Baltimore.

Prof. John D. Thompson, Chief, Division of Health Services Administration, Yale University School of Medicine.

Edward S. Hyman, M.D., American Council of Medical Staffs.

July 6, 1977 (in Bangor, Maine)

Isador Seeman, Mike Samuels, Ph. D., Department of Health, Education, and Welfare.

Thomas W. Cathcart, Blue Cross and Blue Shield of Maine.

Stanley Hanson, Maine Health Systems Agency.

Fletcher Bingham, Maine Hospital Association.

Kenneth A. Hews, Eastern Maine Medical Center.

Andrew Fennelly, Maine Health Care Association.

Kenneth Robinson, Maine Health Care Association.

Kenneth Morgan, AFL–CIO.

D. Jeffrey Hollingsworth, Maine Medical Association.

Dr. Harrison Aldrich, Maine Osteopathic Association.

Derek V. Bush, Maine Coast Regional Health Facilities.

Martin S. Ulan, York Hospital, York, Maine.

Janet Beach.

In addition, statements were supplied for the record by the following organizations and individuals:

Alice M. Rivlin, Director, Congressional Budget Office, U.S. Congress.

The American Association of Neurological Surgeons.

American Federation of State, County, and Municipal Employees.

American Mutual Insurance Alliance.

American Nurses Association.

American Protestant Hospital Association.

American Psychiatric Association.

American Public Health Association.

American Society for Medical Technology.

American Society of Hospital Pharmacists.

American Society of Internal Medicine.
Alfred M. Bell and Associates.
Association of Rehabilitation Facilities.
Association of State and Territorial Health Officials.
Arizona Hospital Association.
The Catholic Hospital Association.
Chamber of Commerce of the United States.
Chicago Hospital Council.
Colorado Hospital Association.
Community Memorial Hospital, Staunton, Ill.
Community Services Society of New York.
Corry Memorial Hospital.
Detroit Osteopathic Hospital Corporation.
Florida Hospital Association.
Georgia Hospital Association.
Health Research Group—Public Citizen.
Hospital Association of New York State.
Hospital Association of Pennsylvania.
Hospital Affiliates International.
Hospital Financial Management Association.
Hospital Financing Study Group, Washington, D.C.
The Kansas Hospital Association.
Kentucky Hospital Association.
Legislature of Michigan.
Leon Hamrick, M.D., State of Alabama.
Maryland Hospital Association.
Massachusetts Department of Public Health.
The Medical College of Pennsylvania.
Medical Society, County of Kings, New York.
Minnesota Hospital Association.
Missouri Hospital Association.
Montana Hospital Association.
National Association of Health Services Executives.
National Audio-Visual Association, Inc.
National Conference of State Legislatures (Martin Sabo).
National Council of Community Hospitals.
National Council of Health Care Services.
National Health Law Program.
National Taxpayers Union.
Nebraska Methodist Hospital.
New Mexico Hospital Association.
Radiation Imaging Products Division.
Resurrection Hospital.
Scientific Apparatus Makers Association.
South Carolina Hospital Association.
South Dakota Hospital Association.
State of South Dakota (Governor Kniep).
Texas Hospital Association.
Union County Hospital Association.
Union County Hospital Society.
United Mine Workers Health and Retirement Funds.
United Societies of Physiotherapists, Inc.
Utah State Hospital Association.
Vermont Hospital Association.
Washington Business Group on Health.
Letter from Lawrence Hill, New England Medical Center Hospital.
Letter from Sherman Katz, Attorney at Law.
Letter from David Troob, Loeb, Rhodes & Co.

The legislation was subsequently considered in open executive session by the Subcommittee on Health and Scientific Research on July 26, 1977, at which time the bill was amended and ordered reported to the Committee on Human Resources. The amended bill was considered in open executive session on July 29 and August 2, 1977, by the Committee on Human Resources, amended further, and as further amended, ordered reported favorably to the Senate.

IV. COMMITTEE VIEWS

The major purpose of this legislation is to establish a transitional hospital cost containment program that will constrain the rate of increase of inpatient hospital costs. The bill would also provide for the publication and disclosure of information designed to encourage efficient use of available hospital resources. The bill would also provide for the development of permanent reforms in order to increase the efficiency, effectiveness, and quality of health care in the United States.

The committee recognizes that its bill makes numerous important and substantive changes in the way that health care will be financed and delivered. At the time that this bill was considered by the committee other important proposals for changes in the financing and delivering of health care were recommended to the committee by its members and by other Senators. Many changes in the Health Planning and Resources Development Act of 1974 (Public Law 93-641) were suggested. These proposals deserve serious consideration and such consideration will be forthcoming in the months ahead as the implementation of Public Law 93-641 is thoroughly reviewed.

The committee would like to highlight the rationale for and the intent of many of the changes in existing law that are proposed by the committee's bill.

The committee's bill employs a revenue increase limit applicable to all hospitals included in the program. The committee believes that this method can and should be implemented quickly and can be administered without unnecessary complexity, as this method does not rely on the development of new procedures and technology. For example, new methods of classifying hospitals that would be capable of distinguishing between high costs arising from atypical services and differing patient needs and the development of new reporting and compliance systems are not needed.

It is the committee's view that adequate methodology is not presently available for a sophisticated system of hospital classification; however, the Secretary is instructed to develop and then implement a system which includes a system of hospital classification. In this respect then, title I accepts the wide variations in hospital costs and charges for the transitional period but limits further inflationary pressures on government and private financing systems while permanent, more sophisticated cost containment programs are being developed and put in place.

The committee realizes that the calculations imposed by section 111 of the bill to adjust the limits imposed starting January 1, 1979, to the various accounting years of hospitals may appear complex. This approach is preferable, however, to the alternative of forcing adaptation of every hospital's accounting year to the administrative needs of a cost containment program which was rejected by the committee as inappropriate and unduly costly to hospitals in a transitional program. It should be noted that those who will actually be performing the limit calculation, such as hospital administrators, accountants, and medicare cost reimbursement technicians, will find that the calculations involve relatively minor adaptations of present techniques to data that is already reported for medicare purposes.

In order to discourage a hospital from increasing its costs to the revenue limit, the committee's bill utilizes a fixed base plus a compounded percentage increase approach which permits a hospital to retain for future years any percentage by which it comes in under the limit in a particular year. Thus, the system avoids incentives to come up to the limit that would exist under a "use or lose system." The basic limit is used during intervening years because the adjustments for patient loads are always based on changes between the subject and base years.

Section 112 of the committee's bill requires the Secretary to promulgate annually a basic limit on increases in inpatient hospital revenues to be effective in the following calendar year. In the first year, the basic limit would be set by a formula reflecting general price trends in the economy as measured by the rate of increase in the implicit price deflator of the gross national product ("GNP deflator") in the 12-month period ending September 30 of the year of promulgation, plus an additional allowance for increases in the intensity or real level of services provided per admission. The intensity factor would be equal to one-third of the difference between the rate of increase in the GNP deflator and the average annual rate of increase in hospital costs in the 2 preceding years.

This basic limit is tied to percentage increases in the gross national product deflator. This was chosen because it is the broadest and most representative measure of inflation in the general economy presently available. The bill provides for an expansion factor, for example, one-third of past differences between general inflation and the rise in hospital costs which the committee believes will allow for continued expansion of needed services. The committee believes that it is essential for this type of program that hospitals are compensated for expected inflation in the overall economy when calculating the basic limit. Thus, if the GNP deflator estimate is significantly lower than actual inflation, paragraph (2) of section 112 allows for such adjustments. The adjustment period is limited to hospitals that have ended the fiscal years no more than 3 months prior to the date of the adjustment period. This is to avoid any need for cost payers to reopen cost reports after they have been filed, which generally is about 90 days after the close of a fiscal year.

Within 1 year after enactment, the Secretary would be required to develop and thereafter to promulgate the basic limit in accordance with a methodology which more accurately reflects the rate of increase in the prices of the goods and services which go into the delivery of hospital services. Simultaneously the committee intends that the Secretary shall promulgate an expanded exceptions process.

Under section 113 of the committees' bill the basic limit would be adjusted to take into account major changes in a hospital's patient load. No revenue adjustments would be made if the hospital's volume, since the base accounting year, had increased by less than 2 percent or decreased by less than 10 percent. Increases or decreases in volume outside these limits would result in allowable revenue increases or decreases, respectively, at the rate of one-half of the allowable per-admission revenue limit for each admission above or below the limit, assuming there has been no change in admissions. The full amount of allowable revenue per admission would be deducted for declines in volume below 15 percent, and no recognition would be given to increases in volume above 15 percent except as expressly provided under the exceptions process.

The volume load formula is designed to compensate hospitals for significant changes in patient load, while encouraging reduction in admission and lengths of stay through better utilization review. If volume declines by up to 10 percent, no reduction in revenue is imposed, thus providing an incentive to prevent unnecessary admissions. For hospitals which experience small increases in volume load—up to 2 percent—total revenue is also to be constant with the hospital expected to absorb the modest variable cost increases that would be involved in such a change. There is also an incentive to reduce lengths of stay to avoid the need to economize further. Automatic adjustments are allowed for increases in volume beyond the initial range; such adjustments add or subtract revenue approximating marginal costs.

In the case hospitals experiencing dramatic increases in patient volume, which the committee expects will be a very small proportion of all hospitals, no adjustment is allowed for increased volume load beyond 15

percent and there is imposed a dollar for dollar reduction in revenue on hospitals experiencing decreased volume beyond 15 percent unless the reason for such changes are closely examined through the exception process which is outlined in section 115.

The marginal cost of 50 percent was chosen recognizing the body of existing research, and although an imperfect figure, the committee felt reflected fairly the marginal cost to the hospital of increased admissions.

The committee believes that when particular kinds of services cease to be furnished by a hospital, the past amounts of revenues from such services should be removed from the hospital's base year revenue calculations. Section 114(b) of the committee's bill includes such a provision.

For example, a CT "CAT" scanner is operated by the hospital in the base year, but leased to a physician in the subject year, the CAT scan charges attributable to Medicare inpatients in the base year would be deducted from Medicare reimbursement in the base year. Similar adjustments would be made in base revenue from each other cost payer and total base year CAT scan charges would be deducted from total base year inpatient charges in determining allowable reimbursement in the subject accounting year.

The committee believes however, that charges attributable to inpatient services that were discontinued, on recommendation of the State health planning and development agency based on a finding that the services were inappropriate, should not be deducted from the base year as otherwise required above. Thus a hospital receives an incentive for the discontinuance of any inappropriate service in that it can continue to pay for debt and redirect the full amount of the operating costs of the discontinued service to other services that will continue to be provided by the hospital.

Section 115 of the committee's bill gives the Secretary the authority to grant an exception to the inpatient hospital revenue increase limit otherwise applicable in certain cases where (1) a hospital's volume load had increased or decreased by more than 15 percent or (2) the hospital had undertaken major changes in facilities or services approved by the State health planning and development agency, provided the hospital could also demonstrate an existing or potential revenue loss which would adversely affect the hospital. Any hospital granted an exception would be subject to an operational review of its effectiveness and efficiency by the HEW Audit Agency, whose report would be made public. Continuance of the exception would be contingent upon the hospital's implementation of any recommendations arising out of the operational review. A modified exceptions process may be used in future years under the revised method for determining the basic limit. This modified exceptions process requires congressional approval.

The committee, in formulating the exceptions process, attempted to draw a balance between simplicity of administratability within government, at the Federal and local level, and fairness and equity for individual institutions in the manner by which they could have access to the exceptions process. It is the committee's view that the Secretary should have appropriate discretion to implement this process.

Whenever an exception is given, the Secretary may require the hospital to undergo an operational review. The findings of such a review are to be made public, and the hospital will be required to implement the recommendations made as a result of the review if it wished to continue to receive the added revenues from the exception. This procedure is likely to rectify some of the factors which are contributing to the need for an exception and subsequently to reduce the number of exceptions.

In all cases when an exception is granted, the additional allowable revenue should be related to the cause of the exception and the revenue should be at a level adequate to maintain a current assets to liability ratio of two.

The committee felt it was essential that an appeals mechanism be instituted when a hospital believed that the decision of the Secretary was adversely affecting the hospital. The Provider Reimbursement Review Board was chosen by the committee to bear the appeals because it was judged that this board, which previously had been established to judge determinations made for the purposes of medicare reimbursement has been doing an adequate job. This would also avoid the need to create a new hearing body for the purposes of the committee's bill.

Under section 117 of the committee's bill the Secretary would have authority to exempt from the provisions of the Federal program hospitals in States that have a hospital cost-containment program of demonstrated effectiveness. In order to qualify for an exemption, the State program would have to apply at least to those revenues to which the Federal program applies, cover at least 90 percent of the State's hospitals which would otherwise be subject to Federal cost containment, and demonstrate a capacity to contain inpatient revenues increases for all hospitals in the State within a range of not less than the rate of increase in the GNP deflator nor more than 110 percent of the basic inpatient hospital revenue increase limit. The 110 percent limit could, at the State's option, be adjusted to reflect wage increases to nonsupervisory employees.

Similarly, the Secretary would have authority under section 119 of the bill to grant an exemption from Federal requirements to hospitals located in a State which has developed a proposed hospital cost-containment program that the Secretary determines would achieve essentially the same cost-containment objectives as those required under established State programs. Pass-through of non-supervisory wage increases would be mandatory under new State programs.

Under section 118 of the bill the Secretary could also exempt a hospital whose exclusion he determined to be necessary to facilitate the conduct of an experiment or demonstration project consistent with the purposes of cost containment.

While Federal controls are necessary on a national level to restrain hospital cost inflation in the short run, the committee was persuaded that, under certain well defined circumstances, cost containment efforts at the State and local levels could be stimulated. Sections 117, 118, and 119 provide three avenues for State authorities to obtain exemptions from the Federal program for hospitals within their boundaries. Firm Federal guidelines underlie each alternative to insure that the exemption may be retained only if an adequate level of cost savings is achieved through a well-administered program.

A number of factors entered into the committee's decision to encourage the long-term growth of State cost containment efforts. Testimony before the committee documented some success by State programs already in operation. Variations among State cost containment techniques demonstrate that some State programs have fostered successful experimentation and have attuned regulatory controls to widely differing geographic, economic, political, and health care conditions.

The committee believes that State programs should facilitate coordination of cost control efforts with local health planning and quality review programs, and the committee intends that there should be coordination between the ratesetting agency and certificate of need and/or 1122 reviews. At a minimum this should mean: (A) that the State health planning and development agency (SHPDA) may be—although need not be the ratesetting agency; (B) the ratesetting agency should not duplicate functions performed by the SHPDA when the ratesetting agency is distinct from the SHPDA—for example, if the SHPDA approves a capital expenditure the ratesetting agency must include reasonable operating costs and the capital costs in the rate, but if the SHPDA disapproves an expenditure the expenditure should not be included in the rate; and (C) the role for the HSA's and SHPDA's under section 117 should be analogous to their role under the Federal title I program.

Section 117 is primarily designed to grant existing State cost control programs meeting certain standards an immediate exemption from the Federal program.

The committee intends that in those States where a cost containment program is already attaining the goals of this title, it is reasonable to exclude hospitals located in that State from the application of this title. The requirement that a State have a program, means that a State must have a program for containing hospital costs, rather than the interpretation that the State must be the sole operator of the program. Responsible parties, including hospital associations, insurers, and consumer groups, can be permitted to participate and share with the State in operating the State's program.

The committee developed the criteria set forth in section 117 in order to assure that only sound programs are approved by the Secretary. However, a sound program can take on several forms, and the Secretary should not restrict his approval to those programs that are based in legal authority. A contractual agreement is sufficient authority to assure the quality, continuity, and responsiveness of a State program. A State program could be considered acceptable, even if it were not based completely on a legislated program as long as the Governor or chief executive of the State could provide the necessary assurances to the Secretary. A State program would have to assure the accountability of all hospitals participating in the program, whether that participation is grounded in State law or in a binding agreement reached either under State law or under the sponsorship of the Governor or chief executive of the State. Upon termination of such agreement, all hospitals would revert back into the program mandated in title I, even if the termination of the agreement under which the section 117 exemption had been granted occurred during a fiscal year. Thus there would be no time when hospitals in these States would not be subject to any cost containment program.

In using the phrase "capable of containing hospital costs" in section 117(1), the committee intends that the Secretary have discretion in approving State projects. In exercising such discretion, the Secretary should examine the program for the following characteristics:

(a) A mutually binding agreement or statute, that commits the various parties to engage in cost containment.

(b) An assurance that hospitals will participate in the program.

(c) An assurance that sanctions exist, that are sufficient to assure participation.

(d) A history in the State that shows innovation, experience, and effectiveness in various aspects of health planning, and cost controls (whether they are existing programs or predecessors).

In making the determination, that a State meets the requirements of section 117, the Secretary should look for one or more of the following: (1) Rate review program; (2) experiments in prospective review; (3) certificate of need; (4) decertification program;

(5) effectiveness of planning regulations; (6) effectiveness of voluntary programs; (7) statutes, contracts, or agreements relating to cost containment.

The committee included an optional wage pass through for nonsupervisory hospital employees in states exempted from the Federal cost control program pursuant to section 117. The committee believed that to require a mandatory wage pass through in those states that may qualify for an exemption pursuant to section 117 would necessitate legislative action in many of these states which would disrupt state cost control efforts that are already successfully underway.

Section 118 would exempt from the Federal ceiling certain prospective reimbursement experiments operating under existing law. The committee accepts the administration's recommendation that such programs be permitted to operate free of additional constraints until the potential of various prospective reimbursement methodologies being tested may be fully evaluated.

The committee intends that section 119 of the bill stimulate the development of new cost containment programs by the States not qualifying for exemptions under sections 117 or 118. The criteria contained in section 119 are designed to be as flexible as possible and still insure that State programs meet Federal priorities.

Section 119(a)(8) authorizes the Secretary to promulgate such additional criteria as the Secretary deems necessary to accomplish the cost containment objectives of title I. The purpose of this provision is to provide the Secretary with some measure of administrative flexibility to meet changing and unforeseeable conditions; however, the Committee intends that such additional criteria be published by the Secretary early enough to give the States sufficient advance notice to develop cost containment programs with full knowledge of all qualifying conditions. If a State program meets the criteria of section 119, including those announced under subsection (a)(8), the Secretary would be required to approve an exemption for that program.

The committee avoided more detailed restrictions on State programs in the interest of local experimentation and flexibility. However, it would urge States developing cost containment plans to consider the following points:

1. The "identifiable unit of State government" designated to administer a cost control program should be an agency which is not under the supervision of the State medicaid Administrator. Such separation will help avoid potential conflicts of interest between a State's role as a regulator of costs and a purchaser of care.

If a State establishes a cost control commission, its members should be appointed for staggered terms, should have an understanding of the delivery and financing of health services in the State, and should not be otherwise employed by the State, a local government, a health care institution, or be otherwise engaged in the delivery of financing of health services.

2. Although the use of varying cost-saving methodologies are acceptable under section 119, the committee encourages the further development and refinement of prospective budget review techniques which examine the feasibility of budget review under a system which classifies hospitals by bed size, type, and diagnostic case mix.

3. Although this section provides for aggregate rate of increase in hospital revenues, the committee feels that State programs should discourage the shifting of costs between purchasers. However, rate differentials between payers may be justifiable where the financial relationship between any payer and the institutional provider results in an identifiable saving in required or necessary costs.

4. Positive incentives to reduced costs and administrative efficiency should be an integral part of any long term cost containment effort. These might include programs permitting hospitals to retain achieved savings, up to specified limits, and application of costs savings to experiments in administrative efficiency.

5. In implementing legislation, the States should clearly identify a viable means for continued financing of cost containment programs which might include taxation of institutional providers.

6. State programs should include a policy review board, with membership appointed for staggered terms and representative of health care providers, third party payers, and the public. The board must actively encourage coordination between health planning, quality review, and cost containment activities.

7. In evaluating revenues related to the financing of capital expenditures, the State cost control agency should approve revenues only for those facilities and services which have been approved by the appropriate health planning authority.

The committee intended that States receiving an exemption pursuant to section 119 include a mandatory wage pass through for non-supervisory hospital employees. The committee believed that the implementation of State cost control efforts pursuant to section 119 would not be delayed by requiring a mandatory wage pass through as these States presently do not have cost control programs and will need to enact enabling legislation establishing cost control programs. A mandatory wage pass through could, therefore, be included as part of a single legislative action.

Recognizing that many States may be reluctant to initiate hospital cost control programs without Federal assistance, a $10 million authorization for startup grants is included under section 119, in addition to existing authorizations for experimental programs under section 402 of the Social Security Amendment of 1967, 222 of the Social Security Amendment of 1972, and 1526 of the Public Health Service Act.

The committee, when it exempted from the revenue increase limits those hospitals that had in the 3 previous accounting years preceding the subject accounting year, an average annual admissions of between 2,000 and 4,000 admissions, intended that only those within a standard metropolitan statistical area and are sole community providers be included for the exemption. It is the committee's intent that the definition of sole community provider used by the Secretary for this exemption be the same definition as is used under title XVIII of the Social Security Act. The committee, after careful review of data on the aggregate costs of medical care in these small hospitals, was of the belief by excluding these hospitals the administration of the program would be considerably easier and the resultant loss of savings relatively small.

Federal hospitals are especially excluded from coverage by the provisions of each title of the committee bill. These Federal hospitals include Veterans' Administration hospitals, Department of Defense hospitals, Public Health Service Hospitals, Bureau of Prisons Hospitals, or any other hospital run by a Federal department, agency, or instrumentality. The committee intends that the Secretary define a Federal facility so as to include a facility which was a Federal facility for any day in an accounting year.

Although Federal hospitals are excluded from the revenue limits of title I, the committee believes that such hospitals should work closely with the other health care providers in their respective areas and that the Federal budgetary process should take into account the limits promulgated under section 112.

The above illustrates the importance of close Congressional scrutiny of the interrelations in planning for health services between the Federal hospitals and non-Federal hospitals.

Under section 124 of the committees' bill the revenue increase limit otherwise applicable in the case of a particular hospital would be adjusted to reflect increases in the wages of the hospital's nonsupervisory employees.

It is the committee's view that nonsupervisory personnel have in the past sometimes been subjected to financial discrimination by individual hospitals. The committee thus exempted from the revenue limit the wages of nonsupervisory personnel as defined by the National Labor Relations Act. The committee intends that shift differential and overtime be included in this wage exemption.

Section 124(b)(3) provides that to the extent that a hospital's exempted wage increases to nonsupervisory employees does not exceed the adjusted inpatient hospital revenue increase limit applicable under section 124(b)(2), the difference may then be applied toward wages for increased numbers of employees whose wage increases in future years would be subsequently exempted under the provision of that section.

Under section 125 of the bill, each hospital (including those exempted under an approved State program) would be required to submit to its health systems agency a semiannual report reflecting its rates for the 30 most frequently used hospital services; an annual report describing its ownership, management, and financial status; and copies of all cost reports submitted to cost payers including the percent increase in wages for nonsupervisory personnel. All such reports would be made available to the public by the health systems agency.

It is the committee's belief that the public needs to be made more aware of the costs of health care and their effects and should be more involved in planning for changes in the financing and delivering of health care at the local level. By having access to the information required under section 125, the health systems agencies, the State health planning and development agencies, and individual citizens will be better informed. The health systems agencies by having comparable information from multiple hospitals will be able to develop, along with the State health planning and development agencies, a more sophisticated State medical facilities plans and State health plans.

Section 130 of the bill provides that citizens may bring civil suits against the Secretary and any other person or provider alleged to have violated or failed to have carried out the various requirements of the bill. This section is intended to provide a measure of accountability under several specified sections of the bill: 124 (Exemption of Nonsupervisory Personnel Wage Increase from the Revenue Limit), 125 (Disclosure of Fiscal Information), 126 (Improper Changes in Admissions Practices), 128 (Excise Tax on Excessive Payments for Inpatient Hospital Limits, 129 (Payment Below the Established Limits). These provisions, although not part of the basic restraint mechanism are important safeguards of the integrity of the entire cost containment program and are worthy of special provisions to assure that they are implemented and followed to the full extent.

The court, in issuing any final order may award cost of litigation including a reasonable attorney's fee based on the prevailing rates for such services. The purpose of this provision was to assure that legitimate actions under this section will not be discouraged because of lack of financial resources of a party contemplating such action. The setting of an award by the court is designed to discourage spurious challenges yet not discourage action brought in the public interest.

Within 1 year of the date of enactment of this bill after consultation with the Bureau of Labor Statistics of the Department of Labor, the Bureau of Economic Analysis of the Department of Commerce, and other appropriate public and private organizations, the Secretary is required to promulgate a figure that more accurately reflects the rate of increase in the prices of the inputs necessary for the production and delivery of hospital services. When this index is promulgated it will replace that promulgated pursuant to section 112. The purpose of this provision is to replace the general economy measure of inflation, the GNP deflator, as the basis for establishing limits on revenue increases. This market basket will more accurately represent the actual proportions in which hospitals combine their inputs. The new figure is to be based on the best information available at the time it is promulgated, and should be sensitive to the goals of the national transitional cost containment program.

Additionally, at the same time the Secretary promulgates this new index, he is expected to make changes in the exception process as deemed necessary or appropriate. It is the committee's expectation that changes in the exception process should reach a balance between effective administration and against the needs of the individual institutions. The exception process should allow greater attention to the unique or special needs of institutions, but any exception must be specifically for costs incurred which are greater than the limits promulgated in this section.

In order to qualify for an exception the committee believes that the State health planning and development agency designated under section 1521 of the Public Health Service Act for the State in which the hospital requesting the application is located should make a finding that the hospital has demonstrated the need for the appropriateness of the proposed service or facility.

The purpose of these provisions is to grant the Secretary the flexibility to expand the exceptions process after 1 year based on his assessment of the need for such expansion and the methodologies and administrative resources available to administer them. The section further emphasizes the concept of community needs and appropriateness as determined by the State health planning and development agencies.

In order to insure an orderely transition to the new provisions, with a minimum amount of administrative burden to hospitals, the government, and other third party payers, the changes in the program will apply to hospitals in the accounting years that begin after the changes are in effect.

The Secretary is required to submit his proposed changes in the inpatient revenue increase limit and in the exceptions process to the Congress together with a detailed statement of the reasons underlying these changes. The changes will go into effect unless either House acts to prevent the changes within the prescribed time. The purpose of this section is to provide for a streamlined process for congressional comment or disapproval of the Secretary's proposed changes, but one that does not require the Secretary to request new legislation which could significantly delay implementation of changes designed to improve the responsiveness of the cost containment program to the needs of the individual hospitals.

The committee believes that the Hospital Cost Containment Act is only a first step toward controlling the escalating costs of health care. It fully expects the Secretary to arrange for the conduct of a study or studies as mandated in section 133 of the committee's bill of methods for controlling the cost and/or revenue received for outpatient hospital services, long term care services, and ambulatory care services including physician services. These studies are required to be completed within 1 year, and submitted to Congress within 30 days of completion. The reports are to include the recommendations for legislative and administrative action should also include a report of the economic impact of the ongoing cost control program.

The committee believes that long term reform in the health care system will not take place until the excess capacity in the health care system is reduced including the reduction of unneeded surplus beds and facilities.

The committee has found in its initial review of the implementation of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641) that the necessary regulations for the development of State medical facilities plans, State health plans, health systems plans, and annual implementation plans have *not* been promulgated by the Secretary of the Department of Health, Education, and Welfare in a timely fashion, and expects that the Secretary will proceed immediately to issue these overdue regulations.

The Secretary in promulgating regulations under section 1602 of the Public Health Service Act should include, among other standards. occupancy standards and bed to population ratios as part of the requirements for individual State medical facilities plans.

V. CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1391.

2. Bill title: Hospital Cost Containment Act of 1977.

3. Bill status: As reported by the Senate Committee on Human Resources.

4. Bill purpose: To establish a means of containing the cost of hospital services by establishing an annual revenue growth limit. This limit would, initially, be based on a formula reflecting overall economic growth (the GNP deflator) and an intensity factor for inpatient costs (rises in hospital prices over the previous two years). These controls are only applied to short-term community hospitals and exclude federal facilities, long-term care institutions, and hospitals with 4,000 admissions where the facility is a sole community provider outside of Standard Metropolitan Statistical Areas (SMSA). Adjustments in the growth ceiling can be made in a given year for a specific hospital based upon increases in patient volume of more than 2 percent over the previous year or upon the rate of increase in wages for non-supervisory personnel.

5. Cost estimates:

[In billions of dollars]

Savings	1978	1979	1980	1981	1982
Medicare	1.15	2.60	4.04	5.93	8.30
Medicaid	.09	.23	.39	.60	.87
Total	1.24	2.83	4.43	6.53	9.17

6. Basis of estimate: Savings are calculated on the basis of CBO's current policy projections for total costs of Medicare and Medicaid hospital costs from 1978-1982 as compared to growth in these programs using the growth formulae as indicated in S. 1391. Also, base year expenditures in fiscal year 1977 do not reflect actual expenditures but, rather, an adjusted level as required by the legislation which excludes hospital increases of over 15 percent and under 6 percent. An annualized rate of 14.5 percent over fiscal year 1976 was used (because of a change in the fiscal year, increases were calculated on the basis of five quarters—July 1976 to September 1977). The following table shows the growth rates in total Medicare and Medicaid hospital costs as projected by CBO and the growth ceiling (with adjustments) calculated as outlined in S. 1391.

Percent measure over previous year

	Medicare	Medicaid	Growth ceiling [1]
1978	17.25	13.83	9.96
1979	16.10	13.72	10.29
1980	16.06	12.68	9.42
1981	16.18	12.74	8.88
1982	16.57	13.10	9.02

[1] Growth ceilings are those used in the CBO document "The Cost Containment Act of 1977: An Analysis of the Administration's Proposal", as published by the Senate Committee on Human Resources, July 1977.

The basic growth ceiling (i.e., without adjustments for volume or wages) for fiscal years 1978 and 1979 was calculated using the following formula:

Growth Ceiling=GNP deflator [1] ÷ ⅓ (Total hospital expenditure increase [2]—GNP deflator [2])

[1] For the previous 12 month period.

[2] For the previous 2 calendar years.

For fiscal years 1980-82, the basic growth ceiling was assumed to be 8 percent, 7 percent, and 7 percent respectively. Under Section 131 of the bill, the Secretary is required to promulgate a growth limit based upon an index that "more accurately reflects the rate of increase in the prices of the inputs necessary for the production and delivery of hospital services." Although no exact data is available, the experience of certain states in establishing such a limit would indicate that the yearly rate of increase would be approximately 7 percent. In the first year, an 8 percent rate is used to account for some phasing-in of this growth limit.

Actual revenue limits include adjustments for both wage increases and volume adjustments. Under Section 124, the growth rate is modified by requiring that each hospital's limit be adjusted to reflect the average percentage increase in wages for non-supervisory personnel. This adjustment to the limit is based upon the following formula:

Adjusted Growth Limit = .35 (increase in wages) ÷ .65 (Basic growth ceiling)

where .35 and .65 represent weighting factors for the proportion of wage and non-wage costs (i.e., wages for non-supervisory personnel account for 35 percent of total hospital costs). Adjustments used in this cost estimate for wages are based upon CB projections for compensation per man hour for hospital employees for fiscal years 1978-82. An increment of 0.5 percent per year was added to currently projected levels in order to reflect the mandatory nature of this provision which would tend to force wages up to a higher level than exists under current policy. The adjusted wage increases used in this estimate are: 1978, 9.4; 1979, 9.2; 1980, 9.2; 1981, 9.5; 1982, 9.9.

Under Section 113, an adjustment to the hospital revenue increase limit can be made on the basis of volume load. These adjustments will be permitted for an individual hospital when the average increase (or de-

crease) in numbers of admissions and total patient days exceeds 2 percent (in the case of increases) or 10 percent (in the case of decreases) of the previous year. In each case, every one percent increase above 2 percent or decrease below 10 percent will lead to a half percent increment or decrement in the revenue increase limit. Thus, if a hospital has a 4 percent increase in admissions and a 2 percent increase in total patient days (for an average increase of three percent) it would have its limit adjusted upward by 0.5 percent (or 50 percent of 3–2). In the same way, a hospital that had a 12 percent decrease in admissions and a 14 percent decrease in total days (for an average decrease of 13 percent) would have its limit adjusted downward by 1.5 percent (or 50 percent of 13–10). Increases or decreases, however, are limited to 15 percent and changes above that level are calculated to be 15 percent. For the purposes of this estimate, it was assumed that total hospital revenues would be increased by 1.0 percent as a result of this provision.

In calculating the total savings, another provision that was considered was that of Section 121(a) (3 and 4) which excludes hospitals from the revenue limit that either have less than 2,000 admissions per year or have 2,000 to 4,000 admissions per year and are sole community providers physically located outside of an SMSA. According to information provided by the Human Resources Committee, this would account for approximately 7 percent of total expenditures and, thus, this proportion of the savings was deducted in the estimate. Also, because of the fact that fiscal year 1978 will begin shortly, savings in the first year were assumed to be for only three-quarters of that year.

Although Section 117 exempts certain states which have cost-containment programs from the provisions of this title, only two of these states' programs now applies to Medicare reimbursement. This, it was assumed that, although states might receive an exemption under Section 117, the savings accrued from this Bill would not be significantly diminished.

Lastly, while Title II of S. 1391 provides for a moratorium on the acquisition of new health care equipment and facilities, no additional savings above those attributed under Title I will be accrued. While Title II might help facilitate hospitals' efforts to meet the limits established under Title I, they would not reduce expenditures below that amount. Also, because of existing capital commitments of facilities and the lag in experiencing the effect of new commitments, no significant impact of this provision will be seen until fiscal year 1981 or 1982.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Jeffrey Merrill.
10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

VI. REGULATORY IMPACT STATEMENT

Regulations issued pursuant to the provisions of this bill will potentially limit cost increases in about 4,000 non-Federal short-term acute care and specialty hospitals. It is estimated that approximately 60 percent or 2,400 hospitals affected by the bill may have costs of inpatient services which increase at a rate in excess of the limit. This number, however, is subject to further reduction to the extent that exceptions and exemptions are allowed pursuant to sections 115, 117, 118 or 119 of the bill. Hospitals requesting exceptions or exemptions as sole community provider under section 121 will incur some additional paperwork in preparing and documenting the request and meeting disclosure requirements. The bill will not apply to the smaller hospitals with 2,000 admissions or less and those sole community hospitals with between 2,000 and 4,000 admissions annually. Although these smaller hospitals make up approximately 40 percent of all hospitals in the nation, they account for less than 10 percent of the total operating expenses that would be subject to the cost control program.

Section 115 of the bill allows exceptions to the revenue limits for certain specified reasons and requires the hospital requesting the exception to provide satisfactory documentation to support the request. It is estimated that approximately 700 hospitals may file a request for exception and that on an average, each request will require about 40 hours to prepare and accumulate required documentation such as balance sheets, certificate of State health planning agency approval, schedules of computation of exception amount, etc.

Section 116 provides that where a hospital imposes inpatient charges in excess of the limits specified in the bill, it will be subject to the Federal excise tax specified in section 128 of the bill and to possible exclusion from participation in Federal programs. A hospital may avoid these penalties by maintaining an amount equal to the excess charges in an escrow account. It is estimated that in the first year approximately 300 hospitals may be required to place funds in an escrow account to avoid the penalty and that approximately 8 hours will be required to establish the account. It is also estimated that the impact of this section will be much less significant in subsequent years.

Section 124 of the bill exempts nonsupervisory personnel wage increases from the revenue limit. This section will require additional work for all hospitals subject to the provisions of this bill to identify nonsupervisory employees and calculate the average percentage wage increases. The amount of this additional work will vary among hospitals as a result of the sophistication of their payroll systems. Hospitals with computerized payroll systems would be able to perform this task with a minimum amount of additional work. If the hospital uses a manual payroll system, approximately 40 hours of additional work will be required to identify the nonsupervisory positions, the number of employees in such positions, the basic wage for each position and compute the amount of wage increase.

Section 125 of the bill which addresses "disclosure of fiscal information," requires that the names and annual compensation of the hospital's principal operating personnel, the name and address of any person who has an ownership interest of over 5 percent or who has a 5 percent or more interest in any mortgage or other obligation secured by hospital property or assets and the name and address of any individual or firm with which the hospital had business transactions aggregating over $5,000 and where an owner of the hospital or note holder has an interest of 5 percent or more in the firm be reported annually. To the extent that this information is disclosed, the bill could have a possible effect on the privacy of the individual concerned.

In addition, each hospital must annually report information describing its financial status (balance sheet and statement of revenue and expenses), copies of all cost reports submitted to each cost payer, and its budget. Moreover, the hospital must report twice a year the rate charges for each of 30 hospital services including average semi-private room rates. Although the information be readily available to most hospitals, this section will require about 30 hours of additional work to photocopy the information and prepare the reports.

Where a hospital fails to comply with the reporting requirements, it is subject to a 5 percent reduction in Federal payments.

Section 132 of the bill requires that the Secretary establish within 1 year of the date of enactment an accounting and uniform cost reporting system for determining operating and capital costs of hospitals providing services. Upon implementation of this part of section 132, hospitals will be required to modify their present accounting system to conform to the new requirements of this section. Also, sections 132 (e) and (f) direct the Secretary to establish a system which will identify hospitals which provide "better than average care" and develop a system for reimbursing such hospitals. This would impact the reimbursement for these hospitals although neither the extent nor the direction of the impact can be determined until the system is developed.

In addition, all hospitals subject to the cost limits will experience some increase in paperwork as a result of other additional cost reporting requirements. Except for those hospitals not currently participating in existing Federal programs, such increase would not be significant since much of the required information is already provided as part of cost reporting requirements for these programs. For example, each hospital will be required to submit information relative to base year average reimbursement per admission by any cost payer, average inpatient charges per admission, and total admissions by each type of third-party payer. It is estimated that an additional 35 hours will be required to collect and submit miscellaneous required information.

The estimated additional paperwork discussed above applies for hospitals currently participating in Federal programs. For hospitals not currently participating in existing Federal programs, the additional paperwork required is estimated to be approximately twice the estimate for hospitals participating in Federal programs.

VIII. SECTION-BY-SECTION ANALYSIS OF THE HOSPITAL COST CONTAINMENT ACT OF 1977 (S. 1391) AS REPORTED BY THE COMMITTEE ON HUMAN RESOURCES

Section 1. The first section contains the short title of the bill—"The Hospital Cost Containment Act of 1977." Section 2. The second section requires that by March 1, 1979, the Secretary of Health, Education, and Welfare—referred to as "Secretary" in later provisions—will submit a report by March 1979, setting forth his recommendations for permanent reforms in the delivery and financing of health care, which will replace the transitional provisions of the bill. The remainder of the bill is as follows:

TRANSITIONAL HOSPITAL COST CONSTRAINT PROVISIONS

PART A—PURPOSE AND GENERAL DESCRIPTION OF THE PROGRAM

Sec. 101 Purpose

Section 101 defines the general purpose of the transitional hospital cost-containment program established by this title. The overall purpose of title I is to constrain hospital cost increases by limiting the amount of revenue which may be received by hospitals or paid to hospitals from medicare, medicaid, private insurers, and paying patients. The provisions will go into effect on January 1, 1979 and remain in place until such time as permanent reforms in health care financing are adopted. The method by which the transitional cost constraint program will be carried out is to limit increases in inpatient costs by limiting the allowable increase in inpatient revenues of short-term acute care and specialty hospitals—other than new hospitals, certain small hospitals, and certain HMO-related hospitals—in the manner outlined.

PART B—ESTABLISHMENT OF HOSPITAL COST CONTAINMENT PROGRAM

Sec. 111 Imposition of limit on hospital revenue increases

Section 111(a) provides that for any period affected by this title, the average reimbursement per admission for inpatient serv-

ices paid by each class of payer—medicare, medicaid, each other cost payer, and all charge payers together—may not exceed the base year average reimbursement per admission for inpatient services by a percentage greater than the product of the factors set forth in paragraphs (1), (2), and (3) of this subsection.

Paragraph (1) of section 111(a) sets a factor which identifies the extent to which costs—that is, total hospital inpatient costs per admission as determined for medicare purposes—would have increased between the end of the base accounting year and the effective date of the program if they had increased by the average annual rate actually experienced by a hospital during the 2-year period ending with the close of the base year except that the percentage will not be less than 106 nor more than 115.

Paragraph (2) of section 111(a) sets a factor by which costs would have increased from the effective date of the program to the start of any subject accounting year if they increased at an average annual rate consistent with the basic limit set under section 112(b). That is, for purposes of computing the total limit applicable in a subject accounting year, the basic limit without any adjustment for patient loads is applied to the period intervening between January 1, 1979 and that accounting year. This percentage will be zero for the first subject accounting year since there will be no intervening period for that particular year.

Paragraph (3) of section 111(a) sets a percentage equal to the adjusted—that is adjusted for differences between subject year and base year admissions—inpatient hospital revenue increase limit set under section 112(a) applicable to the subject accounting year.

Subparagraphs (1), (2), and (3) of subsection (a) set forth the components of the percentage increase over the fixed 1976 base to be allowed in any subject accounting year. Paragraph (1) allows a percentage increase for inflation from the end of the 1976 base year to the January 1, 1979 effective date of the cost containment program. This inflation rate is set by using the actual experience of a past period. The increase which can be carried forward is limited to 15 percent. A rate of at least 6 percent is allowed when past increases have been low. Paragraph (2) adds the basic limits in effect for periods intervening between the January 1, 1979, effective date of the hospital cost containment program and the start of any subject accounting year to allow for inflation at the target rate for such periods. Paragraph (3) allows the limit for the subject accounting year to be adjusted for changes in admissions. Allowable revenues are either increased or decreased based on the marginal cost changes resulting from admission changes.

Section 111(b) provides that where less than a full accounting year falls within the first year (Dec. 31, 1978 to Dec. 31, 1979) for which the limits are set, the limits will be applied to reimbursement and charges in the hospitals accounting period in the same proportion as the number of days in the accounting period falling within the period for which the limit is applied bears to the total days in that accounting year. Thus, for a hospital with an accounting year ending September 30, 1978, and assuming an annual rate of cost increase of 15 percent in the 24-month period ending December 1977, and a 9-percent basic limit with no adjustments effective for the period January 1, 1979 through December 3, 1979, the allowable percentage increase would be 10.5 percent. This 10.5 percent figure is derived by adding the 15-percent annual inflation allowance for the one-fourth of the year between the end of the base accounting year (Dec. 31, 1977) to the effective date of cost containment (Jan. 1, 1979), or 3.75 percent, to the basic 9-percent limit applied for the three-fourths year following after the effective date, or 6.75 percent. The 10.5-percent would be the limit on increases in reimbursement per admission for the last three quarters of the accounting year ending September 1979. This limit would be applied on a monthly basis only to that portion of the year which falls after enactment. Reimbursement for the months prior to enactment is based on existing practices. For any subject year which follows the first subject year one basic limit figure is added to the limit calculated for the first subject year.

Section 111(c) provides that in the case of an admission for which a hospital will be reimbursed by more than one cost payer, the first cost payer who pays for any services rendered to the patient will count the patient and all costs attributable to that patient as one of its admissions. The purpose of this provision is to avoid double counting of admissions and costs through a simple administrative mechanism that is consistent with current practices.

Sec. 112. Determination of adjusted inpatient hospital revenue increase limit

Section 112(a) provides that the adjusted inpatient hospital revenue increase limits (adjusted limits), applicable to a hospital during any accounting year under section 111(a)(3), will be the inpatient hospital revenue increase limits (basic limits) promulgated under section 112(b) for the 12-month period in which the subject accounting year ends modified by the "volume load formula" promulgated under section 113. The adjusted limit, then, is the limits derived from the percentage increase in the GNP deflator and in total hospital expenditures as specified in the following section, modified to account for changes in a hospital's admissions and number of patient days during a subject accounting year.

Section 112(b) requires the Secretary to promulgate the "inpatient hospital revenue increase limit" (basic limit) which will apply during any period subject to this title.

Paragraph (1) of section 112(b) provides that the Secretary will, between October 1, and December 31 of 1978 and each succeeding calendar year, promulgate a figure which will be the basic limit applicable to the following calendar year period. The figure will be the sum of (A) the percentage increase in the implicit GNP price deflator (published by the Department of Commerce and used to adjust the gross national product calculated by that Department for the effects of inflation—hereafter referred to as the "GNP deflator"—for the 12-month period ending October 31 of that year as compared to the preceding 12-month period), plus, (B) a factor that allows for continued expansion of essential hospital services. The expansion factor will be one-third the difference between (i) the average annual rate of increase in total hospital expenditures which is found by the Secretary to have occurred during the 2 years ending December 31 of the prior year, and (ii) the average annual rate of increase in the GNP deflator for the 2 years ending December 31 of the prior year.

Paragraph (2) of section 112(b) provides that the Secretary may adjust or readjust the limit to compensate for actual inflation of more than 1 percentage point above the GNP deflator used to set the limit in section 112(a). Any adjustments will affect all accounting years which end in the calendar quarter preceding the calendar quarter in which the adjustment was made, and all subsequent accounting periods.

Sec. 113. Promulgation of volume load formula

Section 113 provides that basis on which the volume load formula will be promulgated. The formula will be promulgated by the Secretary within 30 days of enactment of the act and will then be applied under the terms of section 112 of this act.

Paragraph (a) provides that the volume load formula will consist of the arithmetic average of the percentage increase in inpatient admissions over the base year and the percentage increase in inpatient days since the base year. This provision allows for recognition of volume changes in setting the revenue increase limits.

Paragraph (b) of section 113 provides that the volume load formula will be such that it establishes a range of percentage change in volume load, decreases of up to 10 percent in the base year and increases of up to 2 percent, within which a hospital will not be subject to any adjustment in total revenues for any changes in patient load over the patient load experienced during the base accounting year.

Paragraph (b)(2) of section 113 provides that the formula will be such that it allows total revenue to increase by one-half of the revenue which would be allowed in paragraph (1) when there is no change in volume loads multiplied by the percentage increase in volume above the range set forth in paragraph (1), but not beyond a 15-percent increase in volume load.

Paragraph (b)(3) provides that if volume load declines by more than 10 percent but by less than 15 percent the formula must require a decrease in allowable total revenue equal to one-half of the revenue which would be allowed under paragraph (b)(1) if there were no change in volume load multiplied by the percentage decline in volume between 10 and 15 percent.

Paragraph (b)(4) provides that if volume load increases by more than 15 percent the volume load formula will provide that the hospital can receive no more total revenue increase than the maximum specified in paragraph (b)(2).

Paragraph (b)(5) provides that if volume load decreases by 15 percent or more the volume load formula will require that the maximum allowable revenue shall decrease from the lower limit set in paragraph (b)(3) by one-half the revenue specified in paragraph (b)(1) if there were no changes in volume load multiplied by the percentage decline in volume below 15 percent.

Sec. 114. Based accounting year and modification of changes and reimbursement for that year

Paragraph (a) of section 114(B) provides that the base accounting year will be a hospital's accounting year which ended in 1977. In the case of a new hospital, which did not meet the definition of a hospital under this title for at least 1 full accounting year prior to its accounting year ending in 1977, the base year will be that accounting year which immediately precedes the accounting year in which the new hospital satisfied the definition in section 121.

Section 114(c) provides that charges attributable to inpatient services determined by a State planning agency to have been inappropriate will not be deducted from the base year as otherwise required by subsection (b).

Sec. 115. Establishment of exceptions

Section 115 authorizes the Secretary to grant exception from the limits established under title I to hospitals which meet certain requirements. The hospital must request the exception and must provide any and all evidence necessary for the Secretary to make a determination.

Paragraph (1) of section 115(a) sets out the two reasons why exceptions may be granted as (A) changes in volume load beyond (either higher or lower than) 15 percent, and (B) changes in the capacity of a hospital, significant changes in the type of services offered in the hospital, or major renovation or replacement of facilities but only if such changes have increased in-

patient costs per admission (as determined for medicare purposes) more than the intensity growth factor—one-third of the difference between increases in the GNP deflator and increases in hospital costs—allowed for hospital growth under subparagraph 112(b)(1)(B).

Paragraph (2) of section 115(a) requires that, to be considered for an exception, a hospital must demonstrate that without an increase in the revenue otherwise allowable under the limit (taking into account all other available resources, including such resources as unrestricted endowment) the major changes in volume load, capacity, facilities, or services would cause it to experience a current ratio of assets to liabilities of less than 2.0. For purposes of this paragraph, "current ratio of assets to liabilities" is defined as the sum of the cash, notes and accounts receivable (less reserves for bad debts), marketable securities, and inventories divided by the sum of all liabilities of the hospital falling due in the accounting year for which the exception is requested.

Paragraph (3) of section 115(a) requires that if a hospital is to be considered for an exception, the appropriate State health planning and development agency (which has been designated under section 1521 of the Public Health Service Act) must find that the major changes in admissions, capacity, plant, or services are necessary to the health needs of the community and are appropriate to the prevailing conditions in the community

Section 115(b)(1) provides that the Secretary shall grant exceptions from the limits for hospitals that demonstrate that there has been a change in the inpatient hospital services for which reimbursement is made by a cost payer or in the basis for calculating reimbursement. This exception is designed to accommodate significant changes in policy coverage by an insurer.

Section 115(b)(2) provides that the Secretary shall grant an exception if the percentage of inpatient charges attributable to any cost payer has changed, and the change has reduced the total revenue of the hospital by at least the percentum specified in section 112(b)(1)(B). This exception is designed to accommodate a major shift in the type of patients served in a hospital, where the shift is not away from nonpaying and medicaid patients. Section 115(c) requires the Secretary to make a determination on every exception request within 90 days after the request is satisfactorily filed. This subsection assures that all exceptions will be approved or denied in a timely manner.

Section 115(d) provides that the Secretary may require a hospital which has been granted an exception to undergo an operational review. The findings of the review would be public. A hospital will be required to implement recommendations made as a result of the review if it wishes to maintain its exception. This subsection provides that any hospital that receives an exception, and, therefore, added revenue, may be closely examined to determine whether or not its operating procedures might be contributing to the need for an exception. If factors contributing to the need for an exception are identified, suggestions for correctional measures must be followed.

Section 115(e) defines how a new limit will be set for a hospital which has been granted an exception.

Paragraph (1) of section 115(e) provides that if a hospital is granted an exception on the basis of changes in volume load of more than 15 percent, then its maximum allowable revenues will be increased or decreased according to a per centum limitation determined by the Secretary.

Paragraph (2) of section 115(e) provides that if a hospital is granted an exception for major changes in capacity in the type of service offered, or in its plant, it will be allowed an increase in its total allowable revenues no greater than the amount necessary to maintain a current ratio of assets to liabilities of 2:0.

Paragraph (3) of section 115(e) provides that if a hospital is granted an exception on the basis of changes in a cost payer's reimbursement practices, then the hospital will be allowed an increase in its total allowable revenue as is necessary to offset the changes for which the exception was granted.

Paragraph (4) of section 115(e) provides that if a hospital is granted an exception on the basis of changes in the type of patients it serves (as indicated by the type of payers covering the patients), then the hospital will be allowed an increase in its total allowable revenue as is necessary to offset the changes for which the exception was granted.

Paragraph (1) of section 115(f) entitles a hospital which is dissatisfied with the Secretary's determination on its exception to request a hearing before the Provider Reimbursement Review Board established under section 1878 of the Social Security Act. For a case to be heard the amount in controversy must be over $10,000 and the petition for a hearing must be filed within 180 days after receipt of the Secretary's decision. Paragraph (2) of section 115(f) authorizes the Secretary to appoint five additional members of the Provider Reimbursement Review Board for the purpose of reviewing appeals which may arise from the exception process.

Section 115(g) provides that upon request by a hospital, the State health planning and development agency designated under section 1521 of the Public Health Service Act for the State in which the hospital is located shall make a finding as to the appropriateness of specific institutional health services for purposes of subsection (a)(3) of section 114(c), after requesting the recommendations of the appropriate health systems agenecy. The findings of the State health planning and development agency under this subsection will not be subject to further review.

Sec. 116. Enforcement

Section 116(a) provides that medicare payments may be made only to the extent that reimbursements are within the established limits on payment for inpatient hospital services. Section 116(b) provides that state medicaid and maternal and child health and crippled children's services programs need not pay amounts in excess of the established limits on payments for inpatient hospital services. Subsections (a) and (b) limit Federal payments to hospitals within the established limits so that compliance with respect to Federal payments is automatic.

Section 116(c) provides for sanctions on hospitals and cost payers who do not comply with the limits on payment for inpatient hospital services established by this title. Receipt on a cost or charge basis of any amount in excess of the established limits on payment for inpatient hospital services will subject a hospital to (1) a Federal excise tax of 150 percent of the excess amount under section 4991 of the Internal Revenue Code of 1954 (as added by section 128 of the act), and (2) exclusion, at the Secretary's discretion, from participation in any or all of the medicare, medicaid, and maternal and child health and crippled children's services programs established under titles V, XVIII, and XIX of the Social Security Act The same sanctions are applicable to any nongovernment cost payer that makes payments in excess of the established limits on payment for inpatient hospital services.

Section 16(d) provides the enforcement mechanism which will apply to billed charges and additionally provides that a hospital will be exempt from the sanctions set forth in paragraphs 116(c)(1) and 116(c)(2), that is, the excise tax and exclusion from the Government programs, if it holds aggregate excess billed charges attributable to charge payers in esrow until equivalent aggregate amounts in charges below the limits are experienced. Any hospital which bills for charges in excess of the limits must make a public announcement in its own community that such excessive charges did occur.

Sec. 117. Exemption for hospital in certain States

Section 117(a) provides that where a State has a satisfactory program for containing hospital costs, the Governor or chief executive of the State may request that the Secretary exclude the hospitals physically located in the State from the application of title I. Paragraphs (a), (b), (c), and (d) set forth the conditions under which a State program can be approved for this purpose.

Paragraph (a) requires that a State program must be in effect as of the date when a request is made. Such a program must cover at least 90 percent of the hospitals which would be covered by title I.

Paragraph (b) requires that the State program must apply to at least all inpatient revenues, and must have applied for at least 1 year prior to the date of such request to at least half of those revenues (excluding those received from the medicare program under title XVIII of the Social Security Act).

Paragraph (c) requires that the Governor or chief executive must certify that the aggregate rate of increase for inpatient hospital revenues for all hospitals in the State will not (1) exceed 110 percent of the basic limit established by the Secretary under paragraphs 112(b)(1) and 112(b)(2). However, at the option of the State, increases which would be exempt under the nonsupervisory wage passthrough in section 124 will increase the limit in the manner prescribed in that section. No State program shall require an increase in aggregate inpatient revenues less than the increase in the GNP deflator applicable to that fiscal period.

Paragraph (d) requires that the Governor or chief executive must submit, and have approved by the Secretary, a plan for recovering any excess revenue which may occur under the State's plan.

Sec. 118. Exemption for hospitals in certain experiments or demonstrations

Section 118 provides that the Secretary may exclude a hospital or group of hospitals from application of title I if (1) such exclusion is necessary to facilitate an experiment or demonstration entered into under section 402 of the Social Security Amendments of 1967, section 222 of the Social Security Amendments of 1972, or section 1526 of the Public Health Service Act and (2) the experiment or demonstration is consistent with the purposes of this title. This provision may apply to a single hospital, to a group of hospitals, or to an entire State.

Sec. 119. Exemption for States with cost containment programs

Section 119(a) provides that a State desiring to conduct a hospital cost containment program may submit a plan to the Secretary. He would be required to approve that plan if it satisfied the criteria set forth in the section. Paragraph (1) requires that there be an identifiable unit of State government which has the authority to supervise the administration of the program. Paragraph (2) requires that there be a methodology that assures that the aggregate rate of increase in revenues for inpatient hospital services for all hospitals in the State will not exceed 110 percent of the inpatient hospital revenue increase limit determined pursuant to section 112(b)(1) and section 112(b)(2), nor

be required to be less than the increase in the GNP deflator applicable to that fiscal period. The section also provides that the methodology may include alternative methods for classifying hospitals, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system. Paragraph (3) of section 119(a) requires that the plan include a methodology for recovery of any excess of total revenues. Paragraph (4) of section 119(a) requires that the plan include sanctions and enforcement procedures to insure complaints. Paragraph (5) of section 119(a) requires that the plan provide for uniform definition of all costs. Paragraph (5) of section 119(a) requires that the plan include provisions for the evaluation of standards of institutional performance.

Paragraph (7) of section 119(a) requires that the plan provide for the mandatory exemption of wage increases for nonsupervisory personnel as specified in section 124 from any revenue or cost limits. Paragraph (8) of section 119(2) requires that the plan comply with such other criteria as the Secretary deems necessary to accomplish the purposes of title I and which are not inconsistent with the provisions of title I.

Section 119(b) authorizes the awarding of $10 million in grants to assist States in implementing cost containment programs which meet the criteria of section 119(a).

Section 119(c) requires that the Secretary promulgate regulations to implement section 119 within 180 days of the date of enactment of the act.

Sec. 120. Revocation of exemptions under section 117, 118, and 119

Section 120(a) provides for an annual review by the Secretary of any program, experiment, or demonstration that has received an exemption under section 117, 118, or 119.

The Secretary may revoke any exemption if he determines that the conditions of the exemption are no longer being met. The revocation may occur only after a notice of intent has been published and an opportunity for a hearing on the record has been provided.

Section 120(b) provides that upon revocation of an exemption each affected hospital will become subject to the limits imposed by title I for each full accounting year, any part of which was not covered by the exemption.

PART C—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sec. 121. Definition of hospital

Section 121(a) defines the term "hospital," for purposes of this title, and with respect to any accounting year, as an institution (including a distinct part of an institution participating in the medicare program established by title XVIII of the Social Security Act, which (1) satisfies paragraphs (1) and (7) of section 1861(e) of the Social Security Act, and (2) has an average length of stay of 30 days or less in the preceding accounting year. Paragraph (1) of section 1861(e) of the Social Security Act defines a hospital as an institution primarily engaged in providing diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons by or under the supervision of physicians, rehabilitative services by or under the supervision of physicians. Paragraph (7) of that section requires that the institution be licensed or meet the requirements for licensure, where State law so requires.

Section 121(b) provides that an institution shall not be a hospital except for purposes of section 125, if it meets the criteria set out in paragraph (1), (2), (3) or (4) below during any part of a period to which title I applies. However, all institutions which meet the criteria established in section 121(a) will be subject to the disclosure provisions of section 125 of this act.

Paragraph (1) excludes institutions which otherwise meet the criteria for hospitals, but are less than 2 years old.

Paragraph (2) excludes institutions which otherwise meet the criteria for hospitals, but derive more than 75 percent of their inpatient care revenues, disregarding revenues received from the medicare program, from one or more health maintenance organizations (as defined in subsection 1301(a) of the Public Health Service Act). A health maintenance organization is defined by section 1301 of the Public Health Service Act as a legal entity which provides basic and supplemental health services to individuals enrolled with the organization on the basis or a prospective periodic rate without regard to the "frequency, extent, or kind of a health service . . . actually furnished" and meets certain other criteria specified in the Public Health Service Act.

Paragraph (3) excludes institutions which have had, in the 3 previous accounting years preceding the subject accounting year average annual admissions of 2,000 or less.

Paragraph (4) exempts those hospitals that had in the 3 previous accounting years preceding the subject accounting year an average annual admissions of between 2,000 and 4,000 admissions and that are not physically located with a Standard Metropolitan Statistical Area and are sole community providers as defined by the Secretary.

Section 121(c) establishes for purposes of sections 117 and 119 the definition of a hospital. This definition, in contrast to the one generally applicable to title I, requires the inclusion of small hospitals and new institutions covered by acceptable State cost containment programs on the grounds that such programs can deal appropriately with the special problems experienced by these hospitals.

Section 121(d) exempts any hospital that is a Federal hospital.

Sec. 122. Other definitions

Section 122 defines five major terms for purposes of this title. Paragraph (1) of section 122(a) defines the term "accounting year" for purposes of this title as:

(A) a period of 12 consecutive full calendar months which correspond to the last full period allowed for medicare reimbursement purposes (for a hospital participating in the medicare program established under title XVIII of the Social Security Act); or (B) a calendar year, or if requested by the hospital, some other 12-month period as designated by the Secretary (for hospitals not participating in medicare).

Paragraph (2) of section 122(a) provides that the Secretary may establish an accounting year of less than 12 months, and make appropriate adjustments in the application of this title, for a hospital whose "accounting year" under paragraph (1) is changed from one 12-month period to another.

Section 122(b) defines the term "inpatient hospital services" as services so defined for medicare purposes plus the services of a private-duty nurse or other private-duty attendant.

Section 122(c) defines the term "inpatient charges" as regular rates, applied to all inpatient services, which are used in apportioning costs between medicare beneficiaries and all other patients.

Section 122(d) defines the term "admissions" as the formal acceptance of an inpatient by a hospital. Newborn children (unless retained after discharge of the mother) and transfers between inpatient units of the same hospital are excluded from this definition of admission.

Section 122(e) defines "cost payer."

Paragraph (1) of section 122(e) defines a "cost payer" as one of the programs established by or under title V, XVIII, or XIX of the Social Security Act. These are the maternal and child health and crippled children's services, medicare, and medicaid programs.

Paragraph (2) defines a "cost payer" as any organization which (A) meets the definition of a carrier in section 1842(f)(1) of the Social Security Act and (B) reimburses a hospital on the basis of costs. Section 1842 (f)(1) of the Social Security Act describes a carrier as "a voluntary association, corporation, partnership, or other nongovernment organization which is lawfully engaged in providing, paying for, or reimbursing the cost of health services under group insurance policies or contracts, medical or hospital services agreements, membership or subscription contracts or similar group arrangements in consideration of premiums or other periodic charges payable to the carrier, including a health benefit plan duly sponsored or underwritten by an employee organization." Section 122(f) defines "reimbursement payable by a cost payer" as the sum of (1) the amounts payable by the cost payer to a hospital for inpatient hospital services, and (2) the amounts payable by an individual to the hospital for inpatient hospital services if the individual's expenses for such services are payable in part by the cost payer, to the extent that those amounts are calculated as a portion of the costs or other basis on which the amounts payable by the cost payer are determined. Section 122(g) defines a "State" to include Puerto Rico, Guam, the District of Columbia, and the Virgin Islands.

Sec. 123. Determination of inpatient reimbursement

Section 123 provides that the base inpatient hospital reimbursement for the maternal and child health and crippled children's, medicare, and medicaid programs will be determined without adjustment for the following regulations: carry forward of costs disallowed under limits on reasonable costs (CFR 405, 460(g)), carry forward of costs disallowed under the lower of cost or charges (CFR 405.455(d)), recapture of accelerated depreciation (CFR 405.415(d)(3), and section 405.415(f)). Thus, the revenues used in base and subject-year calculations will be that portion of revenues directly attributable to costs which are incurred in those years.

Sec. 124. Exemption of nonsupervisory personnel wage increases from revenue limit

Section 124(a) provides that the Secretary shall modify the basic limit, and its adjusted limit as applied to each hospital subject to this title to allow, without restriction, revenue equal to the average amount of any increase in regular wages granted to nonsupervisory personnel. For purposes of title I, the term "nonsupervisory personnel" means any employee who does not meet the criteria for a "supervisor" as defined in the National Labor Relations Act. This exemption does not apply to physicians, but does apply to State and local employees. A hospital must provide all data necessary for the required calculation. This section is applied to all hospitals, except for those exempted under section 117 or 118, for any accounting year beginning before April 1979.

Section 124(b) provides that the modified limit will be calculated by adding together the percentages in paragraphs (1), (2), and (3).

Paragraph (1) of section 124(b) sets forth one part of the formula as the average percentage increase in wages granted to nonsupervisory personnel since the close of the preceding accounting year multiplied by the percentage of total inpatient cost (as determined for medicare purposes) attributable to such wages.

Paragraph (2) of section 124(b) sets forth one part of the formula as the limit (basic or adjusted, as appropriate) otherwise applicable under title I multiplied by the percentage of total inpatient cost (as determined for medicare purposes) attributable to all other expenses in the preceding accounting year.

Paragraph (3) of section 124(b) provides that to the extent that a hospital's exempted wage increases to nonsupervisory employees does not exceed the adjusted inpatient hospital revenue increase limit applicable under section 124(b)(2), the difference may be applied toward wages for increased numbers of employees whose wage increases in future years would be exempted under the provisions of this section.

Section 124(c) provides that the modified limit calculated in section 124(b) will constitute that hospital's basic or adjusted limit for purposes of imposing a limit on revenues under section 111 of the title, and for all other purposes of this title.

Sec. 125. Disclosure of fiscal information

Section 125(a) requires that on March 1 and September 1 of each year every hospital must submit the charges for 30 designated services, including its average semiprivate room rate, to the appropriate health systems agency (as designated under section 1515 of the Public Health Service Act). For purposes of this title, the Secretary will designate 30 services to be reported which he finds to be the most frequently used or most important for purposes of comparing hospitals.

Section 125(b) requires that a hospital shall submit annually to the appropriate health systems agency, within 90 days of the close of each its accounting year, a report, in a form prescribed by the Secretary, which contains information describing the ownership, management, and financial status of each such hospital, as specified by the Secretary, including:

(1) A balance sheet as of the end of such accounting year, setting forth assets and liabilities at that date, including all capital, surplus, reserve, depreciation.

(2) A statement of operations for that accounting year, setting forth all operating and nonoperating revenues and expenses including the percent increase in wages for nonsupervisory personnel during that accounting year (including a comparison with all previous accounting years subsequent to the date of enactment).

(3) The name and address of any person—

(A) who has (directly or indirectly) an ownership interest or lease or rental interest of 5 percent or more in such hospital, or who is the owner (directly or indirectly) of an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such hospital or any of its property or assets, or

(B) who is an officer or director of the hospital if it is organized as a corporation.

(4) The name and address of any individual, corporation, partnership or other legal entity with whom the hospital has had, during the previous 12 months, business transactions in an aggregate amount in excess of $5,000 if a person described in paragraph (3) or a person who exercises discretionary control respecting the financial management of the hospital is such an individual or has (directly or indirectly) an ownership interest of 5 percent or more in such corporation, partnership or other legal entity.

(5) The names and annual compensation including salary and benefit increases of the hospital's principal operating personnel, as defined by the Secretary.

Section 125(c) requires the hospital to make available to the health systems agency in its area all cost reports submitted to cost payers and submit the annual overall plan and budget required for medicare participation.

Section 125(d) provides that if a hospital fails to comply with the disclosure provisions of this section the Secretary may reduce by 10% any payment due to the hospital under programs established under titles XVIII, XIX, or XX of the Social Security Act.

Section 125(e) requires that each health systems agency make available to the public material collected under the provisions of this section.

Sec. 126. Improper changes in admission practices

Section 126 requires that the Secretary must investigate a written complaint by any person to the Secretary that a hospital is attempting to avoid its revenue limits by intentionally reducing the proportion of patients not expected to pay full charges.

If the Secretary finds that the complaint is justified, he may impose the sanction (exclusion from Government programs) set forth in section 116(c)(2) of title I.

Sec. 127. Review of certain determinations

Section 127 provides that the determinations made on behalf of the Secretary (excluding exceptions under section 115 and improper changes in admissions under section 126) are subject to the provisions for hearings on appeals of such determinations before the Provider Reimbursement Review Board.

Sec. 128. Excise tax on excessive payments for inpatient hospital services

Section 128(a) amends subtitle D of the International Revenue Code of 1954 (relating to miscellaneous excise taxes), by adding the following new chapter:

CHAPTER 45—TAX ON CERTAIN EXCESSIVE PAYMENTS FOR INPATIENT HOSPITAL SERVICES

Sec. 4991. Imposition of tax

The new chapter establishes a tax equal to 150 percent of the amount of any payments a hospital receives in excess of the limits established by title I of the Hospital Cost Containment Act of 1977. The same provisions apply to payments by a cost payer which are made in excess of the applicable limits. Subsection (b) of the new chapter exempts a hospital from the tax where it holds the excess charges in escrow as set forth in section 116(d)(2) of the Hospital Cost Containment Act of 1977. Section (c) of the new chapter ties all definitions, where applicable, in the new section to the meanings given them in title I of the Hospital Cost Containment Act of 1977. Subsection (d) of the amendment provides for the administration of the excise tax.

Sec. 129. Effect of act on payments below the established limits

This section provides that the act not require any Federal or State program or any person to pay a hospital more than that program or person would have been required to pay had this act not been enacted.

Sec. 130. Citizen's civil actions

Section 130(a) provides that in general any person may undertake a civil action for injunctive relief on his own behalf against any person (including the Secretary) who is alleged to be in violation of sections 125, 126, 128, or 129 of this title, or the regulations promulgated thereunder. Similarly, the section provides that action may be commenced against the Secretary for an alleged failure to perform any act or duty pursuant to sections 124, 125, 126, 129, or 130. The U.S. district courts will have jurisdiction over actions brought under this section.

Section 130(b) limits the ability of a person to commence a civil action prior to 60 days after the plaintiff has given notice to the alleged violator (if suit is brought for alleged violations of the above sections) or to the Secretary (if suit is brought against the Secretary for alleged nonperformance of requirements under these sections). No suit for alleged violations may be commenced by a person if the Attorney General or the Secretary has commenced and is diligently pursuing judicial proceedings or administrative action with respect to such alleged violations.

Section 130(c) provides that in any action under this section, the Attorney General or the Secretary may intervene as a matter of right. However, the Secretary is not limited by any findings of a court under this section with respect to his ability to institute judicial proceedings or administrative action against a party to such judicial proceeding. Further, the Secretary is not limited by the factual findings of any proceeding (with respect to subsequent judicial proceedings or administrative action) unless he was a party to the proceedings under this section.

Section 130(d) provides that a court, in issuing any final order in any action brought pursuant to section 130(a) may award costs of litigation (including a reasonable attorney's fee, based on the prevailing rates for such services, and expert witness fees) to any party whenever the court determines that such an award is appropriate.

Section 130(e) preserves the right of any person to seek enforcement at any regulation or order or seek any other relief under any statute or at common law.

Section 130(f) provides that nothing in section 130 shall require the disclosure of any trade secret information or any other confidential information except as provided by the Federal Rules of Civil procedure.

Sec. 131. Additional provisions

Paragraph (1) of section (a) provides that within 1 year of the date of enactment of the act, and after appropriate consultation, the Secretary shall promulgate a figure that more accurately reflects the rate of increase of the prices of the inputs necessary for the delivery of hospital services. This figure is to replace the figure promulgated pursuant to section 112 as the inpatient hospital revenue increase limit.

Paragraph (2) of section 131(a) provides that at the same time that the Secretary promulgates a new figure under paragraph (1) of section 131(a), he shall make any changes in the exceptions process as deemed necessary or appropriate. Such changes shall be made in order to insure that—

(A) Only hospitals that are experiencing financial crises, as defined by the Secretary, and that have not incurred expenses in excess of those found to be necessary pursuant to section 1861(v)(1)(A) of the Social Security Act are allowed to receive exceptions; and

(B) Exceptions will only be granted to hospitals that qualify under clause (A) and that have—

(*i*) experienced an unforeseeable or unavoidable rise in the price of malpractice insurance, other liability insurance, energy, or such other items as the Secretary deems appropriate which result in hospital expenditures in excess of the figure promulgated pusuant to paragraph (1) of this subsection;

(*ii*) experienced a change in patient mix resulting from expanded institutional capacity provided such expansion has been approved pursuant to section 1122 of the Social Security Act or title XV of the Public Health Service Act;

(*iii*) experienced unusual increased expenses, as defined by the Secretary, associated with the closure, modification, or change in usage of all or part of its facilities resulting from the elimination of excess bed capacity; discontinuance of an underutilized service for which there are adequate alternative sources; or substitution for the underutilized service of some other service which is needed in the area and which is consistent with the findings of an appropriate health planning agency; or

(*iv*) experienced such other change in condition that the Secretary deems an appropriate justification.

A hospital granted an exception under

these provisions must have demonstrated the need for and appropriateness of the proposed services or facilities to the State health planning and development agency designated under section 1521 of the Public Health Service Act for the State in which the hospital requesting the application is located.

Section 131(b) provides that changes in the program established under subsection (a) will apply to hospitals for their accounting years commencing after such changes are in effect.

Section 131(c) provides the Congress with a 60-day review period for any changes proposed by the Secretary pursuant to section 131(a). The Secretary is to submit these changes to the Congress together with a detailed statement of the reasons underlying such changes. The changes will go into effect automatically unless either House passes a resolution during the 60-day period stating in substance that it does not favor such changes.

Sec. 132. Additional provisions

Section 132 provides that after consultation with appropriate public and private organizations, the Secretary shall establish several new monitoring and accounting systems within 1 year after the date of enactment of this act.

Section 132(a) provides for the establishment of an accounting and uniform functional cost reporting system (including uniform procedures for allocation of costs) for determining operating and capital costs of hospitals providing services.

Section 132(b) provides for the establishment of a system which will classify hospitals according to size, geographical location, and other criteria which will reflect efficiency and services provided.

Section 132(c) provides for the establishment of a system that more accurately measures the changes in hospital costs associated with changes in hospital volume.

Section 132(d) provides for the establishment of a system that monitors, on a current basis, shifts in case mix including shifts of cases with higher than average costs per admission.

Section 132(e) provides for the establishment of a system that measures the output of hospitals which includes a way to identify hospitals that provide better than average care than hospitals of similar characteristics.

Section 132(f) provides for the establishment of a system that would reimburse hospitals of similar characteristics differently based on the system established pursuant to subsection (e).

Sec. 133. Additional provisions

Section 133(a) directs the Secretary to arrange for studies of methods for controlling the costs of and/or revenue received for hospital outpatient services, long-term care services and ambulatory care including physician services. This provision specifically details for the Secretary which areas should be examined in order to develop a long-term strategy to contain increases in health costs.

Section 133(b) provides a 1 year deadline for completion of the studies mandated in paragraph (a) and requires that within 30 days after completion they be submitted to the Congress along with any associated reports completed by the Secretary, including recommendations, if any, for legislative and administrative action.

Sec. 134. Additional provisions

The Secretary is required to monitor, on a current basis, the economic impact of all the provisions of this title, including sections 117, 118, 119, and 124. He is to report annually to the Congress the results of such monitoring including the percentage of increase in the cost of energy, malpractice, and other liability insurance, and the cost of wage increases for nonsupervisory personnel.

Sec. 135. Additional provisions

This section states that in carrying out the purposes of this title the Secretary or a State is authorized to enter into contracts with State or national cooperative information centers established under section 304 or 306 of the Public Health Service Act.●

NOTICES OF HEARINGS

SUBCOMMITTEE ON HUD-INDEPENDENT AGENCIES APPROPRIATIONS

Mr. PROXMIRE. Mr. President, I wish to announce that the Subcommittee on HUD-Independent Agencies of the Committee on Appropriations will hold a hearing on House Joint Resolution 1088—the New York City loan guarantees bill on this coming Friday, August 18, 1978, at 10 a.m., in room 1318, Dirksen Senate Office Building. Mr. Roger C. Altman, Assistant Secretary for Domestic Finance at the Department of the Treasury, will testify on this measure which will, if approved, provide financial assistance for the city of New York.

SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, the Select Committee on Small Business will hold 2 days of hearings, beginning on Friday, August 18, on inflation as it relates to certain segments of the economy and small business. The second day of hearing will be on Monday, August 21. Specific times and witnesses are not yet available. More information may be obtained from the committee, 224-5175.●

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION AND FEDERAL SERVICES

○ Mr. GLENN. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Energy, Nuclear Proliferation and Federal Services. The hearing is scheduled for Friday, August 18, 1978, beginning at 9:30 a.m., in room 3302, Dirksen Senate Office Building. The purpose of the hearing is to receive testimony from the administration and others on S. 1493, the energy impact assistance bill of 1978.

For further information regarding the hearing, you may contact Ms. Donna Lavigne at 224-2627.

Those who wish to submit a written statement for the record should write to the Subcommittee on Energy, Nuclear Proliferation and Federal Services, room 6206, Dirksen Senate Office Building, Washington, D.C. 20510.●

COMMITTEE ON THE JUDICIARY

● Mr. ABOUREZK. Mr. President, I wish to announce that the grand jury reform hearings which are scheduled for August 17, 22, and 24, 1978, will begin each day at 9:30 a.m., in room 2228, Dirksen Building, instead of at 10 a.m., as previously scheduled.●

ADDITIONAL STATEMENTS

CETA SUCCESSES

● Mr. JAVITS. Mr. President, the Senate is expected this month to take up S. 2570, the Comprehensive Employment and Training Act (CETA) Amendments of 1978.

While there will be, of course, debate on the specific provisions of the committee bill—and I believe S. 2570 is a very good bill—often inadequate attention is given to the many success stories in the CETA program.

The National Association of Counties has selected 27 county prime sponsors in the United States to receive its 1978 County Achievement Award for special CETA employment and training projects. The award winners operate special programs for: for example, youth; women; veterans; public assistance recipients, and the handicapped.

I ask that an overview of some of these special CETA programs, which appeared in the June 1978 issue of the County Employment Reporter, be printed in the RECORD.

I know I will be joined by many of my colleagues in paying tribute to the dedicated personnel of these county prime sponsors who have worked so faithfully to make the CETA program a vital influence in the lives of the unemployed poor of our country.

The article follows:

CETA SUCCESSES CITED

In an effort to give national recognition to progressive county activities that demonstrate improvements in local structure, management, or services, NACo conducts the County Achievement Award Program each year. For 1978, twenty-seven counties have received awards for employment and training projects. Many troubled youths, displaced homemakers, handicapped persons and Vietnam-era veterans would be among those unemployed if it were not for special projects conducted by county government.

Highlighted below are several of the award-winning programs. They are divided into seven subject areas.

YOUTH

The Cooperative Diversified Occupations Education Program, Mercer County, New Jersey. Operated through CETA, this dropout prevention and employment program concentrates on potential dropouts or those who have recently left school. The program provides academic preparation for graduation in conjunction with occupational skill training to enhance employability.

For the supervised, on-the-job, vocational training program, a coordinator develops private-sector work stations with local businesses and industries. Participants work on a full-time basis. Wages are paid by the employer.

Classroom instruction is given two evenings each week for thirty-six weeks at a local high school. Instructors cover materials related to employment situations, and provide individual and group counseling. Both parts of the program must be completed successfully for participants to receive a high school diploma. After graduation, the adult evening school staff and county office of manpower administration offer placement assistance so graduates may acquire full-time employment or further their education.

Over a three-year period, forty-nine youths have participated in the program. Eighty-eight percent of the enrollees have obtained their degrees and 82 percent acquired unsubsidized full-time employment. Graduates have been placed into entry- and intermediate-level jobs with accounting and auditing firms, engineering firms, computer-related industries, automotive-related industries, pharmacies, machine shops, and food service firms.

For more information, contact the Office of Manpower Administration, 577 South Broad Street, Trenton, New Jersey 08611, 609/989-6824.

Youth Conservation Corps Program, Oswego County, New York. Last summer, eighty youths working thirty-five hours a week for eight weeks built and upgraded recreational facilities and public lands. Ten crews performed such activities as transforming vacant county land into a multi-use recreation area for hiking, picnicking and cross-country skiing, cutting logs, winterizing camp buildings, and installing subsurface drainage.

In addition to work experience, the program offered enrollees a chance for career exploration on two levels. Professionals conducted career workshops at several locations in the county. Health occupations and industrial opportunities were two of the sessions offered. Secondly, crews tried out their newly acquired skills on a competitive basis at the annual woodsmen's field day. Events included chopping and bow-sawing contests, a pulp toss, a log roll, an obstacle course and a greased-pole climb.

Accomplishments of the Oswego County Conservation Corps include acquisition of basic skills, participation in teamwork effort, peer group interaction, formation of good work habits and attitudes, introduction to various occupational areas, and appreciation of the nation's natural resources. In addition, the community felt the benefits of the program in needed beautification, conservation and modernization.

The summer program, funded through CETA and 4-H donations, will be offered again this summer in Oswego County, which ranks first in unemployment among New York's counties. With additional CETA funds, the program has been expanded year-round to serve high school dropouts. Three crews, each with four young adults between the ages of sixteen and twenty-one, work on environmental projects and study to obtain their high school diplomas.

For more information, contact the Office of Employment and Training, 200 North Second Street, Fulton, New York 13069, 315/598-0840.

Outreach Program Unit, Broward County, Florida. The county youth development division of the department of human resources has implemented an outreach program unit which has established projects in thirteen communities. Each unit works within the community to modify the behavior of its target population through individual and group interaction; assist youths and their families in meeting emotional and social needs; provide guidance for youth in education, employment, family life and social adjustment, and develop resources and a service system for meeting the needs of youths and their families.

A joint study conducted by a non-profit service provider, the county, the school board, and the state had revealed a lack of community-based youth programs in Broward County.

The programs are located in areas of minimal or nonstable social service intervention, unemployment, and high environmental potentials for delinquency. In these areas, the average income for a family of five is $7,000 and the density is 5,134 persons per square mile. Many in these communities were unaware of resources and services; others did not feel free to use the facilities, and some turned to activities that caused greater problems.

Each outreach location has meeting facilities and a few offer recreational equipment. Activities have ranged from personal grooming and youth club activities to career guidance and educational programs.

To ensure the quality of service delivery and enhance professional development, each staff counselor receives 120 hours of initial training followed by monthly in-service training. In addition, each staff member participates in a personal development project. The staff also works with other social service and community-based agencies to set up "client systems" for meeting the total needs of families on a preventive basis.

Annual objectives were outlined for program implementation and subobjectives must be met before a program can be terminated. The outreach unit's goal is to accomplish its objectives in an area within three years and then move to another area that needs its services.

The program started in January 1977 and is financed through the county's general fund at $345,812 for salaries and operating expenses. Donations and fund-raising projects provide for various activities.

CETA funds, under Title III and the Youth Employment and Demonstration Projects Act of 1977, are available for these activities.

For more information, contact the County Youth Development Division, Department of Human Services, 10 35th Avenue, N.W., Fort Lauderdale, Florida 33311, 305/584-8810.

Experiences in Child Care for Young Adults, Westchester County, New York. Through a grant from CETA, the county youth bureau established a day care service for working parents which provides meaningful employment and learning experiences for young adults between the ages of sixteen and twenty-one. Youths assist state-licensed family day care mothers and receive training in child development. Other objectives include developing healthy work attitudes and self concepts, fostering the development of skills in working with adults and children, and preparing the youth for parenthood.

During the second program year, training was expanded to include the following components:

Child Development: Materials are supplemented by workshops and youths are placed in family day care homes and group centers.

Vocational Counseling: Training for youth is provided in choosing, finding, getting and keeping jobs, and some youths participate in a summer internship in the career of their choice.

Group Counseling: Regularly scheduled sessions are conducted, and individual referrals are made when necessary.

Sex Education: Through family planning groups, project participants receive sex education.

Funds for the project director and salaries for youth are provided by the office of employment and training. To be eligible, youths must meet the family income criteria under the Youth Employment and Training Program (YETP). Twenty youths were served in the first year of the program, which began October 1, 1976. This program year, thirty youths are participating and about half are in school.

For more information, contact the County Youth Bureau, 148 Martine Avenue, Room 944, White Plains, New York 10601, 914/682-3064.

WOMEN

Minority Women's Training for Nontraditional Jobs, Monmouth County, New Jersey. Through a competitive grant from the Department of Labor (DOL), the county received $203,000 to operate a minority women's employment and training program. Welfare mothers, housewives returning to the job market, and husbandless women with children are the target groups served by the program.

Intensive classroom and experimental training in conjunction with counseling and guidance are offered to participants to develop salable skills that would afford them higher salaries, career advancement and flexible hours. In addition, training is aimed at changing their expectations and role perceptions toward nontraditional employment in commissioned sales fields.

Low-income women were bitterly disillusioned with previous programs that offered little or no support during the critical job search period. This program has been successful in several areas: Fifty-eight percent of the participants have been placed; all women agree that their self-esteem has increased and their skills, abilities and potentials are marketable; a private firm under contract with the Employment and Training Administration chose the program as one of the top twelve in the United States that are recommended for replication; and major companies are permitted to recruit and have hired about 6 percent of the graduates for sales positions.

For more information, contact the county Comprehensive Employment and Training Agency, Building 427, Fort Monmouth, New Jersey 07724, 201/542-5400.

Women Working in Nontraditional Careers, Westchester County, New York. The county was awarded a $400,000 one-year grant from DOL under Title III of CETA to place women in nontraditional careers, those areas in which women make up less than 38 percent of the total work force. The grant funded a three-part program consisting of public service employment (PSE), skill training on an individual referral basis, and on-the-job training (OJT).

In the PSE component, fourteen women were placed in municipalities, nonprofit agencies, and school districts in jobs such as apprentice electrician, assistant commissioner of public works, bus mechanic trainee and laborer. The PSE slots have been terminated and eleven women have obtained unsubsidized employment.

Skill training had the largest enrollment with eighty-one women in vocational training schools where they learned such occupations as truck driving, electronics, radio engineering, plumbing, printing, and heating and air conditioning repair. A low dropout rate and a high placement rate were attributed to specially trained employment counselors and workshops that emphasized goal development and decision making. In addition, another twenty-three women attended school due to the efforts of the Women's Center staff who helped them apply for other grants and loans.

In OJT, women were placed in positions such as manager trainer, printer and van driver. A key to this program's success was counseling. After women atended an appropriate workshop program, the counseling and support continued through their job training situation. The eight-day workshop series included orientation to nontraditional careers, career assessment, an overview of the job market, assertiveness training, job finding methods, and interviewing techniques.

More than 150 women have been placed in nontraditional jobs. Prior to their participation in this program, most of these women received some form of public assistance.

Other important program services included an interagency referral service for women with personal problems, and efforts to educate women and businesses about occupational areas open to women.

For more information, contact the Employment and Training Office of the County Executive, 201 County Office Building, White Plains, New York 10601, 914/682-3048.

New Phase: A Career Readiness Center for Women, Montgomery County, Maryland. This program is designed to meet the needs of displaced homemakers and women reentering the labor force. It offers individual career counseling in conjunction with workshops and group discussions that clarify goals, needs, and ways to overcome obstacles.

Participants attend workshops on an overview of the job market, skills assessment and transfer, stress management, life plan-

ning, career changing, resume writing, and interview techniques. At New Phase, women also receive information from and referral to any public or private service that may help solve their problems.

In a six-week period, 154 women participated in the program. The majority of clients are over thirty-six. Half indicated that they were separated, divorced, or widowed.

For more information contact Commission for Women, 50 Monroe Street, Rockville, Maryland 20850, 301/279-1800.

VETERANS

Veterans' Emplyment Service, Oakland County, Michigan. The county's Manpower Division and Veterans' Service Division joined forces to diminish an unemployment rate that neared 17 percent for Vietnam-era veterans in November 1975. Four approaches were used to assist veterans in obtaining gainful employment:

Create employer awareness of the program.

Create veteran awareness of employers,

Counsel veterans in the techniques of interviewing,

Place veterans directly into jobs.

A mass mailing campaign and free spot media announcements are used to increase the awareness of private employers. This results in hundreds of new job listings.

A "jobs board" helps veterans become more aware of potential employers. Want ads, with military skill requirements, are highlighted and all levels of government employment are categorized for convenience. The listings are posted and updated on a weekly basis.

The counseling of veterans was expanded to include resume writing, employment markets, educational counseling, and veterans' benefits.

The service helped to place 194 veterans at a cost of $206 per person. In terms of taxes paid and government services terminated (i.e., unemployment compensation, welfare), the dollar return was $5,922 per person. As of December 31, 1977, the unemployment rate for veterans had been reduced to 7.8 percent. The civilian rate had been reduced from 11.6 to 6.2 percent.

Through CETA Title III, on-the-job training programs with employers have been established. All services will be sustained until the veterans' unemployment rate no longer exceeds the average rate.

For more information, contact Veterans' Service Division, 1200 North Telegraph Road, Pontiac, Michigan 48053, 313/858-0790.

PUBLIC ASSISTANCE

Special Employment Counseling Group, Monroe County, New York. The program was created in October 1977 to provide special counseling and job referrals for Home Relief recipients. Its goal is to find jobs for employable recipients, thus removing them from the welfare rolls or reducing their dependence.

The Home Relief Program in New York is a public assistance program to meet the needs of those who do not qualify for federally funded programs such as Aid to Families with Dependent Children or Supplemental Security Income. Program costs are shared equally by the state and localities.

By law, recipients must be enrolled in a work program to receive public assistance. Monroe County was the first to implement a work experience program (WEP) and it became a model for other localities. The county found that WEP, however, was insufficient in meeting the needs of its clients. As a result, the Special Employment Counseling Group was established through a CETA grant.

Through a one-to-one approach, the staff evaluates job skills, monitors job listings, contacts potential employers and counsels a select group on how to apply for a job and the importance of self-confidence and good work habits. Forty-five employable recipients are enrolled in the six-week project, and another is cycled in when a client leaves the program. If a client completes the six-week program and has not found a job, he or she returns to WEP.

In less than a two-month period, twelve persons had found permanent jobs and were removed from the welfare rolls. The program's goal is to place at least 50 percent of the enrollees.

For more information, contact the county Department of Social Services, 111 Westfall Road, Rochester, New York 14620, 716/442-4000.

HANDICAPPED

Vocational Rehabilitation Services Work Experience Project, Heartland Manpower Consortium, Florida. Counseling guidance, evaluation, training, and job replacement services are provided to enable physically and mentally handicapped people to return to work. The consortium uses Title I funds to pay a person's wages while he or she works at a public or private nonprofit agency to gain practical work experience.

To be eligible, an applicant must meet Title I criteria and be:

A person who has satisfactorily completed vocational training but has no work experience.

A high school graduate who possesses a skill or has the potential to learn a vocation.

Someone who is skilled but cannot locate unsubsidized employment.

The program started October 1, 1977 with twenty agencies participating in a five-county consortium—Polk, Okeechobee, Highlands, Hardee and DeSoto counties. By December 22, thirty job slots had been filled in Polk County, and the program has expanded into Highlands and Hardee counties. Job positions include secretary, bookkeeper, respiratory therapy technician, child care aide, sales manager and nursing assistant.

In addition, six high school seniors who cannot function in the classroom will graduate with their classes thanks to the project. They have been provided accredited jobs and will have the opportunity to enter public service jobs upon graduating.

The participating agencies are gaining the benefit of workers for which their budgets don't allow, and are learning firsthand about the skills of the handicapped.

For more information, contact the Heartland Manpower Consortium, 1555 West Main Street, Bartow, Florida 33830, 813/533-0621.

Program for Mentally and Physically Handicapped, Somerset County, New Jersey. With a $400,000 grant from DOL the county offers a variety of services: transportation for clients, classroom training programs, work experience, job developer services, access to a county CETA job bank, on-the-job training, public service employment, job-seeking skills training, support services, job placement services and alcohol-related counseling. An open line of daily communication is maintained among all of the participating agencies to coordinate their efforts.

In a three-month period, the program enrolled 326 individuals and terminated 261, placing 145 in unsubsidized employment. An additional forty-five participants were placed into public service employment positions.

The county is trying to find funding to maintain the level of services after the federal grant expires. For more information, contact the county Employment and Training Agency, County Administrative Building, Somerville, New Jersey 08876, 201/725-4700.

PUBLIC AWARENESS

Public Awareness Pilot Program, Cumberland County, New Jersey. The county CETA department received a grant from the state's discretionary fund to promote and publicize the county's $6 million CETA services. The program involved information dissemination, public speakers, press tours, and publicity for CETA programs and learning centers.

When this program started in April 1977 there was little reference material on CETA programs, policies, benefits to the community, successes and failures. In a short time, the Public Awareness Program created a library of materials which explained CETA to county residents.

The program informs the public about CETA opportunities and services, contributes to the private sector's understanding and involvement, and projects a positive image of CETA through the local media and in Congress. It is under consideration for refunding by the state to transmit expertise to other prime sponsors.

For more information, contact the county CETA, P.O. Box 457, Bridgeton, New Jersey 08302, 609/451-8920.

GENERAL EMPLOYMENT AND TRAINING

Nontraditional Training of Human Service Generalists, Humboldt County, California. A recruiting and training program for human services workers has been part of the county's service delivery system since 1976, when the program's federal funding expired. The New Careers program involves the county mental health department, CETA, a local college, and many local service providers. Community college classroom training is combined with accredited work experience.

The program was founded on the premise that human services can be more effective when delivered by those who have been users of the system and have learned how to provide assistance. Accomplishments include a rise in the level of services offered by the county, development of career ladders for participants, and recruitment of those with the most severe barriers to employment. Seventeen of twenty-four persons completed the first two-year training cycle.

Further evidence of the program's success is the comparison of salary levels achieved by the participants. When they entered the program, only six persons earned $3 or more an hour. At the end of the training cycle, fifteen were earning $3 or more and eight of these over $5 an hour. An example of a new careerist is a forty-five year-old woman with two children who was an alcoholic and receiving public assistance. She is now a recovering alcoholic and director of a women's recovery home.

For more information, contact the county CETA Department, 922 Fourth Street, Eureka, California 95501, 707/445-7715.

School District Counseling Intake Agencies, Oakland County, Michigan. The CETA intake and counseling program was decentralized to ensure that CETA services were provided equitably to county residents in a 900-square mile area. A comprehensive approach to the delivery of employment and training services is exemplified by the county's use of school districts, the state employment office, local government, nonprofit agencies and private businesses in establishing the intake agencies.

Ten agencies provide intake counseling, development of employability plans, referrals to training programs, on-the-job training and job placement services. In fiscal year 1977, the agencies placed 3,000 enrollees into unsubsidized jobs, a placement rate of 66 percent. Over seventy classroom training courses representing twenty-two occupations were offered which resulted in a twenty-five percent increase in wages for participants when compared to their wages prior to training.

For more information, contact the Department of Manpower, 2370 Pontiac Lake Road, Pontiac, Michigan 48054, 313/858-1078.

Preemployment Evaluation Program, Cumberland County, New Jersey. The county CETA office initiated a program to help skilled people find employment. Many did not know how to look for a job, prepare a resume, market their backgrounds and present their talents to prospective employers.

Through an intensive four-week course, participants learn how to choose a vocational goal and reach it.

Although the program began in October 1977, about 70 percent of the students have found employment. Those who do not find a job are assigned a job developer for assistance.

For more information, contact the county CETA Department, P.O. Box 457, Bridgeton, New Jersey 08302, 609/451-8920.

CETA/Public Service Employment Aimed at Private Sector Jobs, Baltimore County, Maryland. The program is designed to develop transfer skills so that workers can be trained in the public sector and find jobs in private industry. CETA workers and their supervisors attend a series of workshops which emphasize private sector placement. Local community college staff act as trainers and resume consultants. A job developer visits local businesses to distribute resumes.

Other courses such as speed writing, turf management, stress management and high school equivalency examinations are offered with paid release time. In addition, private employers speak at special seminars.

The total rate of positive terminations is 66 percent. After completing the program, the average wage of a participant rose from $3.31 per hour to $4.02.

Also contributing to the program's success are paid time for job search activities and a mandatory eighteen month limit on participation.

For more information, contact Research and Public Affairs, CETA/PSE Office, Courthouse Mezzanine, Towson, Maryland 21204, 301/494-2470.

South Dade Skill Center, Dade County, Florida. The county population includes many Spanish-speaking seasonal farm workers who have been displaced by automation and lack the skills needed to obtain other jobs. Through the efforts of the county, school board and community organizations, the skills center was built in 1976 with local and federal funds. Additional funds were obtained from the Community Development Administration to build a child care center at the same facility in 1977.

The center has classrooms, a learning lab, a cafeteria, landscaped grounds, patios and parking facilities. A primary goal is to assist persons seventeen years and older to choose, prepare for, and secure a vocation. The county manpower division has responsibility for recruiting trainees, orientation, supportive services, job development and placement. The school board develops course content and provides teachers and equipment. Community organizations provide transportation and other support services.

The center serves the entire community with an emphasis on the migrant farm worker. The staff also seeks to recognize and deal with the social, personal, occupational and motivational problems that are part of unemployment. During fiscal year 1977, of the 585 persons who entered training, 64 percent completed the program and 54 percent obtained jobs.

For more information, contact the Department of Human Resources, 140 West Flagler Street, Room 1503, Miami, Florida 33130, 305/579-5416.

South Shore Chamber Job Fair, Norfolk County, Massachusetts. Through the joint efforts of the county and the chamber of commerce, a job fair was held in which more than fifty companies and 5,000 job seekers participated. More than 525 jobs were filled ranging from unskilled to professional.

For more information, contact the county Economic Planning and Development Office, 1776 Heritage Drive, North Quincy, Massachusetts 02171, 617/326-1600.●

CRITICISM OF CONGRESS

● Mr. HATHAWAY. Mr. President, we in Congress have been subject to an increasing crescendo of criticism. There is no question that Congress recent performance has been disappointing, especially to many Members. Much of the criticism, unfortunately, is unfounded or shrill. It is most helpful, therefore, to read a thoughtful and concerned analysis of our situation by someone who is intimately familiar with Congress. Such a commentary was published in the Boston Globe on this past Friday by Steven Pearlstein, administrative assistant to Representative MICHAEL J. HARRINGTON of Massachusetts, who, unfortunately for Congress and for his constituents, has recently announced his intent to retire.

I think that all of us can profit by reading Steve's balanced and penetrating analysis, and I ask that it be printed in the RECORD.

The commentary follows:

[From the Boston Globe, Aug. 11, 1978]

WHY CONGRESS DOESN'T WORK ANY MORE

(By Steven Pearlstein)

Congress doesn't work.

It's not just that Congress doesn't work well, or that it has made mistakes, or that it's misdirected. More fundamentally, Congress no longer provides a legitimate forum by which a democracy of 210 million people define the parameters of public policy. Perhaps all that can be said is that Congress each year finances the continuing operations of an increasingly independent bureaucracy.

In school, they used to teach the competing interest theory of legislation. According to that theory, the competing special interests exercise their weight in the halls of Congress on issues of concern. The product that comes out is an accommodation to those interests in rough proportion to their size and influence. It assures the greatest good for the greatest numbers, or so the theory goes.

It can now be revealed that the theory is out of date because it predicated on two assumptions which are no longer valid.

The first is that members of Congress, and the public generally, have a commitment to the process of legislating which transcends individual or group interests in any particular issue. Whether because they are frustrated or because they want to cast themselves in the role of "The Scrapper" for the folks back home, many members have decided to be legislative "kamikazes," willing to halt, subvert, corrupt the entire process of legislation until they get their way. These legislators are spurred by special interest groups who look to the Vietnam era protesters for their models: keep disrupting, make no compromises, and eventually you'll win. And all too often, it works.

Recent examples include the right-to-life campaign, which is content to hold up any important piece of legislation as hostage to its cause—usually at the expense of the elderly the poor, and the disabled. Foes of natural gas deregulation are willing to allow the United States to drift for another decade without an energy policy rather than accept a policy containing a natural gas compromise. Business lobbies are willing to tie up the Senate for the equivalent of an entire legislative year by fueling filibusters on labor law reform, antitrust enforcement and consumer protection.

Now, as the House and Senate trip over themselves to adjourn by Sept. 30, so many pieces of legislation will be held hostage pending defeat or passage of other legislation, that the leadership will need a computer to sort the whole thing out. Majority rule is a myth.

In short, there is no longer, on the part of many congressmen and interest groups, a commitment to the process of legislation sufficient to support the acceptance of a full or partial defeat on a controversial issue. No legislation at all is seen better than unacceptable legislation in a particular area. And it is no legislation that we are getting. In 18th Century jargon, the checks no longer balance.

The second false premise among political theorists is that there are basic human values which are accepted by the actors in the process of legislation—congressmen, staffs, lobbyists, the press and constituents. Those values would translate into a set of beginning assumptions: that a congressman is honest until proven otherwise; that what is said is what is believed; that a commitment to a cause or another politician is a commitment not to be lightly dissolved; that there is a minimum level of civility by which intelligent human beings should interact; that a secret is confidential. Those assumptions are no longer valid, and the civility is no longer there.

Felix Rohaytan, speaking to a group of Harvard Business School graduates in New York the other day, summed it up nicely: "The ruthlessness of political relationships, the callous disregard for a minimum level of human kindness, have to be seen to be believed."

The very fabric of the legislative process has been torn asunder and as a result, the process has degenerated to a point that Congress doesn't function any more. It is simply more than coincidence that we have no energy policy, no government reorganization, no anti-inflation policy, no handle on the dollar slide abroad, no coherent approach to the Russians or the Chinese, no sense of what an equitable tax code would look like, no strategy for ameliorating the poverty at home and abroad. The problem is not so much that we have no solutions to these problems, but that we have no viable framework by which to fashion them collectively.

The blame for this predicament can be spread very neatly all around the landscape, a healthy dose of it to the press, which often panders to the obstructionists and reactionists and ignores most attempts at thoughtful legislation. The solution will involve a very slow and painful process of mending the fabric by which individuals and interests interact in the congressional setting. Without that solution, the Congress will soon rival the Italian parliament in its ability to tie itself in knots.●

PRIVATE PSYCHIATRIC HOSPITALS

● Mr. MATHIAS. Mr. President, I commend to my colleagues an article in private psychiatric hospitals written by Dr. Robert W. Gibson, medical director and trustee of the Sheppard and Enoch Pratt Hospital of Towson, Md. The article appeared in the July 1978 edition of the American Journal of Psychiatry. Its discussion of the contributions of the private sector to the development of psychiatric care in this country merits the fullest consideration. I ask that the article be printed in the RECORD.

The article follows:

PRIVATE PSYCHIATRIC HOSPITALS: "EXCELLENCE IS THEIR WATCHWORD"

(By Robert W. Gibson, M.D.)

Although private psychiatric hospitals accounted for only 3 percent of the total pa-

tient care episodes in 1975[1] and have probably never provided more than 5 percent of that care, they have been and continue to be a major force in psychiatry. During the 1800s a small group of psychiatric hospitals, by their espousal of the moral treatment of the insane, were instrumental in bringing patients out of the almshouses, attics, and prisons. John S. Butler, M.D., who served from 1843 to 1873 as the fourth Superintendent of the Hartford Retreat (now the Institute of Living), was a leader in the movement toward humanitarian care of the mentally ill. Describing his visit in 1842, the year before Dr. Butler moved to the Hartford Retreat from the state hospital in Boston, Charles Dickens marveled that "every patient in this asylum sits down to dinner every day with a knife and fork, and in the midst of them sits the gentleman [Butler] whose manner of dealing with the charges I have just described. . . . At every meal moral influence alone restrains the more violent among them from cutting the throats of the rest: but the effect of that influence is reduced to an absolute certainty and its found even as a measure of restraint to say nothing of it as a means of cure, a hundred times more efficacious than all the strait waistcoasts, fetters, and handcuffs that ignorance, prejudice, and cruelty have manufactured since the creation of the world."[2]

In 1948, when Albert Deutsch wrote The Shame of the States,[3] this same humanistic concern within private psychiatric hospitals provided the evidence that the mentally ill deserved more than the custodial warehousing and neglect to which they were then relegated. Some private psychiatric hospitals engaged in major programs of research, and virtually all were innovators in applying the newly emerging concepts to their treatment programs. As freestanding accredited training centers or in affiliation with academic centers, many private psychiatric hospitals offered physicians an opportunity to learn from intensive work with a small number of patients under the tutelage of experienced clinicians. As treatment services increased and patterns of care changed, private psychiatric hospitals, frequently in collaboration with newly developing facilities, continued as models of excellence committed to serving the patient. Guided by Francis J. Braceland, M.D., the Institute of Living continued to be an outstanding example of excellence.

A CHANGING MENTAL HEALTH DELIVERY SYSTEM

Action for Mental Health (4), the report of the Joint Commission on Mental Illness and Health, contributed to several important changes in health care delivery during the past two decades: a significant increase in the number of psychiatric units in general hospitals, the development of community mental health centers with federal support, and sharp decreases in the number of beds in state and county mental hospitals. Patient care episodes[14] more than quadrupled, increasing from 1.7 million episodes in 1955 to 6.9 million in 1975. The rate of patient care episodes per 100,000 population tripled, increasing from about 1,000 in 1955 to 3,000 in 1975. Inpatient episodes accounted for 77 percent of the total in 1955 but only 27 percent of the total by 1975, with 70 percent outpatient and 3 percent day treatment patient care episodes.[5]

Despite these increases total admissions and patient care episodes still fall short of the estimated need. In its preliminary report of September 1977 (5), the President's Commission on Mental Health estimated that "between 20 and 32 million Americans need some kind of mental health care at any one time". As a consequence—

"The current direct cost of providing mental health services is about $17 billion a year. The social costs, when measured in terms of lost wages and a shortened life span, is estimated to be another $20 billion.

And beyond these statistics—

"There are millions more who seek help for emotional problems elsewhere, especially from their personal physicians or from health care clinics. For example, 15 percent of patients seen in general medical practice are found to have psychiatric or emotional problems. At any given time, 25 percent of the population is under the kind of emotional stress that results in symptoms of depression or anxiety."

The increase in patient care episodes should continue. The need is there, and progress is gradually being made to overcome the stigma that impedes the treatment of mental illness. The trend toward greater reliance on community mental health centers, general hospitals, and private psychiatric hospitals is appropriate. The financing of mental health care is grossly inadequate but is improving slowly. Improved financial resources should reduce the dependence on government institutions, and state mental health programs are making a deliberate effort to shift care toward the private sector. Private psychiatric hospitals are already modifying their role and can be expected to do so without compromising quality.

CHANGES IN PRIVATE PSYCHIATRIC HOSPITALS

Until 1972 the numbers of patients served by private psychiatric hospitals and the distribution between inpatient and outpatient services were relatively stable. Bethel[6] reported that during the period 1968–1971 the number of hospitals stayed at about 150. The number of inpatients in residence at year-end varied only from about 10,200 to 11,000; annual admissions fluctuated from a low of about 87,000 in 1970 to a high of 92,000 in 1969. Changes in the distribution of admission diagnoses were slight, with depressive disorders accounting for approximately 40 percent of the total and schizophrenic reactions for 20 percent. However, there was a trend toward the admission of younger patients; patients under age 25 at the time of admission constituted 18 percent of all admissions in 1968 and 24 percent in 1971.

Substantial changes began to occur during the period 1972–1975, when the number of hospitals increased to 180, the number of inpatients in residence at year-end rose 10 percent to about 11,500, and annual admissions rose to 130,000. The growth in the number of hospitals was due largely to new investor-owned hospitals. By 1975 nearly two-thirds of all private psychiatric hospitals were operated by corporations, individuals, or partnerships on a for-profit basis, with the other third operated by not-for-profit groups, including church foundations. The greatest number of hospitals and beds was concentrated in the mid-Atlantic region, with the smallest number in the Northwest. Private psychiatric hospitals in New England had the greatest number of beds per 100,000 U.S. resident population. About 15 states had no private psychiatric hospitals, and 11 states had only 1; California had 27, and New York had 14.[7]

Although private psychiatric hospitals are organized to provide inpatient care, alternatives to inpatient treatment are being developed. Between 1971 and 1975 admissions to private psychiatric hospital outpatient programs increased 80 percent, day treatment, 67 percent; and inpatient care, 44 percent.[8] By 1975, of a total of about 180 private psychiatric hospitals, 42 percent provided day treatment; 35 percent, outpatient care; 24 percent, emergency services; and 8 percent, halfway houses.[9]

CHARACTERISTICS OF THE PRIVATE PSYCHIATRIC HOSPITAL—1975

In an effort to clarify the role of the private psychiatric hospital in the mental health delivery system, the National Institute of Mental Health and the National Association of Private Psychiatric Hospitals jointly conducted a survey of one month's admissions to private psychiatric hospitals.[10] This study yielded information from three-fourths of the hospitals surveyed, making it reasonably representative of the total. During May 1975, the month surveyed, 7,864 people were admitted to the inpatient services of 139 private psychiatric hospitals.

Of the total number of patients admitted, 42 percent had depressive disorders; 22 percent had schizophrenia; 9 percent had alcohol disorders; 6 percent had adjustment reactions of adolescence, adulthood, or late life; and 5 percent had personality disorders. The remaining 16 percent suffered from drug disorders, organic brain syndrome, childhood disorders, and neuroses excluding depressive states. About 45 percent of the patients admitted were male and 55 percent female. The trend toward younger patients continued, with 27 percent under 25 years of age, 37 percent aged 25–44, 27 percent aged 45–64, and 10 percent 65 years old or older.[10]

The survey indicated that the three major referral sources of all inpatient admissions were private psychiatrists (44 percent), followed by self, family, or friends (24 percent) and by other physicians (11 percent). Approximately three-fourths of the patients admitted reported previous psychiatric care. Thirty-nine percent had received previous inpatient care in the same hospital to which they were admitted, and 30 percent had received inpatient care in another psychiatric hospital.[10] About 3 out of 10 patients had seen private psychiatrists, and more than 1 out of 10 had had other types of nonpatient psychiatric care. This suggests that most of the patients admitted posed serious therapeutic problems and many had been treatment failures.

The types of psychiatric treatment most frequently received by the patients in the survey were individual psychotherapy (90 percent), drug therapy (83 percent), group psychotherapy (61 percent), family therapy (20 percent), and electroconvulsive therapy (8 percent). Ninety-four percent of the patients received two or more types of treatment, and about 70 percent received three or more types. The median number of days spent in the hospital was directly related to the number of treatments, presumably because of the greater severity of illness in those patients receiving multiple therapies. Patients receiving one type of treatment stayed a median of 8 days, two types 17 days, three types 21 days, four types 25 days, and five or more types 31 days.[10]

Staff-patient ratios are too gross to be an indicator of the quality or adequacy of treatment programs. Many factors are not taken into account in such an index—for example, the patient mix in terms of age, diagnosis, or severity of condition, and the type and intensity of the program. Nevertheless, comparisons of staff-patients ratios for the various types of mental health facilities do illustrate major differences in the intensity of patient care and give some indication of the level of care in private psychiatric hospitals.

According to Taube and Witkin,[11] in January 1974 the staff-patient ratio for all private mental hospitals in full-time equivalents of staff per 100 average resident patients was 204 total staff, with 124 patient-care staff (66 professional and 58 other). Not-for-profit private hospitals had a ratio of 238 total staff compared with 173 total staff in investor-owned hospitals; there were 140 patient-care staff in not-for-profit hospitals compared with 110 in investor-owned hospitals. Within the nonpublic general psychiatric hospital units the total number of staff per 100 patients was 130, with 115 patient-care staff (65 professional and 50 nonprofes-

Footnotes at end of article.

sional). In state and county mental hospitals the total staff per 100 patients was 88, with 57 patient-care staff (18 professional and 39 other).

Of the May 1975 admissions to private psychiatric hospitals, about 95 percent of the patients were discharged in 4 months or less. Over 90 percent of all patients were discharged within 12 weeks, with 23 percent in 7 days or less, 17 percent in 8–14 days, 25 percent in 15–28 days, 14 percent in 29–42 days, and 13 percent in 43–84 days. Of the patients discharged, about half had been referred to private psychiatrists for further treatment and one-fourth to out-patient psychiatric clinics or services.[10]

In summary, about two-thirds of the patients admitted had depressive disorders or schizophrenia. Over half were referred by psychiatrists or other physicians and one-fourth by self, family, or friends. Most patients had had previous psychiatric treatment, often inpatient care. Psychotherapy (individual, group, and family) and drug therapy were the principal treatment modalities, with the vast majority receiving multiple therapies. Staff-patient ratios were generally higher in private psychiatric hospitals than in other mental health facilities, with the not-for-profit hospitals highest at 238 total staff and 140 patient-care staff per 100 patients. About two-thirds of the patients were discharged within 4 weeks and 90 percent within 12 weeks, with three-fourths referred for continued treatment.

A PLURALISTIC SYSTEM

At this juncture there is no reason to believe that one type of facility is in all respects superior to another. Each has its strengths depending on the mission and characteristics of the institution. For this reason a pluralistic approach is in order and will probably continue indefinitely. However, it is helpful to examine the differences among facilities in order to understand how each can best serve the patient.

In the psychiatric units of nonpublic general hospitals, inpatient services are stressed and about 50 percent of the patient care episodes involve this treatment mode. Treatment is usually short-term, with an emphasis on crisis resolution and reliance on somatic therapy. The ready availability of surgical and general medical services gives the psychiatric unit of the general hospital a particular advantage in the treatment of patients with interrelated physical illness, psychiatric complications of medical and surgical conditions, severe psychosomatic illnesses, substance abuse requiring detoxification, and severe organic disorders. Because an attending psychiatrist can follow a patient through all modes, including inpatient, outpatient, and day treatment, continuity of care is enhanced. However, physical space, facilities for activities, and specialized treatment services are often limited, particularly in smaller units. Hospital support services designed for the needs of medical and surgical patients are not always well suited to the needs of psychiatric patients, particularly those requiring intermediate or long-term care. Daily costs are usually higher than in psychiatric hospitals, but this is offset by generally better third-party coverage. Some patients and families find treatment more acceptable in the psychiatric unit of a general hospital because these units are in the mainstream of the medical care system.

Community mental health centers place heavy emphasis on outpatient and day treatment (about 81 percent and 7 percent, respectively, of patient care episodes in 1975)[11] as alternatives to hospitalization. As an organized system of care, most provide at least the five basic services initially required for federal funding (inpatient, outpatient, day treatment, emergency, and consultative services). They are expected to identify and meet the needs of residents, particularly the underserved, within a defined catchment area and to strive for early and prompt intervention. There is less reliance on psychiatrists, with correspondingly greater use of other mental health professionals and paraprofessionals. Matching funds helped community mental health centers get started, but severe fiscal problems have been created by the withdrawal of these funds. Somewhat belatedly, the centers are looking to other sources of financial support such as Blue Cross, commercial carriers, and personal payment.

State mental health systems, particularly state hospitals, have come under intense pressure as the cost of health care has escalated and budgets have not kept pace. This has caused an erosion of resources available to the hospitals and has provided only limited funds for new outpatient and day treatment services in the community. Deinstitutionalization programs all too often have been imposed by politicians with the intent of cutting costs rather than meeting the needs of patients. The leaders of many state mental health programs have recommended that rather than being direct providers of care, states should assume the initiative in identifying needs, planning, coordinating, determining priorities, setting standards, allocating resources, and evaluating. Despite the problems, many state programs are excellent. As direct providers of care the state systems potentially are in the best position to provide programs that fill needs not currently met by the private sector. In many instances these efforts can be enhanced by collaborative arrangements with private hospitals, general hospitals, and community mental health centers.

ROLE OF THE PRIVATE PSYCHIATRIC HOSPITAL

The main purpose of the private psychiatric hospital is to serve the patient. Many private hospitals, as collateral purposes, engage in teaching, research, and community consultation. Most private psychiatric hospitals strive for excellence that goes beyond simply meeting needs at an acceptable level of quality. As a consequence, they have, over the years, served as models against which to measure other programs.

In private psychiatric hospitals, treating the mentally ill is not simply one of many specialty services as it is in the general hospital. Even though private hospitals are expanding day treatment and outpatient programs, the emphasis continues to be on the inpatient treatment of individuals with severe psychiatric disorders, whereas community health centers stress emergency, crisis intervention, outpatient, and day treatment services. This allows the private psychiatric hospital to maintain programs to meet the needs of patients with more severe psychiatric disorders that require more specialized care.

Because of the emphasis on the treatment of psychiatric patients, the private psychiatric hospital is so organized that the institution becomes a therapeutic instrument in its own right. There has been a natural evolution from the moral treatment of the 1800s to the therapeutic community of the mid-1900s. The private psychiatric hospital provides the setting and resources for a coordinated treatment program in which most patients receive multiple therapeutic modalities. The potential is greater for definitive treatment beyond crisis intervention and symptom removal.

The private psychiatric hospital has an advantage over other types of facilities in preserving a more direct relationship with the patient. A higher degree of confidentiality can be maintained despite the encroachment of some third-party payers and government requirements. The greater freedom of choice enhances the patient's capacity to develop a therapeutic alliance. The direct relationship to those they serve has made private psychiatric hospitals more directly accountable to the patient than is usually possible in large public systems dominated by the political process and government bureaucracy.

As part of the private sector, private psychiatric hospitals have relied on revenue from patient care as their major source of funding. Of the total admissions to private psychiatric hospitals in 1975, the principal sources of payment were as follows: Blue Cross, 37 percent; commercial insurance, 30 percent; Medicare, 11 percent; other types of government payment, 10 percent; and personal payment, only 6 percent.[12] This reliance on revenues from services to patients has made private psychiatric hospitals cost conscious and has stimulated the development and refinement of management services. As part of the private sector, they have retained close ties with the majority of private psychiatrists, some 2,000 of whom serve as staff and resident psychiatrists, with several thousand more on attending or courtesy staffs.

Private psychiatric hospitals have struggled against such external regulation as the growing requirements of health planning, certification of need, and government third-party funding. The constraints are considerably greater than they were 10 years ago, but the private psychiatric hospital still has a greater flexibility and opportunity for self-determination than do most other psychiatric institutions. With its multiple funding sources, the private psychiatric hospital has greater latitude in responding to the dictates of third-party payers. Addressing the National Association of Private Psychiatric Hospitals, Dr. Braceland noted. "Government money is 'soft money,' and when economy programs are in vogue that money disappears just as government training and research money is disappearing now. Your hospitals are immune, for they should be dependent upon themselves."[13] Individually, and through areawide and national associations, private psychiatric hospitals have been vigorous advocates and effective leaders in influencing the funding policies of government and private insurers.

THE FUTURE

In the future, inpatient care of high quality for children, adolescents, and adults should continue as the hallmark of the private psychiatric hospital. Major expansions should be made in outpatient and day treatment programs. More specialized alternatives to inpatient care, such as halfway houses and community services, are needed. To be more accessible and responsive to community needs private psychiatric hospitals should initiate more diagnostic, evaluation, emergency, and crisis intervention services. The spectrum of patients served should be broadened by greater emphasis on alcoholism programs, active treatment for the elderly, programs for the drug abuser, and special education for the mentally disabled. Greater involvement is needed in preventive programs of (1) consultation to community agencies, (2) public education, especially for those who influence others, such as executives, teachers, labor leaders, judges, and politicians, and (3) counseling, school guidance, and vocational rehabilitation.

Private psychiatric hospitals should participate actively in continuing education for mental health professionals and place greater emphasis on in-service training as a method of maintaining and improving the quality of psychiatric care. In keeping with their emphasis on excellence they should utilize, refine, and assess the new techniques for quality assurance. Private psychiatric hospitals can make significant contributions to research, particularly in the application and evaluation of newer therapeutic approaches. They should explore the opportunities for

Footnotes at end of article.

collaboration with public and private agencies, general hospitals, and state mental health systems, as well as with other organized health care systems such as health maintenance organizations and community mental health centers. As more resources are made available through government and private insurers, private psychiatric hospitals should strive to provide more patient services to the underserved.

As Dr. Braceland has so succinctly put it, "As to the future of the private mental hospitals, it is bright providing excellence is their watchword".[13]

FOOTNOTES

[1] Taube CA, Redick RW: Provisional Data on Patient Care Episodes in Mental Health Facilities, 1975. Statistical Note 139. Rockville, Md. National Institute of Mental Health, 1977

[2] Dickens C: American Notes and Pictures from Italy. New York, Charles Scribner's Sons, 1898.

[3] Deutsch A: The Shame of the States. New York, Arno Press, 1948.

[4] Joint Commission Mental Illness and Health: Action for Mental Health. New York, Basic Books, 1961.

[5] Preliminary Report to the President from the President's Commission on Mental Health. Washington, DC, Sept. 1977.

[6] Bethel H: Trends in Total Additions and Resident Patients at End of Year in Private Mental Hospitals, 1968–1971. Statistical Note 99. Rockville, Md., National Institute of Mental Health, 1973.

[7] Witkin MJ: Private Psychiatric Hospitals, 1974–75. Series A, Number 18. Rockville, Md., National Institute of Mental Health, 1977.

[8] Pollack ES: Changes in Numbers of Additions to Mental Health Facilities by Modality, United States, 1971 and 1975. Memorandum 10. Rockville, Md., National Institute of Mental Health, Aug. 1977.

[9] Witkin MJ: Emergency Services in Psychiatric Facilities, United States, January 1976. Statistical Note 136. Rockville, Md., National Institute of Mental Health, 1977.

[10] Survey of admissions to private psychiatric hospitals. National Association of Private Psychiatric Hospitals Newsletter, Jan.–Feb 1977, p. 1.

[11] Taube CA, Witkin MJ: Staff-Patient Ratios in Selected Inpatient Mental Health Facilities, January 1974. Statistical Note 129. Rockville, Md., National Institute of Mental Health, 1976.

[12] Regier DA: Expected Principal Payment Sources of Admissions to Private Psychiatric Hospitals in the United States. Memorandum 20, Rockville, Md., National Institute of Mental Health, Oct. 1977.

[13] Braceland FJ: Psychiatry in a world still more troubled. Journal of the National Association of Private Psychiatric Hospitals 3 (1):5–12, 1971.

[14] Patient care episodes are defined as the number of residents in inpatient facilities at the beginning of the year (or the number of persons on the rolls of non-inpatient facilities) plus the total new admissions, readmission, and returns from long-term leaves during the year.●

STOPPING THE INTERNATIONAL BIDDING GAME

● Mr. METZENBAUM. Mr. President, last week the Ford Motor Co. announced that it will build a $533 million engine plant in Ontario, Canada, instead of in Lima, Ohio, where the company had also been conducting negotiations. That plant would employ 2,600 people and will produce a newly designed V–6 engine that will be used in the Ford cars of the 1980's. Ford's decision to locate the plant in Ontario will not create any new unemployment in Lima, so that is not the major concern for me. However, I am deeply upset with the role of the Canadian Government during negotiations for this plant.

According to reports from the Department of Treasury and in the media, the Canadian national government offered a variety of cash subsidies to Ford worth $61.2 million to attract the plant to Ontario. Other reports indicate that the Canadian Government has proposed to give General Motors $77 million to locate a foundry near Montreal. Mr. President, I find this kind of government subsidy to private car manufacturers unacceptable. It pits one country against another in a bidding war that hurts the overall interests of each country. Canada is our longtime ally. We exchange goods and commodities on a massive scale. We share a common border and many common interests. I am not saying that American car manufacturers should not be allowed to build their plants in Canada, but I do not believe that the Canadian Government should be involved in this game of international auctioning, where manufacturers locate a plant in the country of the highest bidder.

The Department of Treasury has already registered its strong objection to the Canadian Government's subsidies. Last Friday, Assistant Treasury Secretary, Fred Bergsten, went to Ottawa to discuss this urgent problem and others relating to trading relations between the United States and Canada. I have not been in touch with Mr. Bergsten since he has returned, but news reports from that meeting have stated that the Canadian Government and U.S. Government have agreed in principle to stop the government-incentive competition to attract new auto industries. This is a necessary first step to ending what Secretary Bergsten referred to as a "mugs' game" to attract private corporations with taxpayers' dollars, and I welcome this agreement. In recent testimony before the Housing Banking Committee, Assistant Secretary Bergsten stated that the United States "cannot sit by while these interventionist practices are escalated to the Federal level." I would urge the Treasury Department to stand fast in its efforts to end this kind of Government subsidy system which undermines our international trading agreements. I would also urge the Canadian Government to cooperate in these efforts to prevent another round of international subsidy competition, which would greatly harm our history of cooperation and mutual understanding.●

PODRABINEK'S TRIAL AND THE MISUSE OF PSYCHIATRY FOR POLITICAL PURPOSES

● Mr. LEAHY. Mr. President, 25-year-old Aleksandr Podrabinek will stand trial today under Article 190—1 of the RSFSR Criminal Code, "circulation of fabrications which defame the Soviet State and the social system". He faces a possible sentence of 3 years in a Soviet labor camp. The "fabrications" that Podrabinek has circulated are in fact accurate and detailed descriptions of the grim conditions prevailing in Soviet psychiatric hospitals where political prisoners are often sent for mental and physical punishment.

The misapplication of the law in the Podrabinek case is clear. As a founding member of the Working Commission to Investigate the Abuse of Psychiatry for Political Purposes set up on January 5, 1977. which is closely affiliated with the Moscow Public Group to Promote Observance of the Helsinki Agreement, Podrabinek has been a target of KGB reprisals for some time: In July 1977 Podrabinek was interrogated twice in connection with the case of Yuri Orlov of the Moscow Group and told that he would be arrested if he did not cooperate in testifying against Orlov. The Soviet authorities tried to blackmail Podrabinek into emigrating from the USSR by threatening to arrest his brother, Kirill. After Podrabinek refused to leave the country on the condition that he take his father and brother with him, his brother, on December 31, 1977, was indeed arrested and convicted on the basis of false evidence that was planted in his apartment by KGB agents. On May 15, 1978, the opening day of Orlov's trial, Podrabinek himself was arrested.

The Soviet practice of sending perfectly sane dissidents to insane asylums on the contention that their dissent is a manifestation of schizophrenia and that the constant KGB persecution of which they complain is nothing more than paranoid delusion is by far the most damning example one can find of the mis-application of law in the USSR.

In his book entitled "Punitive Medicine", that appeared in samizdat form in 1977, Podrabinek described many instances where the Soviet authorities have converted places of healing into torture chambers for political undesirables. In the name of medicine, perfectly healthy people are made to suffer physical and psychological abuse and often leave the hospital broken men and women.

These abominations are unconscionable.. That Podrabinek has risked his freedom to make them public does defame the USSR and condemns the Soviet state and social system in the eyes of the world—but it is a justifiable defamation for it is based on fact and not fabrication.●

ALASKA LANDS BILL

● Mr. HATHAWAY. Mr. President, I am pleased to join in support of S. 1500—amendment 2176, as proposed by my colleague from New Hampshire, Senator DURKIN. This is the Alaska lands bill, which is supported by a broad coalition of groups, from the National Council on Senior Citizens and the United Auto Workers to the major environmental and conservation organizations.

For most of us, Alaska truly represents America's last frontier, a State of unequaled pristine beauty and an abundance of natural resources. In the past decade, we have all come to realize the value of wilderness itself as a rich natural resource. In Alaska, we have the oppor-

tunity to avoid the errors committed during the development of the lower 48 in the past century, while still permitting the development of the mineral, forest, and petroleum resources needed for this century and the future.

S. 1500, with amendment 2176, strikes a sound balance between conservation and development. The Senate Energy and Natural Resources Committee is giving the Alaskan legislation top priority. I commend my colleagues on that committee for the long hours and thoughtful consideration they are putting into this issue so important to all of us.

The specific authority under which 80 mililon acres of Federal land was withdrawn from the State selection process or development—the so-called d-2 lands—expires at the end of this calendar year. It is not in anyone's interest to prolong the uncertainty as to the future status of these lands. The Secretary of the Interior has indicated that if Congress does not act, he will use his administrative authority to protect these lands. Failure to act this year will result only in prolonged uncertainty; such uncertainty does not produce gas or oil nor serve the interests of those who have reservations about the legislation. It is essential that we make every effort to have final action on this question in this session of Congress.

Any mineral and petroleum resources which will be affected by the new conservation units under the legislation will be a hedge against the future, both the for Alaskans and for all Americans. They are not "locked up" for all time; they are preserved just as the wilderness will be preserved for future generations to use and develop. These future years are likely to bring increasingly sophisticated ways both to exploit the resources and to preserve the pristine values, side by side.

Mr. President, at this time, I ask to have printed in the RECORD a brief background memorandum on the Alaskan issue and on the impact of S. 1500/amendment 2176.

The memorandum follows:

BACKGROUND ON THE ALASKAN "d-2" ISSUE

Alaska is approximately 375 million acres, nearly all of which is federally owned. In the 1958 Statehood Act, the state was to choose 104 million acres by 1984. In 1966, a freeze was put on this state selection process until native claims could be resolved.

This was accomplished in 1971 when Congress passed the Alaska Native Claims Settlement Act. Under Section 17(d-2) of that Act, 80 million acres of Federal (Bureau of Land Management) land was protected from state selection or development to see if it should be further protected in conservation units. Decision on these "d-2" lands is due from Congress by the end of 1978.

S. 1500/Amendment 2176 would provide protection for 110 million acres of Alaskan lands. Along with existing conservation units, the bill would put a total of 37% of Alaskan lands into one of 4 conservation units—the National Park System, the National Wildlife Refuges, Wild and Scenic River System, and the National Forest Service.

40 percent of Alaskan lands would be available to the state, to Native Corporations authorized under the 1971 Settlement Act, and to private landowners. These lands are thought to be those with the most mineral and petroleum potential.

The following is a statistical breakdown of Alaskan lands under the bill:

—40 percent (149 million acres) will be the property of the State, private landowners or Native Corporations.

—23 percent (86 million acres) will be Federal land open to mineral entry, logging and other uses.

—63 percent (235 million acres, the sum of the above) will be open to a wide variety of uses.

—37 percent (140 million acres) will be in one of the conservation units already existing or designated under the bill.

—70 percent of the metallic mineral potential in Alaska will be outside conservation system units.

—90 percent of all the land in Alaska could be open to sport hunting.

—95 percent of all high potential oil and gas lands in Alaska will be open to possible development.

—100 percent of all Federal lands in Alaska will be open to mineral assessment by the Department of Interior.●

PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the notification I have just received.

The material follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 14, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78-72, which concerns the Department of the Army's proposed Letter of Offer to Iran for major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $185.9 million and support costs of $6.1 million for a total estimated cost of $192.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA.
Director.

[Transmittal No. 78-72]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Iran.

(ii) Total Estimated Value:

Major Defense Equipment*, $185.9 million.

Other, $6.1 million.

Total, $192.0 million.

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).●

(iii) Description of Articles or Services Offered:

Eighty four (84) self-propelled 8" Howitzers, M110A1 and two hundred fourteen (214) self-propelled 155mm Howitzers M109A1B.

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: Aug. 14, 1978.

SIX MILLION UNEMPLOYED—HUMPHREY-HAWKINS ESSENTIAL

● Mrs. HUMPHREY. Mr. President, on August 4 the Bureau of Labor Statistics reported that over 6 million Americans who wanted to work were unable to find jobs in July. The overall unemployment rate rose from 5.7 percent in June to 6.2 percent in July—the largest monthly increase since March 1975.

While these figures represent a tragedy for all Americans, minorities, women and young people have been hardest hit. The jobless rate for blacks is up to 12.5 percent, more than twice the rate for whites. In fact, while the national unemployment rate has eased from close to 7 percent last year, black unemployment has been little changed since last December, hovering between 12 and 13 percent. For women, the unemployment rate went up to 6.5 percent. Moreover, 1 out of 10 women who heads a family was unable to find work to support herself and her dependents. For teenagers the situation can only be termed a depression. Official statistice indicate jobless rates of 16.3 percent for all teens and a whopping 37 percent for minority teens. In some inner-city neighborhoods unofficial surveys find 2 out of 3 teenagers unable to find a job and a generation of young people growing up without skills, work experience or a stake in our society.

Mr. President, we should all be jolted by these statistics and the economic and social costs they represent. But more important than simply reacting to monthly variations in the economic indicators, we should be focusing on the critical task of devising long-term policies and effective programs to insure that in future months Americans will not be denied the opportunity to earn a living.

That is why I believe that passage this session of S. 50, the Full Employment and Balanced Growth Act is so vital. This legislation establishes in law this country's commitment to a job for every American able and willing to work and sets in motion a comprehensive planning process to reach this goal. It brings a critical dimension of rationality and concern for the jobless into our economic decisionmaking and as such is an absolutely essential first step toward achieving a genuine full employment economy.

The legislation sets interim targets and a timetable for the reduction of unemployment: A 3-percent rate for those 20 and older and a 4-percent rate for those 16 and over within 5 years of passage. Thereafter, the goal would be to attain genuine full employment as soon as practicable and to maintain it.

In addition, the bill recognizes the special importance of finding jobs for

those segments of society—women, minorities, and young people—who experience the most severe rates of joblessness. It contains a very strong commitment to reduce and eliminate unemployment gaps for such groups. Among the methods proposed for achieving these goals are targeted training programs, improved labor market information and antidiscrimination enforcement. The coordination of monetary and fiscal measures with these structural policies are key to reducing the overall unemployment rate without adding to inflationary pressures.

Unfortunately, some have called for delay or drastic changes in this legislation based on the mistaken notion that it ignores the threat of inflation. This is false. S. 50 includes major anti-inflation provisions far stronger than current law or policy. It declares that relative price stability is a high national priority for the first time in law. More specifically, the bill requires that the President set forth each year, in his economic report annual numerical goals for prices for that year and for each of the next 4 years. These explicit inflation goals would parallel the other goals in the bill and be considered by Congress in all of its deliberations on national economic policy questions. The bill provides an annual process for the appropriate committees of the Congress and the Congress as a whole to review the numerical goals and timetables set by the President and, if it wishes, modify them. The bill also calls for the use of a set of specific policies to be initiated by the President to combat inflation.

The Senate Banking Committee, in my view, unwisely added a provision which sets a zero-percent inflation goal by 1983. Others have proposed a goal of 3 percent inflation by 1983. Neither of these goals makes any sense to me. They are not based on any careful objective analysis, serious study or open debate on what percentage makes sense or what year such a percentage can reasonably be expected to be reached. Frankly, Mr. President, this is just the kind of unsubstantial and misleading congressional action that undermines the credibility of this institution with the public. And, I am afraid it detracts from any serious attempt to provide national leadership from the Senate of the United States.

Mr. President, I have dealt with this proposal in great detail in my testimony to the Senate Committee on Banking, Housing, and Urban Affairs. I will not repeat those arguments here. Let me conclude on this subject by simply saying that those who propose to reach heroic inflation goals must be willing to propose specific, credible steps to be approved by Congress at the time such goals are set. Otherwise, the Congress risks adding to public cynicism and reducing the momentum to really reduce inflation.

Combating inflation will require sensible monetary and fiscal policies, specific actions to stem cost and price pressures in many sectors of the economy, and at least some good luck. The job will not be enhanced by establishing unrealistic and inflexible inflation goals and timetables. A far better course is the process of policy coordination, and annual inflation targets already contained in the legislation.

Mr. President, S. 50 provides a major improvement in the way in which economic policy decisions are made. It establishes a process of comprehensive and integrated policy planning and coordination involving the President, the Congress, and the Federal Reserve Board.

Mr. President, for too long our economic policies and programs have been established and carried out in fragmented, uncoordinated and too often futile ways. The American people desperately need and deserve a better performance from their Government. S. 50 provides the framework for comprehensive and flexible economic policymaking. It sets long-range and short-range goals which are realistic and achievable. In setting our sights on these goals we will be able to measure year by year the progress of particular policies and programs rather than myopically reacting from month to month as economic indicators fluctuate. We cannot afford to wait for more monthly unemployment data to tell us what is already obvious—our Nation needs prompt enactment of the Full Employment and Balanced Growth Act.●

CANADIAN/UNITED STATES GRAIN PRODUCTION SIMILARITIES AND DIFFERENCES

● Mr. McGOVERN. Mr. President, I have taken a substantial interest in the agricultural affairs of our traditional neighbor to the north, Canada. This interest has taken me earlier this year to Winnipeg, Manitoba, together with Senators MELCHER and BELLMON, to discuss world wheat prices with the marketing agents and legislators of that great country. In my judgment, these talks were a forerunner to what can become a better deal for United States and Canadian wheat producers in developing a mechanism for getting these producers a price for wheat which approximates North American production costs plus a reasonable profit.

Many Members of Congress are not as familiar as they might be with the Canadian agricultural system. Though we coexist on the same continent, our method of doing business substantially differs. Warren Wolfe, an unusually gifted reporter for the Minneapolis Tribune, has authored an excellent article entitled "Canadian Farmers See U.S. Policies as Income Barometers" in the August 6, 1978, edition of that newspaper. Because of its unusual merit on an important subject, I ask that the text of the article to which I have referred be printed in the RECORD.

The article follows:

CANADIAN FARMERS SEE U.S. POLICIES AS INCOME BAROMETERS

(By Warren Wolfe)

STE. AGATHE, MANITOBA.—When the U.S. Congress starts its juggling act with alternative agriculture policies, Canadian farmer Lorne Parker holds his breath.

"Every major agriculture policy in Washington affects my business," Parker explained. "I keep one eye on the (Canadian) Wheat Board and the other on Washington, eh?"

Agriculture Secretary Bob Bergland's decision recently that U.S. farmers could pawn their wheat for a dime more, to $2.35 a bushel, at the government hock shop, for instance, meant that the Chinese might pay slightly more for their next shipload of Canadian wheat leaving Vancouver.

How the U.S. deals with problems of world hunger, trade barriers, beef shortages and farmer unrest may mean more income—or less—for Parker and his neighbors at the northern end of the Red River Valley, 75 miles above the Minnesota border.

It is one of many examples, Canadian officials say, of how the United States dominates hemispheric economics, politics and culture.

"I don't know why that comes as a surprise to so many Americans," Parker said.

There is a touch of gentle criticism in his voice as he explains that most people from the United States don't know much about Canadian agriculture.

"You people hear about how our Wheat Board guarantees us a price, and the railroads guarantee us a rate, and it seems very popular in the United States to believe that the Canadian farmer is reaping the reward while you are taking all the risk," he said.

"If that were true, Canadian farmers would earn more than U.S. farmers, and we don't," he said.

Canadian farm income averaged about $11,100 in 1974, compared with the U.S. average of $26,500 that year. Incomes of farmers in both countries have dropped since then with falling crop and livestock prices.

South-central Canada is the end of a 7,000-mile ribbon of grain fields that winds down the Americas through Argentina. Canada and the United States are the Western Hemisphere's leading grain producers. Both countries compete for buyers of their vast supplies of wheat and other small grains.

Although Canada is the world's No. 2 exporter of wheat, American prices and policies dominate the world. More than half the wheat in international trade is grown in the United States. Less than one-fourth comes from Canada.

But wheat is one of Canada's leading sources of foreign currency. It accounts for about half of Canada's agricultural exports, or about $2 billion. Dependence on wheat for trade income—plus a history of government involvement in agriculture—has transformed Canada's agriculture system into one quite different from the U.S. system.

The Canadian system falls somewhere between America's government interest in agriculture and the Soviet Union's complete government control of agriculture.

Parker can plant and harvest all the wheat, barley and oats he can handle, but he's guaranteed a price on only specified amounts of those crops.

He knows that the Wheat Board this year will pay him at least $3.34 (in U.S. dollars) a bushel for a specific number of bushels per acre—a number based on expected demand and sometimes updated during the growing season—of top-quality wheat he grows.

Each farmer is assigned a number of "quota acres," his share of Canada's grain-marketing opportunities. He may use those acres anyway he wants. He could plant it all to wheat, or split it among the board or non-board crops.

In the United States, a farmer also can plant any amount of any crop—although this year he may not be eligible for some government income-support programs if he harvests too much wheat or corn.

But the American farmer's only guarantee is a government loan. He depends for his livelihood on the vagaries of the marketplace. Some years he earns more per bushel than a Canadian farmers. Some years, such as last year, he earns less.

The Canadian Wheat Board guarantees prices and marketing of only the three "board" crops—wheat, barley and oats. Rape-

seed (an oil-seed crop), sunflowers, potatoes, corn, rye, soybeans, vegetables and other crops are marketed by private traders. Beef, pork and other livestock are sold at markets or, in some cases, are raised under contract to meat companies.

If Parker, 47, sounds a bit like a government official when he describes how Canadian agriculture works, that's because he is not an average Canadian farmer.

He represents the eastern half of the province on the Wheat Board Advisory Committee; he's first vice president of the Manitoba Farm Bureau, an amalgam of most farm groups in the province; he's on the boards of the Manitoba Beef Growers, the Canadian Grains Council, the Canadian Federation of Agriculture and the Prairie Rail Action Committee.

He's an agricultural-economics graduate of the University of Minnesota; he has spent months overseas representing Canada in various agricultural-development projects and at meetings; and this year he's been a farmer observer at international trade talks at Geneva.

Like more than a score of other farmers, grain-trade people and government officials interviewed, Parker is convinced that Canada's agriculture system fits its dependence on a handful of crops for its agricultural livelihood.

Despite striking differences between U.S. and Canadian agriculture systems, there are similarities between farmers such as Parker, a grain and livestock farmer with 1,600 acres, and their counterparts in the United States.

Both know that their incomes will depend largely on the livestock and crops they produce. Both produce far more than their countrymen can eat.

Consequently, both closely monitor agriculture production and policies of other countries, because a big slice of each dollar they earn comes from exports of their agriculture products overseas.

Both worry about rising costs, taxes, undue government restrictions, the weather, crop and livestock diseases and excessive paperwork.

But the differences between U.S. and Canadian agriculture—from weather to marketing systems—are vast:

Climate—Short summers allow farming only in southern Canada—and good farming only in the southernmost 200 miles. But good farming in Canada provides an average wheat yield that's 20 percent less than in the United States.

Crops—That short season allows only selected crops to flourish in Canada. Wheat accounts for about 70 percent of Canadian grain production. Other small grains, such as barley, rye and oats, make up most of the rest. Canadian grain production is concentrated in the prairie provinces of Manitoba, Saskatchewan and Alberta.

With new, short-season hybrids, Canadian farmers are beginning to grow a smattering of corn and soybeans for livestock feed.

The United States, with a climate that makes most of the soil productive throughout the country, has an agriculture belt 2,000 miles deep. It produces more volume and variety of grain, fruit, vegetables and other crops than any other country.

Livestock—Cold winters and short summers also make raising livestock a tougher job than in the United States. Most livestock production is confined to dairy farms and beef-breeding herds that produce calves.

Some of the calves are raised on grass and hay feed and sold to make hamburger; some are fed wheat or other grain and make better grade beef cuts. Some of those calves are sold in the United States to feedlot operators who turn out choice beef.

Most of the livestock in Canada is produced in areas that are less suitable for crops.

Here is how the two countries rank in the world in various livestock-production categories: beef and veal, U.S. No. 1, Canada No. 8; pork, U.S. No. 1, Canada No. 15; mutton, lamb and goat, U.S. No. 3, Canada No. 25; milk, U.S. No. 1, Canada No. 7; chicken, U.S. No. 1, Canada No. 13.

Land in farms—With agriculture confined to a narrow, southern belt, productive land constitutes only 16 percent of Canadian soil, compared with 48 percent of the land in the United States.

Canada has about 339,000 farms averaging about 500 acres each, a total of 169 million acres. The United States has 2.78 million farms averaging about 390 acres, a total of 1.08 billion acres.

Transportation—With an agriculture belt 200 miles deep and 3,000 miles long, moving grain to Canadian export terminals is no mean feat. One-third of the export grain must move across the Rocky Mountains to West Coast ports.

And all rail traffic must squeeze through Crowsnest Pass, which last year was closed for more than a week during a snowstorm. The snow froze so solidly that it had to be dynamited. That delay in moving grain to waiting ships—combined with other snags in the rail-transportation system—is still being felt.

Marketing—Grain buying, handling and marketing is far different in Canada. It's done through a mixture of farmer-owned wheat pools and the government's wheat board, with a little free enterprise on the side.

The four regional wheat pools were formed in the late 1920s because, said Parker, "the private grain companies had been taking advantage of us shamefully."

The companies had divided up the territory, paid low prices and precipitated a farmer revolt that led to the wheat pools, he said.

After nearly going under, the wheat pools were rescued with an injection of government money and promises of guaranteed minimum prices for the basic grains.

Now, farmers grow the grain and store it at wheat pool elevators. They receive their guaranteed payments when they deliver the grain. The wheat board charts the movement of grain to domestic users or to export facilities.

The Wheat Board decides how much grain the market will bear the next year, then sets a minimum price that farmers will be paid. The board negotiates agreements with foreign buyers and if those deals bring in more money than the farmers were promised, they get bonus payments.

But if the grain sales bring in less money, the government makes up the difference.

This year, for the first time since 1970, the government probably will shell out some money to back up its guarantee of a minimum $3.34 a bushel for wheat. Minnesota farmers last year earned an average $2.50 a bushel for their wheat.

No one will know how much the guaranteed-payment program will cost the government until early next year, after all the income and bills have been toted up. The Wheat Board is not yet admitting officially that government money will be needed.

The Winnipeg Grain Exchange is still an active market for "non-board grains," but it's primarily a domestic market doing far less volume than during its heyday 50 years ago.

"It's a system that works for us, but I'm not sure it'd work in the United States," Parker said.

That is a message that visiting American farmers frequently take home with them after visiting the Canadian Wheat Board main offices in Winnipeg, board officials say.

"We've had lots of Americans up here—some of them the farm strikers who were looking for a better system than you've got—who think they'd like to take the wheat board plan back to the states with them," said John Morriss, a spokesman for the board.

"That's before they hear about the quota system. Ideally, what the Americans would like is guaranteed prices with no production restrictions. Our farmers would like that, too, but I don't know how it can be done," Morriss said.

Canada needs that system so it can cope with the monumental barriers of climate and topography facing Canadian farmers, Parker said.

"You have more alternatives than we do. We've got wheat, and you've got that plus everything else; we've got railroads to move our grain, and you've got rail and truck and barge; you've got a good, integrated private market system, and ours has atrophied," he said.

"One of the big differences between Canadian and American farmers is that most of us don't know how to market our crops. You Americans are pretty adept at watching the markets and selling when the price is right. We haven't had the experience."●

PROPOSED MILITARY BASE REALINEMENTS

● Mr. PERCY. Mr. President, Senator STEVENSON, Congressmen ED MADIGAN, MEL PRICE, and I attended a meeting this morning at the Department of Defense on the department's proposed plans for military base realinements.

About 40 leaders of the communities in Illinois affected by the possible changes met with Dr. John P. White, Assistant Secretary of Defenese for Manpower, Reserve Affairs and Logistics as well as high-ranking officials from the three services.

I would like to make the statements of these Illinois leaders a matter of public record, because they raise issues crucial to the local communities and important to Department of Defense decision-making.

Mr. President, I ask that the statements be printed in the RECORD.

The statements follow:

CITIZENS FOR CHANUTE, MUNICIPAL BUILDING, RANTOUL, ILL.

We feel these facts are important and must be factored into any decision affecting the status of Chanute Air Force, Base.

1. If Chanute Air Force Base closes the economic "impact" would be the loss of $176.7 million in personal income. This represents 18% of all personal income received in this area.

2. The base closure would adversely affect approximately 5,000 jobs in the surrounding area.

3. Local Government would lose $9 million and the State of Illinois would lose $11 million in revenue.

4. Chanute Air Force Base procurement for operating supplies, maintenance and other services would be cut by $6.8 million annually for those business firms within a 50 mile radius of Rantoul, $10.2 million for other business firms within the State of Illinois, and $8.3 million for the remainder of the United States which is a total cut of $25.3 million.

5. Just this year, 1978, a total of 2,527 civilian workers are employed at Chanute Air Force Base.

6. Over 74% of the civilian employees live in Rantoul, Gifford, Ludlow, Thomasboro, and Fisher.

7. Sixty-three percent of these civilian base workers who live in Champaign County reside in Rantoul.

8. The 1,165 civilians residing in Rantoul and working at Chanute comprise 22.9% of the village's civilian work force.

9. Assuming there will be no job replacements the unemployment rate could jump as high as 9.7% for Champaign County, 31% in Rantoul alone.

10. The income loss due to the disappearance of base income and the loss of secondary jobs in Ford County would be $7,986,000.00. Iroquois County would lose $2,046,000.00 and Vermillion County would lose $2,922,000.00.

11. While Thomasboro is not a major retail/service center, its few commercial establishments are heavily patronized by Chanute personnel; therefore, its sale tax revenues, would be hit extremely hard.

12. The 362 civilian base workers residing in Paxton make up 21.3% of the communities civilian labor force.

13. There is also Loda which includes 7.9% and Buckley at 9.8% of the total civilian workers.

School aid

City	Federal "impact" Aid	State Aid	Total aid received	City	Federal "impact" Aid	State Aid	Total aid received
Rantoul—High school	$305,000	$650,000	$955,000	Thomasboro	$9,065	$19,242	$28,307
Rantoul—City schools	1,100,000	1,480,000	2,580,000	Buckley-Loda	9,987	5,280	15,267
Urbana	55,000	112,140	167,140	Paxton	46,228	217,427	263,655
Champaign	55,000	85,000	140,000				
Gifford	10,900	12,500	23,400	Totals	1,591,180	2,581,589	4,172,769

PRESENTATION BY LEO F. KUKLA, MAYOR OF NORTH CHICAGO

As Mayor of the City of North Chicago which has a conditional annexation of the Great Lakes Naval Base, I am here with grave concern regarding the recently publicized plans of the Pentagon, which are in the preparatory stages, for a partial closedown of the Great Lakes Naval Training Recruit Command in our city and Fort Sheridan Army Base in Highwood, Illinois. I would like to state publicly that our city of North Chicago would suffer a very severe economic setback by the closing of these facilities as many citizens of North Chicago are employed at the Base of which I am told approximately 362 jobs in that area, not withstanding the fact that a great majority of our business in whole or part are patronaged by the naval personnel. I am speaking mainly of our two motels, the Holiday Inn of North Chicago and the Pagoda Motor Inn which without the support of the visitors at weekly Recruit Training Graduation can and will prove that without this support the businesses will virtually close. Our food services, which are mainly fast food services, almost 75 to 80% realize in whole or in part patronage of the naval personnel.

Getting down to the City of North Chicago which would be drastically affected by this closing, as the current population of the City of North Chicago comprises part of the base wherein the City of North Chicago receives Illinois State Income Tax and Motor Fuel Funds. Notwithstanding the fact that the federal government presently has declared North Chicago to be an economically distressed municipality and at this time is considering some applications which involve federal funds to help pump the economy into our community. We are confused as to why at this critical time, we will be receiving help through possible federal funds on one hand and the elimination of jobs on the other.

The removal of Great Lakes Recruit Training would further add to and make an almost impossible economic drain on the city and on the municipal government of the city. The City of North Chicago wants to do all within it's power to convince the United States that the continued operation of Great Lakes at it's current level is absolutely imperative to the economic existence of the City of North Chicago.

Speaking from the latest census dated 1970, North Chicago had a population of 47,275. That population includes Great Lakes, however minus Great Lakes, the total population of North Chicago from the same census is 12,999 of which the racial mix comprises of 6,644 whites, 5,546 blacks, 184 other, 465 Spanish and 160 Puerto Rican. In the 1970 census data, our median family income was $8,899 and the mean family income $9,889. The unemployment rate data from the Illinois Bureau of Employment Security average unemployment rate for 1976 was 8.41, far above the national level. The average unemployment rate for 1977 was 6.98. So as you can see we do have our problems.

Besides the tremendous economic burden placed on North Chicago by the closing of Great Lakes Recruit Training Command, I would also like to state, and the facts bear me out, that Great Lakes Naval Training Recruit Command is by far the most modernly equipped than any other base and has much more to offer including the area and space for much needed expansion if need be.

As far as our concern for Fort Sheridan is concerned, this is also a grave and serious concern because of it's direct and indirect effect on the citizens of our community. The direct effect of the loss of 123 jobs for North Chicago citizens as of April 1978 plus the indirect economic effect of the spending power of these employees. There is some talk about a needed beach in the Fort Sheridan area. What about the much needed beach for North Chicago where we don't have any facility for a beach for our citizens because of the erosion of Lake Michigan upon our shores.

In closing, I would just like to remind the President, the Department of Defense and all concerned, that we have another problem of possible unemployment and that is the possible closing of the U.S. Steel Mill, Waukegan Works, which borders North Chiago and our sister city of Waukegan further eliminating 450 jobs. We have also just recently been informed that Goodyear Tire which uses a North Chicago mailing address and is adjacent to our community is closing down it's plant in the very near future and will be phasing out an additional 493 to 495 jobs in our immediate area. I am willing to go to any length to get more specific information to show that the city sincerely desires with all it's earnestness in it's heart to call upon the Department of Defense to realize the absolutely devastating effect that the removal of any part of Great Lakes and the Fort Sheridan Army Base, it's growth level or operation, would have upon the city of North Chicago and it's citizens. In fact, Gentlemen, if you could look at the true picture, I am sure you would wholeheartedly agree with me that this area does not and should not have any type of cut backs but should have added impetus in creating the necessary jobs for the many, many unemployed we are strapped with.

I would like to at this time to sincerely thank the Honorable Adlai Stevenson III for setting up this hearing. I would also like to thank the Department of Defense, Senator Charles H. Percy, Congressmen Robert McClory, Philip M. Crane, Melvin Price, Edward R. Madigan and Dan Rostenkowski for their time and effort in allowing the city of North Chicago to plead it's case.

Thank you.

TESTIMONY SUBMITTED BY CHARLES C. ISELY, PRESIDENT OF THE WAUKEGAN/LAKE COUNTY CHAMBER OF COMMERCE

Ladies and Gentlemen, it is a pleasure for me to present testimony to you on behalf of the Waukegan/Lake County Chamber of Commerce and its over 800 members located in Lake County.

For many years, the Chamber has been cognizant of the economic input of these military installations in our area. It has been through past efforts, that various economic facts have been researched and published. One of the most interesting items has been the residency of employees at these two installations within the county. The average one-way trip of employees at these installations is 21 miles; therefore, the economic input is not limited to the immediate adjacent community. It affects the county as a total unit. The cost effectiveness for the operation of these two installations is constantly being stated as "high cost!" The Chamber is interested in learning if there is a "normal" cost which the Department of Defense utilizes as an average to operate a square foot of space for administration of training functions, and if so, we should be apprised of this cost, and how it would be cheaper in another location.

Even though the Department of Defense says there is no collation between the Army and Navy Recruiting Commands, to the layman, it would appear their mission and function would be the same. Both military commands do conduct recruiting actiivties specifically for their element within the corporate limits of the United States. The central location here in the Chicago metropolitan area was given as one of the reasons why the Army Recruiting Command was moved here. The empty space at Fort Sheridan was an economic factor, since the Army was leasing space in the Washington area. However, since it has come to our attention that construction of additional space at Fort Benjamin Harrison would be necessary to accommodate the Army Recruiting Command, it is hard for us to accept that money is going to be saved, because if you build additional space, you are going to increase your annual upkeep cost to compensate figures that exist currently at Fort Sheridan.

In connection with the relocation of the Navy Recruit Training Command we raise the following questions. This Chamber is cognizant of the previous request made by the community of Orlando, Florida, to have their Navy Recruit Training Command Facility closed down. They felt they did not need that economic input to their community. Since the manning level of the Navy does not support the need for three recruit training stations, why not close down the one that the communit does not want? Also, we think it is significant to note that there are many service school ratings that are only taught at Great Lakes, and since the trend is to maintain a one-station training facility, why

not have it be Great Lakes, because if the recruits are trained at other locations, they will still have to come here for this additional training, with added travel expenses and other related costs.

Therefore, the Chamber feels, given the central location of these two facilities, and based upon the information and facts we have been able to obtain at this point in time, the proposed realignment seems to be unreasonable and financially unsound.

It is the Chamber's intent to support all the activities of the Lake County group to maintain the military facilities on an economic and sound basis for the overall mission of providing support to the military establishment.

I appreciate very much, the opportunity to meet with you today.

TESTIMONY OF BRUCE GIANGIORGI

My name is Bruce Giangiorgi. I am here in my capacity as Co-Chairman of the "Save the Bases Committee", which is a subcommittee of the Lake County Economic Development Commission. Our Committee was created by resolution of the Lake County Board. We are here today for the express purpose of addressing problems relating to the possible closure of Ft. Sheridan and proposed base realignment at Great Lakes Naval Training Center.

Our members represent all facets of the County: namely Chambers of Commerce, School Districts, (both public and parochial), Township Supervisors, Veterans Associations, Council for Senior Citizens, Retired Military, Civil Defense Groups, N.A.A.C.P., County Board, American Federation of Government Employees and City Governments, etc.

Based on information in our possession, we have strong reason to believe that not only our County, but the entire State of Illinois would suffer severe economic and social hardships.

A recent article appearing in a local newspaper stated:

A total of $116.9 million in annual income will be lost in the Lake County area if Ft. Sheridan and Great Lakes Naval Bases are closed. . . .

The economic impact figures were compiled by the State Commission for Economic Development.

In 1976, Ft. Sheridan generated some $39.9 million in civilian and military paychecks and supply purchases. As this basic income circulated in the area, the Commission estimates it created additional non-basic income of approximately $30.2 million. Total personal income of the operation of Ft. Sheridan, therefore, is estimated to have been $70.1 million in 1976.

This impact is what would be lost in income to the area if the federal funds coming into Ft. Sheridan were to be discontinued. . . . Close to 2,000 jobs in the private sector near the Fort could also be affected by the loss.

The Great Lakes Recruitment Training Command in 1976 generated about $27.3 million in basic income, and another $19.5 million in non-basic income. The total person income impact of the operation of the Training Command, therefore, is estimated to be $46.8 million annually.

Some 1,200 jobs in the private sector near the base could be affected by the termination of the Training Command program.

In addition to all that income loss, it's been estimated that the closing of the two installations would bring about a $7 million income tax loss to the State of Illinois, plus $5.4 million in local tax loss in the county.

The effects of Ft. Sheridan's closing on School District No. 111 invariably covers the economic effects, such as the loss of $558,000 in Federal Assistance in Federally Affected Areas, commonly called Impact Aid; the 38 certificated and noncertificated jobs which would be eliminated; and the 18–20 classrooms which would be vacated.

Another very significant effect is that a vital part of the District would be lost—425 of its 1408 students, over 30% of their enrollment, together with their parents who contribute so much to the schools as parent-teacher organization officers, and members, tutors, etc. Large portions of two of the District's Schools were built with Federal Public Law 815 moneys because of Ft. Sheridan.

Twenty-two Lake County public school districts received a total of more than three million dollars in Federal Impact Aid last year. Also, many students in the 34 parochial schools in Lake County are dependents of Federal Military and Civilian employees. St. James Parochial School would lose between 25 and 30% of its students which could mean the ultimate closure of the school.

Township High School District #113, operating two high schools, received $218,661.-00 during 1977–78 for their claim of Impact Aid. Estimates for 1978–79 are $225,000.00. A survey conducted showed 219 federally connected students attend school with a potential count distribution to be 155 residing on Ft. Sheridan, another 23 working on Post, 18 in other military services and 23 working on other federal property.

North Chicago would suffer a very severe economic set back by the closing of the facilities. Approximately 362 jobs would be affected.

In 1970, North Chicago had a population of 47,275, however, minus Great Lakes, the population would be 12,999 of which the racial mix comprises of 6,644 Whites, 5,546 Blacks, 465 Spanish, 160 Puerto Rican and 184 Other. In the 1970 census data, the medium family income was $8,899 and the mean family income was $9,889. The unemployment rate data from the Illinois Bureau of Employment Security stated that the average unemployment rate of 1976 was 8.41%, far above the national level. The average unemployment rate of 1977 was 6.98%.

There were 123 employees from North Chicago working at Ft. Sheridan as of April 1978.

The Federal Government presently has declared North Chicago to be an economically distressed municipality and is considering some applications which involve Federal funds to help pump the economy into the community. Why help through possible Federal funds on one hand and the elimination of jobs on the other?

North Chicago also faces another problem and that is the possible closing of the U.S. Steel Mill, Waukegan Works, which border North Chicago and the City of Waukegan, further eliminating 450 jobs.

It is our expressed feeling that the closure of Ft. Sheridan and the realignment of Great Lakes would be detrimental to the social and economic well-being of Lake County and the State of Illinois. We respectfully request that information to be developed from the impact study be made available to our committee for review before being implemented. We strongly urge you to reconsider your original proposal and transfer more activities to both Ft. Sheridan and Great Lakes.

PRESENTATION BY MELVIN L. KLAFTER

Ladies and Gentlemen: I am highly privileged and honored in being allowed to appear before this august body and address myself to the question of retaining the three military installations in the great State of Illinois, namely: Fort Sheridan, Great Lakes, and Chanute Field. My remarks will apply only to Fort Sheridan. Others will direct their attention to the other installations.

As you know, Fort Sheridan was established at about the turn of the century so as to have army troops close to the great City of Chicago in the event of domestic or other troubles. Before the turn of the century, it was necessary to bring troops from Fort Leavenworth, Kansas in times of domestic troubles.

The City's Elders and Fathers in their good judgment dedicated the land which is now Fort Sheridan to meet crises and calamities confronting Chicagoland.

The said actions did portend future events, for over the years Fort Sheridan served this metropolitan area to the full expectations of the dedicating city elders. Needless to say, that through two world wars, Korea, and Vietnam, Fort Sheridan was the hub of military activity in the State of Illinois. Without this outstanding military facility. Chicagoland and the surrounding area would have been handicapped for obvious and manifold reasons.

In the event that Fort Sheridan is closed and in the event of another national military crisis, there would not be an installation or facility in the Midwest that could replace its loss. If for no other reason Fort Sheridan must remain open.

However, your attention is directed to the Fort's comparatively recent military contributions. During the riots when the National Guard was alerted in 1965; when the National Guard was actually called out in 1966; and during the riots when the National Guard was again called out and the Regular Army brought in in 1968, Fort Sheridan was the focal point of logistical operations for the troops participating. In 1965 during the National Guard alert, Fort Sheridan furnished additional rations. In 1966 when the National Guard was called out in the "Cicero, Illinois Episode", Fort Sheridan furnished the rations and ammunitions. In 1968 during the riots when the West Side of Chicago was almost burned out, Fort Sheridan gave necessary logistical support to the Regular Army.

Attention must additionally be called to the year 1967 when a tornado struck Oak Lawn and Belvidere, Illinois, when the National Guard was called out to alleviate the damage and suffering at those localities. Additional vehicles were needed, food rations had to be given to the troops, together with winter clothing. The Army had to send stoves, cots, blankets, food and tents to the citizens of those localities in the same manner that they had to send the same type of equipment to those people who were burned out during the riots of 1968.

Since 1968 the Army has repeatedly helped the citizens of Illinois when struck by catastrophies, both man-made and natural. Such as when tornadoes and storms caused power failures, and generators had to be brought in for power in hospitals and other public and quasi-public facilities; when the water power systems failed in down-state Illinois the Army brought in mobile purification systems and plants. In these above cited calamities it was Fort Sheridan that had the materials and equipment at hand to do the job. It was Fort Sheridan that had the manpower readily at hand; and it was Fort Sheridan's commanders who directed these operations either directly or indirectly.

Obviously, if Fort Sheridan is closed, these disasters and crises will not stop. What will happen in such events when the nearest army installation, Fort Benjamin Harrison, hundreds of miles from Chicagoland, will be depended upon to do the job that Fort Sheridan has done in the past, but without Chicago's airfields, railway lines, general communication systems, truck and bus terminals, manpower and manufacturing capabilities.

Notwithstanding the foregoing, the Army in its computing, figures that there are 2,000 military personnel assigned to Fort Sheridan and in that it disperses $144,000,000 yearly it costs $7,200 per individual to maintain

the post, and that amount is too costly. *We disagree*. There are in fact about 200,000 military related personnel serviced by Fort Sheridan, which brings the cost to about $72.00 per individual as distinguished from $7,200.00.

The 200,000 manpower figure is not exaggerated. Fort Sheridan supports 100,000 reservists from Illinois, Wisconsin, Michigan, Northern Indiana and Iowa. These reservists are paid from Fort Sheridan when on active duty, and their families can use the PX facilities at Fort Sheridan. In addition—reserve units have its weapons and vehicles repaired at Fort Sheridan without having to travel hundreds of miles for these purposes at great extra expense.

Additionally, there are about 47,000 National Guard troops served by Fort Sheridan. There are about 28,000 army retirees, widows and orphans who use all the facilities at Fort Sheridan. There are 1,900 R.O.T.C. students from both the colleges and the high schools. There are about 1,200 Department of the Army civilians; 4,000 active duty army people who both serve on the post and use the post as their headquarters; and about 90,000 eligible dependents of these said individuals. I repeat $144,000,000.00 divided by 200,000 persons equal $72.00 per person.

Moreover, so long as we have a volunteer Army, and recruiting is important, it must be remembered that Fort Sheridan offers such attractions as a golf course, arts and crafts studies, education facilities—there is a full college course offered, including one for advanced degrees.

As a senior vice-president of the Chicago U.S.O., I can report that in 1977, 49,000 service people used the U.S.O. facility at Chicago O'Hare Airport, the world's busiest airport, and 46,500 used the U.S.O. facility in Downtown Chicago. These U.S.O. facilities are supported entirely by private funds—not a dime of government money is involved; and I can say without equivocation that if Fort Sheridan was closed so would the Chicago U.S.O.—or at least the O'Hare facility would be closed.

Attention is directed to the fact that the Chicago District Recruiting, Middle Western, and National Recruiting Commands are all located at Fort Sheridan. The latter two, if Fort Sheridan closes, are scheduled to go to Fort Benjamin Harrison in Indiana, and the Chicago District Recruiting Command will have to rent space in Chicago as do units now located in the 1819 Pershing Road Building, together with the North Central Division of the United States Army Corps of Engineers, and the Chicago Engineers District. If the Army is really trying to save money, it should move Army units which rent space in Chicago to Fort Sheridan where there is ample and available space instead of trying to close it.

And may I add parenthetically, Fort Sheridan should be used to its fullest potential. One way to do this would be to move installations from other sections of the Country to it—to be perfectly blunt—let's stop stripping the military from "Yankee Country".

Further, in regard to recruiting attention is invited to the fact, I do not have the exact figures, but I am told that a great number of the recruits come from the Chicagoland area. In Chicago, parades, ceremonials and display of military hardware materially help recruitment. Without Fort Sheridan such activities should be impossible and recruitment would therefore suffer.

As a retired Army JAG Colonel, AUS, I can attest to the fact that Fort Sheridan has over the years proven to be a great training facility for troops. In 1959 when I activated, organized—and then commanded the 7th JAG Detachment, I can well remember with fond memory Fort Sheridan and all its training and recreational facilities.

As a past Commander of the Chicago and Illinois Chapters of the Military Order of World Wars; as a past Illinois Department President of the Reserve Officers Association of the United States; as a past Chief of Staff of the Military Order of the Purple Heart; as a Mason, Shriner and Knight Templar; as a senior partner in an established Chicago law firm, and as a fourth generation Chicagoan; I abhor the thought, and I am terribly distressed by the proposal to close Fort Sheridan.

May I say in conclusion, it would be a crying shame if the second largest city in the United States was denied a nearby military post.

Thank you, and I especially thank the elected officials from Illinois.

TESTIMONY OF THOMAS H. COULTER, CHIEF EXECUTIVE OFFICER, CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

Illinois' and Metropolitan Chicago's vital importance to the nation's economy stems from its central location at the focal point of commerce, industry, agriculture and population.

Because of the enormous cost savings which central location implies for movement of freight, executive flight, long distance toll charges, postal rates, employee movement and other geographically related costs, Chicago has become the nation's leading manufacturing center. According to the 1976 Survey of Manufactures of the U.S. Department of Commerce, Metropolitan Chicago led all other areas in manufacturing shipments with 51 billion dollars. The 1978 Survey of Industrial Purchasing Power puts the current year's total at 68 million dollars—ahead of all other areas. The same report indicates manufcturing shipments of 103 billion dollars for the State of Illinois—the highest total for any state.

Geography has also created the largest transportation industry in the nation in Chicago. Metropolitan Chicago ships 27 millions of manufactured tons by truck and 23 million tons by rail, according to the U.S. Census of Transportation, to top the tonnage of any other area. Chicago employs more trucking and warehousing employees than any other area.

Chicago's air passenger volume will top 50 million passengers in 1978, the largest in the world. Its airline schedules service 231 direct non-stop flights. Both totals exceed those of any other metropolitan area. O'Hare International Airport handles more air cargo tons than does any other air facility in the country.

Chicago's manufacturing importance and its housing growth within the last ten years cf 367,000 units . . . tops for any area . . . have boosted its construction industry to the highest level of expenditure anywhere in the U.S. From 1967 through 1976, the area spent over 21 billion dollars for construction contract awards, highest in the nation. Last year, Chicago spent 3.5 billion dollars on all kinds of construction, again to lead all other areas. Chicago's expenditures for new industrial plant and equipment, 13 billion dollars in the six-county area and 18 billion dollars in the eight-county area from 1963 through 1976, far exceeded comparable totals for other metropolitan areas.

Metropolitan Chicago and the State of Illinois are leaders in research and development of nuclear energy through the Argonne National Laboratories and Fermi Labs, and in the development of energy by conversion of coal and petroleum to natural gas at the Institute of Gas Technology and the ERDA facility downstate. Chicago's research facilities led by those of The University of Chicago, the Illinois Institute of Technology, Northwestern University and The University of Illinois have provided the academic springboard for much of this research.

In 1975, the State of Illinois contributed 19 billion dollars in taxes to the federal government—the third highest total among the states. Illinois' net outflow of taxes—that is federal taxes minus federal expenditures in the state—was 5.3 billion dollars, the highest net outflow of federal taxes of any state.

In 1886, at the time of Chicago's Haymarket riot, The Commercial Club of Chicago, a private civic organization of business leaders, donated almost 600 acres of land to the U.S. Army for the construction of Fort Sheridan. They were motivated to do so because of their great public concern for the protection of the city's population and resources from the ravages of civil disturbance. At the time, Chicago had a population of only 600,000. Today, the area and its suburbs contain 7.6 million persons, and has grown to be the nation's largest industrial complex with vast resources for the defense of the U.S.A. The Chicago Ordnance District was the largest producer of military equipment and supplies during World War II and has grown in potential since then.

It is unthinkable to the Chicago Association of Commerce and Industry that any federal military establishment so essential to the security of this area be drastically reduced. This is especially true for Fort Sheridan which plays a major traditional role in supplying all kinds of material and manpower for natural disasters, civil disturbances and military operations. Under no circumstances should Fort Sheridan be closed or drastically reduced from its present level of operations.

For many years, Metropolitan Chicago has attracted the largest new capital investments by U.S. industries which obviously must seek the most efficient, low-cost locations in the nation. The Department of Defense can enjoy many of the same advantages. Chicago and Illinois need their fair share of defense establishments. We feel confident that, with objective judgments, the Department of Defense must arrive at the same conclusion.

TESTIMONY OF LYNETTE M. KEATING, PRESIDENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1426

What? Move again? The Army's current plan for moving the Army Recruiting Command to the Great Lakes Naval Base 10 miles north of Fort Sheridan or anywhere else leaves me puzzled.

With an eye to cost, which apparently is the motivation for the recently announced plans to study the closing of Fort Sheridan, it doesn't make sense. The Recruiting Command has already moved once—from Hampton, VA in 1974.

When the Senate Armed Services Committee becomes concerned because the volunteer Army is in distress, perhaps we would be better off to spend the money recruiting and training rather than moving.

The Army has made some of its moves pay off. Units which had been renting commercial facilities in Chicago or paying rent to other federal institutions were moved to Fort Sheridan for that very purpose—to save Army dollars which the taxpayers provide. These same units are under consideration for another move.

But some moves just don't make economic "cents". Some of the Army's already well-laid plans include moving some of the maintenance work for reserve unit equipment to Fort McCoy, WI. Currently, McCoy is operating at near maximum capacity for the number of personnel they have. With work coming from Fort Sheridan they would have to hire more people and in all probability erect more buildings. Again, the payroll would not be decreased, just moved to another locale. That means more jobs for Wis-

consin, fewer government paychecks in Illinois. This state can ill-afford more reduction in defense spending when, as it is now, for every dollar in taxes that leaves the state, the Pentagon sends only three cents back.

With repair work and maintenance of Army equipment in Wisconsin there would be added fuel consumption for units forced to travel the additional 210 miles—something to consider in light of the energy crisis, which is apparently not just going to go away.

Military vehicles are not known for their economy. Some trucks get only three miles per gallon. Fort Sheridan services equipment for some 44,000 reservists in Illinois, Michigan, and Indiana. People cannot drive and do other jobs at the same time. In addition, they have to be paid—$35 a day for food and lodging for every day they are away from their duty station.

Fort Sheridan has been described as being near the heart of the nation's most "park-starved" metropolitan area. That hardly seems to be the case when there are 26,000 acres of state recreational areas in northeast Illinois alone, not to mention the county recreational areas.

Who could agree that 389 acres is worth the 1,188 military jobs and the 1,365 civilian jobs that will be lost if the post closes? Is 389 acres worth 390 minority jobs? That's how many blacks, Spanish, Indian and Orientals are employed at the post now.

The school districts will undoubtedly be hurt. There are few not already feeling the economic pinch. Voters are becoming notorious for turning down bond issues, trimming "luxuries" such as athletics from school programs.

And it's not only Lake County that will be affected. Even schools in Chicago and suburbs benefit from the $1,281 per pupil contribution that the federal government pays to the districts. Of course, it will hit hardest closest to home. Last year in Highland Park, over 600 dependent school age children were enrolled in the school system. The 400 who attended grade school comprised about 29 percent of the district's total enrollment. The support which the schools received amounted to almost $900,000. Without these pupils and the federal funds, what will happen to the budget one can only imagine. Cuts will have to be made in teaching staff and physical facilities.

The schools will feel the crunch, but who will benefit from it? Will it be the taxpayer spent on local purchases in the area because of Fort Sheridan. Money doesn't grow on trees nor in communities where there are no people renting homes or eating in restaurants or purchasing the services of the community.

And if the government plays landlord, who will benefit from it? Will it be the taxpayer or private individuals or corporations waiting in the wings for this valuable property to become available.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LODGE 1426

We have endeavored through the attached enclosures to relay the feelings of *The People* relative to the closure of Fort Sheridan and the maintenance of our military strength.

In a recent opinion poll, the citizens favor maintenance of strong military forces and are concerned by their doubts about the nation's defense posture.

Fort Sheridan's prime purpose is the "Readiness of Reserve Components of the Army." However, due to an antiquated formula, Fort Sheridan is referred to as the most expensive Army base per capita of military personnel in the country. If properly and fairly evaluated, Fort Sheridan is as cost effective as other installations because it directly supports over 44,000 Reserve personnel which is not taken into consideration.

It is realized that Fort Sheridan is located on property of "extraordinary value" in the exclusive North Shore suburbs of Chicago. However, this land was donated for the purpose it has and is now serving. Its strategic location to Chicago was considered when concerned citizens donated the property. None of the functions Fort Sheridan performs will be eliminated, only transferred. Does it make economic "cents" to transfer functions to other bases, that will have to hire more people and spend more taxpayers money to erect more buildings and increase the cost of support of the Reserves?

Can the Closure of Fort Sheridan Save the Nation the Millions of Dollars As Proposed?

How can you hurt one state's economy and not have it reflected in the overall picture?

As Fort Sheridan is the only "Army" base in the state of Illinois, should not the taxpayers money be spent on studies to add and preserve rather than abandon this base and the people involved?

"FORT SHERIDAN, ILLINOIS COST EFFECTIVENESS"

There is a justifiable need to clarify the cost effectiveness of the Fort Sheridan, Illinois operation and to set the facts straight.

The indication that "Fort Sheridan is one of the most expensive Army Bases per capita of military personnel in the country" is a very misleading half truth. If properly and fairly evaluated, Fort Sheridan is as cost effective as most installations.

The Army utilizes an old formula which is based on the military population of the Post. This is OK for large Divisional Posts whose primary mission is to train/support active Army troops, but is unrealistic for a small post, such as Fort Sheridan with approximately 700 acres, whose primary mission is supporting off post Reserve troops.

The reorganization of the Army in 1973 under Project Steadfast recognized, planned for and adopted the policy that the Reserve Components should be depended upon for 50 percent of the Army's requirements for Mobilization.

Fort Sheridan's Military Post Population is only 1870, however it directly supports over 44,000 Reserve personnel for which it receives no credit. Additionally, Fort Sheridan supports retirees and their dependents totalling about 43,800 for which no credit is allowed.

The Army needs to revise/update its formula in consonance with the Steadfast Reorganization and give proper credit for this work load. This would bring Fort Sheridan's cost ratio down with other Posts.

Since Fort Sheridan's Budget is over $32.6 million for P5–OMAR (Operation and Maintenance Army Reserve) versus $18.5 P2–OMA (Operation and Maintenance Army) funds, consideration should be given to carrying Fort Sheridan as a P5 Type Funded Post rather than P2, similar to Fort McCoy, Wisconsin whose mission also is supporting Reserve components. Accordingly, we would not be unfairly compared against the large P2 Active Army Divisional Type Posts, and would be in a similar category with Fort McCoy which is excluded from P2 comparison.

There are personnel cost figures to be considered if Fort Sheridan functions are transferred.

Four hundred seventy-eight employees would be entitled to severance pay. Figuring approximately $7 per hour for 20 weeks, each individual would draw approximately $5,600. Thus the total cost of severance pay would be $2,676,800.00.

Seven hundred eighty-five employees would be entitled to draw unemployment compensation. Using a median figure of $125 per week for 26 weeks, this would result in a cost of $2,551,250.00. It would also add to the unemployment rate of the State of Illinois.

The above represents an irrecoverable loss.

NOTE.—90 percent of the personnel own their homes. If 500 were transferred, based on a family of four, it would cost the government $10,000 for each family for a total of $5,000,000.00.

SO THEY SAY! SHOULD FEDS CLOSE ILLINOIS MILITARY BASES?

(By Mercedes Meyers)

CARPENTERSVILLE.—The Carter administration is considering moving all or most of four military bases out of Illinois as part of a nationwide economy action. The bases are Chanute Air Force at Rantoul, parts of Fort Sheridan, parts of Great Lakes Naval Training Center and an Army agency at the Rock Island Arsenal.

Shoppers at the Meadowdale Shopping Center were asked if they favored the Defense Department's economy proposal to cutback or close the Illinois bases. Their views appear below:

Ronald Knox, of Carpentersville, said: "A cutback could hurt the economy in Illinois.

"I was stationed at a base in Japan that closed its facility and saw what happens. Many jobs were lost. It really hurt a lot of civilians working at the base canteen and other civilian jobs.

"And, can you picture a business area like Meadowdale Shopping Center being near a base and what would happen to their businesses if the base moved out?

"It's a simple case of supply and demand. Take away the military base personnel's demand for consumer goods and you drastically reduce the supplier's income and the local and state revenue.

"And, as to transferring thousands of civilian personnel working at the military bases, not everyone can tear up their roots that easily.

"It can mean pulling children out of one school and transferring them to a new school in another state. That can be a traumatic change for a child to make the adjustment. It can mean breaking a lease or selling a house and clearing up old debts before moving across the country. It's not as easy as it sounds."

Mrs. Ronald (Deana) Knox, of Carpentersville, said: "I agree with my husband. Not many civilians can afford to move."

Mrs. Edward (Florence) Pfeiler, of Barrington, said: "I don't think the Defense Department should cutback or close the bases in Illinois. We need the facilities.

"If they remove the operation, the facilities will deteriorate into an eyesore and safety hazard. If the area were converted into, say, parkland, that would be at the expense of Illinois taxpayers.

"A cutback or closing of four bases in our state would definitely hurt Illinois economy. Many civilians would be out of work. Many more people who are spending consumer dollars at the bases would be gone to pour their dollars into some other state's economy.

"On top of all that, it is difficult for people to transfer from one job site to another, especially to another state clear across the country, away from friends and relatives."

Mrs. Tom (Caroline) Johnson, of Schaumburg, said: "I don't like it at all.

"It would mean laying off so many people. We don't need more unemployment here.

"It also means cutting back defense areas. It wouldn't make me feel too secure.

"It just involves too much. Thousands of military and civilian jobs would go down the tube. How would that help the nation's economy?"

Mrs. Bob (Margo) Price, of Hanover Park, said: "It would swell the unemployment lists here drastically. We don't need that.

"I can't see how the proposed cutbacks will save the nation the millions of dollars the administration says it will. How can you

hurt one state's economy and not have it reflected in the overall picture."●

LAWYERS AND THE CORPORATE BOARD ROOM

● Mr. McGOVERN. Mr. President, a line of modern court decisions has placed increasing personal burdens on those who serve on the board of directors of the Nation's corporations both large and small. Indeed, because of the increasing risks of personal responsibility for corporate decisions many Americans are becoming reluctant to be board members unless they have the time, resources, and personal expertise to serve.

The modern corporation, especially the large ones, have become models of complexity requiring the most sophisticated of legal representation and counsel. Too often the chief client of the corporate counsel is a tight band of central executive officers to the exclusion of other board members who oftentimes serve on the board nominally—their chief interests being their own individual businesses. In many instances management decisions of great magnitude turn out to be disasters much to the chagrin of the board and ultimately the public stockholders. Legal advice either fell short of the test of competency or was only available to the principal operating officers.

Mr. Victor H. Palmieri, a noted financial analyst in Los Angeles, has written eloquently and purposefully of these matters of sufficient and competent legal counsel in an article which appeared in the Wall Street Journal on August 14, 1978. The article is entitled "Officers of the Board" and I ask that the text of the article be printed in the RECORD.

The article follows:

OFFICERS OF THE BOARD?

(By Victor H. Palmieri)

The subject of "corporate governance" has become a favorite preoccupation of Congressmen, SEC commissioners, legal scholars and Naderites.

"How can we improve the way corporations are run?" is the question they are asking. The answers come in three clusters: (1) Making sure that directors are "independent" (i.e., not under management domination); (2) increasing the responsibility of the audit committee of the board for monitoring sensitive disclosure issues such as questionable payments; and (3) raising the level of federal and state standards for corporate behavior in relation to investors and the public.

All the principal actors on the corporate stage—directors, managers, and auditors in particular but also regulators and legislators—have received their fair share of criticism in the course of this debate. All, that is, but lawyers. In the wave of corporate disasters that followed the Penn Central debacle—National Student Marketing, Equity Funding, the R.E.I.T. bankruptcies, the foreign payments cases—lawyers have by and large managed to stay out of the line of fire.

To anyone reasonably familiar with the real world of the board room this immunity is bound to be puzzling, because in practice the quality of corporate governance is so clearly and consistently linked to the performance of counsel in the board room.

As a practical matter, neither the existence of tougher standards on the books nor a majority of independent directors in the board room is likely to make an important difference in the quality of corporate governance. Access to information in depth by itself is no guarantee of understanding, even with the most sophisticated directors. The classic example is the Penn Central, where an independent board majority composed of the nation's business elite remained oblivious to the problems and essentially inert month after month while the company lurched toward the biggest bankruptcy in history. Penn Central may be a classic in the annals of corporate disasters, but it is not unique.

The biggest problem in my judgment is the corporate lawyers' traditional concept of their own role. Until a crisis arises, the lawyers who sit with the board typically see themselves as the chief executive's counsel. Because they are usually selected by the CEO and serve, if not at his pleasure, with their compensation and tenure highly dependent on the CEO's pleasure, corporate lawyers tend to relate to the chief executive as the client. They deal with the board as a specially important constituency of management which, like other constituencies, has to be managed. This perspective, consciously or unconsciously, governs their participation in all interactions between the board and management.

In these situations lawyers have obviously failed to identify their clients, in the words of the ABA Code of Professional Responsibility, the lawyer "owes his allegiance to the entity and not to a stockholder, director, officer, employe, representative, or other persons connected with this entity."

This does not mean that company lawyers should fail to be responsive to the needs of the CEO. It is important to the company for the chief executive to be able to rely on a confidential relationship with the company's counsel. It does mean that lawyers in no instance should compromise their legal judgment to satisfy the purposes of the chief exectuive. If this imposes a burden on counsel, it is simply an occupational hazard that has to be accepted to make the system work.

In relating to the board, corporate counsel needs to use its best efforts to perform three critical tasks on a consistent basis:

1. Detecting and calling attention to any material inaccuracy or non-disclosure in management's presentation on the issues under discussion;

2. Explaining fully and fairly to the board the latent as well as patent risks involved in proposed actions or decisions;

3. Making themselves available to discuss the concerns of the independent directors away from the board meetings and out of the presence of the chief executive.

Lawyers' traditional reluctance to be drawn into "matters of business judgment" often insulates them from important information and leaves them without sufficient understanding of problems which they and the board should know about. In today's world, for instance, corporate lawyers who lack a firm grasp of financial and accounting principles and practice, or who are innocent about corporate relations with politicians or journalists, or who are not up to date on the changing contour of regulatory policy are simply not equipped for their job.

In particular, the emergence of the audit committee as the prime board instrumentality for monitoring sensitive issues such as executive perquisites, questionable payments, political contributions and other required disclosures creating a need for sophistication in dealing with audits and auditors that many lawyers simply do not possess.

Corporate counsel must be energetic in assisting the board to develop a philosophy of governance and a process so structured that, formally or informally, all information and viewpoints which may enhance the directors' capabilities to monitor the performance of management and to make sound decisions are brought to them. It is not a role for a technician, or an advocate, or a lawyer's lawyer. Rather it calls for an entirely different level of professional consciousness and independence, one in which corporate counsel come to be viewed as "officers of the Board" in the same sense that trial lawyers have long been viewed as "officers of the court."●

SUPPORT FOR S. 3007

● Mr. HASKELL. Mr. President, today I join with Senator DOLE in cosponsoring S. 3007, as amended. I agree in the principle of this bill, having already sponsored S. 3037. I believe that all businesses in addition to real estate, need relief in this area. However, I reserve the right to offer amendments to S. 3007, as amended, if the bill as drafted needs to be tightened up to prevent abuses.●

THE BLACK HILLS PASSION PLAY

● Mr. McGOVERN. Mr. President, for almost 40 years, the Black Hills Passion Play has excited and inspired millions of Americans who witnessed these moving performances at Spearfish, S. Dak.

In his sensitive portrayal of Christ, Mr. Josef Meier has brought to this demanding role an historic and religious understanding that is equaled by few in the world today.

Internationally acclaimed for the perceptions he brings to this exacting drama, Mr. Meier continues to create new meaning for his audiences in this "greatest story ever told."

Mr. Tom Zito of the Washington Post has recently visited with Mr. Meier and has seen the Black Hills Passion Play.

Mr. President, I ask that his article be printed in the RECORD.

The article follows:

THE MAN WHO PLAYS CHRIST: 8,000 PERFORMANCES AND 50 YEARS IN THE PASSION PLAY

(By Tom Zito)

SPEARFISH, S. DAK.—Josef Meier has spent the last 50 of his 74 years playing Christ—more than 8,000 performances in "The Black Hills Passion Play," set here in a natural amphi-theater near Mt. Rushmore and Devil's Tower.

It's an eerie, impressive setting. A three-block stage under the West's magnificent and awesome skies, where camels and sheep parade forth and a cast of 250 act out the last week of Christ's life, right down to the crucifixion of Josef Meier, on a mountain specially carved out for the play.

Never mind that Meier has been playing Christ for much longer than the 33 years Christ himself lived.

"His mission would have continued in the same vein if he hadn't been killed," Josef Meier said.

Indeed, Meier himself has taken on the passion play as his mission in life. Raised in Luenen, Germany, having studied medicine as a boy, he was chosen to play Christ in the town's Lenten passion drama. In 1932, after a Pittsburgh Shriner had seen the play in Germany, the enterprising Meier brought the production to that town's Sylvia Mosque. From there Meier put it on the road (including an evening at Washington's Constitution Hall) for five years, carting sheep, camels, horses, costumes, sets, and players on railroad cars.

"It was a pleasure to travel by rail in those days," he says, lost in the intricacies

of managing a road troupe. Meier is rummaging through the desk in his office at the amphitheater, looking for his old diary and fondling his pet miniature poodle, Teeney.

He could be a Russian count out of a Marx Brothers film, with his tiny mustache, close-cropped beard and foreign accent. His fiery eyes have a glint that make him seem like a character out of an outrageous '40s comedy film.

"We approach our work with a serious attitude," he says of himself and his company of 250 actors. Thirty-eight of them are professionals, and two—Harold Rogers, who plays Peter, and Meier's wife as Mary the mother of God—have been with him since the onset. "We bring to our work a sense of faith and believing. If this became a commercial, cold business, the essential symbolic value would be lost."

With money from the road production, Meier built the amphitheater in 1939 and has presented the passion play in the Black Hills every summer since. It is seen by 6,000 people three nights each week. In the fall the production moves to Lake Wales, Fla., where Meier built an amphitheater in 1932.

"I first came here for political reasons," Meier says. "You could sense then in Germany that things were not going in the right direction. I'm worried that the situation in this country today is not unlike the situation in Germany then. We've lost a sense of responsibility and inflation is eating up people's money.

"When I began to travel around this country with the play, I really saw the need for it. The separation of church and state here is extreme. In Europe, every school has a serious religious program. Here we would find that children really knew very little about religion, but they were fascinated by the character of Jesus. You must always reinforce, never disturb people's concept of Jesus."

After 8,000 performances in the same role, you might think an actor would become tired. But not so with Meier, who says that every performance is a re-dedication to his life's goal.

"I gain by the role," the Roman Catholic says. "People often say to me, 'It's a heavy cross. Aren't you tired?' He said, 'Ask and ye shall receive.' And if I need strength, I get it. The good Lord will tell me when it's time to retire. (Meier is grooming a nephew to take on his role and his daughter for the role of Mary.) He's the one who'll make the joints go stiff and the voice grow cold."

Meier often relies upon scripture to express his point. Referring to Christ's words to Peter at the Last Supper he says " 'The Kingdom of which I speak is different than the one you have known. The greatest will become the least.' These are the qualities that must remain with you in every single line when you are on stage. Otherwise it becomes a hollow role."

If all this sounds obsessive Meier says he is careful not to let his role become the world's most amazing case of method acting.

"I'm too terribly aware of my shortcomings, and always want to remain so," he says. "Doing something like that would be a form of insanity."

Which is not to deny that there is some religious spillover from the play into Spearfish's secular life.

A young girl who had just begun appearing in a crowd scene surprised her father one evening when he arrived home from work. She came running out of her bedroom, waving a branch of palm and shouting, "Hail Hosanna." ●

CONSPIRACY AGAINST THE ARMY

● Mr. GOLDWATER. Mr. President, in recent months, I have been very disturbed at the number and quality of criticisms being directed at the All-Volunteer Army. Admittedly, the present system of recruitment has encountered serious problems. But I hardly think the situation calls for the kind of attacks which have been appearing in the news media on the quality of the men and women in our military services. In this connection, former general of the Air Force, Ira C. Eaker, recently wrote an interesting article entitled "Conspiracy Against the Army." I submit for the RECORD the article by General Eaker which appeared in the July issue of the magazine Officer Review.

CONSPIRACY AGAINST THE ARMY

(By Ira C. Eaker)

Last month an hour-long television program on one of the major networks charged that the present-day Army was a collection of misfits from the lower strata of our society. It pronounced the all-volunteer recruitment system a failure. No one would think of joining the Army, it implied, unless he had failed to find any other employment.

More recently, a headline in a Washington paper's Sunday edition read, "As Officers Forget Duty—Honor—Country and Learn to Look Out for No. 1, the Military Loses Its Fight. It's Happening in the U.S. Army."

These are not isolated cases. There have been many other scurrilous attacks in the news media on the quality of the men and women in the military services. These examples are but the latest and most vicious.

Who is behind this effort to denigrate, defame and destroy our Army today? A careful analysis will show it is comprised of two groups, one subversive, the other pacifist, both dedicated to the disarmament of the U.S.

Since Congress, in misguided zeal, has gutted the FBI and castrated the CIA, the influx of enemy agents and money has more than doubled.

For example, within 48 hours after Moscow vehemently opposed the B-1 bomber, 25 pacifist groups in the U.S. obediently took up the refrain. As a result, the B-1 was cancelled. Exactly the same process and result occurred in the case of the neutron bomb.

The pacifist, the unilateral disarmament group in this country, most of whose members may not realize that they are being used as tools by the Kremlin, is busily engaged in destroying the military power of the U.S. The principal components of military power are modern weapons and competent Defense Department people in adequate numbers.

The joint campaign of the left-wing liberal groups has succeeded thus far in preventing the deployment of any new weapons to modernize our defense forces. The present effort concentrates on reducing military manpower.

Taking full advantage of the antimilitary sentiment growing from the Vietnam war and its slanted reporting, these critics now charge our failures there were due to defective Army leadership.

Actually, it was not Army but political leadership which failed us in Vietnam.

The crux of the present campaign is to use Army people to condemn the Army. There are always a few people in the Army, as in any large organization, who cannot measure up and who must be eliminated. Some of these "early-outs" become embittered and dedicated to revenge against the organization which found them defective.

Many flee to the tenured, sheltered status of academia and write books and articles viciously attacking the military. They have learned, unfortunately, that critical books, emphasizing controversy, have more sales appeal.

The facts are that our Army today is representative of the average of the U.S. population. It is admirably trained and dedicated to the defense of the country. Its officer corps, noncommissioned and commissioned, is not only adequate, but superior, the best we have ever had.

If the present conspiracy against the all-volunteer system of recruitment is allowed to succeed, by 1984 the Army will be at half-strength, completely inadequate for its critical defense mission.●

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

● Mr. ROBERT C. BYRD. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Robert J. Cindrich, of Pennsylvania, to be U.S. attorney for the western district of Pennsylvania for the term of 4 years vice Blair A. Griffith.

Tyree A. Richburg, of Alabama, to be U.S. marshal for the southern district of Alabama for the term of 4 years vice Harold S. Fountain, resigned.

On behalf of the chairman (Mr. EASTLAND) and the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Tuesday, August 22, 1978, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.●

AMENDMENT NOS. 3456 AND 3457 TO S. 1392 (CHAP)

● Mr. CRANSTON. Mr. President, on August 10, I submitted for printing two amendments to S. 1392, amendment Nos. 3456 and 3457, and asked that they be printed in the RECORD at the close of my introductory remarks.

Through an inadvertence, several amendments were printed in lieu of the two amendments I introduced. I ask, Mr. President, that the two amendments I submitted, Nos. 3456 and 3457, be printed at this point in the RECORD, and that the permanent RECORD be changed accordingly.

The amendments follow:

AMENDMENT No. 3456

On page 2, line 22, strike out "six" and insert in lieu thereof "twenty-one".

On page 3, line 19, strike out "SIX" and insert in lieu thereof "TWENTY-ONE".

On page 4, line 1, strike out "six" and insert in lieu thereof "twenty-one".

On page 4, line 24, strike out "six" and insert in lieu thereof "twenty-one".

On page 3, line 12, insert "when the care or services for those conditions are not provided pursuant to paragraphs (1) through (5) of section 1905(a)" after "disabilities".

On page 3, at line 14, insert "or discovered by a dentist if the dental assessment is done by direct referral to a dentist" after "assessment".

On page 3, at line 18, insert a comma and "and for the referral of any individual under the age of 21, who has received his periodic assessment, for appropriate care and services not available under this title" before the semicolon.

On page 5, at line 9, insert "for physical and mental problems" after "assessments".

On page 11, at line 21, strike out "September 30, 1977" and insert in lieu thereof "June 30, 1974".

AMENDMENT NO. 3457

On page 12, after line 13, insert the following:

MEDICAID COVERAGE OF PREGNANT WOMEN

SEC. 9. Section 1905 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(m)(1) For purposes of this title—

"(A) any pregnant woman shall be deemed to be a relative specified in section 406(b)(1) with whom a child is living who is a dependent child as defined in section 406(a), and

"(B) any pregnant woman who would meet the income and resources requirements of the State plan approved under part A of title IV if she had borne a child with whom she was living shall be deemed to be receiving aid under that State plan.

"(2) Any woman who is eligible for care and services under this title by reason of paragraph (1) of this subsection shall remain eligible for such care and services for a period of two months following the month in which the pregnancy terminates. Notwithstanding any other provision of law, any such woman shall remain eligible under this title for one additional pregnancy-related check-up beyond such two-month period if the fee for the check-up has been included in a single overall charge for all pregnancy-related care and services.".●

THE SALE OF OIL MACHINERY TECHNOLOGY TO THE SOVIET UNION

Mr. THURMOND. Mr. President, it was with great disappointment that I read in the newspapers yesterday that President Jimmy Carter had approved the sale to the Soviet Union of a large plant for producing oil well drilling bits.

Central to this sale is turning over to the Soviets a sophisticated electron-beam welding machine which is operated with its own computer. Neither President Carter nor the people in his administration seem to understand that the Soviet Union is in a race with the United States for political and economic power. History is replete with their efforts to expand communism to all states of the world.

Why are we transferring to them the technology their system cannot produce? Why are we making it easier for them to obtain oil to run a war machine which threatens us in Europe? Why are we helping them get oil when their ships are undercutting our merchant marine fleet, and their trucks and war machines are spreading Communist doctrine and supporting Communist dictators in Africa?

The Soviets have not lived up to agreements they have entered into on human rights or anything else. We should not give them our technology irregardless of Soviet policy on human rights. By transfer of technology we are strengthening a nation and a system which is spending billions and billions of dollars more than the United States to build a war machine far in excess of anything they could conceivably need for national defense.

Our own defense expenditures could be greatly reduced if it were not for the huge drive by the Soviets to attain military dominance over the United States and export their system throughout the world.

Mr. President, it is shortsighted policies, such as sale of this oil drill machinery, and especially the electron beam and computer techniques, that will lead to real U.S. problems in the future. Computers are at the heart of all advanced defense technology. The Soviets have been working directly and through other nations to get our computer technology. Now we are handing it to them on a platter.

Only an outcry in Congress has prevented other sales of high technology items to the Soviets. Apparently Congress did not make enough noise on this one. The administration should be providing leadership on this subject as the director of our foreign policy, but it seems Congress has to fight to stop such sales to the Soviets.

Mr. President, this particular sale is part of a larger policy carried out throughout the West. In the last 6 years the Soviet debt to Western sources has risen from $2.5 billion to $14.4 billion. I certainly would urge that this country not finance any loan for the $144 million involved in this sale.

Mr. President, it is time Congress started giving attention to legislation to end these technology transfers, if the administration is going to follow the type policy they seem intent on promoting.

This particular sale includes three important transfers: First, it involves a plant which includes our advanced manufacturing techniques. a feature the Soviets lack and which they can apply to military production; second, we are enhancing their capability to get oil, a fuel which they need for their huge war machine; and third, the electron beam and computer technology has significant application to defense weapons, such as the long range ballistic missiles targeted on this city and all over the United States.

Mr. President, I ask unanimous consent that an article entitled "U.S. To Allow $1 Million Soviet Sale," which appeared in the August 10, 1978 issue of the Washington Post newspaper be printed in the RECORD.

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

[From the Washington Post, Aug. 10, 1978]

U.S. TO ALLOW $1 MILLION SOVIET SALE

(By Don Oberdorfer)

The Carter administration, in a decision with political and economic significance for relations with the Soviet Union, has decided to allow the sale to that country a large plant for producing oil well drilling bits.

The $144 million deal worked out by Dresser Industries, a Dallas firm, was the subject of widespread speculation and a new round of government policymaking when President Carter ordered reprisal actions last month for the political trials of dissidents Anatoly Scharansky and Alexander Ginzburg.

At that time Carter canceled the sale of a computer ordered by Tass news agency and decided to ban most travel to the Soviet Union of policy-level U.S. officials. Carter also announced that future exports of oil technology to Russia would be placed under a high-level review.

Most of the Dresser sale had been previously approved, but a $1 million segment to provide a sophisticated electron-beam welding machine was subjected to study under the president's order. This machine contains a computer of its own.

According to the Deputy Assistant Secretary of Commerce Stanley Marcus, the decision was made yesterday to approve the export license for the welding machine, which will permit the entire Dresser deal to go forward.

White House officials said Carter had decided to allow the case to be decided on its bureaucratic and technical merits, without regard for the state of U.S.-Soviet political relations.

The effect of the decision is to limit, at least for now, U.S. economic reprisals for the dissident trials to the single case of the Tass computer.

There had been a sharp division of opinion within the administration about such actions, with Secretary of State Cyrus R. Vance and Secretary of Commerce Juanita Kreps opposing the use of trade as political leverage, and presidential assistant Zbigniew Brzezinski and some of his National Security Council staff on the other side.

Ten days ago Vance informed the Commerce Department, which is charged with processing of export licenses, that he favored moving ahead with the sale of the oil drill plant.

Several senators, including Henry W. Jackson (D-Wash.), had called for cancelation of the Dresser oil deal. Jackson expressed regret last night that the final element of the arrangement has been approved, and said his permanent subcommittee on investigations will look into the matter.

He said providing such sophisticated technology is a poor idea at a time when the United States is attempting to persuade the Soviet Union to "live up to its commitments" on human rights.

Advocates and critics of the Dresser deal agreed that it would enhance the Soviet Union's ability to exploit its potentially vast oil resources.

Proponents of the sale said, among other things, that it is in the United States' interest that Russia be relatively self-sufficient in petroleum rather than be forced to draw large amounts of oil from the tight international market expected in the 1980s.

HUMPHREY ARTICLE URGES UNITED STATES TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the United States has long been active on the human rights front. Both at home and abroad, this country has steadfastly stood for the sanctity of individuals. Since we declared our independence in 1776, we have continuously worked to guarantee certain inalienable rights to every citizen of the world.

In recent years, our commitment to human rights has become more vocal and more vehement. Universal human rights has become the leading tenet of our foreign policy, and we have become the leading advocates of universal human rights.

But is our moral leadership secure? Are we doing all that we can to further the cause of human rights? Will our present policies successfully achieve universal human rights?

One of the Senate's most beloved and respected Members, Senator Hubert Humphrey, addressed this very issue. He warned the Senate about our human rights leadership. In an article for the American Bar Association, Humphrey wrote:

The success or failure of attempts to institutionalize international human rights law and development of workable enforcement

mechanisms may be determined by the continuity and consistency the U.S. gives to this issue within our overall foreign policy framework.

Do we have a consistent human rights policy? Do we indeed lead the world struggle for human rights?

Mr. President, I fear not. Sadly, I must concur with the late Senator Humphrey when he wrote:

. . . The moral leadership which the U.S. could exercise in this critical area is diminished by our failure to ratify numerous human rights conventions, including, that most fundamental of documents—the Genocide Convention.

Is not our failure to accede to the Genocide Treaty inconsistent with our human rights policy? It most certainly is. We who so strongly support human rights have not yet acted to protect the most fundamental of human rights—the right to live.

How can we profess to be the leading advocates of human rights when we have not yet ratified the Genocide Convention? Eighty-three nations, including our major NATO and SEATO allies have already signed the treaty. Are we not undermining our own leadership?

Mr. President, universal human rights is a goal that Senator Humphrey sincerely cherished and that we all deeply desire. To make our policy more consistent and more successful, we must ratify the Genocide Convention.

THE 20-YEAR HITCH

Mr. THURMOND. Mr. President, an article entitled "The 20-Year Hitch" by Brig. Gen. J. D. Hittle, U.S. Marine Corps, retired, appeared in the June 24, 1978, issue of the New York Times.

This article offers a very concise and informative exploration of why 20-year retirement is so important to our career military personnel. As usual, General Hittle does not engage in hazy theory, but goes to the practical and real aspects of the issue of 20-year retirement. He clearly points out its effect on the serviceman and his family and on retention of personnel. He cites the dangers of scuttling it as has been proposed by some groups in the Defense Department.

As the Members of this Senate who know Don Hittle recognize, he has unique credentials for speaking out on such matters. He has commanded Marine Corps field units from a platoon to a battalion. He has served as Legislative Assistant to the Comandant of the Marine Corps and later as Assistant to the Secretary of Defense for Legislative Affairs. Following retirement from active service, he served as consultant to the House Armed Services Committee. Then, as Special Counsel to the Senate Armed Services Committee, he conduced the investigation of absenteeism in the armed services. During the Vietnam war, he was appointed and confirmed as the Assistant Secretary of the Navy for Manpower and Reserve Affairs.

When General Hittle resigned to return to private business, a leading service publication editorially said he had been "the greatest civilian personnel chief any service ever had."

Mr. President, in this article he offers a view well worth consideration. I ask unanimous consent that this article be printed in the RECORD.

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

THE 20-YEAR HITCH

(By J. D. Hittle)

ARLINGTON, VA.—The President's Commission on Military Compensation has made the big decision to recommend junking 20-year retirement for future career servicemen. So, it's just a matter of time before the White House and Congress will have to come to grips with the issue.

Unfortunately, few outside the career military community really understand how important 20-year retirement is to the serviceman and to our national security. The fact is that the 20-year retirement is what the serviceman and his family can look to as the nation's recognition and appreciation for putting up with the conditions of service life that the average civilian wouldn't put up with.

The average person wouldn't for a good reason—it's a different kind of life, a life of family separation, long hours with no overtime pay, and frequent moves that pull the kids out of school and plop them down in a different community, or even a different country. It's the wife keeping the home fires going, while, as in the Navy, the husband is on foreign deployment.

It's not enough to say that the fighting man is well-paid—even overpaid, according to some "experts"—for what he does. If service pay is so good, why aren't civilians breaking down the recruiting-office doors?

Whatever opinions I had on 20-year retirement I found reaffirmed as a member of the "white hats' panel," which consisted of retired military personnel and members of Congress, and was sponsored by the Fleet Reserve Association, national association of retired Navy and Marine Corps enlisted personnel. Seven public hearings were held at major naval bases, and testimony was heard from 164 active-duty enlisted men and women.

In Norfolk, Va., for instance, the panel listened to noncommissioned officers and petty officers representing 20 commands. What they said, in plain language, boiled down to this: 20-year retirement is the main reason for staying in service now, and it will be needed for the same reason in the future.

Twenty-year retirement is not a one-sided benefit, all in favor of the serviceman. It, of course, is good for him. But it is both a "carrot" and a "stick." The "stick" part of it is seldom recognized. It's this: It's an all-or-nothing proposition. There isn't any real in-between departure point. No "vesting," no delayed retirement if he leaves short of 20 years retirement.

To put it bluntly, he has to give his first 20 working professional years to the service or he gets no 20-year retirement. This is the way the Government keeps his training, experience, schooling and his devoted service for these two decades.

Retirement pay is computed on base pay. This does not include allowances and incentive pay. So, 20-year retirement pay actually works out to about 35 percent of gross pay. Civil Service retirement is based on gross pay.

A senior petty officer told the panel he had done an analysis of his first 20 years in the Navy, and his hours on duty. On the basis of an eight-hour day, five-day week, he had put in at least 30 years of service.

The 20-year retirement is a psychological "escape hatch." With all of a service career's separations, poor duty assignments, housing crises and schooling problems for the kids, the fighting man's continuing incentive is the 20-year retirement.

After he's close to the end of his second hitch, he can handle the disadvantages of service life. He can say to himself that he has "his leg up on 20" and that he can do it "standing on his head" if necessary until he has time in for retirement. Without that "magic 20" point, a lot of good, needed servicemen would leave much earlier. Of course, a lot do leave at 20. But, also, there are a lot who don't and go for 30.

I'm puzzled that so much effort is being devoted to end the system of 20-year military retirement. What about other Federal Government retirement systems? Some could be judged as good or better than what the military man has. Why aren't these being downgraded?

Too many overlook how 20-year retirement serves a very constructive personnel purpose. Voluntary retirement at 20 years reduces the number who have to be forced out, as the pyramid of rank structure narrows, in order to provide flow of promotion, and avoid top-level accumulation of "dead wood." Without 20-year retirement, the force-out percentages would rise to impair morale and cast doubt on the wisdom of a military career.

Yeoman 2d Class B. T. Brollini of the Coast Guard pointedly summed up 20-year retirement in his testimony at the white hat's panel: "If there were no 20-years retirement system there would be few people in the military. Almost everyone I know would not be in the service if it were not for the retirement system. If you want to disband the services, change the 20-year retirement system.

It's possible that Yeoman Brollini and his shipmates could be right, and the blue-ribbon commission could be wrong.

TRIBUTE TO MR. WILLIAM BENJAMIN BYRD OF NORTH AUGUSTA, S.C.

Mr. THURMOND. Mr. President, on July 28, 1978, I attended a dinner sponsored by the North Augusta Chamber of Commerce honoring Mr. William B. Byrd of North Augusta, one of the outstanding citizens of that city and of our State. William Benjamin Byrd has led a life well worth emulating by others, and our State and Nation are justly proud of him.

A large crowd of several hundred people attended the dinner and many tributes were paid to him at that time.

Mr. President, I ask unanimous consent that a copy of the W. B. Byrd appreciation dinner program and the following additional items be printed in the RECORD:

First. Welcoming remarks by Mr. Mel Storey;

Second. Invocation by Dr. Sam Smith;

Third. Toast offered by Mr. W. Hammond Burkhalter;

Fourth Remarks by Mrs. Mary Strickland;

Fifth. Letter of appreciation signed by Mrs. Frances Hom;

Sixth. Remarks by Mr. Bill Fuqua, president of the Greater North Augusta Chamber of Commerce;

Seventh. Remarks by Hon. BUTLER DERRICK, Member of Congress;

Eighth. Remarks by Dr. Stanyard Bell, president of Erskine College, Due West, S.C.

Ninth. Proclamation signed by Mayor Henry McKenney for the city of North Augusta.

Tenth. Proclamation from the Aiken County Council signed by its chairman, Hon. Carrol Warner;

Eleventh. Resolution signed by Hon. Cecil Collins for the South Carolina House of Representatives;

Twelfth. Resolution signed by all Members of the South Carolina Congressional Delegation;

Thirteenth. Newspaper article by Mrs. Mim Woodring from the Star of North Augusta entitled "Byrd Testimonial Draws Accolades from City, County, State and Nation";

Fourteenth. Remarks by Senator STROM THURMOND.

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

W. B. BYRD APPRECIATION DINNER

7:30 p.m. Social Hour.

8:00 p.m., Welcome, Mel Story. Invocation, Dr. Sam Smith, Director (Retired) Connie Maxwell Children's Home.

8:15 p.m. Dinner. Tributes: Friend—Hammond Burknalter; Family—Mary B. Strickland; Employee—Katherine Mobley, Frances Hon; Business & Community—W. D. Fuqua, President, Greater N.A. Chamber of Commerce; Government—Hon. Butler Derrick; U.S. Congressman, Third Congressional District; Education and Religion—Stanyard Bell, President, Erskine College.

Presentations: City—Hon. Henry McKenney, Mayor, City of North Augusta; County—Hon. Carrol Warner, Chairman, Aiken County Council; State—Hon. Cecil Collins, S.C. House District 83; Federal—Hon. Strom Thurmond, United States Senator.

Closing Remarks—Mary G. Mittelberg.

Benediction—The Reverend Larry Scales, Associate Pastor, First Baptist Church of N.A.

WELCOMING REMARKS BY MR. MEL STOREY

Welcome. We are all here tonight to demonstrate our appreciation to Mr. William B. Byrd. We will hear many different verbal expressions and see many gestures of love and respect. A paraphrased version of a poem by Will Allen Dromgoole expresses some sentiments I would like to share.

THE BRIDGE BUILDER

An older man, going a lone highway,
Came at the evening, cold and gray,
To a chasm, vast and deep and wide,
Through which was flowing a sullen tide.
The man crossed in the twilight dim—
That sullen stream had no fears for him;
But he turned, when he reached the other side,
And built a bridge to span the tide.

"Wise Sir", said a fellow pilgrim near,
"You are wasting strength in building here.
You never again must pass this way.
You have crossed the chasm, deep and wide,
Why build you the bridge at the eventide?"

The builder lifted his grey head
"Good friend, in the path I have come," he said,
"There followeth after me today
A youth whose feet must pass this way.
This chasm that has been naught to me
To that fair-haired youth may a pitfall be.
He, too, must cross in the twilight dim;
Good friend, I am building the bridge for him."

Bill Byrd has built many bridges. That's why we're here tonight. Mr. Byrd will come in at approximately 8:15 and join us. As he enters, please stand and sing "For He's A Jolly Good Fellow." Until then, please remain seated and enjoy the fellowship.

INVOCATION BY DOCTOR SAM SMITH

Our Heavenly Father, we invoke thy blessings upon this special occasion which brings together family, friends, and business associates of one whom we seek to honor. We express the gratitude of our hearts for his rich and full life of service to his family, to his church, his community, and to his God, for this quality of faith and courage; for his integrity of character and his delightful sense of humor; or his devotion to duty and his boundless energies directed toward his life's goals; for his spirit of generosity in sharing of the products of his heart and hands; and for his stewardship of life itself.

Our lives have been blessed by the impact of the influence of this, thy servant and our friend, and we are grateful for these ties of friendship and or those ties which bind us together in the family of God.

And now, our Father, we express our thanks to those who planned for this special occasion and for the food and fellowship of this hour, in the Name of Christ, our Savior, Amen.

TOAST TO WILLIAM B. BYRD (1978)

(By W. H. Burkhalter)

Every town or community which thrives and progresses must have a nucleous of a few concerned citizens who not only possess much more than the average ability, initiative and intelligence, but they must be willing to unselfishly contribute of their talents for the common good of their fellow citizens. William B. Byrd is such a man and it has been North Augusta's good fortune that he came here to live a number of years ago. He has given of himself and his finances without stint during the entire time he has lived in our city.

As a result of his contributions, the religious, civic and business facets of our town have all profited greatly through sharing his far above the average abilities.

I have always considered it a great privilege to have Mr. Byrd as my friend and to feel that I can call on him at any time for help, information, and advice. This in spite of the fact that we are something of competitors in business. He has never let this prevent him from offering his assistance. In fact, on occasion he has become so caught up in some of my business problems that you would almost think he was the principal who was involved instead of an outsider just offering his suggestions and help!

Edgefield County is famous for producing so many outstanding men and leaders in many different fields. Therefore, it is no surprise that W. B. Byrd is an Edgefield County product. He came from Pleasant Lane. If you don't know where that is, you probably could not find Colliers or Poverty Hall either!

Mr. Byrd attended Furman University where he roomed on the second floor, west wing of Montague Hall. Montague Hall was noted as the home of many athletes. As you know, usually the athletes are the "Big Men On Campus", but during Mr. Byrd's tenure there, he dominated Montague Hall even if he was not an athlete.

He was an exceptionally bright student and he managed to have enough spare time to be constantly planning and devising tricks, pranks and schemes for the purpose of his enjoyment and providing fun for his fellow students (and sometimes for their embarrassment). Throughout his college career he was noted for his wondefully pleasant disposition and good humor.

W. B. Byrd's early contribution of service to Aiken County was as an educator, serving as a teacher and principal of the Clearwater Elementary School for a number of years. His administrative and business ability was soon recognized by the people of Aiken County when they elected him to the office of Superintendent of Education of Aiken County during the depression years of the mid-thirties. He served in this office with distinction for about ten years before resigning in 1946.

When Mr. Byrd assumed leadership of the Aiken County schools, there were some 35 or 40 separate and independent school districts in the county and they were almost all in desperate financial condition as a result of the depression. In one district the previous deficit was more than all the taxes due that district for the current year.

I had some first hand experience with the financial condition of the county schools when I was one of the first school boy bus drivers in 1933 and 1934. My salary was $15 per month but then usually the school district did not have any money to pay, so they issued a voucher which would be good when they did get some money! I was only able to cash the last of these two years after I finished high school and after Mr. Byrd had taken over and brought some financial order out of the chaos.

Mr. Byrd's business acumen and financial ability came to light early during his time as County Superintendent and under his leadership and in cooperation with the county delegation a school district consolidation program was begun. Legislation was enacted for a county-wide equalization fund and by the time Mr. Byrd left office, the schools were on a sound financial basis. It is interesting to note that while accomplishing this the county education staff consisted of Mr. Byrd, his secretary and one clerk.

While putting together a strong school program and at the same time balancing the school budget with available tax moneys, Mr. Byrd had to make some hard decisions and deny many requests. Some of these were from prominent politicians but he did so very smoothly. On one occasion he had to use some strong words in denying the request of one of the district superintendents. Realizing he may have hurt this man's feelings, Mr. Byrd then made a special trip to his house to apologize, thus demonstrating a sensitivity of concern for the feelings of his fellow man—a characteristic we all recognize as so evident in Mr. Byrd today.

Mr. Byrd's interest and talents were directed towards buying land and building houses in a number of different developments after 1950. As a result of Mr. Byrd's interest in developing subdivisions, the city of North Augusta has had millions of dollars worth of utilities and streets installed by Mr. Byrd and deeded to the city at no cost to the taxpayers. Approximately a thousand families live in homes built by Mr. Byrd.

Mr. Byrd has been an outstanding success story financially. You know the definition of success, don't you? "Success depends upon the proper functioning of the glands—especially the sweat glands." His motto has been: "God helps those who help themselves" and "Either push, pull or get out of the way." I assure you that Mr. Byrd is always in there pushing and pulling; he is never just going to get out of the way and stand on the sidelines.

Mr. Byrd has shared his wealth with many worthwhile causes. He has been a very heavy contributor to Furman University and to Connie Maxwell Orphanage, as well as the First Baptist Church of North Augusta, Grace Methodist Church and many, many other causes too numerous to mention. He has given aid to many high school and college students and others in need. This all being done very quietly and inconspiciously.

In the world of politics, many local, state and national leaders have been the recipients of his wise counsel.

All in all, Mr. Byrd's many achievements in all his various fields of endeavor, and his many contributions to society are exceeded only by his modesty!

REMARKS BY MRS. MARY STRICKLAND

Dear William! How proud and honored we are to be members of your family!

You have always been completely selfless, sharing materially, intellectually, and spiritually, asking nothing in return.

In times of trouble and sorrow, you are the first one we call upon, and always you have responded without hesitation.

It is said, "A good name is rather to be chosen than great riches." How good and honorable you have made your name. How proud and fortunate we are to be your family!

SOUTHERN PINE PRODUCTS, INC.,
North Augusta, S.C.

Mr. BYRD. Mrs. Mobley and I have been associated with you for over twenty years; and as time goes on, we realize more and more what a truly great man you are.

We enjoy working for you and matching the wonders you accomplish with telephone, pen and pencil, and most of all your remarkable mind. We know how much pleasure you receive from working and helping others.

We love, admire and respect you. You are the finest man we know.

FRANCES HOM.

GREATER NORTH AUGUSTA,
CHAMBER OF COMMERCE,
North Augusta, S.C.

The North Augusta Business Community is indebted to Mr. Byrd for his vision and ability. He has been, and still is, a major catalyst in the growth and development of our area, having developed 10 sub-divisions and approximately 1000 homes.

He was elected Citizen of the year in 1955 by the Chamber of Commerce, has been a faithful supporter of the Chamber and its activities, particularly the Industrial Development Board and its successor, the Industrial Development Corporation.

By giving unselfishly of his time and energies, he has in some measure touched the financial lives of many of us. From the business community a sincere "Thank You", Mr. Byrd.

BILL FUQUA,
President, Greater North Augusta, Chamber of Commerce.

HOUSE OF REPRESENTATIVES,
Washington, D.C. July 28, 1978.

It is my highest pleasure to say a few words about my good friend, William Byrd.

I, like most of you here, have known this man most of my life. And, I suppose, it is only natural to think of "Mr. William" as a builder of homes, simply because the splendid evidence of this facet of his life is all over Aiken County. This, along with his excellent leadership in the Aiken County Industrial Development Board, truly means that William Byrd is a man who has transformed Aiken County.

Before "Mr. William" was in the lumber and building business, he was Superintendent of Schools in Aiken County, and I always like to think that his commitment to education led to his interest in politics. Though this man never ran for public office, his influence in the political process has been keenly felt in this county and state for many years. His advice and help to me have gone far beyond the bonds of our friendship, and I both respect and enjoy his counsel.

So, I would like to propose and extend a toast to William Byrd and end the way I began. He is my fine friend and valued counselor, and I am both pleased and deeply honored to be here tonight.

BUTLER DERRICK,
Member of Congress,
Third District, S.C.

ERSKINE COLLEGE.

Society's bank of accumulated knowledge is its college and university system. To this bank, society sends its most brilliant sons and daughters to withdraw sustenance for enhancing their life and the life of their neighbor. Doctors, lawyers, engineers, teachers, ministers, business economists, homemakers and many others participate regularly in a centuries-old tradition which lifts baskets from lights, identifies, stretches and enriches talents, seeks, knocks and asks with divine sanction; and above all suffer the young over to draw nearer to their Creator in all of His splendor.

Mr. Byrd, you have paved a way for students who had no way to this depository. You have left the name of Orene Irwin Byrd as a perpetual witness to love, hope and encouragement.

May the only clouds in your life be those that make for a beautiful sunset.

STAN BELL, *President.*

PROCLAMATION

Whereas, Mr. W. B. Byrd has made significant contributions to the growth and development of the City of North Augusta, South Carolina, and

Whereas, He has given of his time, wisdom and patience to individuals and groups within the City of North Augusta, and

Whereas, He has been a willing listener to the dreams and aspirations of many persons in the community and has worked tirelessly to participate in the fulfillment of these dreams and aspirations,

Now, therefore, I, Henry R. McKenney, Jr., as Mayor of North Augusta and representing the Council and citizens do commend Mr. W. B. Byrd and recognize his gifts to his community and its citizens and award him the Key to the City of North Augusta this 28th day of July in the year of our Lord, nineteen hundred seventy-eight, and do proclaim this day to be his day in North Augusta, South Carolina.

PROCLAMATION

Whereas, William B. Byrd has made significant contributions to the City of North Augusta, the County of Aiken, the State of South Carolina, and the United States of America, and

Whereas, William B. Byrd was elected County Superintendent of Education in the 1930's when the County was divided into more than thirty individual School Districts, and

Whereas, Mr. Byrd's business education and ability provided the knowledge and expertise to organize a School District consolidated program, and

Whereas, Mr. Byrd's efforts in the area of school administration put the Aiken County Schools on a sound financial basis, and

Whereas, Mr. Byrd spent exhaustive work and time in the formation and organization of the Aiken County Planning and Development Commission, and

Whereas, Mr. Byrd served as Chairman of the Commission, which provided information to potential industries in the County, and

Whereas, Mr. Byrd realized the need of a greater tax base in Aiken County by bringing industry to the County, and

Whereas, William B. Byrd's interest in education has provided the way for many Aiken County students to receive college education, and

Whereas, Mr. Byrd has encouraged many of these young people to settle in the County and subsequently become solid citizens of the County, and

Whereas, these contributions have added significantly to the growth and prosperity of Aiken County, Now therefore, be it

Resolved, That the Aiken County Council does hereby proclaim and designate Friday, July 28, 1978 as William B. Byrd Day in Aiken County and calls on all the citizens thereof to appropriately acknowledge the massive contributions of William B. Byrd to the growth, prosperity, peace and well being of said County.

Signed: CARROL WARNER.

A HOUSE RESOLUTION TO JOIN WITH THE NORTH AUGUSTA COMMUNITY IN HONORING AND RECOGNIZING THE OUTSTANDING COMMUNITY SERVICE OF WILLIAM BENJAMIN BYRD OF NORTH AUGUSTA

Whereas, the North Augusta community is honoring William Benjamin Byrd of North Augusta with a banquet on July 28, 1978, recognizing his outstanding service to the community; and

Whereas, Mr Byrd, a former Aiken County Superintendent of Education, is successfully engaged in the lumber and building business in the North Augusta community where he has developed more than ten subdivisions and built more than one thousand homes frequently with his personal financial assistance thereby enabling many residents of Aiken County to own their own homes; and

Whereas, Mr Byrd has been an active supporter in local, county, state and national politics where he has a strong force in the establishment of good government and where his efforts and contributions to education both at the local and state levels have manifested a genuine and dedicated interest in young people and in the development of their careers; and

Whereas, Mr Byrd has been an active member in the Greater North Augusta Chamber of Commerce and the Industrial Development Board of Aiken County and was the recipient of the North Augusta Citizen of the Year Award; and

Whereas, it is appropriate that the General Assembly join with the North Augusta community in recognizing the long and productive career of community service of this distinguished South Carolinian: Now, therefore, be it

Resolved by the House of Representatives: That by this resolution the members of the House of Representatives recognize the long and distinguished career of public service performed by William Benjamin Byrd of North Augusta who has contributed so much to the development of the North Augusta area and to the improvement of education at both the local and state levels by his generous support and contributions to numerous educational institutions and his active participation in other community activities: Be it further

Resolved, That a copy of this resolution be presented to Mr Byrd at the banquet in his honor on July 28, 1978, in North Augusta.

RESOLUTION

DATED: JULY 28, 1978.

Whereas William Benjamin Byrd has been a citizen and resident of North Augusta, in Aiken County, South Carolina, for most of his adult life, and

Whereas the said William Benjamin Byrd has given increasingly of his energies and abilities in making significant contributions to the religious, education, financial, civic, cultural, political, and social development of his community and fellow citizens, and

Whereas the said William Benjamin Byrd's life exemplifies in purest tradition and spirit that moral exercise of the freedom which is the cornerstone of our American society, so sacred to each of us, and typifies the boundless success obtainable to one who is willing to honestly work and avail himself of his opportunities, and

Whereas William Benjamin Byrd has generously and selflessly shared life's rewards, both tangible and intangible, with his community and his fellow man, and

Whereas friends, acquaintances, and fellow citizens have found it fitting and proper to express their appreciation and to pay some small tribute and honor to this distinguished gentleman, whose sincere modesty would

never allow him to claim credit for his accomplishments and deeds, and

Whereas state and national leaders are likewise acutely aware of the wisdom of this leader and the enrichment to the life of Community, State, and Country which he has made possible, and

Whereas the Congressional Delegation of the Sovereign State of South Carolina would therefore find it fitting and proper to share in honoring this distinguished American, now therefore, be it, and it hereby is,

Resolved, That the Congressional Delegation of the Sovereign State of South Carolina join with local and community leaders and friends in paying tribute, respect, and honor to William Benjamin Byrd, and in offering earnest thanks for his past and continuing contributions to the life of his Community, State, and Nation; further, be it, and it hereby is.

Resolved, That a copy of this Resolution be reproduced in the United States Congressional Record.

Ernest F. Hollings, Floyd Spence, John W. Jenrette, Jr., Mendel J. Davis, Strom Thurmond, Butler Derrick, James R. Mann, and Ken Holland.

[From the North Augusta (S.C.) Star, Aug. 3, 1978]

BYRD TESTIMONIAL DRAWS ACCOLADES FROM CITY, COUNTY, STATE AND NATION

(By Mim Woodring)

("Rings and other jewels are not gifts, but apologies for gifts. The only gift is a portion of thyself."—Emerson)

William Benjamin Byrd was honored at a dinner last Friday as friends gathered to say thank you to a man small in stature but giant in heart who has given a portion of himself continuously throughout his life.

A series of toasts by his family, business associates, civic leaders and educators was followed by proclamations honoring him and proclaiming July 28 William B. Byrd Day in the city and county.

Coming to Aiken County as a teacher at Clearwater Elementary School, Bill Byrd was elevated to principal. In the mid-1930's he was elected county superintendent of education at a time when there were between 35 to 40 separate independent school districts in the county with most in desperate financial condition, according to Hammond Burkhalter who spoke concerning his friend at the appreciation dinner held at Houndslake Country Club.

"Mr. Byrd's business acumen and financial ability came to light during this time," Burkhalter continued, "and under his leadership and in cooperation with the County Delegation a school district consolidation program was begun. It is interesting to note that while accomplishing this the county education staff consisted of Mr. Byrd, his secretary and one clerk."

Long-time employees Frances Hom and Catherine Mobley spoke of their employer's "remarkable mind" which was molded at Furman University where he graduated. He continued his education at University of Georgia, receiving a master's degree.

Mr. Byrd entered the world of free enterprise with a $500 loan. This propelled him into several expansive lumber businesses and launched him in the home contracting business in 1951.

With the advent of the Savannah River Plant, W. B. Byrd saw the necessity of housing in the city and, realizing the opportunities in this business, first developed Rose Hill on Old Edgefield Road, followed by a group of housing on Crosland Avenue.

Perhaps the largest section was Lynnhurst. Many newcomers in the area have wondered why all the streets in this subdivision, which has been built in three phases, are named for birds. Mr. Byrd uses a theme in street naming of his subdivisions.

Streets in Pinehurst and Pinecrest have names of the various evergreens and in the Colony the streets are named after two famous South Carolinians who were friends of Mr. Byrd. One was the late James F. Byrnes, renowned statesman, and the other the late John Riley, former congressman.

The influence of W. B. Byrd has been experienced by thousands and much of his wealth has been shared with young people he felt needed the boost which would give them a solid foundation.

A firm believer in education, Furman University has named this North Augustan a life member of its Founders Club. Hundreds of students have been educated as a result of Mr. Byrd's generosity to his alma mater. Representing Furman at the dinner was vice president Dr. Robert Christenberry.

The largest single scholarship benefactor at Erskine College is W. B. Byrd who established a fund in memory of his beloved wife, Orene Irwin Byrd. As Dr. Stan Bell, president of Erskine, toasted this man, he stated, "Society's bank of accumulated knowledge is its college and university system. To this bank society sends its most brilliant sons and daughters to withdraw sustenance for enhancing their life and the lives of their neighbors . . . Mr. Byrd, you have paved a way for students who had no way to this depository . . ."

Connie Maxwell Children's Home is of major interest to W. B. Byrd. Not only has he given gifts to the home in money and land, he is developing a section of this land so that the proceeds will go toward this home for children, with the same scrutiny he has pursued his own business ventures.

Representing the home were Maxie F. Moorhead, secretary-treasurer, and retired director Sam Smith.

Many couples have become home owners because of this man's penchant for development of potential. "Lending institutions cannot make loans because they believe in a person," said Mel Story, "but Mr. Byrd has found great satisfaction in this endeavor. His judgment has been 100% correct because every person he helped purchase a home has paid their loan."

Described as a "major catalyst in the growth and development of the area" by Bill Fuqua, president of the Greater North Augusta Chamber of Commerce, Mr. Byrd has developed 10 subdivisions and approximately 1,000 homes. In 1965 the Chamber named him its Citizen of the Year.

Fuqua continued, "He has been a faithful supporter, particularly of industrial development . . . By giving unselfishly of his time and energies he has in some measure touched the financial lives of many of us."

Foresight is another personality trait which has served Aiken County well. Mr. Byrd helped establish the County Planning and Development Commission which was the nucleus that first began attracting industry to the county. County council chairman Carrol Warner commended Mr. Byrd for his devotion to the county, both in education and in laying the ground work for a good industrial base, in a proclamation read at the dinner.

In a proclamation read by North Augusta Mayor Henry R. McKenney, he described W. B. Byrd as having been "a willing listener to the dreams and aspirations of many persons in the community and he has worked tirelessly to participate in the fulfillment of these dreams and aspirations." As he gave Mr. Byrd the ceremonial Key to the City of North Augusta, McKenney said it was a small way to "recognize his gifts to the community."

Cecil Collins, representing House District 83, read a tribute and proclamation to become a House resolution and stated, "Mr. Byrd had been a strong force in the establishment of good government. . . ."

A toast was offered by the Honorable Butler Derrick. Both natives of Edgefield County, Derrick spoke of this gentle man in glowing terms as did the Honorable Strom Thurmond whose resolution will be reproduced in the United States Congressional Record.

Both Derrick and Thurmond alluded to the extreme modesty and humility of the man who sat at the head table and, later, hand on hip declared himself undeserving.

Senator Thurmond declared Mr. Byrd's "life exemplifies in purest tradition and spirit that moral exercise of the freedom which is the cornerstone of our American Society, so sacred to each of us, and typifies the boundless success obtainable to one who is willing to honestly work and avail himself of his opportunities."

The most poignant of tributes was a toast which began the series of tributes. Mrs. Bishop Strickland, niece of W. B. Byrd, spoke for the Byrd family which had come from all sections of the state to take part in an almost surprise event.

Mrs. Strickland said, "Dear William! How proud and honored we are to be members of your family. You have always been completely selfless, sharing materially, intellectually and spiritually, asking nothing in return. In times of trouble and sorrow, you are the first one we call upon, and always you have responded without hesitation. It is said 'A good name is rather to be chosen than great riches.' How good and honorable you have made your name. How proud and fortunate we are to be your family!"

Life has not been free of pain and suffering for this determined man. But a congenital disability has been just another personal challenge to this man of discipline and persistence.

A quiet person recognized by his cane, cigarette-holder and wit, W. B. Byrd was overwhelmed with the well-deserved accolades. Time and again he commented as people congratulated him there were many more deserving persons than he.

His reticence in having his philanthropic activities made public makes this man all the more genuine and humble. His help at First Baptist Church, Nancy Carson Library, North Augusta High School Stadium, Boy Scouts of America and list of community causes are innumerable. However, much of his real joy has come from serving as an anonymous benefactor.

"The only gift is a portion of thyself" succinctly portrays the life of William Benjamin Byrd.

REMARKS BY SENATOR STROM THURMOND, REPUBLICAN, SOUTH CAROLINA

It is indeed a pleasure for me to be present on this auspicious occasion and to have a small part in honoring a long-time friend and an outstanding citizen, William B. Byrd. Mr. Byrd served in many capacities and performed well his duties in all of them.

He served as a teacher for a number of years and then as Superintendent of the Clearwater High School and developed a fine reputation as a leading educator in our State. He has always been vitally interested in young people, and as an educator, he manifested great concern about them and inspired and encouraged them to great heights.

As a businessman, Mr. Byrd was one of the finest. He was possessed of a lot of commonsense and good judgment. He built over 1,000 houses in the North Augusta area and provided homes for many people. In his dealings as a businessman, he was never known to take short cuts or take advantage of people. He was always honest and fair in his business relations with others and developed an outstanding reputation in this regard.

Mr. Byrd took a special interest in public affairs. He was a good judge of human nature and when candidates were offering for office,

he would study them and decide who would best serve the public and did not hesitate to support such candidates openly and above board.

He was a student of governmental affairs and was well posted on the issues at the local, State, and national levels. He could discuss intelligently questions of the day with anyone interested and was always able to make a fine contribution in such discussions.

Mr. Byrd was a dedicated church leader. He served as teacher of his Sunday School class, as a Deacon in his church, and was looked up to as one who lived an exemplary life.

Mr. Byrd was an outstanding civic leader. He was always eager to promote the welfare of the city in which he lived as well as that of the citizens who lived there. He took a leading part in promoting activities for the betterment of his community. He was always ready to lend a helping hand to promote progress.

There is one quality about Mr. Byrd with which a number of people may not have been familiar. He was a philanthropist who helped many worthy causes; he also helped many worthy individuals in need. He not only helped members of his own family but assisted hundreds of other people in one way or another.

Many institutions have benefited from his generosity. Numerous young people have been aided by him to continue their training at college, a technical school, or in some other institution.

Mr. Byrd was a good neighbor. He was respected and loved most by those who knew him best. His sterling qualities endeared him to others who enjoyed the privilege of his close friendship.

Mr. Byrd was a true friend. He is one of the best friends I ever had and countless others felt the same way. He stood ready to advise, counsel and assist people who appreciated his wisdom and sound judgment. If those whom he has befriended could speak out, they would come forth by the legion, as the love and friendship he has demonstrated for his fellow man were unexcelled.

Mr. Byrd believed in the American form of government and supported it to the fullest. He believed in the principles that made our Nation great. He realized that we must keep it strong militarily if we are to remain free. He enjoyed the benefits of our free enterprise system and was a strong exponent of it. He believed in competition, which is the bedrock of the private enterprise system in this Nation. He was of the opinion that if people will prepare themselves in their calling and are willing to work, that the opportunities our Nation afford are superior to those of any place in the world.

He was a sound financier and was opposed to deficit spending by our Government and strongly advocated balanced budgets. He felt that government, like people, should not spend more than is taken in so that it can remain strong economically. Mr. Byrd's life exemplifies in purest tradition and spirit that moral exercise of freedom, which is the cornerstone of our American society, so sacred to each of us, and typifies the boundless success obtainable to one who is willing to honestly work and avail himself of his opportunities.

Mr. Byrd came from a large family which lived in the country, and he was brought up the hard way, like so many other successful leaders. However, he never complained of any disadvantage of any kind and forged ahead, making his own way and setting an example which could well be emulated by others in accomplishing their goals. His spirit was undaunted and his determination was without end. He was the type of man that obstacles did not deter.

I think the following words describe Mr. Byrd's life as well as any one could, and I give them here to illustrate the qualities of that great American, William B. Byrd:

"I do not choose to be a common man; It is my right to be uncommon, if I can.

"I seek opportunity, not security.

"I do not wish to be a kept citizen, humbled and dulled by having the state look after me.

"I want to take the calculated risk, to dream and to build, to fail and to succeed.

"I refuse to barter incentive for a dole. I prefer the challenges of life to the guaranteed existence; the thrill of fulfillment to the stale calm of utopia.

"I will not trade freedom for beneficence nor my dignity for a handout. I will never cower before any master nor bend to any threat. It is my heritage to stand erect, proud, and unafraid; to think and act for myself; enjoy the benefits of my creations; and to face the world boldly and say this I have done with the help of God.

"All this is what it means to be an American."

ARTICLE ON STATUS OF S. 274, THURMOND BILL TO BAR MILITARY UNIONS

Mr. THURMOND. Mr. President, I am pleased to report to the Senate that S. 274, the bill which prohibits military unions, has now been reported out favorably by both the Armed Services and Post Office and Civil Service Committees of the House.

This legislation passed the Senate on a 72-to-3 vote earlier this year and its passage in the 2d session of the 95th Congress is essential if the threat of military unions is to be stamped out.

Mr. President, the threat and even the likelihood of military unions will hang over the Armed Forces if the Congress fails to follow through on this legislation. As the session wears on, I have been informed union interests are urging their supporters in the Congress to let the bill die.

Nothing could be more dangerous to the welfare of the All Volunteer Force. If Congress fails to act on S. 274 it will, in effect, be saying the danger has passed and we could witness union efforts overnight. In fact, the failure to act could be seen as an invitation to the unions to renew their interests as Congress would have demonstrated it lacked the will to say "no" to the unions.

Mr. President, the sentiment in the Congress is strong against unions in our military. That fact was proven by the huge vote in favor of S. 274 in the Senate. I urge the House membership to consider carefully the work of the two House Committees which have reported the bill out favorably, and to bring the will of the membership to bear on its consideration on the floor soon.

In closing, Mr. President, I ask unanimous consent that an article by Marine Capt. P. G. C. Coulter, entitled, "Three Strikes; Is the Union Out?" which appeared in the August 1978 issue of the Marine Corps Gazette, be printed in the RECORD.

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

THREE STRIKES; IS THE UNION OUT?

One sunny day, not long ago, a brand new recruit from Alabama encountered a gruff old officer, "Mawnin," drawled the recruit pleasantly.

The outraged officer launched into a stinging lecture on military courtesy with a great deal of emphasis on saluting.

"Lawdamighty," said the rookie, "if I'd a knowed you was gonna carry on like that, I wouldn't of spoke to you a-tall!"

This joke has made the rounds for many years now, but has only recently taken on a second meaning.

Military customs and courtesies are not quite etched in stone but most can be traced back hundreds, if not thousands, of years. In all those years, as they developed, there was never a real threat to the well structured and disciplined lifestyle they represented—that is, until just these past couple of years as the possibility of military unions became a reality.

Many military leaders and authors have devoted considerable time and effort exploring the reasons behind this new and heretofore unthinkable phenomenon. Depending upon whom one listens to, the main problem is an actual or perceived erosion of traditional benefits. Anyone who has been in Service more than an hour is aware of this situation. Gen. George S. Brown, USAF, past chairman of the Joint Chiefs of Staff, put it very well when he delivered his 1978 posture statement before the House Armed Services Committee:

"Since 1972 there have been repeated attempts to reduce, eliminate, transfer and transform military compensation and entitlements—factors which help to induce the individual to enlist or to make the military service a career."

This was the second year in a row the outgoing Chairman of the JCS made a strong appeal to Congress to act on this matter. He went on to point out that unions are not only attractive to the younger Service members, the ones hurt the most when benefits are cut, but more and more careerists are giving unions a serious once over. Brown urged the lawmakers to act:

"Fundamental causes that would make union membership attractive within the military must be addressed, such as uncertainty about the economic stability of a military career."

Numerous studies, reports and articles in the various news media have offered wide-ranging discussion of the union movement and how it has come to be a real threat to the Armed Forces of this country. Maj. B. J. Fagan in his "Commentary on the Corps" (Gazette, October 1977) presented an interesting corollary when he observed that "if 1976 can be taken as the year of the union challenge, 1977 may well become the year of confrontation." How perceptive he was! In the last days of 1977 there were three major confrontations between union advocates and those opposed to a unionized military. They may well be called the three strikes that could put the union out:

The American Federation of Government Employees (AFGE) vote not to proceed with plans to unionize the military.

The U.S. Senate vote on a bill aimed at banning military unions.

The Department of Defense (DoD) directive that was designed to halt meaningful union activity among military personnel.

This article updates this highly emotional issue and analyzes these three recent actions that could impact significantly on each and every military person.

THE AFGE VOTE

In September 1976, the American Federation of Government Employees (AFGE) amended its constitution to allow military

membership. Immediately the storm flags went up in the Department of Defense. Union watchers zeroed in on the AFGE to find out what its next move would be.

In less than six months, it came. On 7 March 1977 the union's National Executive Council Military Committee issued "Memorandum: 14–Military." This memo told union leaders that unionization of the military was "inevitable." Beginning in May, AFGE locals began to poll their members. To many observers, this referendum to learn how members felt about actively seeking out military memberships, was seen as the final step in the unionization drive by AFGE.

Specifically what did the union really want? According to "Memorandum: 14–Military" it was after actual shop steward representation. This would include bargaining with base commanders and DoD itself over housing, leave, foreign service, education and training, travel allowances, commissary and PX priviliges, recreational facilities, parking, day care, dress and hair codes, political rights and their exercise, health and dental care, efficiency ratings, promotions, equal employment opportunity matters (women's rights), safety and reprimands or discipline under Article 15 of the Uniform Code of Military Justice (UCMJ).

The memo went on to detail other areas of negotiation the union sought: the legal representation to be supplied by the union "primarily in connection with administrative (discharge) boards and UCMJ proceedings. They also pledge "legislative an policy representation." This last category is interpreted by many to mean bargaining with Congress on pay, retirement and benefits. At this point we begin to enter areas that are clearly covered by law.

When he learned of this move by the AFGE, Gen. Maxwell D. Taylor, retired former chairman of the Joint Chiefs of Staff, said:

"Collective bargaining over such matters as pay, overtime and safe working conditions has no place since pay is fixed by law, overtime has no meaning in a profession always on duty, the work is of necessity often dangerous."

Once all this had been presented to the membership, the vote was an overwhelming 4 to 1 against attempting to unionize the military. The actual count was 151,582 against and 38,764 for.

Undoubtedly, many in Congress, the Pentagon and elsewhere throughout the Administration, not to mention the upper echelons of the AFGE, heaved a collective sigh of relief at the outcome of the referendum. AFGE president, Kenneth Blaylock has said a number of times since then that his union will abide by the vote, but he personally believes the military needs union representation.

When asked why the membership was so strongly opposed to unionizing the military, Blaylock replied in a Navy Times interview, "It's obvious the main concern was they felt that AFGE resources and money ought to be spent for the civilians and not the military." Blaylock went on to express concern about this attitude among the members of his union. He said:

"If they are philosophically opposed to the military having unions because of the effects it may have on combat effectiveness, and you've got to have a chain of command, control and authority, that's one thing. I understand that. But for trade unionists to take the position 'Let's help ourselves and the hell with anybody else,' that bothers me."

A number of other union leaders agree with Blaylock that this issue is far from dead. Most feel that now that AFGE is out of the picture for the forseeable future, some stronger and perhaps more aggressive unions will step into the void.

There is little doubt that unless something is done to address the underlying causes of military unrest, unions will continue to be an attractive option for those in uniform who feel no one is aware of or cares about them, except maybe in time of war. In fact, after the votes had been counted and the AFGE position announced, Leo Pulerzi, the general counsel of AFGE, was asked on a radio talk show if all this activity had really accomplished anything at all. He replied:

"To the extent that our input into organizing the military has gained the attention of responsible defense officials, and perhaps members of the Congress and the President, we feel it's been very salutary in and of itself, because it has called to the attention of the appropriate policy officials of this government a condition that needs to be addressed in some way."

And, indeed, it had done that, and, indeed, it was this problem that the lawmakers of the land addressed.

THE SENATE VOTE

Even before the AFGE had finished voting, strong voices in Congress were deliberating long and hard on this complicated and emotion-charged issue. Less than a week after the vote by AFGE had been announced to the media, the Senate voted overwhelmingly 72–3 in favor of a bill, the sole purpose of which was to ban military unions.

This action by the legislative branch of the government, like that of the AFGE, is not a recent phenomenon. It did not just happen in 1977, although it may appear that way.

The banner headlines and editorials across the country told the American people that the lawmakers of this land were not about to sit by and watch some union come in and wrest command of our soldiers and sailors from the generals and admirals. Before the Senate vote, we saw:

"Democracy in Ranks Essential" and "Strikes too Horrible to Imagine," The Chicago Tribune

"The Senate Vote," The Atlanta Journal

"Military Union Talk Stirs Opposition," The Christian Science Monitor

Then shortly after the Senate passed S–274 and sent it on to the House, we read in the papers:

"Senate Panel OK's Ban on Military Unions," The Washington Post

"No GI Unions," The Cleveland Plain Dealer

"Ban Military Unions," New Orleans Times Picayune

These newspaper articles are but a brief sampling of what was being printed by the media. Military-oriented publications, of course, went into considerable detail in their coverage of the Senate action.

Samuel Gompers, the great labor leader, was once asked what American Labor wanted, and his response may well be the most eloquent speech he ever made.

"More," he said.

That response, perhaps is the key to why so many in Congress are reluctant to let the unions make even the slightest inroads to the Services.

The AFGE has often used the argument that a Serviceman (or woman) has all legal rights ascribed all other citizens of the U.S. under the First Amendment of the Constitution—that is the right to "assemble, and to petition the government for redress of grievances." To the contrary, argued Senator Strom Thurmond (R-S.C.) who first introduced legislation early in the 95th Congress (March 1976) to ban military unions. His rationale at that time was to ensure "a sound and responsive defense force for our country." His bill did not make it through that year, but in January 1977, he reintroduced it as S–274.

In an essay for the Chicago Tribune, Thurmond responded to the AFGE argument headon:

"While members of the military are not deprived of the freedom of association granted by the First Amendment, the different character of the military community and of the military mission requires a different understanding of this right. The fundamental need for obedience and the consequent need for discipline make it impossible for servicemen to do some of the things that civilians are entitled to do."

While the debate raged in the Senate, the House was also busy on this issue. During the same time period the House considered no less than twenty-six measures dealing with military unions.

Maj. Fagan pointed out that the Congressional basis for legislation against unionization of the Services also cited the U.S. Constitution, specifically Article I, Section 8, as authority for Congress to "provide for the common defense and general welfare of the United States . . . raise and support armies . . . make rules for the Government and Regulation of the land and naval forces . . . provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States . . . (and) make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . ."

As with most legislation, S–274, by Senator Thurmond and forty-nine other Senators, could have languished in committee for some time. It was the action by the AFGE, however, that injected a sense of urgency into the efforts to get this type of bill on the floor for full consideration and vote. Public hearings began on 18 March 1977 and concluded in July.

The Senate Armed Services Committee (SASC) chaired by Senator John Stennis (D-Miss.), a cosponsor of the bill, passed it to the full Senate with the blessing of all eighteen members. They expressed a fear of an "immediate threat" of unionization.

Briefly S–274 was designed to make it unlawful for:

A Service member to join a military union or solicit or maintain membership, knowing its activities or objectives.

A labor organization to enroll military members, or solicit or accept dues, to negotiate or bargain with the government for military members or to represent them in grievance proceedings.

Any military or civilian Defense official to negotiate or bargain with a purported military union or authorize union activity on government property.

Any individual to bargain on behalf of Service members to use military property for union purposes, or organize a strike or other concerted effort against the government.

There was considerable debate at the time on the floor of the Senate. One needs only to review the Congressional Record to get a feeling for the mood that prevailed as discussions progressed. Most of the talk centered around two amendments that were proposed by Senator James Abourezk (D-S.D.). His amendments (numbers 859 and 860) were an attempt to resolve the unusual status civilian technicians hold in the reserve forces.

These technicians work for National Guard or reserve units during the week and are also members of these same units. According to the National Guard Bureau, which lobbied to put the prohibition on technician unions into the bill, about 14,000 of these 61,000 people are union members in connection with their civilian status.

Senator Abourezk was clearly outnumbered in his fight to get his amendments accepted.

Senator Stennis began the argument by anticipating the objection to S-274 based on the reserve technicians. Contending that if these reserve technicians were allowed to remain in their unions and retain their reserve status it would be planting "the germ" of unionism in the services. Stennis said:

". . . we would have a situation where

some men and women in the military were permitted to have union membership and to others it was denied. To the great majority it would be denied."

He then turned his attention to the effects unions could have on the traditional customs, courtesies and disciplines inherent in the military, saying:

"The military is built on discipline and immediate response to orders, and any development which would damage the chain of command weakens that discipline and response. Unions would inevitably create a second loyalty which would affect the chain of command and as a result cannot be tolerated."

The bill, as written, would have given these technicians a period of ninety days to give up their union status or quit their jobs. Abourezk felt this was too harsh and opposed the bill as an abridgement of the free speech rights of military people. In support of the amendments, Senator Jacob Javits (R-N.Y.) said:

"The key rationale stated by the Senate Armed Services Committee—that unionization is incompatible with the discipline and obedience necessary to maintain an effective military establishment—can easily be overgeneralized. Our citizens do not surrender all their rights just by putting on a military uniform."

Senator Abourezk questioned the constitutionality of the bill. He found it to be "especially reprehensible," because it did not allow a civilian technician to have some sort of representation. He and Javits felt this provision, if challenged in court, would cause the bill to be ruled unconstitutional. They cited Executive Order 11491, and said these technicians should be afforded "the same rights as other Federal civilian employees of the Department of Defense and all other Federal agencies."

Senator Thurmond countered these arguments by assuring all present that the SASC had considered the constitutionality issue from every angle. They had a number of the best legal minds of the country go over the bill word by word, and they were convinced it would be sustained in court.

Thurmond also included in his argument for passage:

A reiteration that it was not an antiunion bill, but rather a promilitary bill.

A discussion of the total force concept and the issue of benefit erosion.

A review of the problems European countries were having with military unions.

Examples of how an AFGE local in an Air National Guard unit in New Jersey had engaged in a work stoppage.

A discussion of the bans on unions applicable to the FBI and CIA as well as Foreign Service officers. He emphasized the unique status of these organizations and related them to the military.

Perhaps his strongest argument came as he effectively closed out the debate on the two amendments when he said they would negate entirely S-274's purpose of prohibiting military unions:

"Any member of the Senate who supports this (these) amendment(s) might as well recognize and understand that he is voting in favor of unionizing the military."

The votes that followed were solid defeats of the amendments. Amendment 859 which would permit unions to represent active and reserve forces in matters that did not include combat, combat readiness and tactical training exercises was soundly rejected by a vote of 3 yeas, to 73 nays. Amendment 860 which sought to exempt the civilian technicians from the ban on soldiers in suits by a union was also defeated, but not as resoundingly. The final vote was yeas 34, nays 43.

Once these votes were completed and the results announced, the bill itself came up for decision. The outcome—72 yeas and 3 nays. The vote was followed by the usual round of praises for those who worked to get the bill passed.

Interestingly enough, the final words on this issue were spoken by one of the dissenting voters. Senator Javits again took the floor to remind the assemblage that he was against unionization of the Armed Forces, even though he had voted against S-274. He was convinced the way to deal with the issue of the civilian technicians was by executive order. He felt the fatal defect in this bill was the way it treated those technicians. He closed his remarks, and ultimately the debate on the Senate side of Congress, by making a plea to the House of Representatives to:

". . . take a very hard look at this technician question and perhaps make whatever revision in the bill that would be dictated by elementary justice in that regard."

Immediately following the announcement of the Senate vote, AFGE President Kenneth Blaylock said that his union and other labor organizations would fight the bill. He said they did not expect to defeat it but they did think they could eliminate the requirement that technicians give up their union membership or lose their jobs.

At this writing it still is not clear when action on the bill will be completed by the House. The bill is stalled in the Post Office and Civil Service Committee after being reported favorably by the Armed Services Committee.

Representative Robin Beard (R-Tenn.), a member of the HASC, urged his colleagues to consider this type of legislation at the earliest possible date. He warned that they should not be lulled into a false sense of security by the AFGE vote, saying:

"This is likely to be only a temporary condition. The AFGE leadership is not about to give up the substantial economic and political gains which would result from bringing the military into the union fold."

THE DOD DIRECTIVE

All the while the legislative branch was busy with S-274, the executive branch was equally engaged in formulating its own solution to the union question.

Defense Secretary Harold Brown urged Congress to hold off on legislation banning military unions until he could issue DOD regulations dealing with them. He told Congress that rules constraining unionization efforts had a better chance than law of surviving a constitutional challenge. He recommended trying them for about a year.

Secretary Brown was attempting to hold off passage of S-274 while his aides could draft what was subsequently issued as DoD Directive 1354.1. The first published hints of exactly what language would be contained in the new regulation came when a draft version was published in the Federal Register of 16 August 1977. After reading what the Secretary was proposing, Senator Thurmond called it "weak-kneed."

While Brown was urging restraint on the part of Congress, Thurmond, who was equally committed to his bill, continued his attack against the Secretary and the Department for not taking a strong enough stand against military unions. He said the DoD proposal would not prohibit union membership by military members or prohibit union activities on or off base. He also charged the Brown proposal would weaken the ability of DoD to cope with this problem in the future.

When finally issued, the directive was quite lengthy but can be summarized briefly as follows:

It prohibits commanders and supervisors from engaging in negotiations or collective bargaining.

It prohibits members of the Armed Forces from engaging in strikes, slowdowns, work stoppages or other job actions by two or more persons which are intended to and do obstruct or interfere with the performance of military assignments, and picketing for the purpose of causing any of the foregoing, when such actions are related to terms or conditions of military service.

It proscribes specified efforts on military installations to recruit members of the Services into certain types of organizations and, in specific circumstances, prohibits membership of Service people in certain organizations.

It vests responsibility for assuming compliance in the hands of the various Departments (each Service).

With the DoD directive published and on the way toward implementation and the Senate bill in the hands of the House with no real substantive barrier to passage, the debate over which is the better course of action continues, albeit at a lower key for the time being. I believe it is reasonable to expect it to remain so through the hearings in the House with the volume and vigor increasing in direct proportion to the closeness of the final vote. It is also reasonable to assume that the DoD order will come under increasing attack as it ages.

Those involved in this deliberation would be well advised to keep the following variables in mind during 1978:

The AFGE vote has taken a good deal of the sense of urgency out of this issue. There are no large unions that appear interested or ready to actively seek out military members. Even the Teamsters has adopted a "wait and see" attitude toward the military. The threat has diminished.

Consequently, the House may be inclined to direct its attention to more urgent matters, and final action could be held in abeyance until some "clear and present danger" of unionization is once again perceived by the lawmakers.

As a result of the extensive debate on S-274, there is a new awareness among top-level government officials of the root causes of military dissatisfaction with current conditions. It follows, therefore, that a good deal of the attractiveness and appeal of the unions to those in the Services who thought "no one knew or cared" may have been lost or at least somewhat tarnished.

All of this can be traced back to the awareness or perception of an erosion of traditional benefits. It came to a head when a national public sector union (AFGE) on the decline in membership, turned its attention toward the Services. The time was right. The first ball was thrown:

The Union vote—strike one.

The Senate vote—strike two.

The DoD Directive—strike three.

Third strike. Is the union movement out? That may have been the last union player at bat for this inning, but the game is far from over. The players have returned to the dugout to rest.

Many think the rest may be long lasting. A recent editorial in the San Diego Union said:

". . . a GI is wiser with a dog tag only and not, say a card from the AFL-CIO. It is safe to say that the attempt to organize the military is dead. So the nation need not worry, it will be an enemy's line, not any picket line, that needs crossing."

I disagree! The editor was premature in his statement. The problems that Gen Brown and others have expressed concern about are still there. Congress has done little, if anything to change most Service members' perception that their benefits are, in fact, dwindling.

Back in the ball park, it is the leaders of the legislative and executive team at bat now, with the judiciary serving as umpire, standing by to render a decision if called upon to do so. They will stay at bat as long as they pay attention to the needs of those troops in the field. The balls being thrown by those who serve.

The first team has a good chance to build a solid lead. But if they strike out in 1978 and the union gets another turn at bat, it could be a whole new ball game.

THE DANGERS OF TRANSFER OF U.S. COMPUTER TECHNOLOGY TO SOVIETS CITED BY JACK ANDERSON'S COLUMN

Mr. THURMOND. Mr. President, in today's issue of the Washington Post newspaper the columnist Jack Anderson has offered an interesting and informative column entitled "U.S. Computers Feared Vulnerable."

Mr. Anderson draws the attention of the public to still another danger involved in the transfer of U.S. computer technology to the Soviets, the possibility that by studying our computers they will gain the knowledge to render them ineffective in a national crisis.

This new danger involved in technology transfers of computers rests on the expert testimony of Dominic Paul Baron who raised the issue of computer security in an article prepared for the London based Foreign Affairs Research Institute.

Mr. Baron warns that by selling some of our computers to the Soviets, as we have already done, we may be enabling them to develop means to render ineffective our computers in wartime. He also points to the great dependence of the West on computers, thus increasing our vulnerability.

The writer is also a strong opponent of transfer of computer technology to the Soviets. He warns that "the damage already done is incalculable."

Mr. Baron also finds great fault with U.S. business in its rush to sell the computers to the Soviets. He writes "The Western businessman's sheer naivete in dealing with the astute Soviet negotiators is quite depressing."

Mr. President, I would like to point again to the fact that we have laws to prevent the transfer of valuable technology to Communist nations if only the executive branch has the will and judgment to use them. It is the lack of will and judgment in the executive branch that resulted in the recent approval for the sale to the Soviets of a $141 million oil well drilling bit plant.

That sale also included transfer of a electron-beam device which contained its own computer, an extremely advanced state of our technology. I urge the President to stop these sales immediately.

Mr. President, I place this article by Mr. Anderson to be printed in the RECORD:

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

[From the Washington Post, Aug. 15, 1978]

U.S. COMPUTERS FEARED VULNERABLE

(By Jack Anderson)

The star wars that are fought on our movie screens may not be as futuristic as they seem. The wars to come, in the opinion of some strategists, may be just about as fantastic as the scriptwriters have portrayed them.

These strategists are convinced that the next war could be won or lost, not on the battlefields, but on complex, whirring and fishing computer panels.

Yet the military brass, though geared for supersonic warfare, continue to base their strategy on past wars. They seek to apply old solutions to new situations. Around the world, the generals and admirals have deployed U.S. forces as though they were preparing to fight World War II, the Korean war and the Vietnam war again.

But some planners are looking behind the great missile, air and sea armadas at the computer systems that will control them. These authorities believe that the military brass, enamored of their growing stockpiles of sophisticated weaponry, are ignoring the vulnerability of computers to attack by enemy forces or terrorists.

A recent report by computer expert Dominic Paul Baron, prepared for the London-based Foreign Affairs Research Institute, examines the problem of computer security. Baron's conclusion:

"If at a time of international tension, a relatively small number of key computers in a modern industrial state could be put out of action by terrorist, commando or sabotage attacks, such a state would be desperately vulnerable when faced with an ultimatum from a hostile foreign power.

"Enemy missiles, forces, ships and submarines could not be monitored; reserve forces could not be mobilized; electric power could not be depended upon; money could not be paid for wages and transport and communications would be paralyzed."

It should be borne in mind, says Baron, that a war effort would not depend only upon the heavily guarded military computer centers. Virtually every system that keeps western civilization ticking is run by computers. Financial institutions, for example, "would grind to a halt almost overnight if their computers ceased functioning."

The United States, moreover, has been far too eager to supply the Soviet Union with sophisticated computer technology and training, Baron believes. "Computer companies in the West fall over each other in their enthusiasm to compete for the favors of the Soviet buying agencies," writes Baron. "The Western businessman's sheer naivete in dealing with the astute Soviet negotiators is quite depressing."

The one-sided exchange, Baron believes has given the Soviets "a sizable quantity of personnel fully acquainted with the characteristics of our systems . . . No one in the West has anything like the in-depth knowledge of Soviet computer systems that the Soviets have about our . . . systems. The damage already done is probably incalculable."

As a result of the technology give-away, the free world has "made it that much easier for [the Soviets] to train their experts to devise methods of exploiting our own computer facilities." With their well-trained cadre, he warns, Soviet agents could, in time of war, take over our computer systems and bend them to the Kremlin's will.

But the ultimate fear is the frightening prospect that a ruthless band of terrorists may crack computer security and make off with a nuclear weapon. Technically trained terrorists, says, Baron, could use "ever cheaper and sophisticated micro-processors . . . to perfect systems to neutralize elaborate electronic protective devices around sensitive installations in order to steal a nuclear weapon."

ORDER FOR MODIFICATION TO TIME AGREEMENT ON S. 3073

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the following modification be entered with respect to the time agreement on Calendar Order 764, S. 3073, the highway bill; provided that the text of S. 2441 be inserted without debate, and be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of S. 3073 (Order No. 764), a bill to amend title 23, United States Code, to authorize Federal aid and highway programs through fiscal year 1980, and for other purposes, debate on any amendment (except the following amendments: 3 by Senator GRAVEL, one each on planning, the hydrofoil, and the Alaskan Railroad, on each of which there shall be 1 hour; one by Senator KENNEDY, relative to truck lengths, on which there shall be 1 hour; 2 by Senator ROTH, relative to bridges and beach erosion, on each of which there shall be 1 hour; one by Senator GRAVEL, relative to New York streets, on which there shall be 1½ hours; one by Senator HUDDLESTON, relative to coal haul roads, on which there shall be 1½ hours; one by Senators ZORINSKY and ANDERSON, relative to rail crossings, on which there shall be 1½ hours; one by Senators KENNEDY and WEICKER, relative to the highway trust fund, on which there shall be 1½ hours; one by Senator KENNEDY, relative to planning, on which there shall be 2 hours; and one by Senator CULVER, relative to bridges, on which there shall be 2 hours) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That amendments first be offered to title I, and then to title II, with no amendment in order to either title once the amending process ends on each title: *Provided further*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment which is not germane to the provisions of the said bill shall be received.

Ordered further, That on titles I and II of the said bill, debate shall be limited to 3 hours, with 2 hours on title I of the bill, to be equally divided and controlled by the Senator from Texas (Mr. BENTSEN) and the Senator from Rhode Island (Mr. CHAFEE), and with 1 hour on title II of the bill, to be equally divided and controlled by the Senator from Nevada (Mr. CANNON) and the Senator from New Mexico (Mr. SCHMITT): *Provided*, That after the disposition of title II, the bill be set aside to be called up at a later time by the majority leader to add a title III: *Provided further*, That when the majority leader calls up the bill to add the text of S. 2441 as title III, it be agreed to without debate and be subject to amendment as original text with germane amendments: *Provided further*, That when the amendment proposing title II is called up it be added without debate and considered as original text for the purpose of further amendment: *Provided further*, That the said Senators, or any one of them, may, from the time under their control on titles I and II of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

ORDER VITIATING RECOGNITION OF LEADERS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the standing order for the recognition of the two leaders tomorrow be vitiated.

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS TOMORROW AND FOR CONSIDERATION OF THE PENDING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the prayer tomorrow, Mr. MORGAN be recognized for not to exceed 15 minutes, that he be followed by Mr. BELLMON and Mr. DANFORTH for not to exceed 15 minutes each, and that at the conclusion of the orders for the recognition of Senators the Senate resume its consideration of the pending business.

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

RECESS TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9:30 a.m. tomorrow.

The motion agreed to; and at 9:39 p.m., the Senate recessed until tomorrow, Wednesday, August 16, 1978, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate August 15, 1978:

CORPORATION FOR PUBLIC BROADCASTING

The following-named persons to be Members of the Board of Directors of the Corporation for Public Broadcasting for terms expiring March 26, 1984:

Geoffrey Cowan, of California, vice Joseph D. Hughes, term expired.

Paul S. Friedlander, of Washington, vice Gloria L. Anderson, term expired.

Kathleen Nolan, of California, vice Amos B. Hostetter, Jr., term expired.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be general

Gen. Sam Sims Walker, [redacted], (age 52), Army of the United States (major general, U.S. Army).

WITHDRAWAL

Executive nomination withdrawn from the Senate August 15, 1978:

FEDERAL ELECTION COMMISSION

Samuel D. Zagoria, of Maryland, to be a member of the Federal Election Commission for a term expiring April 30, 1982, vice William L. Springer, term expired, which was sent to the Senate on April 10, 1978.

HOUSE OF REPRESENTATIVES—*Tuesday, August 15, 1978*

The House met at 10 a.m.

Rev. Ronald W. Cadmus, Verona United Methodist Church, Verona, N.J., offered the following prayer:

By faith we live and trust in the past; by hope we live in the future; by love we live in the present. Remove the clumsy vestments of traditional expressions of religion by making us sensitive as we strive for character ideals within people. Help us to show that life is worth living. The decisions we make can make life vibrant and valuable. Guide us from making life an absurdity—an absurdity when we are confronted by human needs yet remaining unreasonably silent to a people yearning for dignity. It is easy to assume that as we dedicate ourselves to the principles of our leadership that we are governed by our own motivations. Make us wise to know that You work within us, so that through our minds and our hearts You give us the will and the power to achieve Your purposes. Amen.

CALL OF THE HOUSE

Mr. BAUMAN. Mr. Speaker, under clause 1, rule I, of the rules of the House, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 701]

Ambro	Beilenson	Burton, John
Andrews, N.C.	Bonior	Butler
Applegate	Bowen	Byron
Archer	Breaux	Caputo
Armstrong	Brodhead	Clay
Cochran	LaFalce	Risenhoover
Cohen	Le Fante	Roncalio
Conyers	Leggett	Rousselot
Cornwell	Lloyd, Tenn.	Ruppe
Crane	McDonald	Russo
Dent	McHugh	Santini
Diggs	Maguire	Scheuer
Evans, Colo.	Metcalfe	Seiberling
Evans, Del.	Mikva	Shipley
Flowers	Milford	Sisk
Forsythe	Miller, Calif.	Solarz
Fowler	Mitchell, Md.	Spellman
Fraser	Moffett	Stark
Gammage	Murphy, Ill.	Teague
Garcia	Obey	Tsongas
Harrington	Patterson	Udall
Harsha	Pepper	Waxman
Heckler	Pike	Wilson, Tex.
Jenkins	Railsback	Young, Alaska
Kasten	Richmond	Young, Tex.

The SPEAKER pro tempore (Mr. ROONEY). On this rollcall 357 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 687. Concurrent resolution directing the Clerk of the House of Representatives to make a correction in the enrollment of H.R. 10732.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 12106. An act to amend the Independent Safety Board Act of 1974 to authorize additional appropriations.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2333. An act for the relief of James Edward Slowey, Carole Anne Slowey, Christopher James Slowey, Elaine Margaret Slowey, and Carole-Ann Slowey.

PRIVATE CALENDAR

The SPEAKER pro tempore. This is Private Calendar Day. The Clerk will call the first individual bill on the Private Calendar.

KWONG LAM YUEN

The Clerk called the bill (H.R. 1798) for the relief of Kwong Lam Yuen.

There being no objection, the Clerk read the bill, as follows:

H.R. 1798

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provision of section 212(a)(23) of the Immigration and Nationality Act, Kwong Lam Yuen may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.