SENATE—*Wednesday, September 30, 1987*

(Legislative day of Friday, September 25, 1987)

The Senate met at 8 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore [Mr. BREAUX].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Great and wonderful are Thy deeds, O Lord God the Almighty! Just and true are Thy ways, O King of the Ages! Who shall not fear and glorify Thy name, O Lord? For Thou alone art holy. All nations shall come and worship Thee for thy judgments have been revealed.— Revelation 15:3-4 RSV.

Eternal Father, save us from a pragmatism which relegates You to a place of irrelevance in our lives. Help us realize You are not only transcendental above and beyond history, but You are imminently in touch with every detail of our lives, individually and collectively. You know when a sparrow falls to the ground. Though this staggers our imagination, help us to take it in and make room for You in this place under these overwhelming circumstances.

"Our fathers' God, to Thee, Author of liberty, to Thee we sing: Long may our land be bright with freedom's holy light; protect us by Thy might, great God, our King?" ("America" by Samuel F. Smith.) Amen.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from California, Senator CRANSTON, is recognized for not to exceed 15 minutes.

Mr. BYRD. Mr. President, will the Senator yield to me?

Mr. CRANSTON. I yield.

Mr. BYRD. Mr. President, I ask unanimous consent that the 5 minutes of my time under the leader's order be transferred to Mr. PROXMIRE at this time. I understand this is agreeable with Mr. CRANSTON.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Wisconsin [Mr. PROXMIRE] is recognized.

Mr. PROXMIRE. Mr. President, once again I am indebted to my good friend, the majority leader, and I am deeply grateful to him for allowing me these 5 minutes.

ALL THE WAY WITH INTRUSIVE ARMS CONTROL VERIFICATION

Mr. PROXMIRE. Mr. President, verification compliance is the very quintessence of any nuclear arms control agreement with the Soviet Union. If verification will not effectively detect violations of a United States-U.S.S.R. agreement, we should not make the agreement. Without a reasonable assurance that we can determine militarily significant violations of a nuclear arms control agreement, we are engaging in unilateral nuclear disarmament. If we refuse to negotiate agreements with the U.S.S.R. unless we can rely on our ability under the terms of the treaty to determine significant violations, does this mean we will negotiate few or perhaps no nuclear arms control treaties with the U.S.S.R.? No, indeed. Then what does it mean? It means that we will both push for and agree to verification procedures that will reveal if the U.S.S.R. is violating the agreement, and we will agree to the same procedures, however intensive, for the U.S.S.R. to effectively observe our compliance or our compliance with the agreement. Will this mean the U.S.S.R. should be permitted to examine closely our most advanced nuclear technology? Will we let Soviet agents without notice, at will, check out our Trident submarines to determine if we are abiding by any limit we might negotiate on nuclear warheads deployed in these submarines? Do we give the Soviets the freedom of minute inspection of our bomber bases, our missile sites, our nuclear weapons testing areas? Indeed we do.

But aren't we giving a great deal more than we're getting? Isn't our nuclear technology generally ahead and well ahead of the U.S.S.R.'s? Doesn't this mean that by constant inspection of our more complex and advanced nuclear deterrent the Soviets would learn far more from us than we could from them? The answer is that this "intensive" observation might, indeed, give the U.S.S.R. occasional useful technological information. It might even inform them about whatever aspects of our deterrent nuclear forces appear weak and ineffective as well as strong and effective. But in view of the steady assurance by the Department of Defense that the United States is consistently ahead of the U.S.S.R. in the effectiveness of our nuclear arsenal, this Soviet understanding of our devastating nuclear power could only reinforce the Soviet conviction that a preemptive nuclear attack on our country would be an act of certain, inevitable suicide.

Furthermore, let us not forget that just as the U.S.S.R. is a tightly closed society, we are a wide-open society with a free United States press and, indeed, a foreign press that has very wide access to our military productions and deployment including much of our vast nuclear arsenal. Do the Soviet military experts mine our publications for detailed knowledge of our nuclear arsenal? Of course, they do. Do they permit their forces to carry any information on their military technology that might be useful to us? No way. So isn't it clear who would gain from a mutually intensive verification policy?

Is there no risk that the U.S.S.R. will use the opportunity for unannounced inspection of our nuclear arsenal to secure intelligence data of serious military significance? Of course there is. There is always a risk. But consider the risk if we don't insist on the most thorough and meticulously possible verification. Could we expect the Soviets to honor a strong restriction on their nuclear deterrent embodied in a treaty without verification or with only casual or limited verification? Of course not. So there is a balance here. Meticulous verification is most likely to assure us of knowledge of any Soviet violation. It is also most likely to discourage violations of any kind at any time because of the greater likelihood of detection. Third, if both superpowers agree to mutual verification, it is more likely to win confidence that the agreement is, in fact, effective—that both superpowers are restricting or reducing their nuclear arsenal in tandem as the treaty requires.

On the other hand, intrusive verification is, indeed, more likely to give the adversary a fuller knowledge of the strength and weakness of the other side's deterrent, and an opportunity, on occasion, to secure a clearer understanding of whatever technological advantage the other side may have.

On balance, it is clear to this Senator that both superpowers gain from the most thorough and comprehensive verification they can negotiate. Not only is it far more likely that treaties will be observed without violation, not only will we have more confidence that we can detect violations, but the fuller understanding by both sides of the effectiveness of the opposing deterrent is precisely the force most

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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likely to make the deterrent of both sides credible and to prevent nuclear war.

Mr. President, I thank my good friend, the majority leader, once again, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin yields the floor.

RECOGNITION OF SENATOR CRANSTON

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from California, Senator CRANSTON, will be recognized for not to exceed 15 minutes.

THE NOMINATION OF ROBERT H. BORK TO THE SUPREME COURT

Mr. CRANSTON. Mr. President, I rise to speak in opposition to Senate confirmation of the nomination of Robert H. Bork to be an Associate Justice of the U.S. Supreme Court.

Before I discuss the basis for my decision, I want to comment on the singular importance of the vote on this nomination and on Senate responsibility in the confirmation of a Supreme Court Justice.

Mr. President, the vote on the Bork nomination is undoubtedly one of the most important votes that any Member of this body will make. Senators, Members of the House of Representatives, and the President serve for fixed terms and are directly accountable to the electorate at regular intervals. That is not true of members of the Federal judiciary. A seat on the Supreme Court is a lifetime position. A Justice can be removed from office only upon impeachment and conviction of the severest of high crimes. It is not uncommon for a Supreme Court Justice to serve for two and sometimes three decades. A Supreme Court Justice has an unparalleled opportunity to influence the most pressing issues facing this and future generations of Americans.

The framers of the Constitution recognized the great importance of the selection of individuals to serve on our highest court. They deliberately refused to entrust the selection to any one individual or any one branch of Government. Instead, they decided that this should be a matter of shared power and shared responsibility.

SENATE'S ROLE

Mr. President, almost 2 years ago—long before the current vacancy arose on the Supreme Court and before the current controversy over the Bork nomination—our esteemed former colleague and friend, Senator Mathias, and I undertook extensive research into the role and responsibility of the Senate in the judicial confirmation process. Both of us consulted widely with a broad range of scholars representing the full spectrum of legal philosophy.

We summarized our results in separate speeches on the Senate floor on July 21 and 22, 1986.

Senator Mathias, a Republican, and I, a Democrat, reached remarkably similar conclusions about the role the Constitution bestows upon the Senate in the judicial confirmation process.

Senator Mathias said, and I concurred, that:

> Among all the responsibilities of a U.S. Senator, none is more important than the duty to participate in the process of appointing judges and justices to serve on the U.S. Courts, from the trial bench to the Supreme Court of the United States. * * * [A] Senate that automatically consents to a President's nominations abdicates its constitutional responsibility. Its members fail to measure up to the demands embodied in their oath of office.

Those words ring even more true today.

Some people argue that a Senator need not exercise independent judgment in deciding the Bork nomination; they suggest that we should defer to the President and review the nomination on the very narrow basis of whether the nominee is legally competent and of good moral character.

I disagree.

COEQUAL ROLE IN THE CONFIRMATION PROCESS

Mr. President, the Constitution gives the President the power to nominate an individual to serve on the Supreme Court. It also gives the Senate the responsibility to review and evaluate that nomination independently.

Alexander Hamilton in the Federalist Papers confirmed that the decision by the Founding Fathers to divide the appointment responsibility between the President and the Senate was a deliberate one and that it was intended to have a salutary effect on the quality of appointments.

Granting the President the entire power of appointment, Hamilton argued, would, "enable him much more effectually to establish a dangerous empire over that body—the Senate—than a mere power of nomination subject to their control."

Hamilton feared that a President with exclusive appointment power might select judges to please particular Senators whose votes the President wanted to influence on other issues.

He also believed that a President would choose his nominees with greater care if he is faced with the possibility of a Senate rejection. But that is an effective check on Presidential power only if the President has reason to believe that the Senate is prepared to exercise its power of rejection.

The framers gave the Senate the obligation and the power to make its own independent judgment of whether confirmation of a judicial nomination would be in the best interest of the Nation.

Senator Le Baron Bradford Colt, Republican, Rhode Island, himself a former Federal trial and appellate judge, said on the Senate floor in 1916:

> By these provisions the framers of the Constitution believed they would secure judges of high character, free from partisanship and from every form of corrupting influence, and who would devote their lives to an impartial administration of law.

As Walter Dellinger, professor of law at Duke University, recounts:

> The original Virginia plan, introduced at the convention on May 29, 1787 provided that all judges would be appointed by the national legislature. By June 19, the convention had decided that the whole legislature was too numerous for the appointment of judges, and lodged that power in the Senate acting alone. *Attempts to confer the power on the President to the exclusion of the Senate were solidly defeated.* George Mason stated that he "considered the appointment by the executive as a dangerous prerogative. It might even give him an influence over the judiciary department itself." *Only near the end of the convention was it agreed to give the President any role in the selection of judges;* even then the President's power to nominate was carefully balanced by requiring the concurrence of the Senate. That final language was not seen to dislodge the Senate from a critical role in the process. Gouverneur Morris paraphrased the final provision as one leaving to the Senate the power "to appoint judges nominated to them by the President." (Emphasis added.)

The Senate's "advice and consent" function in confirming judges is different from its function in confirming administration nominees who serve at the President's pleasure and who can be removed by the next administration. Most scholars and most Senators agree that the Senate should apply far stricter standards to lifetime judicial appointments.

Then-Republican Senate Whip Robert Griffin, Republican, Michigan, made the distinction well during debate on the Haynsworth nomination in 1969:

> Traditionally, the Senate has applied a different test with respect to nominees to the Supreme Court than * * * to those nominated by Presidents to serve in the Cabinet or in the Executive Branch * * * particularly with respect to nominations for the Supreme Court, however, I do not believe * * * that the Senate is limited to accepting every nomination merely because it can't be proved that the nominee has beaten his wife, or has done this or that. I think the responsibility of the Senate is much higher than that. Under the Constitution, the President is vested with only half of the appointing power. He nominates and the Senate confirms. Accordingly, the Senate's advise and consent responsibility is at least equal to the President's responsibility in nominating. If the judiciary is to be an independent branch * * *, it is essential that its members owe no greater indebtedness for an appointment to one particular branch of our government.

Throughout our history, the Senate has blocked judicial nominees who were deemed qualified in the narrow sense, but whose confirmation would

have been unwise in the broader context. Indeed, the Senate has refused to confirm nearly 20 percent of Presidential Supreme Court nominations.

Senators have given a variety of reasons for refusing to confirm. These include negative judgments on the nominee's ability, temperament, political record, or philosophy.

President Theodore Roosevelt, who consistently sought highly qualified nominees, recognized the wide latitude of judgment the Constitution gives the Senate. In a letter to one Senator whose recommendation for appointment to a lower Federal court Roosevelt was rejecting, Theodore Roosevelt said:

> It is, I trust, needless to say that I fully appreciate the right and duty of the Senate to reject or to confirm any appointment according to what its members conscientiously deem their duty to be; just as it is my business to make an appointment which I conscientiously think is a good one.

Roosevelt made three nominations to the High Court. All were confirmed.

President Richard Nixon stands in contrast. In a letter to a Senator during consideration of the Carswell nomination, Nixon wrote:

> What is centrally at issue * * * is the constitutional responsibility of the President to appoint members of the court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with power of appointment.

The Senate demonstrated its own view of its responsibility by rejecting the Carswell nomination, 45 to 51, with 13 Republican Senators joining 38 Democrats. It was the second of Nixon's high court nominations to be defeated.

Theodore Roosevelt's view—not Nixon's—is consistent with the intent of the framers and with the language of the Constitution. It is also consistent with historical precedents.

As early in our Nation's history as George Washington's second term, a Supreme Court nomination, Associate Justice John Rutledge to be Chief Justice, was rejected by the Senate.

The Senate rejected President James Madison's nomination of Alexander Wolcott to be Associate Justice, when a majority of Senators decided he lacked the requisite legal qualifications for service on the High Court.

For a variety of reasons, five of President Tyler's High Court nominees were not confirmed. And President Fillmore and Grant lost three nominations each.

In 1930, a Republican Senate rejected President Hoover's nomination of Judge John Parker to the Supreme Court because his discredited racial and economic views were not sufficiently sensitive to the temper of the times.

For nearly 40 years, from 1931-69, all the Supreme Court nominations of four consecutive Presidents were confirmed. But the Senate's responsibility had not changed during that time. A review of the list of nominees during this period indicates each of the Presidents had submitted nominees who were both well-qualified and not likely to create a one-sided Supreme Court. This period of Senate-Presidential agreement ended with the forced withdrawal of President Lyndon Johnson's nomination of Abe Fortas to be Chief Justice.*

CRITERIA FOR SUPREME COURT NOMINATIONS

Although the Constitution gives the Senate an important role in Supreme Court appointments, it spells out no standards for weighing the qualifications of a potential Justice. For example, unlike the constitutionally prescribed standards for service in the House, the Senate, or the Presidency, no minimum age is specified. And, though no President has ever nominated a nonlawyer, a judicial nominee does not even need to be a lawyer.

The Constitution leaves each Senator free to develop his or her own criteria. Historically, however, several tests have evolved. At a bare minimum, the nominee should possess at least these qualifications: intellectual excellence, superior legal ability, and personal integrity. No nominee who does not possess at least these qualifications should even be submitted for the Senate's consideration. To be confirmed, however, a nominee should possess more.

Judicial temperament has been deemed to be a key requirement. By that, I mean not simply the personal demeanor which the dignity of the courtroom requires. Rather, judicial temperament, in the broad sense, means the capacity to perform the essential functions of a judge: to be fair, impartial, and balanced in approaching judicial questions.

Finally, the overwhelming weight of reasoned opinion through the years has been that a nominee's judicial philosophy or ideology is an appropriate criterion for Senate approval or disapproval. Felix Frankfurter, while still a Harvard law professor, thought it odd that any nominee would expect or even desire immunity from public inspection of his views. He said:

> Surely the men who wield the power of life and death over political decisions of legislatures should be subjected to the most vigorous scrutiny before being given that power.

However, excessive ideological zeal or biased prejudgment of issues should disqualify a nominee. The agenda of an ideological extremist—whether of the extreme right or of the extreme left—creates a doctrinal conflict of interest fully as inappropriate as a financial conflict of interest. To be locked into an extreme and inflexible ideology fundamentally conflicts with the judicial responsibility to be fair and just, to be open-minded and free of prejudice, and to be able to decide cases solely on the evidence and arguments before the court and on applicable law. A nominee committed to a rigid ideology lacks the impartiality that is the essence of judicial temperament.

A nominee's philosophy or ideology becomes even more relevant to confirmation when an administration uses its appointive power for ideological purposes. By all accounts, Judge Bork was selected by this administration on the basis of his commitment to a certain judicial ideology. It is naive to think otherwise and deceptive to pretend otherwise.

This President, like Presidents before him, obviously took his nominee's judicial ideology into account before deciding to name him. This Senate, like Senates before us, has an obligation to examine that judicial philosophy in deciding whether to confirm the President's nominee.

There is little doubt that the Bork nomination is part of a determined effort by this administration to achieve by a court appointment an extremist social, political, and economic agenda it has failed to advance through the legislative process. The administration thus seeks to end run the legislative process and then cries "politics" when we seek to stop it.

Finally, Mr. President, some people argue that the Senate should defer to the President's choice because he was given a mandate in 1984. Whether that was a mandate to remake the Supreme Court is highly questionable. Moreover, to the extent that election returns deliver any mandates, the 1986 election, which restored control of the Senate to a Democratic majority, is arguably a mandate to check the Reagan administration in this as well as other areas. In the final analysis, however, no election can relieve Members of the Senate of our constitutional responsibility to exercise our independent and prudent judgments.

Mr. President, as I have said, each Senator must determine for himself or herself the acceptable criterion in judging a Supreme Court nominee. I for one believe that a Supreme Court Justice must be open-minded and impartial; have an ability to look beyond his or her own political predilections; and be able to comprehend a wide range of legitimate interests.

Sixteen years ago when Justice Powell's nomination was before the Senate, I said that in my opinion a Supreme Court Justice must also demonstrate a basic commitment to and respect for individual rights and liberties inherent in the fabric of the Bill of

Footnotes at end of article.

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Rights, for it is these rights that stand as the last bulwark between the force of government and individual freedom.

I find evidence of these essential qualifications lacking in Judge Bork's record.

JUDGE BORK DOES NOT MEET THE BASIC QUALIFICATIONS TO SERVE ON THE SUPREME COURT

Mr. President, after an exhaustive review of Judge Bork's extensive publications and speeches, decisions as a member of the Court of Appeals for the District of Columbia Circuit, and his testimony before the Senate Judiciary Committee, I have concluded that he does not meet the fundamental and indispensable standards for a Supreme Court Justice.

For more than a quarter of a century—as a professor, a legal scholar, a writer, and, most recently, as a Federal judge—Robert Bork has used his considerable intellect and skills to disparage, deride, and repudiate a body of law and principles which the majority of Americans support.

In matters of racial equality, religious freedom, women's rights, free speech, personal privacy, family rights, and the fundamental right of individuals to live their lives free from undue government interference and control, Judge Bork has advocated extreme, radical, and reactionary positions.

In the sixties, when our Nation was struggling, slowly and painfully, to overcome racial discrimination, Judge Bork was denouncing civil rights leaders as part of a mob attempting to force its moral views on others. In carefully crafted, erudite language, he opposed enactment of the historic 1964 Civil Rights Act and put the alleged moral right of bigots to discriminate ahead of the moral and constitutional right of black Americans to be free from racial discrimination. Since that time, he has reportedly attacked court decisions protecting rights of minorities.

Judge Bork has also repudiated equal rights for women. He would throw out Supreme Court decisions which forbid discrimination on the basis of gender. He has attacked cases holding that government cannot interfere with an individual's right to use birth control, to make a personal and private decision about abortion at certain stages of a pregnancy, and to decide how to raise and educate one's children. If Judge Bork's positions prevailed, women truly would be relegated to second-class citizenship.

Religious freedom has also been one of Bork's targets. He has assaulted Supreme Court decisions maintaining the wall of separation between church and state. He has advocated putting religion back into the public sector—something the first amendment was aimed at preventing.

On the issue of freedom of expression, Judge Bork has tried to rewrite the first amendment to allow Government censorship of a wide array of artistic and literary works. He has argued against a long line of Supreme Court decisions which protect the rights of Americans to speak out without fear of punishment.

Bork's view of individual liberty is embodied in his contention that the Bill of Rights, the essence and symbol of our unique freedom, was "a hastily drafted document upon which little thought was expended".[1]

Throughout his philosophy runs the radical notion that the framers of the Constitution had no overriding intention to limit the power of government over individual lives. Bork has argued that a long list of Supreme Court decisions upholding the rights of individuals against government interference are flatly wrong and without constitutional foundation. His reading of the history of our country runs directly contrary to that of Justice Brandeis who wrote in the early part of this century that the framers of our Constitution "sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."[2] In Bork's view, government can do almost anything to an individual that it wishes to do. Indeed, he has even taken the position that there is no constitutional barrier or fundamental interest at stake to stop a State from enacting compulsory sterilization laws if it chooses. As Prof. Lawrence Tribe testified before the Judiciary Committee, Bork finds no "constitutional obstacle" to such government action in the absence of racial bias.

Mr. President, the dangers of placing on the Supreme Court an individual who repudiates so many of the settled principles of constitutional law established during the past two centuries cannot be overstated. Although he suggested a different position in his confirmation hearings, Judge Bork has made it patently clear in his voluminous speeches, publications, and prior congressional testimony that he does not believe that a Supreme Court Justice is bound by the rule of precedent to adhere to prior decisions of the Court if he personally deems them constitutionally wrong. He has given us repeated warnings that he is ready to rewrite settled principles of constitutional law, particularly in the area of individual rights. That is what his right-wing supporters expect him to do and that is what his opponents expect he will do.

In practical terms, this could mean reopening civil rights issues settled long ago and reversing the Supreme Court's decision on abortion, thereby making it possible for a State to declare abortion illegal. The State's power to enact legislation which discriminates against women could be reinstated. A State could enact legislation—like that which died in the Senate a few short years ago—to prohibit the use of certain contraceptives, including birth control pills. It means that religious freedoms could be curtailed and the wall between church and state eroded.

Mr. President, abandonment of precedents established by earlier High Court decisions could lead to utter chaos. No one would know with any degree of certainty what the law is, which laws might be reopened, and what fundamental right withdrawn.

Justice Powell takes a different view from Judge Bork on the issue of precedents. Speaking specifically of a Justice's obligation to adhere to earlier Court decisions, Justice Powell said that respect for this doctrine was essential in "a society governed by the rule of law."[3] Only the most compelling circumstances, in Justice Powell's view, would justify deviation from that doctrine.

Our Nation does not need a Supreme Court Justice who wants to rewrite case law and constitutional principles that have evolved slowly and carefully over decades of jurisprudence. And we especially do not need to have them rewritten by an individual who holds such extreme and radical notions about the fundamental constitutional principles of individual rights and liberties.

Moreover, Mr. President, we do not need a Supreme Court Justice who is so tied to his own ideology that he is unable to fulfill the single most important requirement of a judge: impartiality.

Judge Bork's remarkable record in the brief period he has served on the court of appeals amply demonstrates that he often decides controversial cases according to his own peculiar prejudices. Judge Bork seems to be locked into an ideological doctrine which almost invariably predetermines his decisions when certain issues are raised or when certain classes of people enter his courtroom. It is possible to predict how Judge Bork will rule in almost any given closely contested case simply by identifying the parties involved.

Workers, minorities, women, consumers, environmentalists, and individuals asserting their rights against a Government agency will almost certainly leave the Bork courtroom empty-handed. Big business and big government, on the other hand, find in Bork a ready, willing, and ingenious activist on behalf of their interests.

There is often no consistency in Judge Bork's application of the law. His legal principles are revised and applied to achieve preordained results—results which reflect the social, eco-

nomic, and political priorities of the far right. The most striking example of Bork's ability to revise his arguments to justify reaching a particular result is the contrast between his rationale for opposing civil rights legislation in the sixties and his contemporary support for legislation imposing the morality of the far right. When the subject was racial discrimination, he argued against imposing moral values through legislation. When the subject was sexual morality, however, he argued on behalf of the right of the majority to impose its moral values on individuals.

Mr. President, to confirm Judge Bork to sit on the Supreme Court would be to ratify a narrowminded, prejudicial doctrine of law that he has espoused throughout a lifetime of public discourse. It would stand as an invitation to the radical right to try to overturn decades of constitutional law. It would reopen heated debates over civil rights, abortion, and a host of other issues that could tear our Nation apart.

A recent poll shows that the more information people are given about what Judge Bork has said and done during this career, the more they oppose him. I believe the same is holding true for Members of the Senate.

Judge Bork's record speaks for itself. The White House would have us dismiss much of what Bork has said as simply the musings of an academician. They would have us believe that Bork really would not seek to achieve on the Supreme Court the radical changes he has spent the previous 25 years advocating.

In his testimony before the Senate Judiciary Committee, Judge Bork attempted to separate himself from the statements and judicial philosophy which made him the darling of the radical right and won him the nomination in the first place. Has he truly undergone a transformation? Or is this a cynical move to try to persuade us what we see before us now is a new Bork—that he is a different man and a moderate jurist? No amount of rationalization or recanting can convince me that Judge Bork is any different from what he has been: An extremist prepared to rewrite the Constitution to reflect his peculiar legal philosophy.

Mr. President, let me now turn in more detail to Judge Bork's record and to the philosophy to which he has ascribed throughout his career as a professor, a scholar, and a judge.

IDEOLOGY BASED UPON REPUDIATION OF INDIVIDUAL LIBERTIES

Mr. President, Judge Bork believes in the doctrine of original intent. Original intent—or as it sometimes called, the interpretationist school of judicial philosophy—maintains that judges should restrict their deliberations only to the presumed intent of the framers of the Constitution or the authors of the legislation in contention. Interpretationists then claim to know, and so are able to "interpret," that intent.

The original intent philosophy has been characterized as little more than a slogan which its adherents use to justify repudiation of court decisions with which they disagree. An article written by Leo Rennert cogently points up the fallacies of this doctrine. Rennert wrote that original intent "is a fiction that won't stand up to either judicial or historical analysis." [4]

Prof. Philip Kurland of the University of Chicago Law School notes that the Bill of Rights is frequently the main target of original intent advocates. Judge Bork's version of the "original intent" doctrine assumes that the principle intent of the framers of the Constitution was simply to establish mechanisms for majoritarian rule or, as he calls it, a Madisonian rule of law. Although he pays lipservice to the notion that the framers intended to protect some areas of individual rights against the tyranny of the majority, there are very few and very limited areas where he is willing to acknowledge that such rights exist.

One legal scholar has characterized Judge Bork's philosophy as providing that, "the majority is free to impose contested moral views on individuals and minorities in all but nearly universally acknowledged cases of constitutional violation." Another has observed that, "Bork's entire current constitutional jurisprudential theory is essentially directed to a diminution of minority and individual rights." [5] With few exceptions, Judge Bork's view of the Constitution promotes "the majority will at the expense of individual rights." [6]

Judge Bork's constricted interpretation of the intent of the framers of the Constitution is without historic foundation. As Professor Kurland observed:

> The watchword of the people and the constitutional and ratifying conventions was "liberty." They were intent on framing a government to guarantee liberty to individuals within the new nation's domain. The liberty of which they spoke was not Bork's liberty of a parliamentary majority to impose its will on everyone with regard to everything. * * * The liberty of which they spoke and wrote and for which they fought was the liberty of the individual, in "substance" as Judge Learned Hand once put it, "the possibility of the individual expression of life on the terms of him who has to live it."

Judge Bork characterizes his philosophy as the application of "neutral principles." But what Judge Bork and his allies call "neutral principles" translates in actual practice into an attack on the American heritage of protecting individual liberty against government tyranny.

Judge Bork's contention that the right of the majority to impose its will is the only general principle the framers intended to establish would overturn a long line of court decisions of the past 200 years that were based on the assumption that the Constitution limits the power of the majority over individuals. Indeed, Judge Bork himself reaches that conclusion in discussing a broad range of Supreme Court decisions.

Mr. President, let me try to highlight some of the Supreme Court decisions which Judge Bork has attacked.

RIGHT TO PRIVACY

Much attention has been focused on the impact Judge Bork's appointment would have upon the Roe versus Wade decision. That decision recognized the right of a woman to have an abortion without government intrusion at certain stages of a pregnancy. People concerned about preserving the rights recognized in Roe versus Wade have ample justification for fearing the confirmation of Judge Bork.

Judge Bork has called Roe versus Wade an "unconstitutional decision." In the part, he has repeatedly made it clear that he would feel no obligation to follow its precedent if he were a member of the Supreme Court. In his testimony at his confirmation hearings, he suggested a somewhat different position, but one which is not any more reassuring regarding the future of that case. He indicated he would consider three factors in deciding whether to overturn Roe versus Wade. First, he would invite the attorneys to present arguments as to whether there is a right to privacy which can be derived from a specific provision in the Constitution—an argument he has repeatedly and vehemently rejected since the Roe case was decided. Then he would allow them to try to argue that a right to an abortion can be found elsewhere in the Constitution. Finally, he would allow the attorneys to argue that Roe versus Wade is the kind of case that should not be overturned, even if it was wrong. Although he tried to suggest he was thus not totally committed to reversing Roe versus Wade and the decisions on which it was based, given his prior views, it is difficult to imagine how the proponents of the case could satisfy his criterion.

Judge Bork's attack on the Roe versus Wade decision reflects his general legal philosophy. He believes that the Constitution provides no basis for protecting individual choices against the will of a majority, even in the most personal, private, and intimate areas of family life. In his view, government has unfettered power to impose moral choices when those in office feel they speak for majority values. In his testimony before the Judiciary Committee, he reiterated his position that he could find no general right to privacy in the Constitution.

His opposition to the Roe case is simply one manifestation of that view.

Judge Bork sets forth the most detailed explanation of this view in an article he wrote for the Indiana Law Journal in 1971. He repeated those views in a 1984 speech to the American Enterprise Institute,[7] and again in a 1985 speech at the University of San Diego Law School.[8] In an interview in 1985, Judge Bork affirmed that the 1971 article continues to represent his basic judicial philosophy.[9] In his testimony before the Judiciary Committee, he indicated it still reflected his views, except in the area of freedom of speech and to some extent the application of the equal protection clause of the 14th amendment.

In the Indiana Law Journal article, Judge Bork used the Supreme Court's decision in Griswold versus Connecticut[10] as a case study to lay out his basic thesis. In the Griswold case, the Supreme Court invalidated a State law that made it a crime for a married couple to use contraceptives. Bork described the case as "unprincipled" and contended that the right of "a husband and a wife * * * to have sexual relations without fear of unwanted children" is no more entitled to constitutional protection than a business entity's desire not to be subjected to economic regulation.

Bork claimed that Griswold's antecedent cases also were wrongly decided. He challenged a Supreme Court decision which found that the right to "marry, establish a home and bring up children" was entitled to protection under the Constitution,[11] and he objected to a decision which upheld the right of parents "to direct the upbringing and education" of their children.[12]

If there is any doubt as to whether Judge Bork would carry to the Supreme Court his limited view of the constitutional rights of families and parents, one need only read his opinion in the court of appeals decision in Franz versus U.S.[13] This case involved alleged constitutional violations of a divorced father's right to communicate with his children who had been relocated with their mother under the Federal witness protection program. The majority held that severance of the relationship between parent and child will survive constitutional scrutiny only if it can be shown that a compelling State interest exists which cannot be achieved through any means less restrictive of the rights of parent and child. The case was remanded for further proceedings.

A month later, Judge Bork filed a lengthy statement concurring in part and dissenting in part. The thrust of his statement was an assault upon the majority for recognizing any constitutional rights on the part of the noncustodial parent.

He thus questioned the notion that the Constitution affords any basic protections for family relationships and reiterated his long-standing disapproval of the line of Supreme Court decisions including Griswold and Roe versus Wade which recognized a constitutional right of privacy in family-related areas. Similarly, he criticized this line of decisions in his majority opinion in a case involving the discharge of a serviceman because of homosexuality.[14]

Bork further asserted that the equal protection clause of the 14th amendment should be limited strictly to requiring that the Government not discriminate along racial lines. He contended that courts have no "principled" way of saying which nonracial inequalities are impermissible. Under Bork's equal protection formulation, there are no "fundamental interests" courts are required to recognize. He has said that specific decisions like Skinner versus Oklahoma, which held that a State could not require the compulsory sterilization of all persons who had been convicted twice of certain theft offenses, are "as improper and intellectually empty as Griswold versus Connecticut."[15] Judge Bork would thus have upheld the Oklahoma Compulsory Sterilization Act—an act which every member of the 1942 Supreme Court found abhorrent and unconstitutional.

During his testimony at his confirmation hearing, Judge Bork suggested that the Oklahoma statute could have been struck down on the grounds it had an adverse racial impact—that minorities fell more frequently into the categories of criminal offenses for which sterilization was mandated. That suggestion—consistent with his view that the 14th amendment should be limited to Government acts based upon racial factors—would allow the compulsory sterilization law to stand if the burden of proof demonstrating racial animus could not be satisfied. Judge Bork does not appear to have changed his underlying view that there is no fundamental constitutional interest which would itself protect any individual—regardless of race—from being subjected to involuntary sterilization.

Bork's repudiation of the right of privacy embodied in the Roe versus Wade decision and its antecedents, including Skinner versus Oklahoma, is representative of his general constitutional philosophy. He does not believe that the framers of the Constitution intended to establish any general principles or concepts of fundamental freedom from Government interference.

Moreover, even where individual rights are specifically cited in the Bill of Rights, as in the first amendment, Judge Bork would subordinate them to the dictates of the State.

CONSTRICTED VIEW OF THE FIRST AMENDMENT

Mr. President, the framers of the Constitution unequivocally sought in the first amendment to protect certain fundamental rights from governmental intrusion. Yet, Judge Bork has argued that even these fundamental liberties can be subjected to the domination of the will of the majority.

In the area of religious liberty, for example, Judge Bork set forth his constricted view of the first amendment's protection in a series of speeches.[16] The religious freedom provisions of the first amendment prohibit the Government from either "establishing" religion or interfering with an individual's "free exercise" of religion. Judge Bork has attacked the Supreme Court for holding that subsidization of religious schools with Federal educational funds violates the establishment clause of the first amendment,[17] as well as criticized the Court's application of the free exercise clause.[18]

Despite the specific protection the first amendment gives to religious freedom and the indisputable intent of the framers to guarantee individuals special protections against governmental interference, Judge Bork argued that these cases reflected an objectionable, "unprincipled" trend in constitutional law.

"All of these trends, from interpretations of the religious clauses, to readings of the speech clause, to the privacy cases share the common theme that morality is not usually the business of Government but is instead primarily the concern of the individual. Whether or not so intended, these cases may be seen as representing the privatization of morality," he said.

Bork went on to argue for "a relaxation of current rigidly secularist doctrine" which would allow for "the reintroduction of some religion into public schools and some greater regigious symbolism in our public life"—a development he characterized as "sensible."

Mr. President, Judge Bork attacks court decisions enforcing the separation of church and state on the same basis upon which he attacks other decisions upholding individual liberties: Judge Bork believes that individual liberties are not entitled to protection against the moral choices of a majority. And the majority view, he contends, is whatever the Government of the moment desires.

This approach is also reflected in Judge Bork's treatment of that other great freedom guaranteed by the first amendment—the freedom of expression.

The commitment of the framers of the Constitution to the principle of free expression also is indisputable. Yet, Judge Bork has argued that that freedom too can be curtailed by the will of the majority.

"Constitutional protection should be accorded only to speech that is explicitly political," he wrote in 1971. "There is no basis for judicial intervention to protect any other form of expression, be it scientific, literary or that variety of expression we call obscene or pornographic. Moreover, within that category of speech we ordinarily call political, there should be no constitutional obstruction to laws making criminal any speech that advocates forcible overthrow of the Government or the violation of any law."[19] Although Judge Bork now states he was wrong in attempting to limit the first amendment protections to political speech and has abandoned that position, the core of his limited view of the free speech clause remains intact. As recently as his 1984 American Enterprise speech he specifically linked his first amendment principles to his notion that the highest constitutional principle is the right of the majority to impose its will. In that speech, he attacked current first amendment law for denying the community the right to "express [its] moral beliefs in law."

Moreover, in his testimony before the committee he continued to take the view that speech calling for the violation of law could be punished. When specifically asked how this approach would have affected Martin Luther King's speech calling for civil disobedience as part of the civil rights movement, Bork offered his theory that since Dr. King was challenging the constitutionality of those laws, his speech would be protected if those laws were subsequently found to be unconstitutional. Judge Bork was uncertain whether the same rule would apply if the laws being protected withstood the constitutional challenge. He clearly allows for the possibility that one's right to advocate peaceful disobedience to a particular law depends on whether one is ultimately correct in predicting how the Supreme Court will rule on the constitutionality of that law.

Let me illustrate the problems Judge Bork's new rule would create. It is unlawful to demonstrate within a specific distance from the South African Embassy. That law, on its face, has been held to be valid. Many individuals have intentionally violated it and gone to jail as a result. Bork's theory of restricting speech calling for violation of a valid law would allow a speaker who said or wrote, "Let's demonstrate in front of the embassy" to be punished, even imprisoned, for such a statement. That is a preposterous result in a society like ours where dissent and free expression of that dissent is highly valued.

Such an interpretation of the first amendment would have allowed Connecticut to make it a crime for anyone to urge violation of the State law forbidding married couples from using birth control. If Bork's view of the Connecticut law had been one which the Griswold court had adopted, those who had advocated its violation could have been imprisoned for that speech. No serious constitutional scholar would support such a proposition.

Mr. President, Judge Bork's Judiciary Committee testimony illustrated a remarkable abandonment of a view he had previously announced was a necessary result of an original intent interpretation of the Constitution and the tentative creation of a novel theory of when speech advocating civil disobedience is or is not protected by the first amendment. Clearly Judge Bork's new-found principle—if indeed he has found it—would have a chilling effect on freedom of speech since no one would know in advance what speech was protected. Moreover, one might well ask where in the Constitution this "original intent" jurist found this new first amendment standard.

As recently as a May 28, 1987, interview with Bill Moyers, Bork indicated that art fell at the outer edges of the first amendment and might not be protected unless it was "political." The bottom line is that although it is difficult to determine with any certainty precisely where Judge Bork stands today with regard to free speech issues, it is clear he continues to limit the protections of that amendment.

OTHER INDIVIDUAL RIGHTS BORK HAS REJECTED

Mr. President, as I said earlier, Judge Bork's guiding philosophy has been that the Government that happens to be in power at any given time has the right to infringe on individual freedoms because that Government presumably represents the will of the majority. As a result of this strange philosophy, he would overturn a long list of cases upholding individual rights rendered by the Supreme Court over the past 200 years. Some of the decisions Judge Bork has criticized as wrongly decided include Shelly versus Kraemer,[20] forbidding courts from enforcing racial restrictions in deeds; Baker versus Carr,[21] and Reynolds versus Sims,[22] requiring that legislative districts be based on one man, one vote: Katzenbach versus Morgan,[23] and Oregon versus Mitchell,[24] upholding civil rights laws barring literacy tests for voting; Harpe versus Virginia State Board of Elections,[25] striking down poll taxes; and the entire line of modern first amendment cases from Dennis versus U.S. to Brandenberg versus Ohio[26] holding speech can be forbidden only if "clear and present danger" or "imminent and likely harm" is established.

Mr. President, special attention should be paid to Judge Bork's narrow construction of the 14th amendment whose equal protection clause he has said was aptly described as the "equal gratification" clause. Judge Bork has stated that he does not believe the 14th amendment applies to areas other than racial discrimination—and even there he has argued for very limited protections—and, perhaps, procedural due process. The equal protection clause, he has contended, because of its "historical origins," should be restricted to a very narrow and limited range of cases involving government discrimination along racial lines.[27]

The fact is the 14th amendment makes no mention of "race." And historically the courts properly have applied the amendment's prohibitions to a whole range of discriminatory practices.

RIGHTS OF WOMEN

Application of Bork's theory of the 14th amendment would reverse a line of cases over the past two decades which have held that arbitrary discrimination on the basis of gender is constitutionally suspect.

Under Bork's approach, the meaning of the Constitution is frozen in time to reflect only the presumed intent of the men "who drafted, proposed, and ratified its provisions and its various amendments." Although he would allow modern courts to accommodate certain technological advances such as applying the fourth amendment's protections against unreasonable searches and seizures to electronic surveillance, he sees no need to make any adjustments for social changes in our society. He thus rejects a long line of Justices beginning with Chief Justice Marshall who recognized that a Constitution is "intended to endure for ages to come, and consequently, [must be] adapted to the various crises of human affairs"[28] to Chief Justice Hughes who also rejected the argument that "the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them."[29]

Because the legal rights and interests of women were not specifically addressed at the time the Constitution and the 14th amendment were drafted, Bork finds no special constitutional prohibition against sex discrimination. The only constitutional protection Bork would extend specifically to women is the right to vote because of the 19th amendment.

Not surprisingly, Judge Bork has in the past expressed opposition to the equal rights amendment to the Constitution which would afford explicit protection to women. He contended it would give judges the power to decide "enormously sensitive, highly political, highly cultural issues."[30]

Mr. President, in a long line of cases since 1971 the Supreme Court has held that, under the equal protection clause of the 14th amendment, the Government may treat men and

women differently only when the differential treatment is substantially related to the achievement of an important governmental interest. Many laws discriminating against women have been struck down under the standard established in 1971—a standard Bork rejects.

In his testimony before the Judiciary Committee, Judge Bork suggested that the 14th amendment could be read to protect women against "unreasonable" discrimination. Adoption of this standard would return sex discrimination cases to the status they held prior to 1971 when virtually any basis offered by a State was sufficient to justify differential treatment. He contended that application of his standard would reach the same result as the standard currently used by the Supreme Court. Yet when discussing a recent decision of the Court striking down differential drinking ages for males and females, he indicated that the State might have been able to produce evidence showing that its distinction was "reasonable." In light of his philosophy of generally giving deference to the judgments of Government entities, it is not unrealistic to assume that a legislative determination of reasonableness would frequently prevail under his application of this standard.

As recently as June 10, 1987, Judge Bork reiterated his view that the "Equal protection clause probably should have been kept to things like race and ethnicity," implicitly acknowledging that the use of his "reasonable basis" standard for reviewing sex-discrimination would effectively remove the 14th amendment's protections from women.[31]

Judge Bork's hostility to legal equality for women also emerges in his decisions on the court of appeals interpreting statutory provisions. Most striking is his dissenting opinion in Vinson versus Taylor.[32] In this case, a unanimous Supreme Court, in an opinion written by Chief Justice Rehnquist, held that job-related sexual harassment is prohibited by title VII of the Civil Rights Act. Judge Bork, however, questioned whether sexual harassment should be considered discrimination at all. "[S]ome of the doctrinal difficulty in this area," he said, "is due to the awkwardness of classifying sexual advances as 'discrimination.' Harassment is reprehensible, but title VII was passed to outlaw discriminatory behavior and not simply behavior of which we strongly disapprove."[33] In a statement reflecting the view that sexual harassment was less offensive than racial harassment, Judge Bork argued that a more stringent standard of proof and rule of vicarious liability for supervisors should apply in cases involving sexual harassment than apply in cases involving racial harassment.

Judge Bork's attempt in this case to narrow the statutory protections against sexual discrimination has absolutely no legislative basis, and his position was sharply rejected by a unanimous Supreme Court. It endorsed the view that, "Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality."[34]

A singular consistency emerges from both Judge Bork's restricted interpretation of the 14th amendment and his efforts to constrict the scope of title VII when applied to sex discrimination: hostility to equal rights for women.

RACIAL EQUALITY

An examination of Judge Bork's views on racial justice must begin with his 1963 New Republic article, "Civil Rights—A Challenge." In that article, Judge Bork strongly opposed enactment of civil rights legislation, the Public Accommodations Act, to outlaw racial discrimination in businesses serving the public.

Although Judge Bork would later argue in favor of the Government's authority to impose moral values supposedly supported by a majority of the people, Bork in this instance challenged "the morality of enforcing morals though law" when the moral principle the majority sought to impose was racial nondiscrimination. The danger, in Judge Bork's words, was that "justifiable abhorrence of racial discrimination will result in legislation by which the morals of the majority are self-righteously imposed upon a minority."

Judge Bork characterized the Public Accommodations Act as the Federal legislature "inform[ing] a substantial body of the citizenry that in order to continue to carry on the trades in which they are established they must deal with and serve persons [black customers] with whom they do not wish to associate." He described proponents of the Public Accommodations Act as "part of a mob coercing and distributing [sic] other private individuals in the exercise of their freedom. Their moral position is about the same as Carrie Nation's when she and her followers invaded saloons." He stated the issue "is not whether racial prejudice or preference is a good thing but whether individual men ought to be free to deal and associate with whom they please for whatever reasons appeal to them * * *. One may agree that it is immoral to treat a man according to his race or religion and yet question whether that moral preference deserves elevation to the level of the principle of individual freedom and self-determination."[35] No amount of clever verbiage can disguise the sentiment underlying the article: tolerance for racial discrimination

During his 1973 confirmation hearing to be Solicitor General,[36] Judge Bork backed away from the views he expressed in that article. In response to questions from Senator Tunney as to enforcement of the Civil Rights Act in light of his article, Judge Bork replied that "I no longer agree with that article * * *. The reason I do not agree with that article, it seems to me I was on the wrong track altogether * * *. It seems to me that the statute has worked very well and I do not see any problem with the statute, and were that to be proposed today I would support it."

As to whether he would vigorously enforce the Interstate Public Accommodations Act, he responded simply that he would "take the Government's position." There is no indication whether his change of position was based upon a repudiation of his notion that it was inappropriate to impose moral principles against racial prejudice through legislation, or the practical assessment that contrary to his dire prediction the public accommodations law had worked and that by 1973 only an avowed racist would publicly continue to oppose that law. Proponents of Judge Bork argue that his recanting of his offensive 1963 article in 1973 should nullify any criticism of him on civil rights grounds. Unfortunately, that article was not an isolated instance of his misguided judgment. It reflected a deep and enduring lack of understanding of the necessity of ridding this country of racial prejudice and discrimination.

Although Bork concedes that the 14th amendment forbids racial discrimination, he nevertheless has attacked Supreme Court decisions enforcing those protections. For example, he has challenged the decision in Shelly versus Kraemer,[37] which forbids courts from enforcing racially restrictive covenants in deeds. He claimed in 1971, as he did in 1963, that only government discrimination—not private discrimination—should be declared unlawful. "[The] text and history [of the 14th amendment] clearly show it to be aimed only at governmental discrimination," Bork wrote in his 1971 Indiana Law Journal article.[38]

Challenging the power of Congress to ban literacy tests, Judge Bork has described two major decisions upholding key provisions of the 1965 Voting Rights Act, Katzenbach versus Morgan,[39] and Oregon versus Mitchell,[40] as "very bad, indeed pernicious, constitutional law."[41] Ironically, Bork usually argues in favor of deferring to legislative authority.

Judge Bork has also asserted that Harper versus Virginia Board of Elections,[42] which held that poll taxes are unconstitutional, was wrongly decided.

During his 1973 confirmation hearing, he defended his position, contending that the poll tax involved in Harper was, "a very small poll tax, it was not discriminatory and I doubt that it had much impact on the welfare of the Nation one way or the other." [43] As the NAACP Legal Defense and Education Fund noted in a recently issued report, "Judge Bork's benign characterization of the poll tax is difficult to reconcile with the facts that were common knowledge long before 1973." The Supreme Court in the Harper case expressly noted that the Virginia poll tax at issue "was born of a desire to disenfranchise" black voters.[44]

The NAACP Legal Defense and Education Fund also pointed out the Supreme Court was not alone in recognizing that poll taxes had been adopted for the purpose of disenfranchising black voters. The Senate Judiciary Committee, the U.S. Commission on Civil Rights, and several lower Federal courts had reached the same conclusion.[45] Indeed, Congress in 1962 proposed a constitutional amendment to prohibit the use of a poll tax for Federal elections, an amendment which was promptly ratified by the States to become the 24th amendment to the Constitution.

Judge Bork's bald assertion that the poll tax was "not discriminatory" flies in the face of reality. And his statement before the Judiciary Committee that he personally opposes poll taxes is both irrelevant and inconsistent with his 1973 testimony that the Virginia tax in question didn't have much impact one way or the other. Moreover, Judge Bork's statement that he might have found the poll tax unconstitutional if the complaint had been brought on other grounds—a defense which Judge Bork also used to explain his position regarding the Skinner sterilization case—is pure speculation.

Judge Bork's approach would put the burden on those individuals subjected to these unjust laws to devise a new and different legal basis for protecting interests which the Supreme Court correctly held to be guaranteed as fundamental constitutional rights.

Mr. President, in addition to opposing title II of the 1964 Civil Rights Act banning racial discrimination in public accommodations, Judge Bork in a 1964 article appearing in the Chicago Tribune urged rejection of title VII of the act governing employment. He argued that both provisions presented "serious and substantial difficulties" because they would "adopt a principle of enforcing associations between private individuals which would, if uniformly applied, destroy personal freedom over broad areas of life." Striking at the very heart of civil rights legislation, Bork contended that "[t]he accommodations and employment provisions of the civil rights bill cannot be viewed in isolation but must be assessed as only a modest first step in a broad program of coerced social change." [46]

On school desegregation, Judge Bork was one of only two law professors to testify in 1972 in support of the constitutionality of legislation that would have drastically curtailed remedies which the Supreme Court had held constitutionally necessary to cure violations of the 14th amendment.[47] In 1978 he attacked the Supreme Court's decision in University of California Regents versus Bakke, upholding the constitutionality of affirmative action programs. He described that decision as "resting upon no constitutional footing." [48]

For more than 25 years Judge Bork has appeared unable to recognize the magnitude of the problem of racial discrimination. He seems to have neither the insight nor the compassion to view discrimination from the perspective of its victims.

OTHER VULNERABLE GROUPS

Mr. President, Judge Bork's views on racial issues, the rights of women, separation of church and State, and freedom of speech are inimical to basic principles of equality and justice. His constricted view of the equal protection clause of the 14th amendment would render many other groups in our society vulnerable.

Because he does not believe that the 14th amendment provides any special restriction against the Government engaging in arbitrary and invidious discrimination except in a very narrow area involving race, he would effectively withdraw 14th amendment protections not only from women, but also from disabled individuals, aliens, illegitimate children, and any other class of vulnerable people upon whom the State chooses to impose its will. Since he finds no barrier in the 14th amendment to compulsory sterilization of thieves, Skinner versus Oklahoma, it is difficult to postulate where he would draw the line limiting the power of the State to affect the lives of individuals. Ironically, under Bork's warped line of judicial reasoning, a State law making abortion compulsory would not be unconstitutional—an outlandish result.

Bork's assault upon many of the Supreme Court precedents protecting individual rights is also based on his view that Congress lacks the power to enact laws protecting those rights in many of these areas. For example, in his criticisms of the Supreme Court's decisions in Katzenbach versus Morgan, and Oregon versus Mitchell, he expressed the view that Congress lacks the power under the 14th amendment to enact laws establishing what he called "substantive" constitutional law.

Similarly, he has challenged the constitutional authority of Congress to adopt the Public Accommodations Act under the commerce clause, contending such power over the States should be "beyond the reach of the National Government." [49] "If Congress can dictate the selection of customers in a remote Georgia diner," Bork wrote, "because the canned soup once crossed a State line, federalism—so far as it limits national power to control behavior through purported economic regulation—is dead." I might point out that the importance of the commerce clause to congressional authority is evidenced by the legislation we recently enacted prohibiting discrimination against disabled citizens in air travel.[50] Although Judge Bork has said he would not overturn existing commerce clause case law, it is unclear how he would handle future cases relating to this provision.

Mr. President, it is not possible to provide a definitive list of the rights established by Congress or recognized under the Constitution by Supreme Court decisions that Judge Bork would invalidate nor would it be appropriate during his confirmation process to propound questions as to how he might rule in prospective cases. A review of his prior statements and philosophy regarding fundamental rights and the authority of Congress to protect those rights suggests, however, that many of the rights and protections Americans routinely assume are secure would become vulnerable under Judge Bork's philosophy and approach to constitutional and statutory interpretation.

DIFFERENT PHILOSOPHY IN THE AREA OF BUSINESS INTERESTS

Mr. President, Judge Bork's philosophy on general principles of law dramatically changes in the area of law affecting business—big business primarily.

As I will discuss in a few moments, a review by the Public Citizens Litigation Group of Judge Bork's decisions reveals a consistent pattern of his siding with the Government against the interests of individuals, consumers, environmentalists, and workers. But a different picture emerges when business interests are at stake.

This different standard for business appears repeatedly throughout his writings and speeches, as well as his opinions on the bench.

It is particularly apparent in Judge Bork's field of expertise: antitrust law. Numerous articles and papers criticize Judge Bork's approach to antitrust law as "virtually eliminat[ing] enforcement of the antitrust laws," [51] constituting a "sustained attack on modern Federal antitrust legislation," and evincing "rigid ideological identification with corporate interests." [52] What is remarkable about Judge Bork's views in this area, however, is the manner in which he disregards virtually every principle of judicial restraint that he demands in the area of individual rights.

For example, despite repeated declarations that judges should defer to the specific intent of legislative bodies since legislatures represent the "will of the majority," Bork's deference fades when the legislative body does not share his views. Disagreeing with virtually all antitrust legislation enacted in this century, Bork complains that "Congress as a whole is institutionally incapable of the sustained rigorous and consistent thought that the fashioning of a rational antitrust policy requires." [53] Beyond his rhetorical assaults upon the competency of elected officials to develop coherent policy in this area, Judge Bork has argued that courts should not enforce antitrust provisions "unrelated to reality and which, therefore, [the court] knows to be utterly arbitrary." He has written:

> Even in statutory fields of law, courts have obligations other than the mechanical translation of legislative will, and these obligations are particularly important with statutes as open-textured as the antitrust laws.

This is a rather astonishing position in light of Judge Bork's insistence on judicial restraint and deference to legislative authority in the area of individual rights.

The AFL-CIO Executive Council in its August 17, 1987, statement on Bork's nomination, noted that:

> Bork's writings in anti-trust law thus present the irony of a man who purports to abhor a judge's reliance on his own values arguing that judges should refuse to enforce statutes that Congress has passed, because Congress did not—and still does not—sufficiently understand economic truth.

John Donohue of Northwestern University School of Law made another important point about Judge Bork's antitrust philosophy: [54]

> Bork has argued that the anti-trust laws should be used to further economic efficiency, not social or political goals [i.e. protecting small businesses].

Donohue wrote:

> Bork . . . makes the further claim [that his view] expresses the "true" legislative intent of Congress in passing the Sherman Anti-trust Act in 1890. . . . [However,] anyone who has read the entire legislative debate over the Sherman Act will see immediately that its congressional supporters spoke with many, and at times contradictory, voices about this legislation. . . . For Bork to "find" the unequivocal, "unmistakable" original intent amidst this cacophony suggests a remarkable ability to ignore the overwhelming inconvenience of contradictory facts. . . . It does show . . . that when Bork wants to reach an outcome, he is quite facile in dressing his own subjective preferences in the garb of "original intent."

SWEEPING EXECUTIVE BRANCH PRIVILEGES

Another theme dominates both Bork's writings and actions: support for sweeping executive authority. Except where the executive branch has interfered with some business interest, Judge Bork has consistently advocated judicial and legislative subordination to executive branch authority.

This philosophy is demonstrated not only in his rigid application of the policy of deference to agency rulemaking decisions, but in his substantive policy statements in numerous areas.

One of the most striking examples of this extreme bias in favor of the executive branch is set forth in his dissenting opinion in Bartlett versus Bowen.[55] The Bartlett case involved a challenge to the constitutionality of provisions of the Social Security Act which limited payment of Medicare benefits for beneficiaries utilizing both skilled nursing facilities affiliated with the Christian Science Church and secular facilities for the same illness. The case was brought on the grounds that the statute penalized the beneficiary on the basis of her religion.

Generally, the Medicare Act precludes judicial review of claims below $1,000—an amount in excess of the claim made in the Bartlett case. The majority of the court of appeals panel held, however, that Congress in enacting the $1,000 threshold for claims had not intended to preclude judicial review of constitutional challenges to the law itself. The majority noted that the Supreme Court had previously held that a challenge to the constitutionality of the GI bill legislation was reviewable despite statutory language barring judicial review of benefit decisions of the head of the Veterans' Administration.[56] Any other conclusion, the Supreme Court ruled, would "raise serious constitutional questions."

Judge Bork would have denied judicial review to the claimant. He based his position on what the majority in Bartlett described as "an extraordinary and wholly unprecedented application of the notion of sovereign immunity." [57]

In another case, Wolfe versus U.S. Department of Health and Human Services,[58] Bork proposed another novel way to insulate the executive branch from scrutiny. The Wolfe case involved a Freedom of Information Act [FOIA] request for records disclosing when proposed and final regulations were transmitted between the Food and Drug Administration, the Department of Health and Human Services, and the Office of Budget and Management. The district court had rejected the Government's efforts to withhold these documents, and the court of appeals affirmed with Bork dissenting. Although his dissent was based upon his construction of the statute in favor of the Government's position, he offered his support for the Government's claim, made for the first time on appeal, that a constitutional executive privilege justified withholding all communications to or from OMB. The majority protested that this would create "an unnecessary sequestrating of massive quantities of information from the public eye," a result totally contrary to the purposes of the FOIA.[59] In both the Bartlett and Wolfe cases Judge Bork engaged in judicial activism by dredging up theories to insulate the executive branch from outside review.

Judge Bork also adheres to the supremacy of the executive branch in matters of foreign policy. In Abourezk versus Reagan.[60] for example, he favored essentially nullifying the McGovern amendment to the Immigration and Nationality Act which requires the Secretary of State to follow specified procedures in denying admission to certain aliens because of their political affiliations. The appeals court reversed a summary judgment entered for the Government by the district court and ordered the case remanded for a full trial of the issues. The court observed that though the executive branch had broad discretion over the admission and exclusion of aliens, that discretion was not boundless and the State Department was obligated to respect restraints imposed by Congress. Judge Bork dissented, arguing that the "principle of deference applies with special force where the subject of that analysis is a delegation to the executive of authority to make and implement decisions relating to the conduct of foreign affairs."[61] He asserted that "such authority is fundamentally executive in nature" and argued that it does not require as a basis for its exercise an act of Congress.

In another case with foreign policy implications, Barnes versus Kline,[62] Judge Bork sought to deny judicial review of executive branch action. Barnes involved President Reagan's attempted pocket veto of legislation requiring human rights certification as a condition of continued military assistance to the Government of El Salvador. The majority held that the pocket veto had been improperly exercised and ordered the case remanded for a summary judgment in favor of the congressional plaintiffs. Judge Bork dissented, claiming that neither Congress nor individual members could litigate the validity of the purported veto notwithstanding the fact the executive branch had conceded that the Senate did have standing to sue. Judge Bork charged that the majority decision expanded the power of the judicial branch. The fact is that his dissent, had it prevailed, would have expanded the power of the executive.

Judge Bork's opinions on the court of appeals regarding the power of the executive branch are consistent with views he expressed as a private citizen. In various articles and statements he has challenged the war powers resolution as an infringement upon the executive branch's inherent authority, and he has argued that Congress lacked

authority to limit President Nixon's conduct of the Vietnam war.[63] He also has argued that requiring the executive branch to obtain a warrant before conducting espionage-related surveillance of persons within the United States was an unconstitutional interference with the President's powers as commander in chief.[64]

Finally, Judge Bork's excessive view of the powers of the executive branch was reflected in his role in President Nixon's infamous "Saturday Night Massacre." A Federal district court subsequently determined that Bork had acted illegally in firing Special Prosecutor Archibald Cox.[65]

LACK OF IMPARTIALITY

Mr. President, as I said earlier, most fundamental to judicial temperament is the ability to be fair and open-minded. Judge Learned Hand put it well:

> . . . [a judge] must approach his problems with as little preconception of what should be the outcome as it is given to men to have; in short, the prime condition of his success will be his capacity for detachment.

Judge Bork's record over the past 5 years illustrates his lack of impartiality.

Evidence of Bork's "result-oriented" brand of judicial philosophy is set forth in the exhaustive analysis of Judge Bork's record as a member of the U.S. Court of Appeals for the District of Columbia Circuit conducted by the Public Citizen Litigation Group, a nonprofit public interest group which has never before taken a position on a judicial nomination.[66]

Mr. President, as a member of the court of appeals, Judge Bork participated in approximately 400 cases in which opinions were published. Judge Bork wrote 144 majority, concurring, and dissenting opinions. Fifty-six of the four hundred cases involved "split decisions." The Public Citizen analysis focused extensively on the split decisions. The split decisions involve those cases in which one or more of the judges on the panel disagreed with the majority on how the case should be resolved and filed a dissent. Most of the cases decided by the court of appeals are decided by unanimous three-judge panels. Many of these cases involved relatively simple or noncontroversial issues, and the court is simply affirming the decision of an administrative agency or a district court.

The split decision cases tend to be the more controversial, "tough" cases where the position of each of the judges can determine the outcome.

The results of this analysis are startling. Judge Bork's record shows no consistent application of judicial restraint, or any judicial philosophy for that matter. One can predict with almost complete accuracy how Judge Bork would rule simply by identifying the parties in the case. His concept of judicial restraint varied according to who appeared at the courthouse door. When individuals such as consumers, workers, or environmentalists brought suit against a government agency, Judge Bork almost invariably supported the agency. Not so, however, when the litigant was a business. Then his doctrine of judicial restraint changed radically.

Judge Bork voted in favor of the Government in all seven split decisions in which public interest organizations had challenged Federal regulations. He voted for the Government in all seven split decision freedom of information cases. And he voted for the Government in four of the five split cases involving workers' rights. By contrast, there were eight split decisions involving business challenges of the Government; Judge Bork voted against the Government and for business every time.

Perhaps the most dramatic illustration of this inconsistency is found in Judge Bork's separate opinion, concurring in part and dissenting in part, in the case of Planned Parenthood Federation of America versus Heckler.[67]

The case involved a challenge to regulations promulagted by the Department of Health and Human Services requiring family planning programs funded under title X of the Public Health Service Act to notify a parent or guardian when prescription contraceptives are provided to a minor.

A majority on the court found that it was clear from the legislative history that the regulations were inconsistent with the 1981 amendments to the act and the intent of Congress in passing them. The court held that the regulations violated both the express terms of the 1981 statute and "the crystal clear and unequivocal expression of congressional intent" in the 1981 conference report.

Judge Bork did not disagree. In a separate opinion concurring in part and dissenting in part, he acknowledged that the 1981 amendments did not provide authority for the contested regulations and he conceded that the "evidence cited by majority amply demonstrates the error in HHS' position." But he aruged that the amendments did not expressly forbid the promulgation of such regulations and urged that because we "are dealing in a vexed and hotly controverted area of morality" the case should be remanded so that HHS might have an opportunity to reissue the regulations under some other authority.

In essence, Judge Bork encouraged HHS to devise a new strategy to evade what he himself conceded to be the intent of Congress. In pursuit of ends sought by the right wing, Judge Bork did not hesitate to encourage the circumvention of congressional intent. In other cases, however, Judge Bork has rigidly applied his concept of congressional intent.

Oil, Chemical and Atomic Workers versus American Cyanamid Co.,[68] dramatically illustrates Judge Bork's inconsistent approach.

This case involved a chemical company's policy of discharing female employees of childbearing years unless they agreed to be sterilized. The Federal Occupational Safety and Health Act [OSHA] requires employers to provide safe and healthful working conditions. The lead level in certain departments of the plant in question registered at a level too high for the safety of an unborn fetus. The employer contended that it was economically infeasible to reduce the level of lead and instead adopted the policy that women of childbearing age working in that department would be fired unless they were sterilized. A company doctor and nurse gave the female employees a briefing on the surgery that was involved, and they were informed that the company health plan would cover the expenses. They were also informed that there would be only seven jobs for fertile women in the entire plant after the new policy was implemented.

The Secretary of Labor determined that this policy was improper and issued a citation to the employer for violation of OSHA. Following an administrative hearing, the OSHA Commission rule against the Secretary of Labor on the grounds that the sterilization policy was not a workplace hazard of the nature Congress intended to cover in OSHA.

Judge Bork's opinion in this case affirmed the Commission's decision, noting that—

> There is no doubt that the words of the general duty clause [in OSHA] can be read, albeit with some sematic distortion, to cover [the sterilization] policy.

He then went on, however, to decline to apply the OSHA statute to this policy since he found no discussion of such a hazard in the legislative history of the act and concluded that to extend the scope of the act to this type of policy would establish a broad principle of unforeseen scope.

It is interesting to note that an amicus brief was filed in this case on the side of the employer by the Washington Legal Foundation, a conservative legal advocacy group.

Judge Bork's handling of the American Cyanamid case might not be remarkable if he consistently deferred to administrative agencies or congressional intent. Yet, as I indicated, the Planned Parenthood case demonstrates he does not consistently defer to congressional intent.

In numerous other instances, Judge Bork's deference to an administrative agency was inconsistent, depending on whether a business entity, an individual, a worker, or a consumer was involved. For example, in Vinson versus

Taylor,[69] he refused to give any deference to the "Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex" in a case where those guidelines were favorable to a claim that sexual harassment constituted illegal sex discrimination—a claim Judge Bork strongly opposed.

In a series of utility ratesetting cases, Bork refused to uphold an agency decision favoring consumers. In one case, Judge Mikva described Bork's opinion as a "blatant interference with the ratemaking procedures adopted by the [agency]." [70] Similarly, in Middle South Energy, Inc. versus Federal Energy Regulatory Commission, Judge Bork sided against consumers and substituted his personal interpretation of the statute for that of the regulatory agency. His position prompted a dissent from Judge Ginsberg who observed that, absent clear evidence that an agency's construction of its statute is incorrect, the agency's interpretation merits considerable deference.[71]

The pattern that emerges is that of a jurist who is fully prepared to modify his judicial principles to achieve a predetermined result.

Mr. President, a final striking example of Judge Bork's willingness to tailor his judicial philosophy to justify support of a right-wing agenda is displayed in his writings about the right of the majority of a community to curtail the liberties of individuals. His views on this subject have varied sharply, depending upon whether the majority is expressing a liberal or a conservative value.

In his 1963 article opposing civil rights legislation, Judge Bork argued in favor of an individual's right to engage in racially discriminatory acts because, he said, the majority was attempting to impose a moral judgment by enacting civil rights legislation. Then he argued against "the morality of enforcing morals through law."

In language diametrically opposite this rationale, however, Judge Bork has since repeatedly claimed that the majority does have the right to legislate its moral beliefs and to forbid behavior which it regards as morally wrong despite the impact on others civil liberties. In his 1984 American enterprise speech he argued that the majority should have the right "to express [its] moral beliefs in law."

Thus, in the sixties, Judge Bork argued against civil rights legislation on the grounds that it represented an unjustifiable effort to impose moral values by law, but subsequently he has used precisely the opposite argument to advocate enactment of laws that would impose moral values of a different kind. Specifically, he has argued that if a majority believes the use of contraceptives is morally abhorrent, a court should not override that decision.[72]

As Ronald Dworkin, professor of law at New York University wrote in the New York Review of Books, Judge Bork's "principles adjust themselves to the prejudices of the right however inconsistent these might be." [73]

IMPACT OF JUDGE BORK ON THE SUPREME COURT

Mr. President, when President Reagan first nominated Judge Bork to the Supreme Court, his supporters hailed the nomination as a great victory for advancing the agenda of the far right well beyond the Reagan Presidency. Of late, however, the administration has launched a disinformation campaign seeking to characterize Bork as a moderate mainstream jurist, akin to Justice Powell, who would obey the rule of law and not upset the existing balance of the Court.

Responding to this campaign, Owen Fiss, a professor of law at Judge Bork's former institution, Yale Law School, wrote recently in the New York Times:

> [Judge Bork] owes his pre-eminence as a conservative spokesman—and perhaps his nomination—in no small measure to his rejection of the constitutional doctrine associated with [cases Justice Powell supported]. . . . [W]hat Judge Bork's writings—spanning almost 20 years as a professor—reflect is not a concern for precedent but a dogmatic commitment to a comprehensive or general theory and a willingness to denounce, repudiate, even deride decisions that do not agree with his theory. Judge Bork's performance on the Court of Appeals has not revealed a change of outlook.[74]

Prof. Philip Kurland of the University of Chicago put it even more forcefully:

> The concerted efforts in the press to repaint Robert Bork as a closet liberal in order to make him acceptable to centrists in the Senate has all the cogency of Admiral Poindexter's testimony before the House and Senate Select Committees. To make Bork over in the image of a Lewis Powell, a Robert Jackson, or a Felix Frankfurter, as they would seek to do, rather than seeing him as in the tradition of a Sutherland, McReynolds, or Rehnquist, is to give the lie to Bork's public extra-judicial professions of his beliefs . . . The Department of Justice and the White House Staff . . . are not entitled to tell contradictory tales to different Senators to entice their votes for inconsistent reasons. Bork is either the moderate, restrained New Deal-type jurist that he is depicted to be by some of his recent advocates in the press. Or he is the Meeseian, "original intent", constitutional revisionist, as he has depicted himself to be in his talks to the "Federalist Society" and in other forums throughout the country.[75]

A recent study by the Columbia Law Review confirms that Judge Bork is decidedly more conservative in his judicial opinions than other Reagan appointees to the Federal bench.

This study covering 1,200 nonunanimous decisions of all of the U.S. courts of appeal during 1985 and 1986 found Bork voted on the "conservative" side 90 percent of the time compared to 69 percent for other Reagan appointed judges. Like the Public Citizen Group, the Columbia Law Review study found that Bork voted consistently in favor of business groups against Federal agencies while opposing the claims of individuals and public interest groups.[76]

Mr. President, Judge Bork's proponents have also argued that the fact that he has never been reversed by the Supreme Court demonstrates that he is not a judicial radical, but a moderate.

It should be pointed out, however, that the Supreme Court has never even reviewed a case in which Judge Bork wrote the majority opinion. In 1986-87, it granted review in only five cases from the District of Columbia circuit. Moreover, the argument also conveniently ignores the fact that in at least one case, Vinson versus Taylor, supra, the Supreme Court unanimously rejected twisted positions Judge Bork had asserted in his dissenting opinion.

Finally, Judge Bork's supporters point to a handful of cases in which he did not take a "radical-right" position. Most often, his opinion in Ollman versus Evans[77] is cited as evidence of his support for freedom of expression under the first amendment. It should not be overlooked that the parties in this case were two conservative journalists and an alleged Marxist professor. Judge Bork sided with the conservative journalists and noted that the case fell within the scope of speech—political speech—which he has consistently recognized, sometimes exclusively, as protected by the first amendment. He reached a similar conclusion—that political speech was at issue—in Lebron versus Washington Metropolitan Area Transit Authority.[78] On the other hand, he has been on the other side of the first amendment in a number of cases, for example, Finzer versus Barry,[79] upholding a statute forbidding the display of signs opposing the policies of a foreign government within 500 feet of its embassy, but permitting the display of signs supporting that government's policy, and Abourezk versus Reagan,[80] relating to policies excluding certain aliens invited to speak in the United States. Similarly, as to women's rights, Judge Bork joined the majority in three cases decided favorably to women asserting rights against employment discrimination under title VII of the Civil Rights Act.[81] As the National Women's Law Center noted, each of these cases involved settled principles of law in which the court of appeals reached unanimous decision.[82]

Finally, Mr. President, some commentators have suggested Judge Bork's elevation to the Supreme Court would not threaten individual freedoms since few legislatures today

would seriously consider the laws struck down in cases Judge Bork has attacked; that is, a ban on contraceptives in Griswold or involuntary sterilization in Skinner. The short answer to that assertion is that only a few years ago, legislation, S. 158, the proposed human life statute, was considered in the Senate. That legislation would have prohibited the use of some commonly accepted forms of contraception, such as the IUD and certain types of birth control pills. When S. 158 was offered as a floor amendment in 1982 to a debt ceiling bill, it was tabled by a 1-vote margin of 47 to 46. Similarly, the recent school textbook censorship cases and legislation mandating instruction in the theory of creationism show that erosion of the wall between church and state, particularly in the classroom, is an ever present danger.

Individual rights cannot rest upon the mere hope or speculation that legislatures will not propose measures that trample freedom.

OVERTURNING PRECEDENTS

Of perhaps most critical importance in trying to assess the impact of elevating Judge Bork to the Supreme Court is his view of precedents.

At his confirmation hearing, he expressed a very different view about the obligation of a Supreme Court Justice to adhere to prior constitutional decisions from the view he had frequently stated before. In his testimony, he emphasized that he believed that certain decisions, although wrong, were so firmly established that they should not be reversed.

In the past, however, Judge Bork has not hesitated to express his view that a Supreme Court Justice is free to seek to reopen settled issues of law, particularly constitutional law, which he believes were wrongly decided. In a 1985 interview he said:

> A Supreme Court Justice always can say, and many times the Supreme Court has said, that their first obligation is to the Constitution, not to what their colleagues said 10 years before.[83]

More recently, in a 1987 speech before the Federalist Society, Judge Bork expanded on that view:

> Most constitutional doctrine is merely the judge-made superstructure that implements the framers' basic values.
>
> This means, I think, that the role of precedent in constitutional law is less important than it is in a proper common law or statutory model. . . . So if a constitutional judge comes to a firm conviction that the courts have misunderstood the intentions of the founders, the basic principle they enacted, he is freer than when acting in his capacity as an interpreter of the common law or of statute to overturn precedent.[84]

In this speech, Judge Bork also reiterated his longstanding opposition to decisions that do not comport with his "originalist" theory of constitutional requirements and declared that—

> An originalist judge would have no problem whatever in overruling a non-originalist precedent, because that precedent by the very basis of his judicial philosophy, has no legitimacy.

Any lingering doubts regarding Bork's respect for precedents with which he disagrees should be resolved by a look at his record on the intermediate court of appeals. It belies the lip-service he pays now to honoring Supreme Court precedents. For example, in his 1985 dissenting opinion in Barnes versus Kline, Judge Bork wrote:

> Though we are obligated to comply with Supreme Court precedent, the ultimate source of constitutional legitimacy is compliance with the intentions of those who framed and ratified our constitution.

He further observed that—

> Constitutional doctrine should continually be checked not just against words in prior opinions but against basic constitutional philosophy.[85]

The majority in the Barnes case attacked Judge Bork's refusal to adhere to the established precedents: "The dissent contends that previous decisions of this court permitting congressional standing do not bind this panel because they are the result of the court's failure to give proper regard to the underpinnings of article III's standing requirement, namely, the separation of powers," and observed that "Supreme Court precedent contradicts the dissent's sweeping views" on the issue of congressional litigation.

Similarly, in Dronenburg versus Zech, Judge Bork wrote a blistering attack upon Supreme Court precedents establishing a right of privacy. This prompted other members of the Court to criticize Judge Bork for trying to use "the panel's decision to air a revisionist view of constitutional jurisprudence" and for attempting "to wipe away selected Supreme Court decisions." [86]

Professor Dworkin of the New York University Law School aptly describes Bork as a "constitutional radical" who rejects the view that the Supreme Court must test its interpretations of the Constitution against the principles inherent in its past decisions, as well as other aspects of constitutional theory. As Dworkin notes, Judge Bork repeatedly has made clear his belief that "central parts of settled constitutional doctrine [are] mistakes now open to repeal by a right-wing court." [87]

Mr. President, nothing he said in his testimony before the Senate Judiciary Committee convinces me he has abandoned these views.

Once on the Supreme Court, Judge Bork is unlikely to be deterred by the legitimacy of precedents or the doctrine of stare decisis from reopening settled issues of constitutional law. He has made it clear that he regards a long line of decisions of the Supreme Court, stretching back to the 1920's, recognizing constitutionally protected freedoms to be without legitimacy. He pointedly refused to include these cases among those he considered to be settled questions of law. He has repeatedly made clear that he would, as a member of the Supreme Court, be an activist judge in seeking to overturn and reverse longstanding decisions which he regards as incorrect. I believe the Reagan administration fully understands Judge Bork's mind and intentions in this regard. It is surely a key reason for his nomination.

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

Mr. President, I withheld making a final decision on the Bork nomination until Judge Bork had an opportunity to testify before the Senate Judiciary Committee and respond to the many concerns which have been raised regarding his record and fitness to serve on the Supreme Court.

He has now had that opportunity.

I found his testimony, taken as a whole, to be both disingenuous and unpersuasive.

I have commented earlier on several aspects of his testimony including his new positions on the first amendment, on sex discrimination under the equal protection clause of the 14th amendment, and on reversing Roe versus Wade, and his explanation of his position with regard to Skinner versus Oklahoma dealing with involuntary sterilization.

In numerous other instances he stated positions starkly different from those he has taken in the past.

For example, in discussing the issue of a Supreme Court Justice adhering to the doctrine of stare decisis and precedents established by earlier Courts, he several times suggested that the law should not be seen as changing each time the personnel on the Court changed. Yet, he has in the past specifically pointed to the change in the personnel of the Court as the means for reversing decisions with which he disagrees. In 1982, he stated:

> The only cure for a Court which oversteps its bounds that I know of is the appointment power. * * *[88]

In 1986 he wrote:

> Democratic responses to judicial excesses probably must come through the replacement of judges who die or retire with new judges of different views.[89]

When pressed to explain his extraordinary prior positions that the 14th amendment should not apply to women and that the 1st amendment's protection of free speech should be restricted to political expression, he presented the committee with new positions I described earlier which were inconsistent with his prior public statements. As a result, it is almost impossible to state accurately what Judge

Bork's current legal position is with respect to sex discrimination or freedom of speech or how he might apply these new policies in the future. It is also virtually impossible to understand how the doctrine of "original intent"—to which he still pledges allegiance—has led him to his new positions on these matters.

Judge Bork repeatedly characterized his opposition to specific, pivotal Supreme Court decisions upholding individual liberties as mere criticisms of the Court's reasoning, not necessarily the result. What he refers to as "reasoning" is recognizing and protecting fundamental constitutional rights. Because Judge Bork does not find these fundamental rights explicitly mentioned in the Constitution, he disagrees with the "reasoning" of the cases.

He frequently stated that he did not personally support the statutes which the Court had struck down, but, as a legal matter, did not believe that the Court had the authority to overturn the law. Judge Bork's personal view, for example, that the Connecticut law making it a crime for a married couple to use contraceptives was "nutty," is totally irrelevant. The fact remains that, as a judge, he would have allowed the law to stand. When pressed in questioning about that unacceptable result, he could only respond that the law had not been enforced and would be impossible, as a practical matter, to enforce.

Finally, he defended some of his most outrageous statements on the grounds that his job, as a professor, was to be provocative. It should be stressed that the record which gives rise to so much concern about the prospect of Judge Bork being placed on the Supreme Court does not involve statements as a professor alone. It also involves articles in publications such as the Chicago Tribune, the Wall Street Journal, Fortune, New Republic, and National Review as well as numerous speeches delivered while on the Federal bench. These were clearly efforts to engage in and influence public debate and legal philosophy regarding controversial issues. And the criticism of Judge Bork's record rests upon his record as a judge, not merely his years as a professor.

In short, his characterization of his positions during his testimony before the Judiciary Committee did little to resolve my deep concerns arising from his record and statements for the past 25 years.

CONCLUSION

Mr. President, I urge that the nomination of Judge Bork be rejected.

The struggle over this nomination is as much about the future and where this Nation is going in the next century as it is about what Judge Bork has said and done over the past 25 years.

Judge Bork looks into the Constitution and finds it an empty vessel, a mere instrument for government to impose its will on individuals. I look at the same document and see a charter for restraining the power of government from interfering with individual freedom. Judge Bork looks at the intent of the framers and sees a narrow vision of democracy. I see in the words and struggles of our Founding Fathers a deep and abiding desire to establish a rule of law which protects individuals from the tyranny of the majority.

Judge Bork is committed to a judicial philosophy that rejects the principles of individual freedom which lie at the very heart of our Constitution and our national heritage. That philosophy threatens the principles of law, liberty, and privacy which Americans deeply cherish. On the Supreme Court, he could undermine the stability of precedents and jeopardize the hard-fought gains of women and minorities. This is a time when we should be moving forward in protecting individual rights. His confirmation would move the Nation backward. The nomination should be rejected.

FOOTNOTES

*For a discussion of the role of the Senate in the confirmation of Supreme Court Justices and citations to the historical record, see generally Tribe, "God Save This Honorable Court" (1985).

[1] Bork, "Neutral Principles and Some First Amendment Problems," Indian Law Journal, fall 1971, 1, 22 (hereinafter cited as "Neutral Principles").

[2] *Olmstead* v. *U.S.*, 277 U.S. 438, 478 (1928).

[3] *City of Akron* v. *Akron Center for Reproductive Health*, 462 U.S. 416, 419-420 (1983).

[4] Congressional Record, July 22, 1987, S10516.

[5] Barber, "The New Right Assault on Moral Inquiry in Constitutional Law," the George Washington Law Review, 253, 259 (1986); Kurland, "Bork: The Transformation of a Conservative Constitutionalist," Chicago Tribune, Aug. 18, 1987.

[6] American Civil Liberties Union, "Report on the Civil Liberties Record of Judge Robert H. Bork."

[7] Bork, "Traditional and Morality in Constitutional Law," American Enterprise Institute, Dec. 6, 1985.

[8] Bork, "The Constitution, Original Intent, and Economic Rights," San Diego Law Review, July/August, 1986.

[9] McGuigan, "An Interview with Judge Bork," Conservative Digest, October 1985.

[10] 381 U.S. 479 (1965).

[11] *Meyer* v. *Nebraska*, 262 U.S. 390 (1922).

[12] *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).

[13] 712 F.2d 1428 (1983), majority opinion reported at 707 F.2d 582 (1983).

[14] *Dronenburg* v. *Zech*, 741 F.2d 1388 (1984).

[15] 316 U.S. 535 (1942); "Neutral Principles", supra at 12.

[16] These views were fully developed in a speech, "Religion and the Law," presented at the University of Chicago on Nov. 13, 1984, and reiterated in a speech given at the Brookings Institute on Sept. 12, 1985.

[17] *Aguilar* v. *Felton*, 473 U.S. 402 (1985).

[18] Although he clearly criticized the Court's application of the free exercise clause, the record is in dispute as to whether this attack specifically included criticism of the pivotal school prayer decision, *Engel* v. *Vitale*, 370 U.S. 421 (1962). In his Judiciary Committee testimony, Judge Bork stated he had not taken a position on the school prayer issue. However, the Dean of the N.Y. University Law School has written that Judge Bork attacked the Engel decision in a speech delivered at the New York University Law Review Dinner in May of 1982.

[19] "Neutral Principles", supra at 20.

[20] 334 U.S. 1 (1948).

[21] 369 U.S. 186 (1962).

[22] 377 U.S. 533 (1964).

[23] 348 U.S. 641 (1966).

[24] 400 U.S. 112 (1970).

[25] 383 U.S. 663 (1966).

[26] 341 U.S. 494 (1951) and 395 U.S. 444 (1969). During his testimony before the Senate Judiciary Committee, Judge Bork indicated he would accept *Brandenberg* although he still regards it as wrong. What that actually means in terms of future first amendment cases is totally unclear.

[27] "Neutral Principles", supra at 11.

[28] *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

[29] *Home Bldg & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934).

[30] McGuigan, 1985 interview, supra at 8.

[31] *Reed* v. *Reed*, 404 U.S. 71 (1971); *Kirchber* v. *Fienstra*, 450 U.S. 455 (1981); *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975); Worldnet Interview, June 10, (1987), p. 12.

[32] 753 F.2d 141, rehearing denied, 760 F.2d 1330 (1985), aff'd sub nom., *Meritor Saving Bank* v. *Vinson*, 106 S. Ct. 2399 (1986).

[33] 760 F.2d at 1333 n. 7.

[34] *Meritor Savings Bank*, supra at 2406, citing *Henson* v. *Dundee*, 682 F.2d 897, 902 (1982).

[35] New Republic, Aug. 13, 1963, 21-24.

[36] Hearing before the Committee on the Judiciary, U.S. Senate, 93rd Cong., 1st Sess., Jan. 17, 1973.

[37] 334 U.S. 1 (1948).

[38] "Neutral Principles", supra at 16.

[39] 348 U.S. 641 (1966).

[40] 400 U.S. 112 (1970).

[41] Hearings on the Human Life Bill before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Cong., 1st Sess., June 1, 1981 at 314.

[42] 383 U.S. 663 (1966).

[43] Hearings before the Senate Judiciary Committee, 93rd Cong., 1st Sess., Jan. 17, 1973 at 17.

[44] "Judge Bork's Views Regarding Racial Discrimination," a Report of the NAACP Legal Defense and Education Fund, Inc., August 1987.

[45] S. Rep. No. 162, 89th Cong., 1st Sess., (1965); U.S. Commission on Civil Rights, "With Liberty and Justice for All" (1959); *U.S.* v. *Texas*, 252 F. Supp. (W.D. Tex 1966); and *U.S.* v. *Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

[46] Bork, "Two Professors Tell Civil Rights Bill Merits, Faults," Chicago Daily Tribune, Mar. 1, 1964.

[47] Hearings of the Subcommittee on Education of the Senate Committee on Labor and Public Welfare on the Equal Educational Opportunity Act of 1972, 92d Cong., 2d Sess. (1972).

[48] Bork, "The Unpersuasive Bakke Decision," Wall Street Journal, July 21, 1978.

[49] Chicago Daily Tribune, March 1, 1964, supra.

[50] Air Carrier Access Act of 1986, Public Law 99-435.

[51] Robert Pitofsky; Georgetown Law School, memorandum to Senate Judiciary Committee, August 1987.

[52] Leonard Orland, University of Connecticut, memordandum to Senate Judiciary Committee, August 1987.

[53] Bork, "The Anti-Trust Parodox: A Policy at War With Itself," 412 (1978).

[54] Donohue, "Judge Bork, Anti-Trust Law, and the Bending of Original Intent", Chicago Tribune, July 22, 1987.

[55] 816 F.2d 695 (1987).

[56] Id., citing *Johnson* v. *Robison*, 415 U.S. 361 (1974).

[57] 816 F.2d at 703.

[58] 815 F.2d 1527 (1987).

[59] 815 F.2d at 1533.

[60] 785 F.2d 1043 (1986).

[61] 785 F.2d at 1063.

[62] 759 F.2d 21 (1985).

[63] Confirmation Hearing, 1973; Wall Street Journal, Mar. 9, 1978.

[64] Wall Street Journal, Mar. 9, 1978.

[65] *Nader* v. *Bork*, 366 F. Supp. 104 (1973), subsequently vacated as moot.

[66] "The Judicial Record of Judge Robert H. Bork", August 1987. See Congressional Record, Aug. 7, 1987 at S11788.

[67] 712 F.2d 650 (1983).

[68] 741 F.2d 444 (1984).

[69] 760 F.2d 1330 (1985).

[70] *Jersey Central Power and Light* v. *Federal Energy Regulatory Commission*, 810 F.2d 1168 (1987).

[71] 747 F.2d 763, 744 (1984).

[72] American Enterprise Speech, 1984; San Diego Law Review, July/August (1986) at 830-31.
[73] "The Bork Nomination", Aug. 13, 1983.
[74] New York Times, July 31, 1987.
[75] Kurland, letter to L.A. Journal, July 1987.
[76] Columbia Law Review Release, July 27, 1987.
[77] 750 F.2d 970 (1984).
[78] 749 F.2d 893 (1984).
[79] 798 F.2d 1450 (1986).
[80] 785 F.2d 1043 (1986).
[81] *Palmer* v. *Schultz*, 815 F.2d 84 (1987); *Laffey* v. *Northwest Airlines*, 740 F.2d 1071 (1984); and *Ososky* v. *Wick*, 704 F.2d 1264 (1983).
[82] "Setting the Record Straight: Judge Bork and the Future of Women's Rights," August 1987.
[83] "Justice Robert H. Bork: Judicial Restraint Personified," California Law Journal, May 1985, at 25.
[84] "Changing the Law: The Role of Lawyers, Judges, and Legislators," Jan. 31, 1987.
[85] 759 F.2d at 56, 67.
[86] 746 F.2d at 1580.
[87] "The Bork Nomination," New York Review of Books, Aug. 13, 1987.
[88] 1982 confirmation hearing, p. 7.
[89] "Judicial Review and Democracy," Encyclopedia of the American Constitution, v. 3, p. 1062 (1986).

RECOGNITION OF SENATOR LEAHY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont, Senator LEAHY, is recognized for not to exceed 30 minutes.

Mr. LEAHY. I thank the distinguished Presiding Officer and the distinguished deputy majority leader, both of whom were here at about a quarter of 11 when we left last night and were back here again at a quarter to 7 this morning. I applaud you for that. I thank the distinguished majority leader for arranging for us to come in early enough so that we could do this.

THE CONFIRMATION OF JUDGE ROBERT BORK

Mr. LEAHY. Mr. President, the Judiciary Committee is drawing toward the conclusion of an extraordinary series of hearings on the nomination of Robert Bork to be Associate Justice of the Supreme Court. Never before in our history have the qualifications and judicial philosophy of a Supreme Court nominee been publicly examined with such thoroughness, fairness, and seriousness.

As a member of the Judiciary Committee, I prepared intensively for these hearings by reading as much as I could of Judge Bork's voluminous articles, speeches, and judicial decisions. I have participated actively in the hearings. I have studied Judge Bork's testimony, his responses to the questions posed by all 14 members of the committee, and the testimony and questioning of the other witnesses.

Based on this extensive record, I have arrived at a difficult decision. I will vote against the confirmation of Judge Bork to the Supreme Court.

I am not opposed to Robert Bork, the person. I have great admiration for his intellect, scholarship, and skill in crafting judicial opinions. Nor do I question his personal decency and integrity. His forthrightness in responding to the most probing and far-ranging questioning by committee members is unparalleled, and sets a high standard that future nominees will have to work hard to match. In the hearings, Judge Bork handled himself in a way that commands not only our respect, but also our admiration for the support shown by his impressive family.

Robert Bork the person, has my praise and respect. Robert Bork, the nominee to the Supreme Court, does not have my vote, and the President does not have my consent to this nomination.

Confirming this nominee could alter the direction the Supreme Court takes into the next century. My children will live most of their lives in that century, and my vote speaks to the legacy I would leave them—and all other Americans.

The central issue in this nomination is not Robert Bork, the person, but Robert Bork's approach to the Constitution and to the role of the Supreme Court in discerning and enforcing its commands. The central issue is his judicial philosophy. When the hearings began, I said that Judge Bork's judicial philosophy is comprehensive and clearly stated. It is also a record of consistent and forceful opposition to the main currents the Supreme Court has taken on a wide range of issues that touch on the basic freedoms of the American people. While in some areas Judge Bork departed from this long-standing record in his testimony before the Judiciary Committee, I am not convinced that his fundamental approach to constitutional principles has changed. This is a key factor in my vote on this nomination. Let me explain why.

With Judge Bork, as with any Supreme Court nominee, the record before the Senate is a record of the past: what the nominee has said and done up to the moment the Senate makes its decision. But that decision is a referendum on the future.

Whoever succeeds Justice Powell on the Supreme Court will probably serve well into the 21st century. The Senate should confirm Justice Powell's successor only if we are persuaded that the nominee has both the commitment and the capacity to protect freedoms the American people have fought hard to win and to preserve over the last 200 years.

When the framers of the Constitution met in Philadelphia two centuries ago, they decided that the appointment of the leaders of the judicial branch of Government was too important to leave to the unchecked discretion of either of the other two branches. They decided that the President and the Senate must be equal partners in this decision, playing roles of equal importance. The 100 Members of the U.S. Senate, like the Chief Executive, are elected by all the people. And all the people have the right to expect that we will approach our task with care and concern for the importance of this decision for the future of our Republic.

I cannot vote for Judge Bork unless I can tell the people of Vermont that I am confident that if he were to become Justice Bork, he would be an effective guardian of their fundamental rights.

The people of Vermont have a right to know that as a Supreme Court Justice, Robert Bork would aggressively defend their freedom to think, speak, and write as they please—without the threat of censorship or reprisal from any level or branch of government. Based on the record before me, I cannot tell the people of Vermont that Robert Bork would champion their first amendment rights to free speech.

The people of Vermont have a right to know that as a Supreme Court Justice, Robert Bork would prevent Government from intruding into the most intimate and private decisions of family life, as the Constitution provides. Based on the record before me, I cannot tell the people of Vermont that Judge Bork recognizes their right to privacy as one of their most fundamental liberties, and that he will act forcefully on that recognition.

The people of Vermont have a right to know that as a Supreme Court Justice, Robert Bork would comprehensively uphold the constitutional right to be free of unfair discrimination by any branch or level of government. Based on the record before me, I cannot tell the people of Vermont that Judge Bork will unstintingly employ the equal protection clause of the 14th amendment to block government actions based on sexual discrimination and other forms of unfounded prejudice.

From my own studies and from the hearings, I know much about Judge Bork and his judicial philosophy, and I am not convinced that the nominee will protect those freedoms into the next century. Therefore, I must exercise my constitutional duty to vote against the nominee.

As Senators decide how to vote on this nomination, much will be made of the subject of "confirmation conversion." This phrase summarizes some of the reasons why I have found this decision so difficult. But like any catch phrase, it may suggest different things to different people. Some of these connotations may be misleading.

Two weeks ago, Judge Bork told the Judiciary Committee many things he has never told anyone else before—at least not in public—about his approach to fundamental constitutional issues. The issue is not whether he was candid in those aspects of his sworn

testimony which seem to contradict so many basic thrusts of his prior writings and speeches. Judge Bork testified under oath, and I have no reason to think that a man of such integrity would have testified with less than complete truthfulness. The real issue is what weight the Senate should give to these newly expressed views.

There is a pattern to the new views that Judge Bork disclosed for the first time at the hearings. His evolving thinking on free speech questions, for example, has come to rest at a point near the consensus that was reached by the Supreme Court and by most legal scholars some 20 years ago. On constitutional questions that still excite controversy within the legal mainstream—for example, the right of marital and family privacy—Judge Bork's views have scarcely changed at all.

This pattern shows that Judge Bork's views are now different from some of the more isolated positions he previously sought to defend. But it also shows that, at this point in his long career, he still does not demonstrate a passion for vindicating the individual rights of Americans that matches his passion for a rigorous and coherent legal theory of the Constitution.

A key element of the issues the Senate must confront on this nomination is whether Judge Bork's newly announced perspectives are likely to overpower the deeply considered and well documented intellectual habits of a long career as a legal philosopher. Our focus, once again, must not be limited to what Judge Bork now says about the established precedents he so forcefully attacked in the past. Our focus must be on the judicial philosophy that Justice Bork would bring to the constitutional controversies of the 21st century.

Many distinguished lawyers testified before the Judiciary Committee on this nomination. But a nonlawyer, the novelist William Styron, went to the heart of the matter when he said that the Senate must decide whether Judge Bork's newly expressed views reflect "a matter not of passing opinion but of conviction and faith." Measured against that standard, Judge Bork's testimony of earlier this month mitigates some of his previous statements, but does not erase them from the record which the Senate must consider.

When a nominee for a Cabinet position comes before a Senate committee for confirmation hearings, it is not unusual for Senators to seek specific commitments as to actions the nominee will or will not take if confirmed. Senators may even condition their vote on these commitments. But a lifetime appointment to the Federal judiciary is entirely different from an appointment to an executive branch position. In the case of a nominee to the Supreme Court, it would be improper for members of the Judiciary Committee to seek such commitments, and it would be unthinkable that any nominee would make them. The committee's job is not to extract commitments, but to exercise judgment about the probable course of the nominee's long-term performance on the Supreme Court. Recent changes in the nominee's views, whether or not they are considered "confirmation conversions," form an important part of that judgment.

Mr. President, as I stated here on the Senate floor last month and again today, the central issue in this nomination is the question of Judge Bork's judicial philosophy: his approach to the Constitution and to the role of the courts in discerning and enforcing its commands. During the confirmation hearings that are now winding up, we heard a great deal of testimony, both from the nominee himself and from other witnesses, about many aspects of Judge Bork's judicial philosophy.

But three issues stand out. Each is drawn from a phrase from the Constitution that evokes a core value of the American system of self-government: "freedom of speech," "liberty," and "equal protection of the laws." I am not persuaded that Judge Bork is philosophically committed to the historical role of the Supreme Court to protect these core values against actions by one of the branches or levels of government that would threaten the rights of individual Americans.

The first issue is one of freedom. The constitutional provision that embodies it is found in the first amendment: "Congress shall make no law * * * abridging the freedom of speech." The history of judicial interpretations of this general prohibition underscores how essential this freedom is to our constitutional system. It is the freedom of every American to think, speak, and write as we please, on any subject and in any medium, without the threat of censorship or reprisal by any branch of government at any level.

This is a freedom that every American holds dear. But it has a special meaning for me. As the son of a Vermont printer, I grew up in a family which venerated this freedom above almost any other. So when I began to read Judge Bork's interpretation of the first amendment, I was disturbed and alarmed.

The question of free speech was the centerpiece of the most significant and most widely cited law review article written by the nominee on the issue of judicial interpretation of the Constitution. Three strands of Judge Bork's view of the first amendment concerned me. First, he emphatically asserted that "constitutional protection should be accorded only to speech that is explicitly political. There is no basis for judicial intervention to protect any other form of expression." Second, Judge Bork argued that "within that category of speech we ordinarily call political, there should be no constitutional obstruction to laws making criminal any speech that advocates forcible overthrow of the Government or the violation of any law." The third theme of Judge Bork's views on free speech that I found troubling was developed in greater detail in some of his subsequent speeches and articles, in which he argued that the first amendment should not prevent State and local governments from punishing people who speak, even on "explicitly poltical" topics, in a way that the majority of the community finds "offensive."

To understand why I was so concerned about these views, it is worth reminding ourselves what freedom of speech really means under the law today. In case after case, the Supreme Court has been called upon to apply the general words of the first amendment to a variety of concrete factual situations. Those cases have established the practical contours of freedom of speech in each of the areas questioned by Judge Bork.

First, consistent with the first amendment, these cases affirm that, in America, all kinds of speech are protected: Speech that directly concerns the process of self-government, and also speech that has nothing to do with politics. The candidate on the stump and the orator on the soapbox may speak without fear of government censorship or reprisal. But so also may the scientist in the laboratory and the entertainer on the stage or screen, large or small. The author of a best-selling novel is protected by the first amendment; so is the poet publishing in an obscure journal. The painter, the sculptor, the composer may follow their muses wherever they may lead, free of the fear that official disfavor may squelch or constrain their creativity.

Second, a series of Supreme Court cases affirms that government may not arbitrarily suppress even speech that confronts government with a challenge to its legitimacy or with advocacy of disobedience of law. Only when such speech presents the danger of imminent lawless activity may it be curbed.

Finally, it is clear that the first amendment forbids censorship not only when the government dislikes what we say, but also when it dislikes how we say it. When speech is not legally obscene, the majority of the community may consider it offensive, or even immoral, but the Constitution will not allow the majority to gag the minority—even a minority of one—on that account.

Taken together, these strands of the first amendment's free speech clause form the backbone of a system of freedom of expression unparalleled in any other nation. We sometimes overlook the vital part that this system has played in making America the most vibrant, creative, prosperous and confident society in the world today. Freedom of speech has guaranteed the diversity of thought that keeps our democracy vital as it enters its third century.

When Judge Bork testified before the Judiciary Committee 2 weeks ago, I questioned him extensively about each troubling aspect of his approach to the application of the first amendment guarantee of freedom of speech. His answers were detailed and comprehensive.

Judge Bork's testimony was most nearly reassuring on the question of first amendment protection for nonpolitical speech. Referring to the well established principle that speech is protected regardless of its lack of relationship to the political process, Judge Bork said, "That is what the law is, and I accept that law." While this testimony was welcome, it still must be read against the background of Judge Bork's prior statements on the issue.

Judge Bork may have long ago abandoned the "bright-line" distinction between protected political and unprotected nonpolitical speech, but his responses to interviewers as recently as this past May and June clearly state that the existence of first amendment protection should be affected by where speech falls in relation to a "wavering line" between speech that feeds into the "way we govern ourselves" and speech that does not, a line that must be drawn on a case-by-case basis.

When he came before the Judiciary Committee, Judge Bork conceded that this line, whether bright or "wavering," is irrelevant to the scope of the first amendment. By his confirmation testimony, Judge Bork accepted a consensus that has existed for decades.

On the question of protection for speech that advocates the violation of law, my questioning focused on Judge Bork's evaluation of the leading Supreme Court case on the subject, the 9-to-0 decision in the 1969 case of Brandenburg versus Ohio. Judge Bork sharply criticized this decision on a number of occasions and at least once described it as "fundamentally wrong." When I asked him about it, Judge Bork stated, for the first time in public that "the Brandenburg position * * * is OK; it is a good position." The next day, he gave a slightly different response to a question from Senator SPECTER: "I think Brandenburg * * * went too far, but I accept Brandenburg as a judge and I have no desire to overturn it. I am not changing my criticism of the case. I just accept it as a settled law."

Finally, on the question of whether a community can punish even political speech because it uses offensive words, the leading case, Cohen versus California, struck down a conviction of a young man for disorderly conduct for using a four-letter word to express his opposition to the Selective Service Act. Judge Bork consistently has criticized this decision, but his testimony on his current position was somewhat ambiguous. While he embraced the general principle that "no community can override any guarantee anywhere in the Constitution," he also reiterated his long-standing criticism of the reasoning of Justice Harlan in the Cohen case, stating "I feel precisely the same way as I did" on the occasions of his previous attacks on the decision.

The testimony on all three of these points is inconsistent with much of what Judge Bork had said on these topics as recently as a few months before he walked into the Senate Caucus Room as a nominee for the Supreme Court. A review of Judge Bork's decisions as an appellate judge in first amendment cases does not resolve these inconsistencies. Most of these decisions involve either speech that Judge Bork deemed political, and therefore indisputably protected, or issues rather closely controlled by Supreme Court precedent that any lower court judge is bound to apply. Interestingly, in the only majority decision by Judge Bork that the Supreme Court has ever decided to review, the nominee sustained a statute that permits the government to discriminate between competing speakers on political topics based on the content of the speech.

The overall picture presented by Judge Bork's free speech decisions and his writings on the subject belies the extravagant claim made by some of the proponents of this nomination that he is "at the forefront" of modern free speech jurisprudence. At best he is somewhere in the pack and running to catch up.

While the degree of inconsistency may be debated, the only purpose of this review of the past record is to aid in anticipating his approach to free speech questions in the future, if he is confirmed.

It is quite likely that in the future, some American will say, in a speech or a book or a television program or in some other medium, something that has nothing to do with the political process, but that nevertheless raises the ire of government. It is also likely that some speaker will advocate the disobedience of a law that he finds unjust, even if it is not in fact later found to be unconstitutional. It is equally likely that a future speaker will for whatever reason choose to express his views on political subjects in a manner that many others, perhaps almost all of us, find crude, shocking or offensive. And each of these events may well arise in a context of heated emotions, of social turmoil, even of crisis when our deepest attachment to freedom of even unpopular speech is most sorely tested.

Our first amendment forbids Government censorship or reprisal against these speakers. In our constitutional system, that is a matter, in William Styron's words, of "conviction and faith." The question before the Senate is the depth and strength of Judge Bork's attachment to these fundamental principles, which he so incisively criticized for years—and which he came to accept only recently.

Certainly, Judge Bork's forthright testimony before the Judiciary Committee makes this a close question. But in the end, I am not persuaded that Justice Bork would be an energetic and effective guardian of this most basic of our constitutional freedoms. Belated acceptance of these well established principles does not match what we expect of a Supreme Court Justice.

The second great constitutional theme which was explored in the hearings on Judge Bork's nomination is an issue of equality. The words of the 14th amendment to the Constitution are, once again, grand but general: "nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

The Judiciary Committee questioned Judge Bork extensively on his views on issues of racial equality, and of the powers of the courts and Congress to take steps to eradicate the racial discrimination that the 14th amendment was originally adopted to combat. To me, one of the most troubling aspects of Judge Bork's philosophy of equality under the Constitution is the application of this general language to a problem that modern Americans perceive in a far different light than was perceived by the authors of the 14th amendment: unfair governmental discrimination on the basis of gender.

The problem with Judge Bork's judicial philosophy in this area can be posed in simplistic terms: does he believe that the equal protection clause applies to women? The answer is equally simplistic. Of course women are included within the phrase "any person," and therefore a law that discriminates on the basis of gender can be challenged under the equal protection clause.

The more difficult question is this: by what standard should a court evaluate a challenge to law that discriminates between men and women? Is it comparable to a law that provides different tax rates for the sale of apples and oranges? That sort of distinction is almost never found to deny "equal protection of the laws." Or is the proper standard more like the

scrutiny that will be given to a law which treats members of different races differently, a form of discrimination which is virtually never permitted under the Constitution?

The Supreme Court precedents on this subject are more recent than in the free speech area, but they establish an important principle. As eight of the nine Justices agreed in a 1980 decision, laws that treat men and women differently will be upheld only if they "serve important governmental objectives" and use "means * * * substantially related to the achievement of these objectives." In other words, such laws are not always inconsistent with the 14th amendment, but they come into court with two strikes against them.

Judge Bork's statement on this issue prior to the hearing disagrees with this approach. From 1971, when he wrote that "the Supreme Court has no principled way of saying which nonracial inequalities are impermissible," to June 10, 1987, when he told an interviewer that he thought "the equal protection clause probably should have been kept to things like race and ethnicity," there was no indication that Judge Bork supported or even accepted the recent attitude of judicial skepticism toward laws that embody sex discrimination. His record as a judge on the D.C. Circuit Court of Appeals sheds little light on the issue, since he has written only one opinion in a case involving the treatment of sex discrimination under the equal protection clause, and in that case his decision did not reach the merits of the claim.

Judge Bork's testimony at the hearing fleshed out his approach to this question. He argued that the courts ought to ask the same questions of any statute challenged under the equal protection clause. A law that treats members of different groups differently would be sustained if there were a reasonable basis for the distinction, but would be struck down if a "reasonable basis" were lacking. Judge Bork concluded that this approach "would arrive at * * * virtually all of the same results that the majority of the Supreme Court has arrived at," using the existing methods of equal protection analysis in sex discrimination cases. "There is really no difference," he testified, "except in the methodology."

It was reassuring to hear that Judge Bork would have reached the same result—though by a different route—as the Supreme Court has reached in striking down state laws that reflect unfounded stereotypes about the proper role of women in modern society. But once again, our focus on his attitudes toward past decisions is useful mainly as an element of predicting the course toward which he would guide the Supreme Court in the future if he is confirmed. Viewed in that light, the nominee's testimony on equal protection issues raises some serious concerns. I will mention four here.

First, during the first century of litigation under the equal protection clause, the Supreme Court followed an approach to claims of sex discrimination that is disturbingly similar to the analysis Judge Bork presented to the Judiciary Committee. In case after case, the Supreme Court found it "reasonable" to bar women from certain professions and occupations, and otherwise to limit their opportunities compared to those available to men. Accordingly, it upheld state laws reflecting a level of blatant discrimination that would be quite offensive to the ideals of equality that we as a society hold today. Indeed, the Supreme Court never struck down a law that treated men and women differently until 1971, when, not coincidentally, it began to abandon the "rational basis" standard for measuring such laws against the equal protection clause. Perhaps it is mostly a matter of nomenclature, but Judge Bork's "reasonable basis" approach summons up unwelcome memories of the "bad old days" that are just as offensive to those concerned about women's rights as memories of the era of "separate but equal" are for people concerned about racial justice in our society.

The second problem is related to the first. To ask the Justices of the Supreme Court to decide, without further elaboration, what is "reasonable" discrimination is to invite a highly subjective decision. To use the facts of one celebrated case as an example, the Justices of the 19th century decided that it was "reasonable" for the State of Illinois to forbid Myra Bradwell from practicing law because of her gender. They reached that conclusion by using the same sort of unstructured, unpredictable analysis that Judge Bork says he would bring to the Supreme Court of the 21st century. Ironically, this method of applying the general words of the Constitution to the particular facts before the Court smacks of the free floating, "unprincipled" decisionmaking that Judge Bork has never ceased to criticize in Supreme Court precedents.

The unpredictability of this approach is a serious liability. This would be a concern not only to women who may wish to challenge laws that they believe are unfairly discriminatory. It would also be unfair to state and local governments, which every day consider actions that treat different groups of people differently because of gender or other factors. While the current state of the law may not provide as much predictability as these levels of government would like, it seems clearly preferable to a situation in which any distinction drawn by any government can be struck down whenever five members of the Supreme Court, for whatever subjective reason any of them might choose, decide that the distinction is "unreasonable."

The third problem with Judge Bork's "reasonable basis" approach to questions of constitutional equality can be illustrated by reference to one specific sex discrimination precedent which he has discussed both before and during the hearings. In 1976, the Supreme Court struck down a State law establishing a lower minimum drinking age for women than for men. Judge Bork said about this case in an interview last June that "when the Supreme Court decided that (this distinction) violated the equal protection clause, I thought * * * that was to trivialize the Constitution and to spread it to areas it did not address."

In response to questions from Senator DeConcini, Judge Bork commented as follows about this case:

> I thought, as a matter of fact, the differential drinking age probably is justified. * * * They had a lot of evidence about differential drinking patterns and resultant troubles, automobile accidents and so forth, upon which they based that differential.

Although the nominee refrained from offering a final opinion on whether the case was properly decided, he said enough to raise another concern about his approach to the entire subject.

Whatever the Justices of the past thought was "reasonable," and whatever the Justices of the future might think is "reasonable," it is disturbing that Justice Bork might find "reasonable" a law that treats individual men and women differently based on overall statistical evidence about men and women as a whole. That approach does not bode well for a principle that lies close to the heart of our constitutional commitment to equality under law: that the contribution of every American citizen should be limited only by his or her own efforts, and not by generalizations about the gender or other group to which he or she belongs.

This raises a fourth problem with Judge Bork's newly articulated views on equal protection. Supreme Court precedents have established the axiom that laws that treat members of different races differently are almost never constitutional. But surely it is possible to make accurate statistical generalizations about different racial groups. Taken as a whole, black and white populations differ in life expectancy, for example, or in the prevalence of certain diseases. If such statistical generalizations are enough to establish a "reasonable basis" for a discriminatory law, then the prohibition against laws that make racial distinctions could logically be in jeopardy.

In the final analysis, what toubles me about Judge Bork's testimony on

the issue of constitutional equality is not its inconsistency with his previous statements on the subject, although certainly some inconsistency exists. Rather, I am concerned about how a Justice with his judicial philosophy would respond to an ever more powerful and beneficial trend in American society: The drive to eliminate unfounded barriers to full participation in the society, not only by racial minorities and women, but by members of other groups disadvantaged by prejudice, ignorance, and superficial stereotyping.

We must ask ourselves what forms this trend will take in the constitutional controversies of the 21st century. In a nation whose birth was announced with the proclamation of the "self-evident truth" that "all men are created equal," we can be sure that claims for a fuller and broader meaning of equality before the law will be pressed. Based on the record before the Senate, even including the new perspective provided by Judge Bork's own testimony, this nominee's conception of the equal protection clause is not broad and dynamic enough to reassure me that as a Justice of the Supreme Court, he will respond to these claims in the way the American people have a right to expect.

Our Nation, in Abraham Lincoln's words, is not only "dedicated to the proposition that all men are created equal"; it was also "conceived in liberty." The ideal of liberty as embodied in our Constitution provides the third theme for the Judiciary Committee's examination of Judge Bork's judicial philosophy.

As with freedom and equality, our Constitution speaks of liberty in the most general terms. The fifth amendment states that "no person shall * * * be deprived of * * * liberty * * * without due process of law." The 14th amendment directs a similar command to the States. As the Court applied this general language to a series of cases in our country's history it defined the meaning of the liberty our constitutional system was designed to protect.

These cases give life to a powerful American ideal that is more implicit than explicit in the words of the Constitution. Perhaps the ninth amendment comes closest to expressing it: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." But liberty is not just a group of rights; it is also an essential set of limitations on the power of government.

The Supreme Court's delineation of constitutional liberty may be found in an important series of 20th century cases. These precedents recognize that in some aspects of the lives of individuals and families, the Government has no legitimate power to intrude. Government is fenced out of those parts of our lives. We sometimes refer to the doctrine these cases establish as the right to privacy, but Justice Louis Brandeis' famous phrase more accurately describes constitutional liberty: "the right to be let alone."

These precedents do not draw the boundaries of our liberty with crystalline clarity. But they do identify points within the sphere of private and family decisionmaking where government must "let us alone."

It is fitting that, in a debate which leads to a referendum on the future of our constitutional ideals, most of the points of liberty identified by these precedents concern our children. How shall we educate them? What shall we teach them about our culture and our heritage? Shall we bring that heritage to life by having children live with their grandparents? Shall we marry and have children at all, and if so, when? Under our system, these are all decisions that, within certain limits, we are at liberty to make as we choose, without the unwanted intrusion of government.

These are also precisely the precedents which Judge Bork has most incisively and consistently criticized, for the very reason that they are not specifically rooted in the literal text of the Constitution. He has called these precedents "unprincipled," "utterly specious," "intellectually empty," and even "unconstitutional." This last criticism is part of Judge Bork's assertion that "nobody believes the Constitution allows much less demands" some of these decisions, which, in his words, "could not have been reached by interpretation of the Constitution."

These statements from Judge Bork's speeches and articles, both before and after he became a judge, are not contradicted by his actions on the bench. In those rare cases in which constitutional privacy issues came before him, he has continued to criticize these precedents. This is not improper, so long as he carried out his responsibility as a lower court judge to apply the precedents faithfully. While the testimony on this issue conflicts, I believe he has fulfilled that obligation as a U.S. circuit judge.

But Judge Bork's nomination to the Supreme Court requires the Senate to examine Judge Bork's philosophy of constitutional liberty in a different light. As a lower court judge, he is bound by precedent, even precedent he considers fundamentally illegitimate. As a Justice of the Supreme Court, he will have the power, and in some instances even the duty, to vote to overturn precedent that he believes the Constitution does not "allow, much less demand."

Thus, two issues of liberty are important in this nomination. First, what is Judge Bork's philosophy on this question? Have his views changed from those he has expressed with such consistency and forcefulness over the past decade and a half? Second, what does he think of the power of precedent for the Supreme Court? What consequences does his philosophy hold for the future of constitutional liberty?

The record on the first question is clear. Judge Bork's views on the role of the Supreme Court in defining constitutional liberty have not changed in any substantial degree.

His testimony on this subject did clear away some underbrush that might obscure the main issue. He emphasized the distinction between his personal views and his conception of the commands of the Constitution. For example, the Connecticut law which the Supreme Court struck down in the 1965 case of Griswold versus Connecticut made it a crime for a married couple to use contraceptives. Judge Bork reiterated his conviction that this was a "nutty" law; but as he told me in response to a question at the hearing, "Merely the fact that it is a dumb law gives the Court no additional power because there is no statement in the Constitution that no State shall make a dumb law."

Judge Bork also emphasized that he was criticizing Griswold and other precedents for the reasoning employed by the courts, and not necessarily for the results reached. Perhaps the same result could be reached by another route. As he told the committee with respect to Griswold, "I have never tried to find a rationale and I have not been offered one. Maybe somebody would offer me one."

Neither of these points reflect any significant change in Judge Bork's judicial philosophy. I never thought that Judge Bork's personal views on the statute struck down in Griswold, or indeed any similar policy matter, have any relevance to the merits of his nomination. His personal views on contraception are immaterial.

And the distinction between rationale and result is not particularly meaningful. The result of Griswold is history, and the flow of history has left that particular "nutty" statute stranded on a shoal of the past. What is most important for the future is the rationale of the decision, and how it will be applied, expanded, or rejected when the next case, and the next and the next, inevitably come along.

Judge Bork still challenges the legitimacy of Griswold and all the other cases defining a constitutional right of privacy. He testified, "If I decide that I am going to protect liberty * * * I have to define it without guidance from the Constitution—what liberties people ought to have and what liberties they ought not to have * * * I became convinced that it as an utterly subjective enterprise * * * I do not

want judges, including me, going around, saying, 'You have this liberty, you do not have that liberty * * *.'"

Judge Bork continues to maintain, with fervor and force, that the Supreme Court cannot give real content to the general concept of constitutional liberty, as contrasted with the specific guarantees of the Bill of Rights and other constitutional provisions. Judge Bork continues to defend an isolated position.

One knowledgeable witness before the Judiciary Committee asserted that "not one of the 105 past and present Justices of the Supreme Court has ever taken a view as consistently radical as Judge Bork's on the concept of liberty—or the lack of it—underlying the Constitution." Whether or not that is so, it is certainly true that in modern times, the Justices have virtually without exception agreed that "liberty" is something more than observance of the specific limitations on Government that are literally spelled out in the Bill of Rights. They arrived at this conclusion by a variety of routes, and applied it differently in different cases. But I do not know of any who would accept the proposition that the liberty of Americans and their families goes only as far as the words of the first eight amendments to the Constitution, and no further. Indeed, I think the American people would find that narrow concept of their liberty profoundly disturbing.

What Judge Bork derides as an "utterly subjective enterprise" is what most of us would call the process of wise judgment. The role of a Justice of the Supreme Court in these cases is to draw lines, to shape contours, and then to tell Government, "This far you may go, but no further, into the private lives of the citizenry." To draw those lines requires a keen intellect, a deep understanding of history, a sense of justice, and that undefinable mixture of prudence and boldness we call good judgment. The issue for the future, and hence for this nomination, is not whether Judge Bork has those qualities, but whether he is philosphically committed to exercising them on behalf of the ideal of liberty so central to our constitutional system.

The question, then, is how a Justice Bork would use this rich history of the ongoing development of our constitutional liberties. Would he approach it as a conservative: conserve what is best in the precedents and build upon it to decide future clashes between the demands of the Government and the rights of the individual? Or would he take the activist approach of seeking to eradicate from our jurisprudence this chain of decisions that he still believes are profoundly misguided?

These are not questions to which Judge Bork's prior record gives us a definitive answer. After all, he has never before had any of the power—and will not unless the Senate confirms him—either to conserve or to reject the constitutional precedents of the Supreme Court. And the testimony of the nominee before the Judiciary Committee does not provide the definitive answer.

In my last opportunity to question Judge Bork at the hearings, I discussed with him this question of the power of precedent. I noted that earlier in the hearing he gave some examples of constitutional doctrines that were firmly embedded in our law. Judge Bork said then that regardless of whether these decisions were right or wrong, they "are now part of our law, and whatever theoretical challenges might be leveled at them, it is simply too late for any judge to try to tear it up, too late for a judge to overrule them."

Judge Bork's list of these firmly settled doctrines—of precedents he would respect even if he disagreed with them—was short but significant. It included the expansive interpretation of the Federal Government's power to regulate interstate commerce. It included the legal tender cases, authorizing the printing of paper money. It included the discrimination. It even included the free speech precedents culminating in Brandenburg versus Ohio, which until the hearing he had never publicly accepted as settled law.

I then asked Judge Bork about the most salient cases involving the constitutional liberty of the American people: "the cases based on a constitutional right to privacy in matters relating to procreation, child rearing and the like." I asked him whether he would include these decisions in his list of precedents that, right or wrong, were so firmly embedded in our law, and in the way we as Americans think about our rights, that "it is too late for the Supreme Court to tear them up."

Judge Bork replied as follows: "Senator, I have, I think, rather consistently testified that I am not going to answer that question because that is a highly controversial matter." He continued that if a right to privacy could not be more firmly "rooted in the Constitution," he would have to consider "whether this is the kind of case that should be overruled. And I have listed the factors that one would consider in deciding whether a case should be overruled. And I cannot go any further than that."

I do not criticize Judge Bork's reticence in answering my question. The purpose of a confirmation hearing for a Supreme Court Justice is not to extract commitments, but to exercise judgment about what the nominee is likely to do or not do if confirmed.

But Judge Bork's response does create a distinction. He already gave something resembling a commitment in response to another question. He said it was "too late to overrule" either the leading free speech cases or the cases addressing sex discrimination under the equal protection clause, even though he had consistently criticized those doctrines for years prior to the hearing. For Judge Bork, the cases defining a constitutional right to privacy are—even today—different.

On the issue of liberty, then, as contrasted with the questions of freedom and equality, Judge Bork did not accept the precedents. Nor did he assure us that he would reach the same result by a different route. Evidently, he continues to believe that by identifying a constitutional right to marital and family privacy the Supreme Court is not only taking the wrong path, but wandering off the path entirely, far from the signposts that can be read in the words of our Constitution.

This is what we know about Judge Bork's past views and his present thinking on the issue of liberty. But once again, our focus must be on the future.

The task of defining our liberties—of deciding where Government must stay its hand, and the individual be left free to make his or her own wise or foolish choices—is one of the most difficult tasks of interpreting the Constitution. History tells us that the decisions that the Supreme Court makes in the name of liberty are not always wise ones. Even today, there is much that any thoughtful American can disagree with in this line of precedent. But if the Supreme Court were to shirk the duty of making these decisions, of drawing these lines to define the spheres of Government power and individual rights, the results would be chilling—chilling for the American people to contemplate.

Government power and individual rights will continue to collide as we approach the new century. Technology will give Government an ever greater capacity to intrude into our homes, our families, even our bedrooms. And if we doubt whether Government will ever be tempted to realize this potential for instruction, we ignore the implications of today's headlines and the lessons of history.

When a majority of the community, acting through its elected representatives, oversteps its legitimate bounds, the results, in retrospect, sometimes seem amusing, trivial, even "nutty." But that does not mean that the majority will never repeat such mistakes. To the contrary, history teaches us that under the pressure of public turmoil or panic, the majority will in the future, as it has in the past, sometimes seek to channel the force of Government into collision with the rights of the individual. It may do so with the best of motives, with the most plausible of reasons, and with overwhelming

popular support. Where then can the individual turn for protection of a fundamental liberty, the right "to be let alone"?

History gives us the answer. The individual will seek to vindicate his liberty in the same forum to which black Americans turned when the majority refused to hear that separate is inherently unequal. It is the same forum to which disenfranchised voters turned when legislative majorities refused to heed the call for "one person, one vote." The future defenders of liberty will turn to the courts, the institution that must stand, in James Madison's phrase, as "an impenetrable bulwark" to protect our liberties against a powerful government with majority support.

If the Government action violates a specific guarantee of the Bill of Rights, the courts have a duty to put an end to it. But if the right involved is not specifically listed in the Constitution, but instead emerges from our shared ideals of liberty, then it is equally important that the courts vindicate it, not, in the words of the ninth amendment, "deny or disparage" it.

This is the ideal that the American people hold of the Supreme Court as the guardian, not only of their specifically enumerated freedoms, but also of the liberties that they have never surrendered to the Government. But as I understand the record before the Senate, this is not the concept of constitutional liberty that Judge Bork holds.

We cannot know the specific challenges to liberty that will confront us and our children in the years ahead. But we can foresee that new and complex developments in our society—genetic engineering and other new technologies, threats of terrorism, epidemics of disease and panic, to name only a few—will spawn difficult and important controversies. Those cases will test, more forcefully than ever before, our commitment to limited government and to the "right to be let alone." That commitment is embodied in the specific words of the Constitution. But it can also be found in the tradition of a Supreme Court that accepts the responsibility to give real meaning to the ideal of liberty.

Judge Bork has often said that American law lacks theory; it only has a tradition. That tradition may be uneven and inconsistent. Its structure may be blurred, not sharply drawn. But if the Supreme Court is faithful to that tradition, it can continue to be a powerful safeguard against the threats to liberty that may confront the Court in the decades ahead. The Justices of the Supreme Court must be true to that tradition. I am not confident that Judge Bork can meet that test.

The extensive hearings on the nomination of Judge Bork have examined in depth many other issues besides the three I have discussed today. The testimony we heard from dozens of accomplished public servants, legal scholars, historians, and other citizens was useful and thought-provoking.

I gave careful consideration to the testimony of former President Ford, former Chief Justice Burger, and former counsel to the President Lloyd Cutler. The essence of their testimony is that Judge Bork's philosophy poses no realistic threat to our constitutional ideals of freedom, equality and liberty. These distinguished Americans, and other supporters of this nomination, argue that the concept of the Constitution that this nominee would bring to the Supreme Court will strengthen its capacity to apply these values to the unknown cases and controversies of the future.

The witnesses on either side of this controversy may speak the language of certainty. But the real issue before us is one of probabilities and of risk. Many thoughtful and distinguished Americans have shared their versions of the future with us. But our duty is not to align with witnesses, however prestigious, who vouch for or against the nominee. Each Senator brings to this nomination what we know of Judge Bork's past record and recent testimony, but the question which we all seek to answer concerns the future. The task is for each Senator to make an independent judgment about how the confirmation of Judge Bork is likely to shape the rights, the hopes and the dreams of today's Americans, and of our children who will live most of their lives in the 21st century.

As we vote on this nomination, we must respond to the recommendation of the President. But we must answer, not to him, but to the people.

We must answer to the author, the artist, the orator, who draw creative sustenance from freedom of speech.

We must answer to the women who ask nothing more than the chance to compete equally in contributing to the wealth and wellbeing of our society.

We must answer to parents of every race and creed who dream of a better life for their children.

We must answer to the families who willingly respond to the just claims of Government, but who understand that they and their children are not creatures of the state, and that some decisions are too intimate and important to leave to Government.

We must answer to every American who recognizes that the majority may rule, but the majority is not always right.

I have made my judgment, and I am prepared to be accountable to my fellow Vermonters for it. I conclude that the confirmation of Judge Bork to the Supreme Court poses too great a risk for the future of the ideals—freedom, equality, and liberty—that "we the people" have embodied in our Constitution. This judgment is a prediction, not a fact, and if Judge Bork is confirmed I may be proven wrong. But after studying the massive record before the Senate, I believe that my judgment is correct.

Accordingly, I will vote against the confirmation of Judge Bork, and will actively oppose it on the floor of the Senate.

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

The PRESIDING OFFICER. Will the Senator withhold that request for a moment?

Mr. LEAHY. Yes.

RESERVATION OF THE MINORITY LEADER'S TIME

Mr. LEAHY. Mr. President, I ask unanimous consent that the time of the distinguished Republican leader, Senator DOLE, be reserved for his use later.

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business for not to extend beyond the hour of 9 a.m. with Senators permitted to speak therein for up to 1 minute each.

Mr. STEVENS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, may I ask my good friend if it is time to bring down the Interior bill?

Mr. BYRD. Mr. President, I ask morning business be closed.

The ACTING PRESIDENT pro tempore. With objection, it is so ordered.

Mr. FORD. Would the majority leader yield? I would like 1 minute. I understand we have 1 minute. That is all I want.

Mr. STEVENS. Yes. I yield the floor.

Mr. BYRD. I withhold my request.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

THE AVIATION TRUST FUND

Mr. FORD. Mr. President, I rise to say to my distinguished colleagues that we heard a great furor as it related to airline safety, near misses, needing a new communications system, large improvements in airport facilities, essential air service, truth in scheduling, and all of that.

For weeks and months the Aviation Subcommittee, of which I am chairman, and the Commerce Committee

worked diligently to put together the reauthorization of the aviation trust fund. We basically have the approval of the administration, and for some unknown reason there are holds on all three of those bills but particularly one that has been out now almost 2 months. And for 8 to 9 weeks now that reauthorization of the aviation trust fund has had a hold on it.

If we are going to do anything about air safety, if we are going to do anything about the improvements and enlargement of airports, if we are going to improve our national air space communications system, then we must get on about the business of funding this particular arena.

Those airport managers are sitting there, with the push being from their community, from economic development prospects, to improve these airports.

So, Mr. President, I take this minute to urge those colleagues of mine who have a hold, particularly on the reauthorization of the aviation trust fund, that they take that hold off, so that we might proceed with the development of airspace improvement and improvement of the airport facilities.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. FORD. I am delighted to yield to the majority leader.

Mr. BYRD. Mr. President, perhaps it will help the Senator in talking with those Senators to whom he refers if I say that such a hold is not going to be recognized by this leader. That business is too important. When the time comes in the schedule here that I can go to that bill, I will go to it by motion.

If Senators want to filibuster, that is up to them. But we are not going to delay action on that. There are two other measures that have to be done first.

If that will help the Senator to get the other Senators to cooperate and work out some resolution of the matter, that will be fine.

I am paying no attention to such holds, except to alert Senators that if they have holds, the matter is going to be coming up, and if they have amendments, they can be prepared. I am not going to spring a surprise.

Mr. FORD. I say to the distinguished Senator from West Virginia that his statement warms my heart. I would be very pleased to work with any of my colleagues. That bill, which is important to air safety, is being held hostage.

I am delighted to hear the majority leader say that several other bills which are more important for the function of the Government, in total, than this bill would be among the priorities.

I thank the majority leader.

Mr. BYRD. I thank the Senator from Alaska.

Mrs. KASSEBAUM. Mr. President, tomorrow will be October 1, the day we begin the new fiscal year. Once again a substantial portion of our legislative work is unfinished. There was a time when that would have been cause for serious concern. Today, it is simply viewed as an unfortunate, but routine, fact of life.

I would like to say a few words about one of the items on our legislative agenda—S. 1184, the Airport and Airway Capacity Expansion Act. S. 1184 was reported by the Commerce Committee on July 1. It has now been available for floor consideration for 2 full months. S. 1184 contains the reauthorizations for FAA air safety improvement programs, virtually all of which expire tomorrow.

The recent erosion of public confidence in the safety of air travel in this country is disturbing. It's disturbing, Mr. President, but—on the other hand—it's understandable. Over the past 6 months, aviation-related problems have received an unprecedented level of media attention. That attention has heightened public awareness about aviation safety.

Mr. President, in truth, our air transportation system is remarkably safe. It's probably a lot more safe than most air travelers have been led to believe. The system, however, is not perfect. And while I doubt we can ever achieve a level of absolute perfection in the system, we can continue to make incremental improvements.

The program reauthorizations contained in S. 1184 provide increased flexibility for FAA safety improvements. The bill provides for the addition of 1,000 new air traffic controllers. It increases the allowable amount of funding available to individual airports for safety improvements. It makes an additional 160 airports eligible for Federal safety and capacity improvement funds.

In addition, S. 1184 contains the reauthorization of funding for modernization of the air traffic control system. The bill grants the FAA the authority to accelerate modernization of the system under the national air space plan.

Unfortunately, it has been impossible to get S. 1184 to the Senate floor. We held extensive hearings on the measure in the Aviation Subcommittee. The bill shaped by the subcommittee was reported out of the full Commerce Committee, without substantial change. As I indicated previously, it has been available for floor consideration since July 1.

The chairman of the Aviation Subcommittee, Mr. FORD has been attempting to secure a time agreement on S. 1184 for 2 months. Such an agreement has proved elusive. The demand by some Members of this body to add extraneous material to the reauthorization has brought matters to a standstill.

As the ranking member of the Aviation Subcommittee, I fully support Chairman FORD in his effort to get this important legislation to the Senate floor. I believe he is absolutely correct in attempting to move the bill quickly, and without excess baggage. We need to get the measure through the Senate, and into conference. The public would welcome a little good news on the subject of aviation, for a change.

Mr. President, the majority leader recognizes the importance of S. 1184. It is a very important piece of legislation. We have had it in our committee for 2 months, and it has been held on the calendar. Senator FORD and I, as ranking member, as well as other members of the Aviation Subcommittee of the Commerce Committee, are very appreciative this legislation will now be brought before the Senate.

Mr. STEVENS. Mr. President, I say to the Senator from Kentucky and the distinguished majority leader that I certainly join them in their concern that the airport improvement program reauthorization must come before the Senate before we complete business for the year; and I would join the distinguished chairman of the Rules Committee at any time in trying to convince our colleagues not to hold up that bill. It is vital that we get action on that bill as quickly as possible.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is concluded.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION, 1988

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 9 o'clock having arrived, the Senate will now resume consideration of H.R. 2712, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2712) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1988, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Alaska [Mr. STEVENS] is recognized for 10 minutes.

Mr. STEVENS. Mr. President, I am indebted to my good friend from West Virginia, the majority leader. Last evening, before I left the floor, I desired to have a colloquy with the managers of the bill concerning the pay of the U.S. Park Police.

I have served on the Post Office-Civil Service Committee, now the Governmental Affairs Committee, into

which the Post Office-Civil Service Committee was folded some years ago, for 19 years. During that period, I have been very concerned about maintaining rates of pay for our civil servants. Current law requires us to provide equal pay for equal work.

One of the other things we have attempted to do is to have equal pay for similar categories of work. One of the categories of work for which we have attempted to provide equal pay is that of uniformed police officers. The uniformed National Park Police have generally been considered to be comparable to the uniformed Secret Service Division of the executive branch. In the Treasury, Postal Service appropriations bill, we voted to give the Secret Service Division a 15-percent pay increase. No similar pay increase for the National Park Police has been included in this legislation, nor has it been recommended.

The Secretary of the Interior, Mr. Hodel, has indicated his desire that this inequity be eliminated. Of course, this pay raise was not included in the Department of the Interior's budget and raises a serious problem as far as the managers of this bill are concerned. My staff and I have discussed this matter with Senators JOHNSTON and MCCLURE, as well as their staffs, to see if there was something that could be done to resolve this situation in this bill. Unfortunately, we have come to the conclusion that it is not possible.

I have taken the floor this morning to make a request of the Appropriations Committee that it join those of us on the Governmental Affairs Committee to ask the General Accounting Office to make a study of the comparability of the duties of the National Park Police with other similar uniformed police personnel in the Federal Government and the Washington metropolitan area. I believe that should be done as quickly as possible.

We will have a supplemental appropriations bill this year, and in all probability we will have a continuing resolution this year. We could address this subject in one of those bills, if we can get the information before us and get the study completed in time.

I am making my statement now, realizing that the Senator from Louisiana and the Senator from Idaho will have to put their response in the RECORD after the vote commences. But I do hope they will join us.

I think the Senator from New York [Mr. D'AMATO] and the Senator from Maryland [Ms. MIKULSKI] will want to join in my request that we expedite a study to be conducted by the General Accounting Office of the inadequacies of the National Park Police's compensation and the comparability of that compensation to other uniformed police personnel. I hope that will be done as quickly as possible.

I address my good friend the majority leader as to what his intentions are at this time. Again, I am grateful to him for delaying the vote so that I could make this statement, in view of the fact that the scenario we envisioned as I left last night did not take place.

I hope the two managers of the bill will make a response to my request in the RECORD. Otherwise, I am perfectly willing now to proceed to vote, if that is the desire of the majority leader.

Mr. BYRD. I thank the very distinguished Senator from Alaska [Mr. STEVENS]. I am sure that the two managers will be happy to respond to his request.

Mr. DOMENICI. Mr. President, I rise in support of the Department of the Interior and related agencies appropriation bill as reported by the Appropriations Committee.

I commend the Appropriations Committee for bringing this bill to the floor in accordance with the budget resolution for both budget authority and outlays.

Mr. President, this bill is below its section 302(b) allocation by less than $50 million in BA and outlays.

Mr. President, I want to make a couple of observations that should not be construed as criticisms of this bill. Instead, I want to point out the likely pitfalls ahead under the Gramm-Rudman-Hollings fix.

While this bill funds a host of extremely important initiatives, such as $807 million for SPRO and $350 million for clean coal, these same programs will push funding above the Gramm-Rudman-Hollings baseline levels.

Let me try to make this clear. The Gramm-Rudman-Hollings fix we adopted last week specified a baseline for fiscal year 1988 that inflates fiscal year 1987 appropriations by 4.2 percent. In fiscal year 1987 we did not appropriate new budget authority for SPRO or clean coal. Therefore, this bill is over the new Gramm-Rudman-Hollings baseline by at least this amount.

In the next couple of months we must produce legislation that leads to a net of $23 billion in savings in order to avoid a sequester under the Gramm-Rudman-Hollings law. This bill would add to this task by providing a net increase in spending.

A "NO" VOTE ON FISCAL GROUNDS

Mr. PROXMIRE. Mr. President, I am going to vote against this bill not because it is inherently bad, but because it is the start of a trend. The bill is about $560 million over what the House provided, about $1,370 million over the President's budget, and a startling $1,560 billion—18 percent—over last year's request.

If you seek testimony that our budget crisis, our concern with the deficit, has paled this bill is it. I can see no evidence that we must spend 18 percent more on these programs than we spent last year. Next summer, when it will be apparent that the deficit is as real a problem as ever, we will be looking around for a rationale to explain why the deficit has not continued to decline or why it has increased. This bill is one of the reasons.

The best way to continue making progress in the fight against the deficit is to hold down spending. At the least, we should be able to hold spending to the increase in the Nation's gross national product. That standard implies an increase of no more than 7 to 8 percent—that is the upper limit. We should be able to do better than that. This bill fails that test.

We passed the Gramm-Rudman fix which mandates a $23 billion cut in the deficit. How can we meet that target, while increasing spending in this bill by 18 percent over last year? To this Senator, these two votes are inconsistent. We are going to have to revisit this question in the near future, when a sequester order looms and we face an across-the-board cut.

Some parts of this bill are commendable. I am particularly pleased that we were able to reach a compromise on the forest roads issue. That accommodation holds out some hope that we can reduce spending and protect the environment.

But that small bow to common sense does not outweigh the larger damage. More spending is going to mean a higher deficit. Next year, we are not going to be so fortunate as to get a $20 billion bonus in revenues from tax reform. And we are going to find it harder to use one-time gimmicks to reduce the deficit.

If this Senator were going to run for reelection, I would be extremely uncomfortable running with an increasing deficit. But that is the situation which many of my colleagues are going to face next year. This bill will be one explanation of a higher deficit.

EXPLORE VISITORS' CENTER

Mr. TRIBLE. Mr. President, I would like to engage in a colloquy with the distinguished majority bill manager, Senator JOHNSTON, and the distinguished manager, Senator MCCLURE.

I would like to request that any savings the National Park Service finds within its budget from completed projects or those not underway in fiscal year 1988, be used to initiate planning for a visitors' center, to be built on the Blue Ridge Parkway near Roanoke in western Virginia. This visitors' center is part of the master plan for an extensive project called "Explore," a history-oriented tourist destination to be situated on the parkway near Roanoke.

This region's scenic and unspoiled natural beauty will be the setting Explore uses to tell the story of Ameri-

ca's Western-moving frontier, an effort that began in these mountain foothills over two centuries ago and extended to the Pacific. Our Nation's continent was explored and tamed by countless pioneers, many of them Virginians who made their home along the famous Blue Ridge. All of us recognize the names of Thomas Jefferson, George Rogers Clark, Lewis and Clark, Sam Houston, Stephen Austin, and Zachary Taylor.

Conceived to diversify and bolster the economy of the region, "Explore" will emphasize the region's two greatest assets: history and environmental beauty. The visitors' center is a vital part of this interpretation.

This facility will be an information center for the 2.7 million annual visitors along the Blue Ridge Parkway, and an additional 5 million out-of-State travelers on I-81 through the Shenandoah Valley. From here, Americans will learn about the Blue Ridge Parkway, the Appalachian Trail, the region's two national forests, the Booker T. Washington National Monument, and Roanoke's many cultural and entertainment opportunities. They also will hear about facilities throughout the region, which includes the State of West Virginia—less than an hour drive to the west—with its equally famous environmental, recreational, and resort attractions.

In keeping with "Explore's" theme of "discovery," the visitors' center will relate to guests the stories of other States that share with us the history of national exploration. We will tell the story of the old Northwest, from Ohio to Minnesota, celebrating this year the bicentennial of Thomas Jefferson's Northwest ordinances. The history of the Plains and Rockies, explored by Lewis and Clark, and the Southwest, tamed by Houston, Austin, and Taylor will also be explained.

Furthermore, the center will serve as a regional tool of tourism and economic development. The basic sectors of the region's economy have dropped in recent years. Simultaneously, the areas population increased revenue sources are vital if this part of Virginia is to maintain and strengthen economic stability. Additional and expanded job opportunities are needed. Thus, tourism is important to an area that richly deserves a greater share of an industry so vital in Virginia and the Nation.

Mr. JOHNSTON. I thank the distinguished Senator from Virginia for his comments. I think that a visitors center constructed on the Blue Ridge Parkway would be very worthwhile, and I support the idea. I will certainly do all that I can to accommodate the request of the distinguished Senator from Virginia.

Mr. McCLURE. I concur with my distinguished colleague from Louisiana. I am pleased to make note that my colleague from Virginia, Senator JOHN WARNER, and I, representing the East and the West, have agreed to serve as honorary cochairman of the Explore History Advisory Committee. This is a very exciting concept for providing a unique recreation and historically educational experience for millions of Americans.

As you might imagine, I am particularly interested in the interpretation of our Westward expansion, particularly the expedition of Lewis and Clark through my State of Idaho to the Pacific coast.

Mr. CHILES. It has recently come to my attention that we have a rare opportunity to acquire a valuable piece of property for the headquarters of the Canaveral National Seashore. I am seeking your assistance in this regard.

When the seashore was originally authorized in 1975, the headquarters was temporarily placed at the southern end of the park, adjacent to the Kennedy Space Center complex. However, the law required that the permanent site be in the northern end of the park. In May of this year, the headquarters was temporarily moved to Titusville due to water contamination problems at the southern site. Subsequently, a prime piece of land has become available to house a permanent facility, and I believe it would be in the best interest of Florida to acquire this property.

This piece of land, known as Seminole Rest, is a 25-acre plot which already houses basic utilities. The site is easily accessed by both U.S. route 1 and the intracoastal waterway, and the owners of the property are willing to sell the land to the Federal Government if the matter is handled in an expedient manner. I have recently received word that the Southeast Regional Office of the National Park Service has favorably recommended Seminole Rest as the site of the future headquarters.

Unfortunately, if the purchase of the land is not acted upon quickly, the owners will be forced to sell the property to a private buyer, and the Government will lose the opportunity to acquire this prime land. It is my hope to secure $300,000 for acquisition of this land during conference.

Does the distinguished chairman agree that this is a matter that can be made clear in conference?

Mr. JOHNSTON. Yes, I would like to assure the distinguished senior Senator from Florida that we will give this every consideration in conference, even if we have to consider reducing the amount provided for other Florida land acquisition projects, if acceptable.

RURAL ABANDONED MINE PROGRAM INCREASES IN INTERIOR APPROPRIATIONS

Mr. SASSER. Mr. President, I am pleased that we are moving to final passage of the Department of Interior appropriations for fiscal year 1988. This bill reflects the greater concern that the Congress is showing for wise use of our national resources. One area of particular interest to me is the funding provided in this bill for the Rural Abandoned Mine Program [RAMP].

The Interior appropriations bill underscores the Senate's commitment to maintaining much needed programs like RAMP. The administration's request of only $500,000 would have effectively killed the program. However, the Appropriations Committee has recommended funding of $15 million to be transferred to the Soil Conservation Service within the Department of Agriculture, which is responsible for operation of the program. This funding level represents an increase of $5.1 million over last year's appropriation.

Mr. President, my colleagues will recall that the Surface Mine Control and Reclamation Act of 1977 created RAMP with a 15-year goal of recovering 20 percent of the abandoned mined lands around the country. It is unfortunate that we are not on schedule to meet this goal and appropriations continue to fall short of the available funding. However, RAMP continues to provide valuable funding to State programs for mine reclamation.

In my home State of Tennessee, the Soil Conservation Service has received $2.25 million over the past 11 years. These funds have provided the base for treatment of 1,734 acres and for erosion control of some 47,000 tons of soil annually. As well, water quality improvement has taken place on 808 miles of streams. This year's appropriation could mean as much as $1 million additional for Tennessee.

Needless to say, these projects have taken previously useless lands and returned them to productive and scenic areas. This reclamation is important not only for aesthetic value, but for the protection of our soil and ground water supplies. Soil erosion and toxic runoff from abandoned mines create some of the most severe water pollution problems we have seen. RAMP funds directly address the most critical erosion problems; thereby working to eliminate ground-water contamination.

Mr. President, as we move into the final 5 years of RAMP, it is my hope that funding levels will continue to increase for the program. The protection of our soil and water is an area we cannot afford to underfund. As well, I believe that the Department of the Interior must move toward greater protection of all of our natural resources. We cannot continue to ignore abandoned mine lands in this country. I am encouraged that this Interior appropriations bill shows progress toward improved management of these lands.

Mr. LEAHY. Mr. President, I am somewhat concerned with the Department of Energy's [DOE] consultations to date with the Environmental Protection Agency [EPA] in project solicitation and selection under phase I of the Clean Coal Technology Program. Certainly, the EPA has a certain expertise in this area, particularly in LIMB technology. Does the Senator from Louisiana concur with this assessment?

Mr. JOHNSTON. Yes, I would agree that the EPA has been in the forefront of LIMB technology development.

Mr. LEAHY. Do you envision that the EPA will have a role in the promotion and evaluation of clean coal technologies under the Clean Coal Technology Program?

Mr. JOHNSTON. Yes, it is my understanding that the EPA will have two representatives on the advisory panel which will help develop evaluation criteria for subsequent project selection under phase II of the Clean Coal Technology Program.

Mr. PROXMIRE. Mr. President, I am concerned that selection criteria for the program give sufficient emphasis to reducing atmospheric emissions of sulfur dioxide and/or nitrogen oxides. Would the Senator from Louisiana agree that the program is intended by the administration to serve as a response to the Lewis-Davis report of the Special Envoys of the United States and Canada?

Mr. JOHNSTON. Yes, that is correct.

Mr. PROXMIRE. Therefore, would you not agree that any clean coal program should have, as a major component, the reduction in emissions of sulfur dioxide and oxides of nitrogen? Do you not further agree that the selection criteria should therefore give great weight to such reductions?

Mr. JOHNSTON. I would agree that the reduction of sulfur dioxide and/or nitrogen oxides must be a feature of any technology chosen.

Mr. PROXMIRE. Mr. President, I am concerned that insufficient attention is being paid to technologies which deal exclusively or predominantly with control of nitrogen oxides. These technologies may be slighted in the selection process in favor of those technologies capable of removing both nitrogen oxides and sulfur dioxide. Nitrogen oxides are of particular concern to Senators from Western States. In addition, many powerplants in the United States have either wet bottom or cyclone boilers which cannot use some of the cheaper nitrogen oxide removal technologies. There are many exciting new nitrogen technologies which should be explored by the Clean Coal Technology Program. I would ask the Senator from Louisiana what his position is of the appropriateness of such technologies for funding under the Clean Coal Program?

Mr. JOHNSTON. I agree that the new nitrogen oxide removal technologies, such as natural gas reburning, are important. I look forward to new breakthroughs in this area, and agree that they provide good opportunities for funding by the Clean Coal Technology Program. Of course, as a response to the Lewis-Davis recommendation, the Clean Coal Technology Program cannot put its emphasis on technologies which solely reduce nitrogen oxides. But, I do agree with the Senator that these technologies are important.

CHEROKEE NATIONAL FOREST MANAGEMENT PLAN NEGOTIATIONS

Mr. SASSER. Mr. President, for the past 18 months, I have tracked the development of a management plan for the Cherokee National Forest in East Tennessee. Many of my colleagues will recall that the managment plan for the Cherokee, like those for many other National Forests, was appealed by various interest groups. I have been involved in the negotiations aimed at resolving this appeal Today, I am pleased to announce that progress is being made toward resolution of the Managment Plan for the Cherokee National Forest

Movement toward resolving the disputed aspects of the plan comes after lengthy talks between the appellants of the plan and the Forest Service. These negotiations have led to an agreement on at least one area dispute—protection of environmentally sensitive areas under the proposed management plan. The revised plan agreed to last week will protect some 19,416 acres from timber harvesting during the initial ten years of the plan, which is currently scheduled for review in 1995.

In addition, the appellants, the Forest Service, and intervenors to the appeal continue to work toward an agreement to reduce the percentage of clearcutting in the Cherokee and to improve wildlife management. Such agreements will provide for the multiple use of the Forest which has been a goal since the initial announcement of the plan.

Mr. President, of the 107 management plans released by the Forest Service in late 1985, 63 have been appealed. Serveral of the appeals have been worked out between the Forest Service and the appellants, and now it appears that such an agreement on the Cherokee will be forthcoming.

Debate on these plans has brought to the public's attention the affects of clearcutting and the economics of the practice of below cost timber sales. These are practices which were addressed by Congress in the National Forest Management Act in 1976 and continue to be the focus of intense scrutiny. The practice of clearcutting leaves an obvious eyesore, but worse, it contributes heavily to soil erosion and pollution of our streams and lakes. Thankfully, this is an issue which is being addressed in the Cherokee. The Forest Service indicates that clearcutting will likely be reduced by some 30 percent in the final management plan.

Below cost sales are also being reviewed by the Forest Service. In these times of budget constraint, below cost sales are not something that we can tolerate. Improved management practices can also help to turn these sales around.

At a time when we are seeing forests around the world eliminated at a drastic rate, I am pleased that we are taking a practical and long term approach to the management of our own forests. The improved protection of our natural resources and recreational lands is a goal that we must pledge ourselves to. Improvements in the management plans will help us maintain the practice of multiple use of our National Forests. They are a valuable resource for recreation and timber management alike. It is my hope that the progress we are seeing on the Cherokee will be reflected in forest management plans across the country.

Mr. SPECTER. Mr. President, I would like to ask the distinguished acting chairman of the subcommittee, and my friend the ranking member, if they would engage in a colloquy with Senator HEINZ and me on the subject of park fees.

Mr. JOHNSTON. Please proceed.

Mr. HEINZ. Mr. President, earlier this year the Interior Department decided to waive the entrance fee at Independence National Historic Park during the bicentennial of the Constitution. The fiscal year 1987 Interior and related agencies appropriation granted the Interior Department authority to collect this fee. We feel that language in that legislation which bars fees at certain urban parks should exempt Independence Park. The Park Service disagrees, and may attempt to impose a fee in January. Given the tremendous historic value of Independence Park, we are very concerned that this fee amounts to little more than a tax on history—a tax which will make it difficult for innercity youth to enjoy nearby parks, and thus limit educational opportunities.

Mr. SPECTER. It is our understanding that the provisions of H.R. 2712 which extend authority to collect fees may presuppose authorizing legislation later in this session. The House already has passed such legislation, and the Senate may consider it in the near future.

Our concern is, should Congress not act soon, the Interior Department easily could change its policy toward Independence National Historic Park, and move to impose a fee. We are seek-

ing the managers' assurance that they intend to continue current fee policies until Congress should direct otherwise.

Mr. JOHNSTON. I understand the Senators' concern on this matter. We are planning to move authorizing legislation very soon. In the meantime, it is our expectation that the Park Service's current policies will remain as they are.

Mr. McCLURE. The Senators are correct and if permanent statutory language is enacted, then the language contained in the appropriation bill will be superseded. One of the concerns of the Senators from Pennsylvania is not to restrict the youth of our Nation from enjoying parks and allowing them to experience educational opportunities. The language in this bill allows free entrance to all parks for those 12 years and under.

Mr. HEINZ. I am very grateful for my colleagues' reassurance and appreciate their help on this matter.

Mr. SPECTER. We look forward to working with Senator JOHNSTON and Senator McCLURE on the issue of park fees, specifically regarding Independence National Historic Park.

Mr. LEAHY. It is my understanding that the legislation under consideration provides a matching grant to the National Trust for Historic Preservation of $5.3 million for purposes of carrying out its congressionally chartered responsibilities. I further understand that the committee approved this amount to support, among other purposes, the expansion of technical grant assistance to local preservation organizations and public agencies through the National Trust's Critical Issues Fund and Preservation Services Fund. I would like to know how the committee intends these funds to be accounted for by the National Park Service which administers Historic Preservation Fund grants to the National Trust?

Mr. JOHNSTON. The Senator is correct. The two grant programs of the National Trust described by the Senator are designed to meet urgent preservation needs at the local level. Through the Preservation Services Fund, the National Trust provides critical seed money in the form of small planning and technical assistance grants. Through the Critical Issues Fund, the National Trust hires experts and makes grant awards to individuals and organizations to develop creative solutions to pressing local preservation problems that can serve as models for other communities.

The Preservation Services Fund is currently operated by the National Trust with nonappropriated moneys. The Critical Issues Fund has now fully committed its $1 million corpus derived from a $500,000 fiscal year 1984 appropriation and an equal amount of private funds.

The committee intends that the National Trust continue to have maximum flexibility in use of these funds in order to respond quickly and effectively to the needs of the preservation community. Therefore, the committee intends that the National Park Service administer the entire amount appropriated for grants to the National Trust as a single aggregated grant award and not on a separate subgrant basis. The committee understands that the National Trust will continue to operate its Preservation Services Fund with nonappropriated funds and further understands that the National Trust will make new Critical Issues Fund awards from nonappropriated funds.

The committee expects the National Trust, in making grants through the Critical Issues Fund and the Preservation Services Fund, to match grant funds, in the aggregate and not necessarily on an individual grant basis, on a 2-to-1 basis.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed with the vote.

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

Under the previous order, all time has expired.

The bill having been read the third time, the question is, Shall it pass? On this question, 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 Connecticut [Mr. DODD], the Senator from Tennessee [Mr. GORE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea".

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

Mr. BYRD. Mr. President, I ask for the regular order.

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

The result was announced—yeas 91, nays 5, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—91

Adams	Cochran	Glenn
Armstrong	Cohen	Graham
Baucus	Conrad	Grassley
Bentsen	Cranston	Harkin
Biden	D'Amato	Hatch
Bingaman	Danforth	Hatfield
Bond	Daschle	Hecht
Boren	DeConcini	Heflin
Boschwitz	Dixon	Heinz
Bradley	Dole	Hollings
Breaux	Durenberger	Humphrey
Bumpers	Evans	Inouye
Burdick	Exon	Johnston
Byrd	Ford	Karnes
Chafee	Fowler	Kassebaum
Chiles	Garn	Kasten
Kennedy	Murkowski	Shelby
Kerry	Nickles	Specter
Lautenberg	Nunn	Stafford
Leahy	Packwood	Stennis
Levin	Pell	Stevens
Lugar	Pressler	Symms
Matsunaga	Pryor	Thurmond
McCain	Quayle	Trible
McClure	Reid	Wallop
McConnell	Riegle	Warner
Melcher	Rockefeller	Weicker
Metzenbaum	Rudman	Wilson
Mikulski	Sanford	Wirth
Mitchell	Sarbanes	
Moynihan	Sasser	

NAYS—5

Domenici	Helms	Roth
Gramm	Proxmire	

NOT VOTING—4

Dodd	Simon
Gore	Simpson

So, the bill (H.R. 2712) was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. McCLURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate insist on its amendment to H.R. 2712, request a conference with the House of the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. BYRD, Mr. JOHNSTON, Mr. LEAHY, Mr. DECONCINI, Mr. BURDICK, Mr. BUMPERS, Mr. HOLLINGS, Mr. REID, Mr. McCLURE, Mr. STEVENS, Mr. GARN, Mr. COCHRAN, Mr. RUDMAN, Mr. WEICKER, and Mr. NICKLES conferees on the part of the Senate.

ADDITIONAL CONFEREES—H.R. 2712

Mr. BYRD. Mr. President, I ask unanimous consent that the names of Mr. STENNIS and Mr. HATFIELD be added as conferees on the Interior appropriations bill.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 2713 AND H.R. 2714

Mr. BYRD. Mr. President, I have the approval of the distinguished Republican leader for this request.

I ask unanimous consent that the Senate proceed to the consideration of H.R. 2713, the District of Columbia appropriations bill; that upon the disposition of that bill, the Senate proceed to the consideration of H.R. 2714, the legislative appropriations bill, with the proviso that at any time the managers or the leaders with respect to the DOD authorization bill wish to return to that measure the Senate will return to it, with the understanding that the legislative and the D.C. appropriations; bills if not completed at that point would then return to the Senate at such time as the Senate dis-

posed of the DOD authorization bill or had reached a gap when nothing is being done.

I have the approval of the distinguished Republican leader who said that if he was not on the floor when I make the request, he approves it.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, and I do not intend to object, I wonder if the distinguished leader might define the procedure by which the managers of the DOD bill can acquaint the managers of the legislative appropriations bill that they want to return to DOD. There should be some reasonable juncture.

Mr. BYRD. I will have to work that out. There will be no problem.

Mr. WARNER. I thank the distinguished majority leader.

Mr. WEICKER. Mr. President, reserving the right to object, and it is not my intention to in any way inhibit the flow of business on the Senate floor, which is being ably handled by the distinguished majority leader. However, I do not want to mislead anyone as to the intensity of feeling on the outstanding business that relates to the Department of Defense authorization bill. My colleagues have just spent several weeks stocking the larder, filling the closet. Everybody's DOD laundry list and shopping list has now been satisfied as far as this body is concerned. We have had the courage to decide what weapons, what personnel, and what systems should defend this Nation.

That is a rather easy task. All we do is spend other people's money. But when it comes to the difficult task, which is also our responsibility, as to whether or not these items should be used, nobody wants to vote.

I just want my colleagues to be aware that, no, I am not going to set this aside unless there is some agreement arrived at as to a time certain for a vote on the Weicker amendment, amended by the Byrd amendment. We have the responsibility, the ability, and the courage to vote on military hardware. We also need to accept the responsibility as to when we use the hardware.

That is the issue of the war powers amendment, the Weicker amendment as amended by the Byrd amendment before this body.

If I have to stand here all week, we are going to vote on that because we sure had dozens of votes, on the hardware issues. Now let us step up to bat and accept our share of the responsibility along with the President on the War Powers Act.

I do not believe Senator WARNER, Senator NUNN, the President, Secretary Weinberger, or anybody else has disguised the fact that we are in hostilities in the Persian Gulf. We are.

That being the case, we either go ahead and agree or we say that we want to have control as to the total hardware and we want to have our share of control as to the duty imposed on us by the Constitution and by law of how the hardware, the men and women and weapons, are employed.

I will certainly not object to the unanimous-consent request, but I want to put everyone on notice that I believe I speak not just for myself but for others who feel as intensly.

This is not going to go away. Believe me, it demeans us as a body, the longer we put decision time off. I would suggest that we get to it and vote on the war powers amendment before us.

I might add when that comes I do not intend in any way to count votes and see who has what. It will be up or down.

Mr. BYRD. Mr. President, will the Chair put the request?

The PRESIDING OFFICER. Is there objection to the majority leader's request? The Chair hears none. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Connecticut for not objecting to this request. It is my desire within the next few minutes to sit down with some other Senators and discuss precisely what we are up against and what our approach should be, if we can determine one at the moment. In the meantime, I felt if the Senate could be making some progress on some appropriations bills which we have to do before we go out it would be time well spent.

Under the request, the distinguished Senator from Connecticut can be assured that anytime he wishes to call for regular order that will bring this bill back. It is certainly not my intention to delay action on it very long, but only for the purpose I have stated.

I thank the Senator.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that while the managers are coming to the floor that Senators may be permitted to speak out of order for not to exceed 5 minutes each for a period of no longer than 10 minutes.

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

Several Senators addressed the Chair.

THE WAR POWERS RESOLUTION

Mr. EXON. Mr. President, I would like to have the attention of Senator WEICKER for a moment, if I might. I have served in this body for a long time with him. I for one have been maybe a silent, but nevertheless very appreciative, Member of this body of the discipline the Senator from Connecticut brings to this body, and I congratulate him for the statement he just made. I think the Senator from Connecticut knows that this Senator agrees with the basic premise that if we have the courage to vote for the weapons and the projection of forces, then we should also have the courage to become involved in the process that is required by the Constitution to make use of them. I guess it all depends on how we are going to get this job done.

The dilemma that faces us at the present time, of course, is that if the Weicker amendment alone or as amended by the Byrd amendment would come to the floor of the Senate, it is my guess—and I have not counted noses but it is my guess that an amendment of that nature would pass. If it is passed on the defense authorization bill, I think, right or wrong—and he certainly has the right, but right or wrong the President would very likely make the decision to veto the bill on the grounds of the amendment being attached. It just so happens that the President does not agree with what I think probably is the majority opinion of the Senate. Therefore, the dilemma that we face is once again how can we move the body forward, take care of the very important matter of authorizing the various defense needs of the United States and the free world, and not get caught up in further delays after the bill has been delayed, as the Senator from Connecticut knows very well, for almost 4 months now, by a filibuster or a threat of a filibuster.

Is there not some way we can have some compromise and accommodation, which we generally come up with sooner or later, to remove this bill, as a suggestion, from the measure before us, have an up or down vote on the defense authorization bill with some agreement that in the immediate future, possibly immediately after the defense authorization bill is disposed of, to allow that bill to an amendment like the Senator from Connecticut offered, possibly amended by the Senator from West Virginia? Could we not come to some kind of agreement that that bill would be allowed to come up and have an up or down vote on it at that time, that we would have thorough debate but no filibuster? Would something of that nature satisfy what I think is a legitimate concern from the Senator from Connecticut?

Mr. WEICKER. In response to my distinguished colleague from Nebraska, I have indicated that if there were a time certain for this matter to be voted on immediately upon passage of the defense authorization bill, I would have no problem. But let us understand that nobody can dispute that

the President is in clear violation of the law right now and has been, that we in the Congress are in violation of our constitutional duty, and the mechanism is in place to take care of the problem as raised, and reasonably so, by the distinguished Senator. It is called a veto override. Granted, that takes a few more votes. But if we cannot face up to the simple facts that present themselves to this body today, then, believe me, the country does not deserve our constitutional form of Government. It deserves a President, period. It does not need a Congress.

Mr. EXON. Mr. President, I thank the Senator from Connecticut for his response. I do not disagree with anything that he has said. I appeal to all Senators to recognize the vice grips that we are getting ourselves into right now. It seems to me that there must be some way, working together, that we can solve the problem, let the Senate work its will, and still not hold up any further the defense authorization bill that I think most of us feel is vitally necessary. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

(The remarks of Mr. METZENBAUM relating to the introduction of legislation are printed later in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

FRAUD OF THE DAY

Mr. HEINZ. Mr. President, beginning today and continuing for the next few weeks, I plan to take some time periodically to discuss customs fraud. I hope my comments will make people aware of this large and growing problem. Recently, as imports to the United States have increased, incidents of fraud associated with these imports has also increased. Simply put, the Customs Service, as well intentioned as it may be, does not have the resources, either financial or legal, to effectively prevent customs fraud.

The Customs Service estimates that 10 percent of total U.S. imports are involved in fraudulent acts. Customs data for fiscal year 1984-85 suggest that only 27 percent of the textile and apparel imports involved in customs fraud are detected by the Service. Of course, textiles and apparel are not representative of all imports, but they are not the only import-impacted sector to experience serious fraud problems.

Overall, the National Treasury Employees Union estimated customs fraud at $19 billion in lost sales to U.S. industry, $8 to $12 billion in lost GNP, 500,000 lost jobs, $1.5 to $2.2 billion in lost Federal taxes, and $3 billion in lost customs revenue. We are really losing out.

Major sectors suffering from such fraud include textiles and apparel, motor vehicles and equipment, electrical and electronic equipment, and steel.

I recently proposed an amendment, adopted by the Senate, which would help to address this growing and disturbing problem. It would allow a private party who is injured by customs fraud or gross negligence to sue for damages in the Court of International Trade. I am under no illusions that this measure will solve the entire problem. That would be simplistic and naive.

The amendment would, however, and will have a significant impact. It would provide, in addition to the resources now employed by the Customs Service, a remedy via a private right of action analogous to what is now available under the antitrust and securities laws.

Today, I want to introduce the first fraud of the day. These periodic examples of customs fraud are for the most part cases which have been investigated by the Customs Service. And there is certainly no shortage of them. But at the same time, we should remember that they are only a fraction of what the Customs Service has uncovered and an even tinier part of what is no doubt actually occurring.

I am going to begin my frauds of the day with one of the most substantial cases to date. On July 21, 1982, the Mitsui Corp., pleaded guilty to 21 counts of fraud. It received $210,000 in criminal fines and $11 million in civil ones. Although $11 million might seem like an exorbitant amount, many experts contend then and now that the fine could justly have been up to 10 times greater than the $11 million that was involved because of the huge profits involved.

The fraud committed by Mitsui was both simple and widespread. The company valued its steel at more than the prices for which it actually sold the steel in the United States and because of our law at the time Mitsui was able to evade the U.S. trigger price mechanism, which would have initiated an antidumping investigation of foreign steel sold below specified price levels—trigger prices.

If my amendment had been in effect in 1982, U.S. steel companies could have brought suit against Mitsui. This would have helped the domestic companies that had been hurt by Mitsui's dumping, and it would have perhaps served as a deterrent against other fraudulent actions. The Justice Department was faced with fraud of incredible proportions and was unable to address it in its entirety. The Justice Department settled for 21 counts and $210,000, the maximum criminal fine permitted by law. The substantially larger civil penalty was negotiated by the Customs Service. My amendment would not have changed these penalties but would also have given the private sector an opportunity to redress some of the injury suffered.

Over time, I expect my frauds of the day to cover a wide range of imports. I will discuss fraud in textiles, steel, sugar, and any number of other imports. Countries involved in these frauds include ones in Latin America, Asia, and Europe. I will discuss frauds costing as little as thousands of dollars and as much as millions of dollars.

But what each of these frauds have in common is that they are in the minority. They are part of the small percentage of customs abuses which were actually discovered and penalized. I hope that drawing attention to these cases will alert my colleagues and fellow Senators to the extent of customs fraud and the need to take further action against it beyond the opportunities that current law provides.

Mr. President, I yield the floor.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1988

The PRESIDING OFFICER [Mr. PRYOR]. Under the previous order, the Senate will now proceed to the consideration of H.R. 2713, which the clerk will report.

The assistant legislative clerk read as follows:

A bill [H.R. 2713] 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, 1988, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2713

TITLE I

FISCAL YEAR 1988 APPROPRIATIONS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia for the fiscal year ending September 30, 1988, and for other purposes, namely:

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1988, **[$425,000,000]** *$444,500,000,* as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, as amended (D.C. Code, sec. 47-3406): *Provided,* That none of these funds shall be made available to the District of Columbia until the number of full-time uniformed officers in permanent positions in the Metropolitan Police Department is at least 3,880, excluding any such officer appointed after August 19, 1982, under qualification standards other than those in effect on such date.

FEDERAL PAYMENT FOR WATER AND SEWER SERVICES

For payment to the District of Columbia for the fiscal year ending September 30, 1988, in lieu of reimbursement for charges for water and water services and sanitary sewer services furnished to facilities of the United States Government, $48,048,000, as authorized by the Act of May 18, 1954, as amended (D.C. Code, secs. 43-1552 and 43-1612): *Provided*, That $7,916,000 of this amount shall be available upon enactment of this Act: *Provided further, That water and sewer services of $40,132,000 shall be paid to the District in four equal quarterly payments on the first day of the beginning of each quarter.*

FEDERAL CONTRIBUTION TO RETIREMENT FUNDS

For the Federal contribution to the Police Officers and Fire Fighters', Teachers', and Judges' Retirement Funds as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), $52,070,000.

TRANSITIONAL PAYMENT FOR SAINT ELIZABETHS HOSPITAL

For a Federal contribution to the District of Columbia, as authorized by the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), $30,000,000.

CRIMINAL JUSTICE INITIATIVE

(INCLUDING RESCISSION)

[The $50,000,000 previously appropriated under "Criminal Justice Initiative" for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, for the design and construction of a prison within the District of Columbia shall remain in the United States Treasury and shall be transferred to the District of Columbia government only to the extent that outstanding obligations are due and payable to entities other than agencies and organizations of the District of Columbia government, and payments to such agencies and organizations may be made only in reimbursement for amounts actually expended in furtherance of the design and construction of the prison.]

Of funds appropriated under this head in Public Law 99-500 and Public Law 99-591 for the design and construction of a prison in the District of Columbia, $20,000,000 are rescinded.

For the design and construction of a prison within the District of Columbia, to become available October 1, 1988, $20,000,000: Provided, That no funds are available for construction on the South part of Square E-1112 as recorded in Subdivision Book 140, Page 199 in the Office of the Surveyor of the District of Columbia unless previously approved by the Committees on Appropriations of the Senate and House of Representatives; Provided further, That the $50,000,000 herein and heretofore made available for the prison project shall remain in the United States Treasury and shall be transferred to the District of Columbia government only to the extent that outstanding obligations are due and payable to entities other than agencies and organizations of the District of Columbia government, the payments to such agencies and organizations may be made only in reimbursement for amounts actually expended in furtherance of the design and construction of the prison.

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, [$114,328,000] *$114,178,000*: *Provided*, That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, and $2,500 for the City Administrator shall be available from this appropriation for expenditures for official purposes: *Provided further*, That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further*, That notwithstanding any other provision of law, there is hereby appropriated $5,417,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, of which $763,000 shall be derived from the general fund and not to exceed $4,654,000 shall be derived from the earnings of the applicable retirement funds: *Provided further*, That the District of Columbia Retirement Board shall provide to the Congress and the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further*, That the District of Columbia Retirement Board shall provide the Mayor for transmittal to the Council of the District of Columbia an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report[: *Provided further*, That of the $150,000 appropriated for fiscal year 1988 for Admission to Statehood, $75,000 shall be for the Statehood Commission and $75,000 shall be for the Statehood Compact Commission: *Provided further*, That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.]

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $140,467,000: *Provided*, That the District of Columbia Housing Finance Agency established by section 201 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Code, sec. 45-2111), based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated administrative costs plus interest at a rate of four percent per annum for a term of 15 years, with a deferral of payments for the first three years: *Provided further*, That notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Agency and shall be repaid to the District of Columbia only from available operating revenues of the Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses: *Provided further*, That upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia: *Provided further*, That up to $270,000 within the 15 percent set-aside for special programs within the Tenant Assistance Program shall be targeted for the single room occupancy initiative.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, including purchase of not to exceed 135 passenger-carrying vehicles for replacement only (including 130 for police-type use and five for fire-type use) without regard to the general purchase price limitation for the current fiscal year, [$654,392,000] *$657,367,000*: *Provided*, That the Metropolitan Police Department is authorized to replace not to exceed 25 passenger-carrying vehicles, and the Fire Department is authorized to replace not to exceed five passenger-carrying vehicles annually whenever the cost of repair to any damaged vehicle exceeds three-fourths of the cost of the replacement: *Provided further*, That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further*, That funds appropriated for expenses under the District of Columbia Criminal Justice Act, approved September 3, 1974 (88 Stat. 1090; Public Law 93-412; D.C. Code, sec. 11-2601 et seq.), for the fiscal year ending September 30, 1988, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1975: *Provided further*, That funds appropriated for expenses under the District of Columbia Neglect Representation Equity Act of 1984, effective March 13, 1985 (D.C. Law 5-129; D.C. Code, sec. 16-2304), for the fiscal year ending September 30, 1988, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1985: *Provided further*, That $50,000 of any appropriation available to the District of Columbia may be used to match financial contributions from the Department of Defense to the District of Columbia Office of Emergency Preparedness for the purchase of civil defense equipment and supplies approved by the Department of Defense, when authorized by the Mayor: *Provided further*, That not to exceed $1,500 for the Chief Judge of the District of Columbia Court of Appeals, $1,500 for the Chief Judge of the Superior Court of the District of Columbia, and $1,500 for the Executive Officer of the District of Columbia Courts shall be available from this appropriation for official purposes: *Provided further*, That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding Lorton prison in Fairfax County, Virginia, can promptly obtain information from District officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further*, That the District of Columbia shall also take steps to publicize the availability of that service among the residents of the area surrounding the Lorton prison: *Provided further*, That none of the funds appropriated by this Act may be used to implement any plan that includes the closing of Engine Company 3, located at 439 New Jersey Avenue, Northwest: *Provided further*, That none of the funds provided by this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as filed with the District of Columbia Register July 25, 1986: *Provided further*, That the Mayor shall reimburse the District of Columbia National

Guard for expenses incurred in connection with services which are performed in emergencies by the Guard in a militia status and which are requested by the Mayor, in amounts which shall be jointly determined and certified as due and payable for such services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further,* That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and their availability shall be considered as constituting payment in advance for the emergency services involved.

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national defense education programs, [$569,544,000] *$570,594,000,* to be allocated as follows: [$412,517,000] *$413,567,000* for the public schools of the District of Columbia: *Provided, That $600,000 shall be available to the District of Columbia Public Schools Foundation for entry level career employment programs, together with $200,000 which shall become available when the Foundation certifies that an equal amount of private contributions has been received;* $62,318,000 for the District of Columbia Teachers' Retirement Fund; $71,667,000 for the University of the District of Columbia; $17,047,000 for the Public Library; $3,544,000 for the Commission on the Arts and Humanities; $2,100,000 for the District of Columbia School of Law; and $351,000 for the Educational Institution Licensure Commission: *Provided further,* That the public schools of the District of Columbia are authorized to accept not to exceed 31 motor vehicles for exclusive use in the driver education program: *Provided further,* That not to exceed $2,500 for the Superintendent of Schools, $2,500 for the President of the University of the District of Columbia, and $2,000 for the Public Librarian shall be available from this appropriation for expenditures for official purposes: *Provided further,* That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1988, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area.

HUMAN SUPPORT SERVICES

Human support services, [$695,565,000] *$696,787,000: Provided,* That $14,700,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation.

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, [$211,362,000] *$215,615,000,* of which not to exceed $4,141,000 shall be available for the School Transit Subsidy: *Provided,* That this appropriation shall not be available, prior to October 1, 1988, for collecting ashes or miscellaneous refuse from hotels and places of business or from apartment houses with four or more apartments, or from any building or connected group of buildings operating as a rooming or boarding house as defined in the housing regulations of the District of Columbia.

WASHINGTON CONVENTION CENTER FUND

For the Washington Convention Center Fund, $6,758,000: *Provided,* That the Convention Center Board of Directors, established by section 3 of the Washington Convention Center Management Act of 1979, effective November 3, 1979 (D.C. Law 3-36; D.C. Code, sec. 9-602), shall reimburse the Auditor of the District of Columbia for all reasonable costs for performance of the annual convention center audit.

REPAYMENT OF LOANS AND INTEREST

For reimbursement to the United States of funds loaned in compliance with an Act to provide for the establishment of a modern, adequate, and efficient hospital center in the District of Columbia, approved August 7, 1946 (60 Stat. 896; Public Law 79-648); the Departments of Labor, and Health, Education and Welfare Appropriation Act of 1955, approved July 2, 1954 (68 Stat. 443; Public Law 83-472); section 1 of an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, sec. 9-219); section 4 of an Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211; Public Law 86-515); and section 723 of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 821; Public Law 93-198; D.C. Code, sec. 47-321, note); and section 743(f) of the District of Columbia Self-Government and Governmental Reorganization Act, approved October 13, 1977 (91 Stat. 1156; Public Law 95-131; D.C. Code, sec. 9-219, note), including interest as required thereby, $220,905,000.

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of reducing the $224,881,000 general fund accumulated deficit as of September 30, 1986, [$20,000,000] *$11,032,000,* [of which not less than $19,118,000 shall be funded and apportioned by the Mayor from amounts otherwise available to the District of Columbia government (including amounts appropriated by this Act or revenues otherwise available, or both)]: *Provided,* That if the Federal payment to the District of Columbia for fiscal year 1988 is reduced pursuant to an order issued by the President under section 252 of the Balanced Budget and emergency Deficit Control Act of 1985 (Public Law 99-177, approved December 12, 1985), the percentage (if any) by which the [$20,000,000] *$11,032,000* set aside for repayment of the general fund accumulated deficit under this appropriation title is reduced as a consequence shall not exceed the percentage by which the Federal payment is reduced pursuant to such order.

SHORT-TERM BORROWINGS

For the purpose of funding interest related to borrowing funds for short-term cash needs, $3,750,000.

OPTICAL AND DENTAL BENEFITS

For optical and dental costs for nonunion employees, $1,489,000.

ENERGY ADJUSTMENT

The Mayor shall reduce authorized energy appropriations and expenditures within object class 30a (energy) in the amount of $1,200,000, within one or several of the various appropriation headings in this Act.

CAPITAL OUTLAY

For construction projects, $269,862,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, secs. 43-1512 to 43-1519); the District of Columbia Public Works Act of 1954, as approved May 18, 1954 (68 Stat. 101; Public Law 83-364); an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, secs. 9-219 and 47-3402); section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457); including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: *Provided,* That $15,353,000 shall be available for project management and $13,134,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor, and that the funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further,* That $4,000,000 of the $269,862,000, shall be financed from general fund operating revenues for pay-as-you-go capital projects for the Department of Public Works: *Provided further,* That $26,919,000 of the $269,862,000, shall be available to the Board of Education of the District of Columbia for the construction of new roofs for various school buildings, for boiler, window, door, and air conditioning replacements in various school buildings, for room conversions, erosion control, and general improvement projects at various school buildings, for an Administration Building site study and for the Sharpe Health School Modernization Project with $21,109,000 of these funds available for construction, $2,387,000 available for architectural design, $1,423,000 available for project management, and $2,000,000 for equipment: *Provided further,* That $10,000,000 appropriated in the fiscal year ending September 30, 1986, and $10,000,000 appropriated in the fiscal year ending September 30, 1987, shall be available to the Board of Education of the District of Columbia for asbestos abatement and removal, with $17,000,000 available for construction, $1,500,000 available for architectural design, and $1,500,000 for project management: *Provided further,* That notwithstanding the last sentence of section 405(b) of the District of Columbia Public Postsecondary Education Reorganization

Act, approved October 26, 1974 (88 Stat. 1423; Public Law 93-471; D.C. Code, sec. 31-1535(b)), the Board of Education of the District of Columbia may procure contracts for the construction of new roofs for various school buildings, for boiler, window, door, and air conditioning replacements in various school buildings, for room conversions, erosion control and general improvement projects at various school buildings, for asbestos abatement, for an Administration Building site study, and for the Sharpe Health School Modernization Project: *Provided further,* That $12,819,000 of the $269,862,000 shall be available to the University of the District of Columbia for the construction of an underground parking extension at the Van Ness campus, for architectural barrier removal, for heating, ventilation, and air conditioning and partition modification, for a security system evaluation, and for the design and project management of the Mount Vernon Square campus: *Provided further,* That $500,000 of the $269,862,000 shall be available to the District of Columbia School of Law for general repair, rehabilitation, and improvement projects: *Provided further,* That all such funds shall be available only for the specific projects and purposes intended: *Provided further,* That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1989, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1989: *Provided further,* That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

WATER AND SEWER ENTERPRISE FUND

For the Water and Sewer Enterprise Fund, $169,013,000, of which $31,720,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, $7,358,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, sec. 43-1512 et seq.): *Provided,* That the requirements and restrictions which are applicable to general fund capital improvement projects and which are set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund established by the District of Columbia Appropriation Act for fiscal year 1982, approved December 4, 1981, as amended (95 Stat. 1174, 1175; Public Law 97-91), for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Code, secs. 2-2501 et seq. and 22-1516 et seq.), $5,458,000, to be derived from non-Federal District of Columbia revenues: *Provided,* That the District of Columbia shall identify the sources of funding for this appropriation title from its own locally-generated revenues: *Provided further,* That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

CABLE TELEVISION ENTERPRISE FUND

For the Cable Television Enterprise Fund established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 5-36; D.C. Code, sec. 43-1801 et seq.), $250,000.

GENERAL PROVISIONS

SEC. 101. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 102. Except as otherwise provided in this Act, all vouchers covering expenditures of appropriations contained in this Act shall be audited before payment by the designated certifying official and the vouchers as approved shall be paid by checks issued by the designated disbursing official.

SEC. 103. Whenever in this Act an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor, except for those funds and programs for the Metropolitan Police Department under the heading "Public Safety and Justice" which shall be considered as the amounts set apart exclusively for and shall be expended solely by that Department; and the appropriation under the heading "Repayment of General Fund Deficit" which shall be considered as the amount set apart exclusively for and shall be expended solely for that purpose.

SEC. 104. Appropriations in this Act shall be available, when authorized by the Mayor, for allowances for privately owned automobiles and motorcycles used for the performance of official duties at rates established by the Mayor: *Provided,* That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations).

SEC. 105. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided,* That the Council of the District of Columbia and the District of Columbia Courts may expend such funds without authorization by the Mayor.

SEC. 106. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments that have been entered against the District of Columbia government: *Provided,* That nothing contained in this section shall be construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947, approved March 31, 1956 (70 Stat. 78; Public Law 84-460; D.C. Code, sec. 47-1812.11(c)(3)).

SEC. 107. Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of section 544 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code, sec. 3-205.44), and for the non-Federal share of funds necessary to qualify for Federal assistance under the Juvenile Delinquency Prevention and Control Act of 1968, approved July 31, 1968 (82 Stat. 462; Public Law 90-445; 42 U.S.C. 3801 et seq.).

SEC. 108. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 109. Not to exceed 4½ per centum of the total of all funds appropriated by this Act for personal compensation may be used to pay the cost of overtime or temporary positions.

SEC. 110. Appropriations in this Act shall not be available, during the fiscal year ending September 30, 1988, for the compensation of any person appointed to a permanent position in the District of Columbia government during any month in which the number of employees exceeds [37,350] *37,392,* the number of positions authorized by this Act.

SEC. 111. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during nonschool hours.

SEC. 112. The annual budget for the District of Columbia government for the fiscal year ending September 30, 1989, shall be transmitted to the Congress no later than April 15, 1988.

SEC. 113. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency, Federalism and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 114. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making payments authorized by the District of Columbia Revenue Recovery Act of 1977, effective September 23, 1977 (D.C. Law 2-20; D.C. Code, sec. 47-421 et seq.).

SEC. 115. None of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

SEC. 116. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

[SEC. 117. None of the funds provided in this Act shall be used to perform abortions.]

SEC. 117. None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or

incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

SEC. 118. At the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings: *Provided,* That within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

SEC. 119. The Mayor shall not borrow any funds for capital projects unless he has obtained prior approval from the Council of the District of Columbia, by resolution, identifying the projects and amounts to be financed with such borrowings.

SEC. 120. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the District of Columbia government.

SEC. 121. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

SEC. 122. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443) which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec. 47-361 et seq.).

SEC. 123. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

SEC. 124. None of the Federal funds provided in this Act shall be obligated or expended to procure passenger automobiles as defined in the Automobile Fuel Efficiency Act of 1980, approved October 10, 1980 (94 Stat. 1824; Public Law 96-425; 15 U.S.C. 2001(2)), with an Environmental Protection Agency estimated miles per gallon average of less than 22 miles per gallon: *Provided,* That this section shall not apply to security, emergency rescue, or armored vehicles.

SEC. 125. (a) Notwithstanding section 422(7) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(7)), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. 5315.

(b) For purposes of applying any provision of law limiting the availability of funds for payment of salary or pay in any fiscal year, the highest rate of pay established by the Mayor under subsection (a) for any position for any period during the last quarter of calendar year 1987 shall be deemed to be the rate of pay payable for that position for September 30, 1987.

(c) Notwithstanding section 4(a) of the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 793; Public Law 79-592; D.C. Code, sec. 5-803(a)), the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

SEC. 126. Notwithstanding any other provision of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided,* That for pay purposes, employees of the District of Columbia govenment shall not be subject to the provisions of title 5 of the United States Code.

SEC. 127. The Director of the Department of Administrative Services may pay rentals and repair, alter, and improve rented premises, without regard to the provisions of section 322 of the Economy Act of 1932 (Public Law 72-212; 40 U.S.C. 278a), upon a determination by the Director, that by reason of circumstances set forth in such determination, the payment of these rents and the execution of this work, without reference to the limitations of section 322, is advantageous to the District in terms of economy, efficiency and the District's best interest.

SEC. 128. No later than 30 days after the end of the first quarter of fiscal year 1988, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1988 revenue estimate as of the end of the first quarter of fiscal year 1988: *Provided,* That these estimates shall be used in the fiscal year 1989 annual budget request: *Provided further,* That the officially revised estimates at midyear shall be used for the midyear report.

SEC. 129. Section 466(b) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 806; Public Law 93-198; D.C. Code, sec. 47-326), is amended by striking out "sold before October 1, 1987" and inserting in lieu thereof "sold before October 1, 1988".

SEC. 130. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 *and section 104* of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85).

[SEC. 131. It is the sense of the Congress that the ongoing pattern of corruption by individuals in the District of Columbia government is deplorable.]

SEC. 131. No funds provided by this, or any other Act, may be used to condemn, vacate, or raze the building known as the Employment Security Building, located at 500 C Street, Northwest, Washington, District of Columbia, unless adequate monetary consideration has been agreed to by the Federal Government and the District of Columbia Government.

SEC. 132. An Act to authorize funds for ceremonies in the District of Columbia, chapter 231, approved July 11, 1947 (61 Stat. 314, ch. 231, 1; D.C. Code, sec. 1-355), is amended to read as follows: "There is hereby authorized to be appropriated, out of any monies in the Treasury of the District of Columbia not otherwise appropriated, not to exceed $50,000 in any fiscal year for such expenses as the Mayor of the District of Columbia and the Council of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment of officials of foreign, State, local, or Federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia. Records shall be public records and shall be audited as a part of the Comprehensive Annual Financial Report in conformity with generally accepted accounting principles: Provided, That public disclosure of such records shall include an itemization of each disbursement from the fund.".

TITLE II

FISCAL YEAR 1987 SUPPLEMENTAL

DISTRICT OF COLUMBIA FUNDS

GOVERNMENTAL DIRECTION AND SUPPORT

(INCLUDING RESCISSION)

For an additional amount for "Governmental direction and support", $3,115,000: Provided, That of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $1,056,000 are rescinded: Provided further, That notwithstanding any other provision of law, there is appropriated $1,000,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, which shall be derived from the earnings of the applicable retirement funds.

ECONOMIC DEVELOPMENT AND REGULATION

(INCLUDING RESCISSION)

For an additional amount for "Economic development and regulation", $309,000: Provided, That of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $5,281,000 are rescinded.

PUBLIC SAFETY AND JUSTICE

For an additional amount for "Public safety and Justice", $60,355,000, including ten additional passenger-carrying vehicles for the Fire Department.

PUBLIC EDUCATION SYSTEM

(INCLUDING RESCISSION)

For an additional amount for "Public education system", $4,810,000, to be allocated as follows: $2,250,000 additional for the public schools of the District of Columbia; $1,354,000 additional for the University of the District of Columbia; $1,146,000 additional for the District of Columbia School of Law, which amount shall remain available until expended; $60,000 additional for the Educational Institution Licensure Commission: Provided, That of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $300,000 are rescinded: Provided further, That the language under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, is amended by striking the following provisos: "Provided further, That of the amount made available to the University of the District of Columbia, $1,146,000 shall be used solely for the operation of the Antioch School of Law: Provided further, That acquisition or merger of the Antioch School of Law shall have been previously approved by both the Board of Trustees of the University of the District of Columbia and the Council of the District of Columbia, and that the Council shall have issued its approval by resolution: Provided

further, That if the Council of the District of Columbia or the board of trustees of the University of the District of Columbia fails to approve the acquisition or merger of the Antioch School of Law, the $1,146,000 shall be used solely for the repayment of the general fund deficit," and inserting in their place the following provisos: "Provided further, That acquisition or merger of the Antioch School of Law shall have been previously approved by the Council of the District of Columbia: Provided further, That the interim Board of Governors of the District of Columbia School of Law shall report, by October 1, 1987, to the Mayor of the District of Columbia, the Council of the District of Columbia, and the Appropriations Committees of the Senate and House of Representatives on the anticipated operating and capital expenses of the District of Columbia School of Law, as created by the Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1987, approved February 24, 1987 (D.C. Law 6-177; to be codified at D.C. Code, sec. 31-1541), for the next 5 years.".

HUMAN SUPPORT SERVICES

(INCLUDING RESCISSION)

For an additional amount for "Human support services", $5,545,000: Provided, That $3,445,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation: Provided further, That of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $4,067,000 are rescinded.

PUBLIC WORKS

(INCLUDING RESCISSION)

For an additional amount for "Public works", $1,140,000: Provided, That of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $6,400,000 are rescinded.

REPAYMENT OF LOANS AND INTEREST

(RESCISSION)

Of the funds appropriated under this heading for fiscal year 1987 in H.R. 5175 as enacted in section 101(d) of Public Law 99-500 and Public Law 99-591, $3,488,000 are rescinded.

REPAYMENT OF GENERAL FUND DEFICIT

(INCLUDING RESCISSION)

For the purpose of reducing the $224,881,000 general fund accumulated deficit as of September 30, 1986, $15,000,000 of which not less than $11,571,000 shall be funded and apportioned by the Mayor from amounts otherwise available to the District of Columbia government including amounts appropriated by this Act, revenues otherwise available, or both: Provided, That notwithstanding the provisions of section 448(a)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 801; Public Law 93-198; D.C. Code, sec. 47-310(a)(1)), appropriations shall be established in the fiscal year ending September 30, 1987, and made wholly available for expenditure or obligation for the Public Education System heading.

PERSONAL SERVICES

For an additional amount for "Personal services", $1,800,000, to be apportioned by the Mayor to the various appropriations titles for optical and dental costs for nonunion employees.

CAPITAL OUTLAY

For an additional amount for "Capital outlay", $20,585,000: Provided, That $310,000 of this additional amount shall be for project management and $240,000 of this additional amount shall be for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor, and that the funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System.

This Act may be cited as the "District of Columbia Appropriations Act, 1988".

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I am pleased to present the fiscal year 1988 District of Columbia appropriations bill to the Senate. The bill before us contains a total of $574.6 million in Federal funds. This represents an increase of $14 million over the fiscal year 1987 amount. This is an increase of less than 3 percent over fiscal year 1987. This increase is totally attributable to the increase in estimated water and sewer services provided to the Federal Government. The bill is within our allocation under the budget resolution. When a $20 million rescission is taken into consideration, we are $500,000 below the House bill. As required, the committee is recommending a balanced budget.

For the Federal payment to the District, we are recommending $444.5 million, which represents a freeze at last year's level. The President had proposed a reduction in the Federal payment, however, given the increasing cost of providing city services and the already heavy burden on District taxpayers the committee has recommended the same level as last year, a freeze on last year's level of Federal payment.

In addition to the Federal payment the committee has recommended: $48.1 million for payment for water and sewer services; $52.1 million for payment to the various District retirement funds; and $30 million for the authorized transition payment to St. Elizabeths Hospital, which will be transferred to District control on October 1.

In addition, the bill contains $2.6 billion in District of Columbia funds. This represents locally generated revenue combined with the Federal payment. The District estimates an increase in local revenues of 5 percent in fiscal year 1988.

Mr. President, the bill contains language that requires that the District not begin construction of the new prison on the current site without the committee's permission. We have also asked that the General Accounting Office examine three of the sites that were originally rejected to determine which one is more suitable for the type of building the District intends to build. This will be done by February 1, 1988, at which time the District can request access to the land. All of these sites are vacant and government owned. Construction could begin during the next construction season.

We have taken this action as a result of information provided by the community. The neighborhood surrounding the current site is already inundated with large, institutional-type buildings, such as D.C. General, the D.C. Jail, the Armory, and RFK Stadium. It seems unfair to further burden them and their neighborhood streets with more traffic and threats to public safety.

The District has also encountered problems with this site. Construction could not begin as planned because of the discovery of archeological findings. We do not know if there is any significance to these findings or if they will cause further delays. However, it is the committee's opinion that these discoveries make it prudent to look further at sites that were originally rejected.

Mr. President, the committee has included funds for the new D.C. Taxicab Commission. We are also recommending report language that requires that the commission address issues of language, taxi inspection, cleanliness and age of vehicles used as taxis. There have to be some standards. We have also asked them to work with other regional agencies so that soon we might have a single rate, regardless of where the trip begins or where it ends. That is a single rate, not just for the District of Columbia but for all surrounding jurisdictions and including the District of Columbia. This is the Capital of the United States. It is the first impression that many receive when they visit America. I have traveled in much of the industrialized world, and much of the Third World. The taxi situation here is one of the worst of any major city in the world. I include both the free world and the nonfree world. Something really has to be done about this taxicab situation. I believe this bill begins taking steps in that direction.

On February 20, 1987, the committee held a hearing on the region's poor response to the two snow emergencies that struck the area in January. As a result of that hearing the District reviewed, among other things, its inventory of snow removal equipment and submitted a list of needed additional items to adequately cover the city. The committee is recommending $2.7 million to purchase this equipment. Having the equipment and knowing what to do with it are different things, so the committee report encourage efforts on regional coordination and cooperation, as well as with the Office of Personnel Management. I would also encourage the District to contact

other jurisdictions and review with them their snow removal policies to see if any improvements can be made in the District's procedures.

Mr. President, the report also contains a directive to the District concerning their capacity for water rescue. We have all read of the tragic helicopter crash in the Washington channel, which cost three people their lives, and the police unit that had to return to the dock to pick up diving equipment before attempting a rescue. This wasted precious time. The fire department, which also responded within minutes, had no diving equipment. We have directed that equipment be purchased and divers trained so that any unit responding to a water emergency will be equipped to provide immediate assistance.

Mr. Chairman, the bill also includes a provision, suggested by Senator NICKLES, with which I agree that will require that the District's discretionary funds be a part of the city's annual independent audit, and that they are maintained according to generally accepted accounting principles.

This raises an issue that we all have been reading about, allegations of corruption by individuals in the District government. We have been mindful of these charges, but it is not for us to judge. Independent investigations are proceeding. What we have before us today is the budget for the Nation's Capital. The District of Columbia has a responsibility to us to maintain a city that provides the services we require, and we have a responsibility to them to respect the will of the citizens of the District and not to interfere in matters that do not have a Federal interest.

Mr. President, the committee is also recommending an agreement with a provision included by the House, that prohibits any sole source contract from being renewed without competitive bidding. There may be reasons why sole source contracts may be necessary. For instance, initially, there may be only one supplier or it may be a public emergency. However, we would prohibit the renewal, without competition, of these contracts.

GOVERNMENTAL DIRECTION AND SUPPORT

The bill includes a total of $114,178,000 for governmental direction and support. This account includes for the first time in the Office of Intergovernmental Relations the support cost to establish an Office of Education, which will be responsible for coordinating and monitoring the interagency educational services.

The bill also contain funds for the transfer of the presonnel and labor relations program from St. Elizabeths Hospital to the District government effective October 1, 1987. There are funds appropriated for the Department of Administrative Services to provide contract opportunities through increased advertising of District contracts and to acquire office automation equipment.

ECONOMIC DEVELOPMENT AND REGULATION

The committee recommends $140,467,000 for economic development and regulation. This amount is the same as the House allowance and the budget request.

Funds are appropriated for the establishment of an office of banking and finanicial institutions, pursuant to District of Columbia law 6-107. This office will be responsible for regulating and chartering banks and other financial institutions organized to do business in the District. The office is also responsible for planning and initiating community development and investment projects in targeted wards of the city.

Within the department of housing and community development increases are recommended to establish the new housing finance for elderly dependent and disabled program. This program will serve the elderly, mentally and emotionally handicapped, homeless, and those with illnesses or handicapped that require either group living facilities or special facilities not available through normal financed programs.

For the development of employment services the bill includes an increase of 32 positions. A special initiative for 12- and 13-year olds will be new for 1988. This is an enrichment program for 2,500 students to better prepare them for the Youth Employment Act programs, and the general job market. There will also be funds to support 11,660 jobs for the youth under the Summer Youth Employment Program.

PUBLIC SAFETY AND JUSTICE

The bill includes a total of $657,367,000 for public safety and justice.

The committee has recommended a total of $178,813,000 for the Metropolitan Police Department. This is the same as the budget estimate and the House allowance. The department will increase personnel by 204 positions. 129 will be civilians and 75 police cadets. The reassigned uniformed personnel will support a special emphasis unit, which will target special crime problems such as narcotics sales.

Also included in the bill is $73,879,000 for the Fire Department. The committee directs that the Fire Department take immediate action to implement a program to ensure that two qualified divers and equipment are procured, trained, available, and operational not later than January 1, 1988, for each of the four rescue squads and fireboats 1 and 2.

For the court of appeals the committee has recommended a $278,000 increase giving the highest Court its full budget request.

For the superior court the committee has included $49,634,000. Included in this amount is $678,000 to establish a mandatory arbitration program in the D.C. Superior Court. This program will provide that all cases under $20,000 should be submitted to mandatory arbitration with a right of de nova appeal. The committee has restored to the superior court's budget $840,000 for juvenile justice initiatives.

The bill also contains $250,000 as recommended by the council for a $25 per day payment for volunteer mediators participating in the court's multidoor dispute resolution program.

The committee has recommended $181,802,000 and 3,338 positions for the department of corrections. This amount is above the budget estimate and the House allowance. The additional amount will be used to increase the amount available to reimburse the Federal Bureau of Prisons for the cost of housing D.C. Code violators, this will make the total amount available $34,609,000 in fiscal year 1988.

In addition, the committee has recommended language in the bill to delay the availability of the final $20 million Federal commitment to the construction of the new prison in the District until October 1, 1988. The delay is due to unexpected location of archeological discoveries on the proposed site, which has necessitated the selection of an alternative site. The bill contains language prohibiting any construction on the current site, adjacent to the District of Columbia Jail, without the prior approval of the Committee on Appropriations of the Senate and the House of Representatives. The committee also requests the Federal Bureau of Prisons to further explore three alternative sites and make a recommendation to the committee by February 1, 1988, on which site will be most suitable for the type of facility the District intends to construct.

The committee also expects to receive quarterly reports on the status of prison construction progress prepared by the construction managers and contractors.

The board of parole's budget is $3,984,000. This amount is twice the amount of resources available to the board in fiscal year 1987. This increase is due to the transfer of responsibility for parole supervision to the board from the department of corrections.

PUBLIC EDUCATION SYSTEM

The committee recommends $570,594,000 for the public school system.

The total budget recommended for the board of education is $413,567,000. This is an increase of $26,361,000 over fiscal year 1987, and is $1,050,000 above the budget request and the House allowance.

Recommended increases will cover costs for the expansion of full-day kindergarten programs, reduction of

pupil/teacher ratios at the elementary and secondary levels and expand the gifted and talented programs, and specialized staff for the special education students housed in State schools.

Included also is $800,000 to expand the Public Schools Foundation ACCESS Program. ACCESS is a partnership between the D.C. Department of Labor, and the District of Columbia public schools.

Also recommended is $2,100,000 and 65 positions for the new DC School of Law. The school is expected to receive a total of $777,000 to support another 10 positions from Federal and other sources for a total budget of $2,877,000.

HUMAN SUPPORT SERVICES

The bill includes $696,787,000 for the human support services appropriations title. This is an increase of $42,472,000 over fiscal year 1987.

For the Department of Human Services a total of $579,961,000 has been recommended. This amount is an increase of $1,106,000 above the budget estimate and $1,222,000 above the House allowance. A reduction of $202,000 has been restored for hiring new positions and the committee has also agreed to the addition of $86,000 for the office of the chief medical examiners.

Funding is also included for the transfer of authority for care of St. Elizabeths Hospital patients to the District of Columbia on October 1, 1987.

District of Columbia General Hospital is a very important and needed facility within the District. The sum of $47,930,000 is requested for the fiscal year 1988 budget. This amount is $3 million below the 1987 amount. This is due to the improved revenue collection the hospital has been experiencing over the last few years.

PUBLIC WORKS

The committee recommends $215,615,000 and 1,959 positions for the activities to be funded for fiscal year 1988.

The Department of Public Works has an increase of $3,876,000 above the fiscal year 1987 budget. Included in this amount is $1,589,000 for the new taxicab commission. The commission began operation in April 1987 and includes 12 commissioners and 20 staff persons.

The committee has included $2,664,000 to purchase new snow removal equipment. This equipment will not only enhance the District's ability to keep its main streets open during snow falls, but will aid in clearing side streets so that residential streets are passable.

REPAYMENT OF GENERAL FUND DEFICIT

The committee recommends that $11,032,000 be budgeted to reduce the general fund deficit. The recomended amount is $10,150,000 more than the budget request and the amount appropriated by the House.

Mr. President, before yielding I want to express my appreciation for the assistance of the chairman of the Appropriations Committee, Senator STENNIS, and to our distinguished ranking member, the Senator from Oregon [Mr. HATFIELD]. I also want to convey my appreciation to the ranking member of the subcommittee, the Senator from Oklahoma [Mr. NICKLES], for his cooperation, interest and time in helping to shape this bill.

Mr. NICKLES. Mr. President, I thank my colleague and friend, the Senator from Iowa [Mr. HARKIN]. I applaud him for his leadership on this bill.

Mr. President, the District of Columbia appropriations bill for the fiscal year 1988 recommended to this body by the Committee on Appropriations provides for a total of $574 million in Federal funds and $3.89 billion in District of Columbia funds.

In addition, the committee recommends an advanced appropriation of $20 million to become available October 1, 1988. The amendment recommended for fiscal year 1988 is $25 million below the fiscal year 1987 level, and it is $500,000 below the House.

This is primarily due to the deferral of $20 million on the prison funds. It is also more than $47 million above the President's request.

That concerns me, and I hope that we can continue working together with Senator HARKIN and others to see if we cannot make additional fiscal prudent decisions to reduce this amount.

I also thank the committee chairman for his cooperation in addressing a number of concerns that I raised in this bill. Specifically I think we have included extensive report language in the Senate report pertaining to Antioch School of Law and its relationship with the University of the District of Columbia.

We also addressed the matter of the mayor's discretionary fund by requiring regular auditing and disclosure of that fund and any disbursements from it.

Mr. President, I am aware there are several amendments. I have two amendments. I think the Senator from North Carolina has an amendment. There may be additional amendments.

If it is the chairman's pleasure I will be happy to offer one amendment that deals with the Federal payment at this time.

Mr. HARKIN. That will be acceptable to me. The amendment the Senator wants to offer is the committee amendment.

Mr. NICKLES. The committee amendment.

Mr. STENNIS. Mr. President, will the Senator yield to me to make a brief statement on the amendment and it will not take over 5 or 6 minutes?

Mr. NICKLES. That would be fine. I am happy to yield to my friend and chairman of the full committee. He has given us ample leadership and we appreciate his cooperation in the committee and on this bill as well.

Mr. STENNIS. Mr. President, it is a lot easier to work with Senator NICKLES and Senator HARKIN, and we have had the support of all of us, I think, and I want to cover that in a few words here.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, we have before us today before the Senate the District of Columbia appropriation bill for fiscal year 1988, which reflects the recommendations of the Senate Appropriations Committee. This bill, which provides a total of approximately $555 million in new budget authority for fiscal year 1988, reflects the careful thought and hard work of our entire committee. In particular, however, it is evidence of the able leadership and excellent work of Subcommittee Chairman HARKIN and the ranking minority member, Senator NICKLES. I also wish to compliment the highly skilled work of the staff of their subcommittee: Mr. Timothy Leeth, Mr. J. Keith Kennedy, and Ms. Lula Joyce.

Mr. President, this is not easy work. It is difficult to handle. It requires a great deal of time.

I remember among the very first items of advice that I had when I got here as a Senator was from the then sitting President of the United States, Mr. Truman, when he took me down to Mr. Truman's office and he was telling me something about his services as a member of this committee and how he learned about the Government and I think I found out as I went along that they learned a whole lot about him, too, and that in a way was my start, and I was proud to get started in that way.

Before I turn to Senator HARKIN to give a brief description of the bill, I wish to highlight a few important items regarding this matter.

First and foremost, I am pleased to report that this bill is below the 302(b) allocation for budget authority and outlays. This is essential, in my opinion, for all appropriation bills which are to be taken up for consideration on the Senate floor.

Incidentally, the membership need not doubt the worth and the merit of the operation, and a great number of instances of these allocations that we refer to here as 302(b) or some other designation. It is a good vehicle and handled correctly and doing good in solving our problems.

Second, the committee's $555 million in budget authority recommendations

regarding H.R. 2713, are only slightly above the President's requested funding level of approximately $507 million. However, in the committee's serious attempt to impose fiscal restraint during a period of budgetary discipline, the bill was reduced $500,000 from the House-passed version.

Finally, I would ask my colleagues to resist any further amendment to the committee-reported bill calling for money within itself. Any amendment adding additional funds would violate the bill's spending ceiling set by the subcommittee's 302(b) allocation. Let me also mention that any amendment must be germane in keeping with the Senate rules and as with all general appropriation bills, Senate Rule 16 requires that no legislative amendments be added.

In conclusion, I firmly support this bill and ask that it be adopted so that we can proceed to conference with our House counterparts in a timely manner.

Mr. President, my distinguished colleague, the ranking minority member of the Appropriations Committee, Senator HATFIELD, as well as the chairman of the District of Columbia Subcommittee, Senator HARKIN, have already given some remarks, and I am going to closely follow such remaining remarks as they may have.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, I see the distinguished manager of the bill here. I wonder if I might engage him in a very brief colloquy relating to a considerable amount of speculation that has been taking place recently occasioned by the recognition that a new home is needed for the Washington Redskins.

Mr. President, I freely admit that I have an interest in this, and I am very careful not to tread in any area where I have a conflict of interest. I am proud of the fact that I am a member of the board of directors of the Washington Redskins, and from time to time I talk to Mr. Cooke, who is the owner. I am certain that my colleague has seen the publicity to the effect that the Redskins need a new home and that certain individuals, including the mayor of the District of Columbia, have been looking at the options. One option early on in the debate on this issue was possibly that Uncle Sam would be forthcoming from the Federal Treasury and perhaps offer money to some location for the purpose of matching funds or some formula to build a new stadium.

Putting aside the issue of whether a new stadium is needed or not, I think we have an obligation, those of us who deal with issues relating to the Federal budget on a daily basis, and those of us who are very concerned about the deficit and concerned about the shortage of funds and indeed concerned about many legitimate needs in the area of human welfare; I think we have an obligation really to put aside any hopes that the Federal Government could be forthcoming with an appropriation for the purpose of matching funds to build a new stadium.

It is this Senator's view that Federal funding is not available and that in consideration now being given, as it should be, to building a new home for the Washington Redskins or other professional teams that may come and play, like the all star game, and so forth, they should put aside once and forever any thought that a Federal grant or an appropriated grant could be used as a part of that plan.

I ask my distinguished colleague, because he has spent a great deal of time now in his present position as chairman of the subcommittee dealing with the financial affairs of the District of Columbia and also he has spent a great deal of time on the issues relating to the Federal budget and the deficit, does he basically concur in the observations of the Senator from Virginia?

Mr. HARKIN. I thank the Senator for his comments in this regard.

I would just hasten to add, however, I have been chairman of this D.C. Subcommittee for less than a year now, so I would not in any way pass myself off as an expert of District of Columbia fiscal matters or anything else.

Mr. WARNER. Mr. President, he survived his baptism under fire very well.

Mr. HARKIN. I thank the Senator for his kind remarks.

Let me just say that no request has come through the Appropriations Committee for any funds for any kind of stadium in the District of Columbia.

Now, as the Senator from Virginia, I come from a State where we do not have a professional football team, so I personally have adopted the Redskins. I happen to be one of the best Redskins fans around.

I recognize the problems that they may have at RFK Stadium. But I have to agree with the Senator from Virginia: With a budget constraint that we have, with all of the other things that we are dealing with in the District of Columbia, the prison, St. Elizabeth's, a host of other problems that we have, in which I believe we have a direct responsibility because this deals with the interaction of the Federal Government with the District of Columbia, I just cannot see any time in the near future at least where we would see any kind of direct Federal appropriations for any kind of a stadium of that nature.

Let me also add that the District of Columbia is a government unto itself now that they have home rule. Like any other jurisdiction, whether it is Richmond or whether it is Norfolk or Los Angeles or Des Moines, IA, or Tulsa, OK, they can do what any other jurisdiction can do. They can sell bonds. They can raise private money through their ability to raise money if the people of the District of Columbia want to go into debt to do that. So they are free to do that if they want to.

So if this becomes an issue of which jurisdiction is going to provide the best resources and location, things like that, for a new stadium, I would think the District could stand on equal footing with any jurisdiction in bidding for it without any kind of Federal Government direct payment.

Mr. WARNER. Mr. President, I thank our distinguished colleague from Iowa. We are grateful to him for the time that he puts in on this budget. It is very important to the whole Federal structure that the District of Columbia receive funding that is necessary to carry on its functions.

Mr. President, as Senators will recall, just last year the Congress was asked to act, and did act, in response to a request from the mayor, to transfer the ownership of the Robert F. Kennedy Memorial Stadium to the District of Columbia, so that the District of Columbia could utilize the very laws that the Senator mentioned to raise the funds necessary to make such improvements and conversions to enable that stadium to be part of the competitive process to attract a baseball club into Washington. I, for one, have been trying to encourage bringing a baseball club—hopefully renamed the Senators—back to Washington.

So the Senator is quite correct. The District of Columbia now owns the stadium. There is a continuing interest to the Federal Government in the land beneath the stadium. But, that tenuous Federal interest, coupled with the shortage of Federal funds, should once and for all remove any consideration that a Federal grant in the form of matching, or direct, appropriations should be used as a part of solving the problem for a new stadium.

I thank the Senator.

Mr. NICKLES. Mr. President, I wish to compliment my friend and colleague, the Senator from Virginia. I wholeheartedly agree with his assessment and will work to see that we do not have a Federal payment assessment or whatever in the building of a new stadium. If we did, I am sure that there are fans of the Dallas Cowboys or the Oakland Raiders, now the Los Angeles Raiders, who might want to have a perfecting amendment. And I do not want to get involved in that on this bill.

Mr. WARNER. Mr. President, I did not initiate this colloquy against any background of a request from anyone. No one in the Redskin organization has requested that I secure Federal

funds for this purpose. But, quite naturally, the Federal Government has helped with the Kennedy Center, the Smithsonian Institution, the Air and Space Museum, and other entities, and lots of things that people come to see in this wonderful Nation's Capital. And it is an understandable spillover of that sort of thinking into the area of sports. I mean, some people are more interested in sports than they are in museums. They say, "Well, let's take care of our interests in the sports field as well as in the cultural field."

But I think we should clearly indicate that option is not open. I thank the managers of the bill for allowing me to briefly engage both of them in a colloquy and for their viewpoints.

Mr. HARKIN. I thank the Senator from Virginia.

I might add one other thing. When RFK Stadium was built, it was built, as I understand it, with a loan from the U.S. Treasury to—I guess it was not maybe the District, but it was an entity that was set up at that time to construct the stadium. Those loans were repaid. The stadium was then—when home rule was given to the District of Columbia 10, 11 years ago—the stadium then reverted to the District of Columbia.

The issue on which the Senator from Virginia spoke just a minute ago was on the transfer of the land which recently took place in the last year, I believe it was, to the District of Columbia.

Mr. WARNER. Mr. President, it was the transfer of the structure itself, it is my understanding, and the land remained titled in the Federal Government, in the Department of the Interior. I believe that is correct.

Mr. HARKIN. I think it is all transferred.

Mr. WARNER. For the record, we will resolve any difference of opinion. My recollection of the law is the stadium was transferred at the request of the mayor, such that he could use the available laws to encourage financing and improvements.

Mr. HARKIN. We will clear that up. I thank the Senator.

(Mr. EXON assumed the Chair.)

Mr. HARKIN. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, with the exception of the amendment on page 24, beginning on line 13 down through line 24, and that the bill, as thus amended, be regarded as original text for purpose of amendment, and provided no point of order under rule XVI shall have been considered to have been waived if the request is agreed to.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that the committee amendments be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

AMENDMENT NO. 809

(Purpose: To reduce the Federal Payment to the District of Columbia)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 809.

Mr. NICKLES. 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:

At page 2 on line 6 strike "$444,500,000" and insert in lieu thereof "$434,500,000", and

At page 13 on line 24 strike "$11,032,000" and insert in lieu thereof "$1,032,000".

Mr. NICKLES. Mr. President, this amendment reduces the Federal payment from $444½ million to $434½ million. In other words, a reduction of $10 million in the Federal payment. The Federal payment over the last years has increased substantially. In the bill it was, as I mentioned, $444 million, the same thing we had last year. However, in this bill we had a significant increase in water payments, about a $20 million increase in water payments. So the net result is, if you add the water payments and the Federal payment together, there is a $10 million increase instead of a $20 million increase as proposed in the committee report.

Also, I might mention for our colleagues' information, the House-passed bill has a Federal payment of $42 million. So now we will have a Federal payment of $434½ million. So we split the difference between the House Federal payment and the Federal payment we had last year, again keeping in mind that the water payments for this year increased by $20 million.

Also for information and the record of the Senate, I ask unanimous consent to have printed in the RECORD a table that shows the amount of water payments and how that has increased between 1979 and 1988.

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

Actual Federal payments to the District of Columbia for water and sewer payments (as requested by the District government)

	Millions
1979	$12,200
1980	10,500
1981	8,100
1982	13,500
1983	11,800
1984	16,520
1985	24,100
1986	29,197
1987	28,810
1988	48,048

Mr. NICKLES. Mr. President, for the information of my colleagues, the water payment in 1987 was $28.8 million and in 1988, for this next year, it will be $48 million.

So that is the purpose of this amendment. I appreciate the cooperation of my friend and colleague, the Senator from Iowa, who I believe is prepared to accept the amendment.

Mr. HARKIN. Mr. President, we have discussed this amendment among Senator NICKLES, myself, and other members of the subcommittee. The amendment is acceptable on both sides of the subcommittee.

I just want to also add that, as I noted in my opening remarks, the bill was already below the House bill, if you take in the rescission on the $20 million, and the same as last year for the Federal payment.

I also again will point out for the record, to make it clear, that this increase has come about because of the increased cost of sewer and water services to the Federal Government for the District of Columbia services.

Mr. President, we used to have a Federal payment that covered sewer and water services just as a single item. We had one set payment for sewer and water services. OMB came in and said they thought that was too much.

What the OMB mandated, Mr. President, was that the District of Columbia meter all of the sewer and water services to the Federal Government so that we get a correct payment, a correct amount. Guess what happened? They put the meters in, they started metering the sewer and water, and found out they were undercharging the Federal Government for sewer and water services. So the increases in the bill reflect the new charges based upon accurate metering of the sewer and water services provided to the Federal Government.

In a way, OMB sort of hung out there themselves when they ordered the District of Columbia to do just that. But, having said that, Mr. President, as I said the amendment was agreed on. It was a compromise position.

I must also say, if Senator NICKLES is correct in this regard, the amendment will provide for greater fiscal responsibility on the part of the District of Columbia. And so for that reason the amendment is acceptable.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 809) was agreed to.

AMENDMENT NO. 810

(Purpose: Lorton reimbursement)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for Mr. TRIBLE proposes an amendment numbered 810.

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

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

The unaccepted committee amendment should be set aside.

The amendment is as follows:

H.R. 2713 is amended by adding at the appropriate place: *Provided further,* That not to exceed $100,000 of this appropriation shall be used to reimburse Fairfax County and Prince William County, Virginia, for expenses incurred by the counties during fiscal year 1988 in relation to the Lorton prison complex. Such reimbursements shall be paid in all instances in which the District requests the counties to provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison. The District shall make quarterly reports to the House and Senate Subcommittees on District of Columbia Appropriations regarding the amount and purpose of such reimbursements made to the counties, and the amount of the authorization remaining for such reimbursements."

Mr. TRIBLE. Mr. President, I offer an amendment today to help ensure that the citizens of northern Virginia no longer bear the financial burden of playing host to the Lorton prison.

For many years, Washington, DC's prison has been located in Fairfax County, VA. During those years, the Lorton correctional facility has been plagued by escapes, riots, and similar disturbances, and the financial burden of resolving those problems has often fallen on the residents of Fairfax County and Prince William County.

It is they who have paid the cost of mobilizing their county policy force to search for an escaped convict. It is they who have paid county police to guard the prison's perimeter during a riot to help prevent escapes. And, it is they who have financed other emergency efforts by county personnel made necessary by Lorton's presence in Fairfax County.

My proposal will redress this unfair situation by requiring that the District Government reimburse Fairfax and Prince William County for expenses incurred by those counties in providing police, fire, and related services to the prison. Simply put, this bill will help place the financial burden of handling emergencies at Lorton back where it belongs—on the city that runs the correctional facility.

Last year, I offered an amendment identical to this to the D.C. appropriations bill. That amendment was approved by the Congress, and I am pleased that $100,000 of the District's fiscal year 1987 budget was earmarked for reimbursements to Fairfax County and Prince William County.

I believe that we should continue the reimbursement requirement for another year. To that end, this bill will help ensure that the costs of maintaining the Lorton prison and responding to emergencies there will be borne by the District government and not by my constituents in northern Virginia.

Mr. NICKLES. Mr. President, I think this amendment is self-explanatory. Basically it says without exceeding $100,000 Fairfax County and Prince William County would be reimbursed in relationship to any fire or any other disturbance in the Lorton prison. They would be reimbursed for fire, police, rescue, or other related services in regard to that prison. I think it is a good amendment. It has been in the past appropriations bills and I urge its adoption.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. We are happy to accept the amendment on behalf of the Senator from Virginia, Senator TRIBLE. As my colleague has stated, a similar provision has been included in the bill in recent years. It is acceptable to the committee and to the city government.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 810) was agreed to.

AMENDMENT NO. 811

(Purpose: To prohibit the use of federal and District of Columbia funds from being used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator form Oklahoma [Mr. NICKLES] proposes an amendment numbered 811.

The amendment is as follows:

On page 24, strike all after "SEC." beginning at line 15 through line 24 of the bill and insert in lieu thereof the following: 117. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

The PRESIDING OFFICER. Setting aside the unaccepted committee amendment, the amendment has been offered for consideration.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, this amendment is one that I doubt will be accepted. I would hope that it would be. I would hope it would be accepted by this body.

I do except that there will be a rollcall. If my colleague from Iowa would agree to accept the amendment, well, that would be fine and I would not request a rollcall vote.

Mr. President, this amendment is very simple. It is very plain. It is Hyde language dealing with D.C. appropriations. It says: "None of the funds contained in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term." That is Hyde language. It is language that we have in HHS, it is language that we have in the Treasury, and I believe it is language that we need in the D.C. appropriations bill as well.

In the District of Columbia we have one of the highest rates if not the highest rate of abortion anywhere in the country; and, again, these abortions are being subsidized with public funds.

Some will say well, wait a minute, these are not Federal funds, they are District of Columbia funds, and we should not be telling them how to spend their money.

As I am sure everyone is well aware, in the Constitution, article I, section 8, it says—it gives Congress the exclusive power "to exercise exclusive legislation in all cases whatsoever over such District," the District of Columbia.

This is awfully important. We are talking about thousands of lives.

In 1985, actually the number of abortions exceeded the number of live births. I think my colleagues need to reflect on that statement. Again, this area, this District, has had one of the highest abortion rates anywhere in the United States.

We can help protect the lives of unborn children by passing this amendment. We can help ensure that public funds are not used to subsidize the taking of an unborn child's life. Public funds are used for a lot of reasons, but when you start using public funds to terminate a human being's life, we have a fierce debate and a divergence of opinions; because we are talking about lives. We are talking about nationally a real tragedy and one I think that is a double tragedy, having it be so prominent, so evident, so commonplace in our Nation's Capital.

I hope that this amendment will pass. I hope it will be accepted. I would like to see it accepted. I think it is important.

This language, I might tell my colleagues and the majority leader, is not as strong as the language that has already passed the House of Representatives.

They have language even tougher than this that did not even have an exception for the life of the mother.

This is your typical, as we come to know it, Hyde language, that does provide an exception for the life of the mother. It does say that no funds contained in this act shall be used to perform abortions except where the life of the mother would be endangered.

I hope my colleagues will agree to the amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I take a backseat to no one in this body or anywhere else in my abhorrence for the practice of abortion. I must say that as a Catholic I oppose abortion. I feel the number of abortions being performed is a national and international tragedy. But I see abortion as part of a growing insensitivity to human suffering, injustice, and disrespect for all life. But that is not the issue here. That is why I do not adopt the narrow, negative approach advocated by some which could, as a matter of constitutional law, make it a crime—which could be punished by the death penalty—for a woman to have an abortion, even in the case of rape.

If we are truly concerned about respect for life, we should enact a nuclear freeze, cancel the MX missile, and stop sending arms to Central America. A part of the savings from these actions could support a national program of pre-natal and post-natal care, assistance for women, infants and children [WIC], adoptive services, life support centers, and more help to pregnant teenagers.

I introduced a bill to do this clear back in 1977. This positive approach would work, would do more to reduce the number of abortions, and would also address the other issues concerning respect for life.

This positive approach is what I have followed in the House of Representatives, and what I will continue to follow in the future.

The issue here is one that concerns the home rule of the District of Columbia and it concerns what limitations would be placed upon both the Federal funds and the money raised by the District of Columbia to provide medical services for poor women.

Mr. President, the language dealing with this issue of abortion has been included in D.C. bills since 1980. But the language in every instance, since 1980, has been used to limit only the Federal funds that go to the District of Columbia. That is the Federal funds that we provide to the District of Columbia; not to limit the District of Columbia's ability to decide for themselves how they will spend that money.

In no other jurisdiction in the United States, no other city, does the Federal Government purport to tell that city how to spend the revenues that that city raises. But that is what this amendment, offered by my friend and colleague from Oklahoma, would say, that none of the funds in the bill, not just Federal money but that the District of Columbia money that they raise also has to be restricted.

Well, if Senators want to turn the clock back and take over running the city, the District of Columbia, once again with all that that entails, then let them step forward and let us have a vote on it.

But this Senate and the House decided 11 years ago to give home rule to the District of Columbia; to provide the District of Columbia its city council, its own elected people, the ability to govern themselves.

I think that was a major step in the right direction. We have enough to deal with around here, issues of arms control, Supreme Court Justice nominations, agricultural policy, transportation policy. We have got enough to keep us busy here from early January to late December every year. The last thing we need to do is take on the burden of running the city of the District of Columbia again.

Oh, maybe 20, 30, 40 years ago, maybe that could be done. But we have moved beyond it, way beyond it.

So, certainly, I would hope that no one would want to turn the clock back and say once again the Congress is going to run the District of Columbia. We do not have the time and we do not have the wherewithal of doing that. I trust and hope we do not have the interest in doing that.

Obviously, we do have an interest in how the Federal Government spends Federal tax dollars. I will accede to that. That is true. We do have an interest in that. That is why since 1980 we have limited the use of Federal funds to be used in cases of abortion in the District of Columbia, but not the money of the District of Columbia. I want to make that clear. The amendment offered by my friend from Oklahoma covers both Federal funds and money raised by the District of Columbia.

As I said in the beginning, this is an appropriations bill. It is not a bill for this issue, really. I think where this matter should be debated is on other pieces of authorizing legislation.

In 1985, Mr. President, on a motion to table by the Senator from North Carolina, Senator HELMS, the same committee language that we have right now, the very same language that is trying to be amended by my colleague from Oklahoma, which came out of the committee, which we have included every year since 1980—this same language in 1985 on a motion to table by the distinguished Senator from North Carolina, Senator HELMS, the Senate voted 35 to 60 not to table this language that is in the bill.

So we have a record here of voting on this very same language.

In 1985, in the same year on an amendment by the Senator from New Hampshire, Senator HUMPHREY, that would have banned all abortions, which would be similar to the language which is in the House bill, the Senate voted 54 to 41 to table that amendment.

Mr. President, just last year, the Senate voted 48 to 42 in favor of the same language that is in the bill today.

Let me read the language so there is no mistake about what this language provides because it is restrictive. I will read the section that deals with this.

> None of the Federal funds provided in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

So we do have limitations. The limitations deal with endangering the life of the mother, the medical procedures necessary for rape or incest where that rape or incest has been reported promptly to the law enforcement agency, or for medical procedures for the termination of an ectopic pregnancy.

I would hope that those who feel just as strongly as I do about the practice of abortion, that it ought to be restricted to the greatest extent possible, I would hope that those would not want to at least strike out medical procedures necessary for termination of an ectopic pregnancy. Do those who support this amendment offered by my friend from Oklahoma say that a woman who has an ectopic pregnancy could not have an abortion?

I would ask my colleague from Oklahoma if that is the intent? I would ask my colleague from Oklahoma if in this amendment there is not a procedure that says funds may be used for medical procedures for the termination of an ectopic pregnancy. Does the Senator with his amendment say that if a woman has an ectopic pregnancy nothing could be done to abort that fetus?

Mr. NICKLES. If that pregnancy was life-threatening to the mother, that abortion could be performed. That is what we have in the HHS bill. I think that is in several pieces of legislation which have passed the House of Representatives. If there is a pregnancy that endangers the life of the mother, then abortion could be performed, but only that circumstance. I think that is the proper exception to be made.

Mr. HARKIN. I thank the Senator for his response. I guess it is again proof that we are not all doctors around here. We do not understand these situations. I happen to know

something about ectopic pregnancies. I know that initially they do not know, but later on they might know. That means that a woman who might have an ectopic pregnancy in the early stages might have to wait 2 or 3 months. You do not know in the interim whether it is life endangering or not.

That is where you get into these problems where we in this legislative body cannot legislate on things like that. That is why the exceptions that have been carved out in the past were exceptions that came about through deliberation, through consideration of all of the aspects that were involved here.

I believe, Mr. President, the language that is in the bill, the same language that this body has adopted consistently since 1980, has proven to be effective. It is language this body has supported time and time again. Quite frankly, I see no overriding reason to change it, especially as it concerns the use of the District of Columbia's money.

I again just want to make that point. I would hope that the amendment would be defeated.

I see others who may wish to speak on this amendment. I do not know how long it would take. I would hope, Mr. President, that at some point we might agree on a time limit on this amendment so that we do not just go on. I do not want to cut off anybody's chance to talk. I will not move to table it now. I would ask the Senator if he might be agreeable to a time limit.

Mr. NICKLES. To my good friend from Iowa, I say I am happy to agree to a time limit. I would like to respond to several of the statements that the Senator from Iowa made. I see colleagues from North Carolina and New Hampshire who wish to speak. I do not know that we need a time limit. I have a feeling that after they make their statements and I make a brief statement, we could vote.

Mr. HELMS. If the Senator will yield, I do not want to speak very long, but I do not want to be cut off by a time limitation. We are talking about the deliberate termination of innocent human life, the most innocent human life imaginable. I want to answer some of the comments of the Senator. When I can get the floor, I will be ready to proceed.

Mr. HARKIN. Mr. President, I yield the floor.

Mr. NICKLES. Mr. President, I have a couple of comments to respond to my friend and colleague from Iowa concerning home rule. I have heard that question. A lot of people refer to home rule.

Well, it is interesting that we have had during the confirmation hearings of Judge Bork a lot of discussion concerning the Constitution. We have not repealed the Constitution, the Constitution is still the law of the land, and we swear to uphold it. The Constitution in article I, section 8, gives this body, the Congress, the right to "exercise exclusive regulation in all cases whatsoever over such District."

I have heard people say, "Wait a minute. Does that contradict home rule?"

Home rule was not a constitutional amendment. It did not override the Constitution. As a matter of fact, in home rule, very expressly, Congress left them the right and the prerogative to decide such legislation as they desired.

In the home rule statute—and I read Title VI: Reservation of Congressional Authority—section 601 says:

> Notwithstanding any other provision of this act, the Congress of the United States reserves the right at any time to exercise its constitutional authority as legislature for the District by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted by the council by this act, including legislation to amend or repeal laws enforced in the District prior to or after enactment of this act and any act passed by the council.

So even in home rule, they did not overturn the Constitution. The Constitution is very, very clear that we have the right to do so.

You say, "Well, still, I do not really want to get myself involved in legislative affairs for the District of Columbia, even though it is a Federal enclave, even though it is a Federal city." In the bill before us, we have a lot of Federal involvement, a lot of congressional involvement that directly violates the intent of home rule. We have language dealing with purchase of scuba equipment, we have language dealing with the D.C. law school, we have language that delays construction of a D.C. prison, and on and on. It has happened every single year. It will continue to happen. And so the home-rule question is not really valid. That may be an excuse, it may give someone an excuse to say, "I do not want to vote for this amendment."

But really the amendment is the Hyde language and the question is whether or not we are going to have Federal funds, public funds being used to subsidize abortion. Abortion is taking the lives of unborn children. It is a very serious thing. It is not a political issue so much. I guess it turns into one. But it is happening on a daily basis. We have averaged over the last few years in D.C. 20,000 per year. Forty-eight percent of those in 1985 that had an abortion had had one previously. It has become an alternate method of birth control and it is far too commonplace. It should not be taking place in our Nation's Capital. We have something to say about that. We have the opportunity to save human lives by passage of this amendment.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair. I do not see the distinguished Senator from Iowa on the floor, but let me comment on a few of the points that he made in opposition to the amendment pending offered by the distinguished Senator from Oklahoma.

Now, I am not going to rise to debate on whether the Congress is trying to run this city or not. If I read the newspapers correctly, listen to the news on the radio, maybe somebody ought to run the city because Mr. Barry is having his problems in terms of his personal conduct and his official conduct. But I will not get into that.

I simply say that it is not fair to suggest that there is anything unique about this amendment in terms of home rule. I would invite the Senator to look, for example on page 9 where language placing restrictions on all funds provided by this act appears beginning on line 14: "That none of the funds appropriated by this act may be used"—now get this, Mr. President—"to implement any plan that includes the closing of Engine Company 3 located at 439 New Jersey Avenue, Northwest."

Then you look at line 17:

> That none of the funds provided by this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as filed with the District of Columbia Register July 25, 1986: *Provided further*, That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services which are performed in emergencies by the Guard in a militia status and which are requested by the Mayor, in amounts which shall be jointly determined and certified as due and payable for such services by the Mayor and the Commanding General of the District of Columbia National Guard.

Then you turn on over to page 23; line 13:

> SEC. 113. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency, Federalism and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

Then you go to page 24, line 5. "None of the funds." There you go again. On page 25, section 121. "None of the funds"—the very same thing. So let us wash out this argument, Mr. President, that there is anything unusual about the amendment of the Senator from Oklahoma, whom I respect and to whom I am grateful for offering this amendment.

Now, then, what are we talking about? As I said a moment ago, here we are working in a city, the Capital city of the United States of America, which has, unless the statistics have materially changed, more abortions each year than it does live births.

Now, I reiterate, we are talking about the deliberate termination of the most innocent, most helpless, of human life. And that is what Senator NICKLES is talking about, and he is talking about using taxpayers' funds to do it.

Now, if Congress ever had a duty to move in and express itself, it is on this subject of abortion. I recognize that this amendment has been tabled in the past. It was tabled when Senator HUMPHREY offered it, and it may be tabled again today. But that does not make it right. Something like 2,000 years ago, a majority crucified our Lord. So do not complain about those of us who feel strongly about the deliberate termination of human life. As long as I am in this Senate, we are going to vote on this; we are going to vote on it again and again and again, because there is something fundamental about this issue.

I say to you, Mr. President, that a nation that condones the deliberate destruction of millions upon millions of innocent human lives each year perhaps deserves to have travail as we do now.

Now, Mr. President, since 1979, Congress has been playing a shell game with the abortion restrictions placed on moneys appropriated by Congress for the District of Columbia. Let us make one thing clear. We are not talking about just Federal money when we say "moneys appropriated by Congress," because the tax moneys collected by the District of Columbia are included in that. That point is sort of covered up, veiled, and obscured. So we are talking about all moneys. The game goes something like this. Congress puts abortion restrictions on so-called Federal funds—I emphasize the word "Federal"—restrictions on Federal funds in the D.C. appropriations bill but leaves the so-called District moneys totally unimpeded, untouched.

The District then, of course, funds abortions out of the so-called District moneys.

Now, the law in this little scheme is that all moneys available to the District are in fact and in law appropriated by Congress, as I have just said. And I hope there will be no more obscuring this issue. You cannot hide behind that, because not only, as Senator NICKLES said, do we have the right to do it, those of us who feel strongly about the slaughter of the unborn have a duty to do it, or at least try.

Now, while there may be funds denominated "Federal" and denominated "District," and while there may be certain bookkeeping and other advantages in this distinction, it is, Mr. President, the Congress of the United States that appropriates all moneys for the District of Columbia.

So we cannot hide behind this little rhetoric that we hear every time this amendment comes up. The shenanigans of the Congress, Mr. President, have helped produce an unconscionable result. The District of Columbia is now the abortion capital of the United States. According to the most recent Census Bureau report available to me the District of Columbia has the highest abortion rate in the country—1,517 abortions for every 1,000 live births.

In addition, according to the National Right to Life Committee, the District has the most permissive policy on the tax funding of abortions in the entire country, not only paying for abortions on demand for Medicaid-eligible women but also paying for abortions for women who do not qualify for Medicaid but have no private insurance.

As much as many in Congress would like to minimize this abortion issue—for many Senators like to play both sides, and they will vote one way here and talk another way when they get back home—and as much as people would like to ignore it, I think there are a few of us who intend not to let this happen. And that is why this issue is coming before this Senate again and again as long as I am here, and I am sure Senator NICKLES, Senator HUMPHREY, and others feel the same way.

Unborn babies in Washington, DC, and elsewhere across this land are making a silent but unmistakable claim on the consciences of a good many of us. They, like all other human beings, deserve the right to be born. They have the right to survive, the right to love and to be loved, and to fulfill the life the Lord himself gave them.

My favorite in American history is a fellow named Tom Jefferson who said, "We hold these truths to be self evident, that all men are created equal," and they are endowed by their Creator with certain unalienable rights. And among these are what? First, he says, is "life," and then he says "liberty and the pursuit of happiness."

Mr. Jefferson did not say we had a right to be happy. We have a right to pursue happiness.

So, Mr. President, the abortion issue highlights the fundamental right to life that our Founding Fathers sought to preserve. This abortion issue forces this Congress to make a fundamental decision, to vote up or down, yea or nay, yes or no, to these millions of people, not only here in the District of Columbia but across this country, who deserve a right to be born.

Will we have laws to protect the lives of all human beings in our border including the innocent and helpless lives still within their mothers' wombs? Or will we discriminately choose who can live and who can die—or to put it another way, who can live and who must die? That is the deadly question. If we are unwilling to protect lives of the weak and the defended yet to be born, what is to prevent us from denying the same right to the sick, the elderly, the physically impaired, or the mentally handicapped who may be just as weak and just as dependent as the unborn child?

Today, thanks to Senator NICKLES, we are going to vote once again on an important part of the fundamental question, the question of whether the taxpayers of the United States through an appropriation by their Congress will fund the deliberate termination of innocent human lives in the Nation's Capital.

I say, "Praise the Lord" for the House of Representatives which has just taken the right approach on this matter. The House voted to end the charade by placing a flatout ban on any abortion funding with moneys appropriated by Congress rather than placing the restriction merely on Federal—I stress the word "Federal"—moneys.

The approach taken by the House of Representatives is honest. It is forthright. And it is an approach worthy of the Congress of the United States and I hope the House will prevail. And if the Senate defaults in its responsibility, I hope the House will prevail in conference.

Of course, the Senate Appropriations Committee decided otherwise contrary to the House action. Our Appropriations Committee chose to perpetuate this charade, the shell game, the double standard. The committee chose to continue the status quo of prohibiting Federal—there we go again, that little old rhetorical exercise, Federal—moneys from being used for abortion while leaving so-called District moneys unencumbered.

In effect, our Senate Appropriations Committee opted in favor of funding abortion on demand in the District of Columbia.

Mr. President, obviously, I hope that the Senate will vote today to end this charade, and will support the splendid amendment by the distinguished Senator from Oklahoma.

Mr. NICKLES. Will the Senator yield for a question?

Mr. HELMS. Yes.

Mr. NICKLES. I do not want to interrupt the Senator.

Mr. HELMS. I have finished.

Mr. NICKLES. But I wanted to ask a question. The Senator mentioned a fact, It is a statistic, but it is a fact and

it is a sobering fact, and it is one I think we need to reflect on.

Did the Senator say that in 1985, according to the records that we have, there were something like 1,500 abortions for every 1,000 live births in the District of Columbia?

Mr. HELMS. That is correct. I think it is even worse today. But these are the latest figures available to me.

Mr. NICKLES. Are all of those D.C. residents or am I correct in thinking that a significant percentage, maybe as much as about half, are from outside the District of Columbia?

Mr. HELMS. That is my understanding. Of course, the records are available on that. But I think the Senator is absolutely correct and the record will verify that.

Mr. NICKLES. I believe I have heard, and I have seen some statistics, that go back to 1985.

Mr. President, I ask unanimous consent to insert two tables into the RECORD which reflect those statistics.

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

TABLE 2.—ABORTIONS BY RESIDENCE, 1985

Residence	Number	Percent
Total	[1] 17,742	100.0
District of Columbia	8,627	48.6
Maryland	6,177	34.8
Virginia	2,526	14.3
Other	412	2.3

[1] Does not include 1,799 abortions with unstated residence.

TABLE 6.—ABORTIONS BY NUMBER OF PREVIOUS ABORTIONS, 1985

Previous abortions	Number	Percent
Total	[1] 16,677	100.0
None	7,721	46.3
1	4,874	29.2
2	2,392	14.4
3 or more	1,690	10.1

[1] Does not include 2,864 abortions with unstated number of previous abortions.

Mr. NICKLES. I hope we can get some more accurate, more up-to-date information. But I believe according to the records we have, and the latest data we have for about half of those abortions were performed in the D.C. area for non-D.C. residents. I think about a third of them were from the State of Maryland, and the other were from Virginia and maybe surrounding States. But if people would stop to think, or would the Senator not agree that if people would stop to realize we have almost more than abortion on demand, that it is just wide open in our Nation's Capital?

If you have abortions to the ratio of 1,500 to 1,000—and I would think there are probably a lot of abortions that are being performed that are not listed in the statistics—but if you have that kind of ratio that does not speak well for our Nation, and it certainly does not speak well for this part of the country. We have to do something to stop it. I think this amendment would be a step in the right direction.

Mr. HELMS. I certainly agree with the Senator.

Again, I congratulate him on his amendment, and I hope the Senate will support it.

Mr. President, I yield the floor.

Mr. HUMPHREY addressed the Chair.

The DEPUTY PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. HUMPHREY. First, I commend Senator NICKLES for offering this amendment. The Senator from North Carolina has properly referred in this important debate to the most important passage, the most well-known passage, in our Declaration of Independence that reads "We hold these truths to be self-evident" and that all men are endowed by their Creator with inalienable rights, among which is the right to life.

Is that only Fourth of July rhetoric at this point in our Nation's history? Or do we still mean it when we utter that passage, when we speak reverently of that passage? All men are created equal and endowed by their Creator, not by Congress, not by the Senate, not by politicians, not by Government, but endowed, as Jefferson said and which we are fond of repeating, endowed by their Creator with certain inalienable rights among which is the right to life.

There is more than a debate over a technical amendment. It is more than a turf battle. It is a very fundamental question that goes to the very ethical foundations of our country. Are we going to practice what we preach, or are we going to push it aside, lay aside this noble sentiment that the rights come from God and that an inalienable right to life exists for each of us? Are we going to push that aside out of patriotism? I hope not. We have in the past in some respects, and in some respects we have not.

It is, after all, to continue Jefferson's statement, the purpose of government to secure these God-given rights; that to secure these rights, governments are instituted among men. That is what Jefferson said, after he said that there are certain inalienable rights with which we are endowed by our Creator.

He went on in the same paragraph, in the same breath, to say that, to secure these rights, governments are instituted among men.

So, let us today, by our vote, secure this right for those who would otherwise perish right here in the Nation's Capital. That is what the House said when it amended on the floor H.R. 2713 to include section 117, which is very brief and simple and says: "None of the funds provided in this act shall be used to perform abortions."

Mr. President, repeatedly over the years, Members of both Houses have amended various bills to include what has come to be known as the Hyde amendment, Hyde amendment language, which prohibits the expenditure of Federal funds to pay for abortions, except in one case, except in a single case, of where continued carriage of the pregnancy to term threatens the life of the mother. Repeatedly over the years, both Houses have adopted Hyde amendment language.

Indeed, the action of Congress in this respect has been upheld by the Supreme Court. The Court has said that Congress is well within its rights to refuse to pay for abortions. It is in no way an infringement upon the right discovered in Roe versus Wade for the Congress to refuse to pay for abortions. The Court said that the refusal to subsidize a right—in this case, the right to abortion—does not infringe upon that right.

In other words, as it applies to the bill before us, if we adopt the House language, it in no way impinges or infringes on the right of women to have abortions. It simply ends the forced subsidizing of those abortions by the taxpayers. We are in a position once more, today, to end this forcible subsidization of this ghastly procedure known as abortion. If women choose to have abortions, they may do so under the law, according to the Supreme Court.

That is not what is at issue here. What is at issue here is whether we are going to force the taxpayers of the United States and the taxpayers of the District of Columbia to pay for this ghastly procedure. We are going to fail today in this, as we have failed in past years, but we will be back next year.

The abomination of slavery was not abolished in 1 year or in one effort or in one vote. The abolitionists were troublesome in their time to those who favored slavery, and indeed troublesome to those who did not want to think about slavery, but ultimately the issue was forced, as all moral issues must be, sooner or later.

The business of killing prenatal infants—innocent, helpless, prenatal infants—is every bit as abominable, perhaps more so, than was the institution of slavery. At least, slavery, as abominable as it was, offered life; and where there is life, there is hope. Abortion offers only death and despair.

The Senator from Oklahoma and the Senator from North Carolina in their colloquy, established that the District of Columbia, the seat of our Federal Government, over which Congress has the right and the responsibility and the powers of appropriation, has become a mecca for those who

wish to kill prenatal infants. It is a magnet, drawing in women from outside the District of Columbia who seek to have abortions under this unconstrained abortion policy.

The officials of the District of Columbia make no effort whatever to examine the circumstances of the person seeking an abortion. D.C. officials do not take into account the stage of development of the prenatal infant.

A woman coming to this city, residing or otherwise, can have an abortion paid for by the taxpayers in even the eighth or ninth month of pregnancy. There are absolutely no limits in this city. Small wonder that it has become a mecca for those seeking abortions.

Mr. NICKLES. Mr. President, will the Senator yield for a question on that point?

Mr. HUMPHREY. I yield.

Mr. NICKLES. I have found the information I was looking for earlier.

According to the statistics, in 1985 almost 35 percent of abortions performed came from Maryland, 14 percent came from Virginia, 2 percent came from other States, and about 10 percent are unspecified.

Along the same line, I wonder if the Senator is aware of the number of people who have had previous abortions. In other words, they have gone to D.C. and had an abortion, and maybe this is the second, third, or fourth abortion. For about 46 percent, it was their first abortion; but we find that 29 percent already had had 1 abortion, 14 percent had had 2 abortions, and 10 percent had had 3 or more abortions.

So it is almost an alternate method of birth control. But we are talking about lives of unborn children being sacrificed, in most cases, for convenience.

Mr. HUMPHREY. Those are certainly distressing statistics. Indeed, we are talking about human life.

That is the fundamental question here. The offspring of human beings are human beings. That is self-evident. One need not be a biologist, a geneticist, a scientist. One needs no training in science whatever to know that the offspring of human beings are human beings. They are not Coke bottles or toothpaste tubes. They are not pigs, cows, or chickens. The offspring of human beings are human beings, and abortion kills human beings.

It is that simple. There is no getting away from it. The apologists like to resort to terms like fetus and product of conception. Some even refer to the prenatal infant as a blob. But it does not change the fact that the offspring of human beings are clearly human, and abortion kills human beings.

Prenatality is just another stage of life, not yet widely recognized but prenatality is just another stage of life as is infancy, childhood, adolescence, young adulthood, middle age and ultimately old age. They are all stages of life. It is true we look different as these stages progress but that does not make us any less human.

Are we any less human when we are 80 and when we are wrinkled and stooped than we were when we were 20, in the prime of our health? Of course not. Is a prenatal infant any less human because it does not look like a 5-year-old child? Of course not.

Humanity is humanity. Human life is human life and either Jefferson's ringing phrases about an inalienable right to life in which all human beings are endowed by their Creator, either that means something or it is just Fourth of July rhetoric that you throw away with all the bunting and the crepe paper on July 5.

If it means something let us put it into practice by supporting this amendment. Prenatal infants are human beings.

There was a time, as Senators know, not too long ago, two generations ago, when children worked just as hard as adults in the mills and on the farms of our country and no one thought much about it at the time but ultimately society came to realize that childhood is a very special time. Childhood is not like adulthood. But it is still nonetheless a phase of the human experience, a stage of development and children are as much entitled to protection of the law as are adults. So I suggest are prenatal infants.

So it is a moral question. I hope Senators will not seek to dodge the moral question by suggesting it is a turf battle. It is not.

Other Senators have addressed the fact that the Senate routinely over the years restricted expenditures of the District of Columbia. That is our responsibility. We are the legislature of the District of Columbia with respect to appropriations, and we cannot shun that responsibility by speaking of home rule as though home rule is operative in this area. It is not.

Either we exercise our responsibilities or we evade them, but we cannot assign them to the District of Columbia, consistent with our responsibilities.

Mr. President, I will close this way: The Senate over and over again has enacted Hyde amendment language cutting off Federal funding of abortions. Why? Clearly because a majority of Senators feel that taxpayers should not be forced to subsidize this procedure. Clearly Senators feel that refusing to subsidize the procedure in no way infringes on the right to have an abortion.

So we should consistent with our past history in this matter adopt the Nickles amendment which is an amendment already adopted in the House of Representatives to their everlasting honor.

Mr. NICKLES. Mr. President, will the Senator yield for just a comment?

Mr. HUMPHREY. I yield.

Mr. NICKLES. I wish to compliment my friend and colleague from New Hampshire.

He spoke in a very moving speech, as well as the Senator from North Carolina. Both shared, I think, very strongly held convictions, convictions that I happen to share and agree with, and I just compliment them for their efforts, their past efforts as well as their comments today.

The ACTING PRESIDENT pro tempore. Does the Senator from New Hampshire yield the floor?

Mr. HUMPHREY. I do.

The ACTING PRESIDENT pro tempore. The Senator from Iowa, Senator HARKIN.

Mr. HELMS. May I ask the Senator if he is preparing to move to table?

Mr. HARKIN. I am.

Mr. HELMS. Before he does that, could I make one point and I make it in the utmost friendliness.

Mr. HARKIN. Surely.

Mr. HELMS. I will not take more than a minute.

Mr. HARKIN. I yield the floor.

Mr. HELMS. Mr. President, I realize there are those who believe that the Congress should not be attempting to run the city of Washington, the District of Columbia. And, of course, this amendment is not an attempt in that direction as Senator NICKLES pointed out.

The Congress has the duty under the statute creating the District of Columbia as an independent entity or semi-independent entity, I would substitute. We have many rights and responsibilities and duties I think.

I have enumerated several examples, Mr. President, in this very bill, which the Senator from Iowa is managing along with the distinguished Senator from Oklahoma, where the Congress itself, both the House and the Senate, have inserted language and I am going to ask unanimous consent that a list of all of the provisions of this bill which we are now considering which are identical in nature and intent to the Nickles amendment be printed in the RECORD.

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

(At page 2, lines 3 through 14:)

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1988, $425,000,000 *$444,500,000,* as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, as amended (D.C. Code, sec. 47-3406): *Provided,* That none of these funds shall be made available to the District of Columbia until the number of full-time uniformed officers in permanent positions in the Metropolitan Police Depart-

ment is at least 3,880, excluding any such officer appointed after August 19, 1982, under qualification standards other than those in effect on such date.

(At page 9, lines 14 through 16:)

That none of the funds appropriated by this Act may be used to implement any plan that includes the closing of Engine Company 3, located at 439 New Jersey Avenue, Northwest:

(At page 9, lines 17 through 20:)

Provided further, That none of the funds provided by this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as filed with the District of Columbia Register July 25, 1986:

(At page 23, lines 1 through 8:)

SEC. 111. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during nonschool hours.

(At page 23, lines 13 through 23:)

SEC. 113. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency, Federalism and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

(At page 24, lines 5 through 8:)

SEC. 115. None of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

(At page 24, lines 9 through 12:)

SEC. 116. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

(At page 25, lines 16 through 18:)

SEC. 121. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

(At page 25, lines 19 through 25 and page 26, lines 1 through 3:)

SEC. 122. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443) which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec. 47-361 et seq.).

(At page 26, lines 5 through 8:)

SEC. 123. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

(At page 29, lines 12 through 18:)

SEC. 131. No funds provided by this, or any other Act, may be used to condemn, vacate, or raze the building known as the Employment Security Building, located at 500 C Street, Northwest, Washington, District of Columbia, unless adequate monetary consideration has been agreed to by the Federal Government and the District of Columbia Government.

(At page 32, lines 2 through 25 and page 33, lines 1 through 4:)

"Provided further, That of the amount made available to the University of the District of Columbia, $1,146,000 shall be used solely for the operation of the Antioch School of Law: Provided further, That acquisition or merger of the Antioch School of Law shall have been previously approved by both the Board of Trustees of the University of the District of Columbia and the Council of the District of Columbia, and that the Council shall have issued its approval by resolution: Provided further, That if the Council of the District of Columbia or the board of trustees of the University of the District of Columbia fails to approve the acquisition or merger of the Antioch School of Law, the $1,146,000 shall be used solely for the repayment of the general fund deficit," and inserting in their place the following provisos: "Provided further, That acquisition or merger of the Antioch School of Law shall have been previously approved by the Council of the District of Columbia: Provided further, That the interim Board of Governors of the District of Columbia School of Law shall report, by October 1, 1987, to the Mayor of the District of Columbia, the Council of the District of Columbia, and the Appropriations Committee of the Senate and House of Representatives on the anticipated operating and capital expenses of the District of Columbia School of Law, as created by the Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1987, approved February 24, 1987 (D.C. Law 6-177; to be codified at D.C. Code, sec 31-1541), for the next 5 years.".

Mr. HELMS. I thank the Chair.

Mr. President, on page 29, there is one provision, section 131, beginning on line 12, which the Senate committee inserted. "No funds provided by this, or any other act may, be used to condemn, vacate, or raze the building known as the Employment Security Building, located at 500 C Street, northwest, Washington, District of Columbia, unless adequate monetary consideration has been agreed to by the Federal Government and the District of Columbia government."

Now, if we can prevent the razing, or r-a-z-i-n-g, for those who may be listening on television, that is the destruction of a building, my lord, Mr. President, are we not obliged to consider what we are doing when we provide the taxpayers' money to destroy the lives of the innocent, helpless unborn?

I thank the Senator from Iowa and the Senator from Oklahoma and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina yields the floor.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I think we have had adequate debate on this topic. I just respond just to the last point the Senator from New York made to section 131. This is put in at the request of the city of the District of Columbia. So the District of Columbia requested this provision be put in. It has to do with the GSA vacating a building in the District of Columbia. It was not the committee's or any member's desire to put that in. The city wanted it.

Mr. HELMS. If my friend will yield, that validates the point I make, that even the District of Columbia recognizes the role of the U.S. Congress.

Mr. HARKIN. If I may regain my time, Mr. President, what I am saying is that this deals with a Federal building within the city of the District of Columbia and does not deal with us mandating that the city has to do one thing or another with its own local moneys, and I believe that is an adequate distinction.

Mr. President, I said the Senate debated and talked about this issue in the past. I think the issue is clearly defined. I am prepard to move to table.

I will yield for a brief question or does the Senator desire to make a statement?

Mr. METZENBAUM. Mr. President, I will make a brief statement.

Mr. HELMS. I will yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. METZENBAUM. I will not take long.

Mr. President, we are in one of those situations that we have been in a number of times in the past. As a matter of fact, this particular amendment or this particular issue was before us in years past and on those occasions, in fact I think the last occasion this particular amendment was up I indicated that I thought that this body had dealt with the issue of abortion so often so regularly that it was time enough that we put it aside and get on to running the Government.

The D.C. appropriations bill is the measure that has to do with that body being permitted to run its government, and unfortunately this amendment would go so far as to limit what that government can do.

I think we ought to have a D.C. appropriations bill, but if the Senate should see fit not to table this amendment, I would be prepared to explain to my colleagues the 470-odd amendments or bills that we have had before us since I have been in the U.S. Senate and obviously that would take some time. I do not look forward to doing that, but I think it would be an educational procedure that might be very worthwhile.

Under the circumstances, I do hope that the motion to table, that the

manager of the bill is about to make, will be looked upon favorably and that the D.C. appropriations bill might proceed to final enactment.

I thank the Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, before the Senator yields, may I respond briefly to the Senator from Ohio who has threatened a filibuster if things do not turn out the way he likes. Certainly that is his right, and I can think of worse things to have the Senator doing than spending time filibustering the bill. That would keep him out of the Judiciary Committee and we would not mind that very much.

But I find that ironic coming from the Senator from Ohio, who has such a sincere interest in protecting the minority from the majority and who, I am confident, had he been a Senator in the 1840's and 1850's, would have argued endlessly against slavery and resented anyone who impugned his motives and resented any Senator who threatened to block the abolition movement the way the Senator from Ohio has threatened to block the efforts of those of us who seek to abolish this ghastly institution of abortion.

Mr. HARKIN. Mr. President, I believe again that all discussion has been held on this amendment.

I move to take the Nickles amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on the motion to table the Nickles amendment.

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 Hawaii [Mr. MATSUNAGA] is necessarily absent.

Mr. BYRD. Mr. President, I ask for regular order.

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—60

Adams	Dixon	Leahy
Baucus	Dodd	Levin
Bentsen	Evans	Metzenbaum
Biden	Exon	Mikulski
Bingaman	Fowler	Mitchell
Bradley	Glenn	Moynihan
Bumpers	Gore	Nunn
Burdick	Graham	Packwood
Byrd	Harkin	Pell
Chafee	Heinz	Pryor
Chiles	Hollings	Riegle
Cochran	Inouye	Rockefeller
Cohen	Kassebaum	Roth
Conrad	Kennedy	Rudman
Cranston	Kerry	Sanford
Daschle	Lautenberg	Sarbanes
Sasser	Specter	Warner
Shelby	Stafford	Weicker
Simon	Stennis	Wilson
Simpson	Stevens	Wirth

NAYS—39

Armstrong	Gramm	McClure
Bond	Grassley	McConnell
Boren	Hatch	Melcher
Boschwitz	Hatfield	Murkowski
Breaux	Hecht	Nickles
D'Amato	Heflin	Pressler
Danforth	Helms	Proxmire
DeConcini	Humphrey	Quayle
Dole	Johnston	Reid
Domenici	Karnes	Symms
Durenberger	Kasten	Thurmond
Ford	Lugar	Trible
Garn	McCain	Wallop

NOT VOTING—1

Matsunaga

So the motion to lay on the table amendment No. 811 was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARKIN. Mr. President, I move adoption of the remaining committee amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the remaining committee amendment.

The committee amendment on page 24, lines 13 through 24, was agreed to.

Mr. SPECTER addressed the Chair.

the PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I would like to put on the record a brief discussion I have had with the distinguished chairman of the District of Columbia subcommittee concerning the construction of the new prison. It is a subject of considerable importance to the District. It is a matter on which I spent considerable time during the 4 years I chaired the District of Columbia subcommittee. It was only after a long, tough battle that we were able to get the Federal appropriation and move ahead with the city government to secure the plans for the building of a new prison.

The crime situation in the District of Columbia, as well as in many other big cities in this country, is enormously serious. There are major problems concerning sufficient space for sentencing violent criminals. There are major problems in getting judges to sentence violent criminals because there is no place to put them. The jails are overcrowded. There is a serious issue concerning constitutional rights of those who are in jail.

The problem of jails across the country is one of enormous importance.

This Senator considers it urgent that the plans move ahead as promptly as possible to have the D.C. jail built. I have just had a discussion with Senator HARKIN, the chairman of the D.C. Subcommittee, who has assured me that the action taken by the subcommittee will not have any effect to delay because there could not be any action taken in any event by February 1 because of collateral considerations.

I am informed that there is neighborhood objection to the construction of the prison. That is to be expected under all circumstances. I have had some experience on the issue of jail construction, having been district attorney in Philadelphia in the 1960's and 1970's. Whenever an issue came up in Pennsylvania on building a jail, the only agreement about the site was to put it in New Jersey.

There is a long history in this country of everybody wanting a jail put in somebody else's backyard. It is regrettable that a jail has to be put anywhere. Some neighborhoods will suffer.

I think it is very important for this body, the Congress, to put the people of the District of Columbia on notice that Congress has acted on this matter after appropriate consideration of local home rule with the mayor and the city council, after protracted hearings and discussions during the consideration of this matter. Simply stated, this body is not going to put up with any delays, Congress is not going to put up with any delays.

After my conversation with the chairman of the D.C. Subcommittee, I am satisfied that the situation as of February 1 does not involve a delay, but I wanted to have this discussion on the record, perhaps more for the community than for the Senate. But this jail construction ought to go ahead in an expeditious fashion in terms of public safety for this community.

Mr. HARKIN. Mr. President, I know that the Senator from Pennsylvania spent a great deal of time on this issue when he chaired the District of Columbia Appropriations Committee. I compliment him for the fine work he did do over that time in getting the groundwork laid for this prison.

There is no doubt in anyone's mind that the prison is needed, that it should be built expeditiously. But in the last several months, since I think probably earlier this year, as the Senator said, collateral things have come into play. Archaeological findings at the site on which they were going to build the prison have delayed it.

Quite frankly, we have heard a lot from the neighbors in that area down there which is right near the D.C. Armory and near RFK Stadium, a lot of people who have owned their homes for a long time down there, who are obviously very concerned about their properties, the fact that there is a heavy concentration down there right now of, like I said, the D.C. Armory, D.C. General, and RFK Stadium.

The subcommittee began reviewing the history of this matter and found

there had been several sites that had been looked at and some of these were dismissed. I asked the subcommittee with the Bureau of Prisons and the District of Columbia to take another look at those sites in August. They did. There are at least two other sites which are totally uninhabited. There are no considerations of neighbors and houses and things like that. Whether or not the prison can be built there or not, I do not know.

But during this period of time when it is being held up because of these archeological findings at the present site, I felt it would be wise to at least take another look at those uninhabited areas to see if there were less insurmountable barriers, let us say, to overcome to building there rather than the site initially picked by the D.C. Armory.

If that is the case, then it might be that the building of the prison could take place more expeditiously at one of these other sites than the location that has been picked.

That may not be the case. I would think that by February 1 we should know one way or the other. But it is not going to hold it up in any regard.

Mr. SPECTER. I am pleased to hear the assurances of the chairman that there will not be a delay; that nothing could be done in any event by February 1. The problem which may arise once there is a derailment, if that should occur, and the site selection is subject to change, the difficulty is that there may be some objection to the other site. Objectors arise out of nowhere when it comes to the issue of a prison site.

It is a matter of urgency that there be additional space for the imprisonment of violent criminals in this community. It is a matter of urgency that the crowded conditions in the existing jails be reduced, eliminated if at all possible, because of the constitutional rights of those who are in custody.

As long as the notice is clear that the Senate and the Congress will not tolerate delays and that there is in fact no delay by this study, or this consideration of an alternative site, then I am satisfied and it ought to be pursued.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I join my distinguished colleague from Pennsylvania. We have worked together for many years in the Senate on this issue, because my State is impacted as a consequence of the Lorton situation and time and time again that has been used as the escape hatch, as the Senator from Pennsylvania knows, to cure the problems of the overcrowding in this jurisdiction.

So this Senator, along with others, including the Senator from Pennsylvania, will be the watchdog again to urge a rapid decision process on this issue. It is unfair to Virginia. The District should care for its own and not ask the citizens of Virginia to accept those risks occasioned by the problems of overcrowding in this jurisdiction.

Mr. SPECTER. Senator WARNER and I look forward to joining the Senator from Iowa for groundbreaking ceremonies on February 2.

Mr. HARKIN. I do not know that it will take place on February 2, but at least it will go forward after that period of time.

Mr. SPECTER. After that date. I thank the Chair.

AMENDMENT NO. 812

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 812.

Mr. HARKIN. Mr. President, I ask unanimous consent that the amendment be considered as if read.

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

The amendment is as follows:

At page 1 beginning on line 1 strike down through line 2, and at page 2 after line 2 insert,

TITLE I

FISCAL YEAR 1988 APPROPRIATIONS

Mr. HARKIN. Mr. President, this is a technical amendment. It corrects a printing error in the bill. This amendment has been cleared on both sides. I urge its adoption.

Mr. NICKLES. Mr. President, there is no objection to that amendment on this side.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment offered by the Senator from Iowa.

The amendment (No. 812) was agreed to.

Mr. HARKIN. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments? If not, third reading.

Mr. HELMS addressed the Chair.

Mr. HARKIN. Regular order.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 813

Mr. HELMS. Mr. President, I send an amendment to the desk and ask it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 813:

At the appropriate place in the bill, add the following: "None of the funds appropriated by this Act for payment to the District of Columbia as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, shall be obligated or expended after December 31, 1987, if on that date the City Council of the District of Columbia has not repealed D.C. Law 6-170, the Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170).".

Mr. HELMS. Mr. President, the Senate has already approved this amendment in prior years but it was not agreed to by the House. I feel obliged to have the Senate consider it again.

I remember the last time it was before the Senate. The objections raised were the objections we always hear about, "Well, Senator Eagleton and Senator HELMS call it a stupid ordinance adopted by the D.C. city council, but I am going to vote against the Senator's amendment," meaning the HELMS' amendment, even though I agree with it."

Then, let me stress at the outset that this amendment represents an agreement I have entered into with approximately 600 black ministers in the District of Columbia representing congregations of at least 150,000. These ministers came to me and to other Members of the Congress because, quite frankly, the D.C. council was more concerned about giving special preference to the homosexuals in this city than about the welfare of all of the residents of the District of Columbia, including the 150,000 individuals represented by the ministers to whom I have already alluded.

As most Senators know, the D.C. AIDS law which went into effect in August 1986 prohibits life, health, and disabilty insurers from using all AIDS-related tests for 5 years, including tests for the AIDS antibody, tests to appraise the condition of the immune system, and tests to identify the existence of the AIDS virus.

Senators may recall that on two occasions during the 99th Congress, once by a rollcall of 53 to 41 and once by a voice vote, this Senate passed my amendment favoring repeal of D.C. Law 6-170. But unfortunately, as I observed earlier the House of Representatives refused to act on my amendment, and these ministers therefore have come up to Capitol Hill again urging me to propose again an amendment to overturn the D.C. Law 6-170 which Senator Eagleton and others described as "stupid." And I do not think they were wrong, and I agree.

In any case, Mr. President, just about a year ago I stood right here on this floor and spoke against D.C. Law 6-170 because I believed, and I believe more strongly than ever before now,

that insurance companies have a right to assess the risk of the applicant for insurance coverage developing AIDS just as the insurer has the right in connection with other diseases.

The insurer can ask about or they can test the applicant for high blood pressure. They can ask about or test for diabetes, cancer, allergies, anemia, or alcohol abuse or drug abuse, paralysis, heart attack, and go down the list, but not the AIDS virus. Why, as the black ministers of the District of Columbia have repeatedly said to me, discriminate? The insurer can consider the applicant's weight, the insurer can consider whether he smokes or not, the insurer can consider the medical history until the insurer gets to the AIDS virus, and then according to this foolish D.C. Law 6-170 all bets are off. You cannot ask about it. You cannot test for it. It is purely discriminatory against all of the others who apply for insurance.

The list goes on and on. If the insurer determines that the applicant is at high risk, the applicant is either denied insurance or the applicant's premiums are set in accordance with the individual's health risk. That is true except for AIDS. AIDS is off limits. That is the way the game is being played everywhere except in the District of Columbia where a certain group of people are singled out by the D.C. city council and told, "We are going to put you on a little bit of a pedestal and we are going to give you preferential treatment and make all of the rest of the residents of the District of Columbia pay for it." And pay for it they have, Mr. President.

About a year ago when I was discussing this amendment on the floor, I predicted one of two things would happen: Premiums would go up like a skyrocket, or insurance companies would stop writing policies altogether. Those fears have materialized. Shortly after the D.C. law went into effect, in early August of last year, health and life insurance companies began to flee. They shut their doors to D.C. residents, and they said, "We cannot operate like this." And by November 1986, Mr President, 3 months after the D.C. Law 6-170 went into effect, insurance companies began to pull out. According to a study by Martin Weiss, professor of insurance at Howard University, 82 percent of the city's top 50 life insurance companies had stopped writing individual life insurance policies for the residents of the District of Columbia by November 1986. New York Life, Massachusetts Mutual, Metropolitan, Prudential, Alexander Hamilton, Federal Kemper, Confederation Life, Keystone, Provident, Franklin Life, Equitable Life of New York, E.F. Hutton, Equitable Variable Life, New York Life & Annuity, Massachusetts Indemnity, Aetna Life & Annuity, and Phoenix Mutual are just a few of the companies that just said, "We are not going to cope with this. Out we go." And they closed their doors.

Health insurance companies were not surveyed by Professor Weiss, but according to a January 15, 1987, Washington Times article, 50 insurance companies have stopped writing health insurance for the residents of the District of Columbia.

I do not blame these companies. Swallowing the bitter pill forced down their throats by the D.C. city council could make other policyholders pay higher premiums or, worse, put these companies out of business. In support of that, let us look at some facts, incontrovertible facts. Assuming that 20 percent of those infected will develop AIDS, 200 out of every 1,000 applicants who test positive will develop AIDS within 5 years and will die within approximately 7 years. Compared with percentages of those who die of other causes, a person infected with the AIDS virus over a 7-year period is 26 times more likely to die than someone in what the insurance companies call standard health—26 times.

Do you see why the insurance companies are slamming their doors? I do not blame them. I would not write the policy under the restrictions and the terms ordered by the D.C. city council. The 600 black ministers who have visited with me are exactly right. They do not think it is fair because it is not fair. And the District of Columbia residents other than the black ministers say the same thing and feel the same way.

I will not consume the Senate's time reading very many of the letters that I have received. But let me read a few excerpts from some of them just to indicate how people feel. On March 19, for example, I received a letter from Ms. Loretta Davis, who lives and works in the District of Columbia. Here is what she said. And I quote her. "Please do what you can to kill this newly enacted AIDS law, D.C. Law 6-170. We appeal to you because it appears that no one downtown in the District Building cares about what happens to D.C. citizens."

Then on March 20 I received a letter from Mrs. May L. Miller, who wrote and I quote:

> . . . do whatever you feel necessary and possible, within your power, to have the Congress of the United States to overturn D.C. Law 6-170, the D.C. Aids Law. We have just realized that most of the insurance companies have ceased writing individual life policies in D.C. This can wreak havoc in young families who need this protection most.

Of course, the lady is exactly right, Mr. President.

Then there is Mrs. Sylvine Blackwell, who wrote me on March 18.

> Please use all your authority and influence to nullify D.C. Law 6-170, the D.C. AIDS law . . . We need someone who will listen to reason concerning this law. It is unfair, biased, unbusinesslike and economically damaging to D.C. and its residents . . . Please initiate actions to see that the law . . . is repealed

Well, I say to Mrs. Blackwell that that is what we are doing right now. Mrs. Blackwell is exactly right, and I hope the Senate will vote again to instruct the D.C. city council to repeal D.C. Law 6-170.

Residents of the District are paying a high price for the weakness and stupidity of the D.C. council. You would think that the D.C. council members would come to a rational conclusion about the mistake that was made last year. But, despite the mass exodus of the top insurance companies from the District, the members of the D.C. council are sitting on their hands and are digging their heels and refuse to undo a law that is obviously unjust and highly destructive to the people of the District of Columbia.

Mr. President, I urge Senators to look very carefully at this issue and not be swayed by any argument, if it is made, when it is made, that this is somehow an improper intrusion into the responsibilities of the D.C. city government. We have already been down that road in the debate on the previous amendment.

It is true that Congress in 1973 created representative local government for the District. But that act also recognized the constitutional right, and I think the duty, of Congress to legislate over the District's affairs and to repeal or amend any law passed by the D.C. city council which flies in the face of reason, as does D.C. Law 6-170. The Senate clearly has the right, and in this case the duty, to overturn this absurd law.

In summary, Mr. President, the residents of the District of Columbia are facing what is in fact an insurance crisis. As I said earlier, more than 600 black ministers, representing congregations of at least 150,000 people, want our help. They are pleading for it. They have been up here time and time again. And this day I am giving Senate an opportunity to respond to the appeals made by these ministers. We should not be afraid to listen to their pleas. We should not be hesitant to require the District of Columbia, the city council, to repeal what is obviously an unjust law. We must act now, before all insurance companies in the District pull out, leaving residents unable to protect themselves from financial disaster which may occur due to sickness or death of a family member. That is where we are headed. We are way down the road already toward that unthinkable situation.

I ask unanimous consent that the following be printed in the RECORD at the conclusion of my remarks: First letters from Rev. John G. Martin, founder-executive director of Third

World Assembly, Inc.; Rev. Cleveland B. Sparrow, Sr., chairman of Washington, DC, Moral Majority and pastor of Sparroworld Baptist Temple; second, letters from the following insurance companies: Great West Life Assurance Co., Mutual of Omaha, Aetna Life Insurance Co., Prudential Insurance Co. of America, Mutual Life Insurance Co. of New York, National Life of Vermont, New York Life Insurance Co., Geico Life Insurance Co., Pilot Life Insurance Co.; third, a letter from Walter E. Schmitt, Schmitt Insurance Services; fourth, a letter from Harry L. Staley, president, Pridemark Capitol Hill Insurance Agency; fifth, a letter from R. Damian DuFour, president, Greater Washington Health Underwriters Association; sixth, a study entitled "Survey of Life Insurers Writing Individual Life Insurance in the District of Columbia" by Martin Weiss, professor of insurance, Howard University; seventh, May 1987 Harvard Law Review article entitled "AIDS and Insurance: The Rationale for AIDS-Related Testing"; eighth, a letter from Rev. John Bussy, on behalf of the Baptist Ministers' Conference of Washington, DC.

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

(See Exhibit 1.)

Mr. HELMS. Mr. President, obviously, I hope that we can vote on this quickly. I have no desire to consume additional time of the Senate. But it seems to me that if there ever was a time when we ought to be attendant to the pleas for help from citizens who deserve to be considered, it is now, and this amendment will do it.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I yield the floor.

EXHIBIT 1

SURVEY OF LIFE INSURERS WRITING INDIVIDUAL LIFE INSURANCE IN THE DISTRICT OF COLUMBIA IN DECEMBER 1986

(By Martin Weiss)

BACKGROUND OF THE ISSUE

On August 7, 1986, a bill entitled "The Prohibition of Discrimination in The Provision of Insurance Act of 1986" was enacted by the District of Columbia City Council. The Council acts as the District's Unicameral Legislature.

The stated purpose of the District of Columbia Law "is to prohibit health, disability, and life insurers from engaging in unfair and discriminatory practices stemming from efforts to predict who may or may not develop AIDS (acquired immune deficiency syndrome), ARC (AIDS-related complex), or other infection with the HTLV-III virus." [1] The law was based on two premises. "First, there is as yet no test of proven reliability and accuracy for identifying exposure to the probable causative agent of AIDS. And, second, assuming that a reliable and accurate test will be developed at some point, there is no body of evidence to show its value as a predictor of who will or will not develop AIDS or other less severe AIDS-related disorders; without evidence of predictive value, there is no foundation for the actuarial analyses that insurance risk assessment requires." [2]

To carry out this purpose, the law prohibits insurers from denying coverage on the basis of an individual's positive test for exposure to AIDS. However, the prohibition has an interesting time factor included. For a period of five years from enactment, the act also prohibits insurers from requesting or requiring anyone to take any AIDS-related screening test. Even such results obtained from other sources (perhaps a review of medical records) could not be considered. An insurer's standard use of policy exclusions or limitations of benefits would also be affected. The law anticipates possible "redlining" of persons thought to be in high-risk categories for AIDS by prohibiting underwriters from considering such factors as age, sex, marital status, and sexual orientation.[3]

Included in the testimony offered in support of the act was that of Carol B. Thompson, Director of the Department of Consumer and Regulatory Affairs. She stated that evidence available at the time indicated that from five percent to twenty percent of those who were exposed to or infected with the virus were expected to develop AIDS within two to five years. That left a group of approximately eighty percent which would never develop the disease. She concluded that this was the group which must be allowed to purchase insurance without discrimination.[4]

Soon after passage of the law, the American Council of Life Insurance and Health Insurance Association of America sought in federal district court to overturn the legislation. The law suit charged that the law was unconstitutional and interfered with private contracts made outside the District. The suit was unsuccessful.

In September and October, there were reports from various sources that some insurers were discontinuing the writing of individual life insurance for District residents.

COMPANIES SURVEYED

During October and November, records of the DC Insurance Department and annual reports of insurers licensed to write individual life insurance in the District were used to obtain information regarding the nature of the market for individual insurance in the District.

Five hundred and seventy domestic and foreign companies were licensed in 1985 to write individual life insurance in the District. These companies wrote fifty-eight thousand seven hundred ordinary life insurance policies totaling $2.66 billion of life insurance in 1985.

From among the one hundred largest insurers in the United States, the fifty companies writing the largest premiums for individual life insurance in the District of Columbia in 1985 were selected. These fifty companies issued twenty-three thousand eight hundred and sixty-two individual life insurance policies to residents of the District in 1985, totaling $1.58 billion of insurance. Thus, the companies surveyed wrote approximately forty percent of all policies written and sixty percent of the total insurance written in the District in 1985. (Table 1).

THE SURVEY

During the two-week period from November 24, 1986, through December 25, 1986, telephone inquiries were made to the DC area agencies and, where necessary, to the home offices of the fifty companies included in the survey.

The telephone inquiry requested response to the question: "To your knowlege, is the (name of insurance company) currently accepting applications for individual life insurance from residents of the District of Columbia?"

Thirty-eight answered "No"; three additional answered "No", with a qualification (such as the acceptance of applications if the resident worked outside the District). The remaining nine companies answered "Yes." (Appendix A). Thus, eighty-two percent of the sample had made the decision not to accept applications in the District, and eighteen percent were still doing so. The nine companies responding "Yes" to the question are listed as Appendix B.

Of the companies surveyed, the forty-one which no longer write individual insurance for residents of the District represent eighty-two percent by number of companies. These companies had written 65 percent of all policies written by surveyed companies in 1985 and 91 percent of the face amount of individual life insurance written by surveyed companies in 1985.

The market for the purchase of individual life insurance by District residents has been substantially restricted by the actions of insurers surveyed. To the extent that the surveyed companies are representative of all companies writing District residents or include a disproportionate number of "low-cost" companies the market availability is serious for District residents.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ACTION

At their meeting in December 1986, the National Association of Insurance Commissioners (N.A.I.C.) established a guideline for insurance regulators which would prohibit any consideration by insurers of a person's sexual orientation in the process of selling insurance. However, the guideline allows the regulators to permit, or not, the right of an insurer to ask an applicant about any history of AIDS-related tests or to utilize such tests in underwriting decisions.

TABLE 1

	Premium [1] (millions)	Policies [2]	Face amount [3] (billions)
All companies [4]	$137.7	58,700	[5] $2.66
50 companies surveyed	81.2	23,862	1.58
41 "No" companies	65.6	15,483	1.44

[1] For ordinary life insurance written in 1985 for D.C. residents.

[2] Issued in 1985 to D.C. residents.

[3] Ordinary life insurance written in 1985 for D.C. residents.

[4] District records list 570 domestic and foreign life insurers and an additional 33 fraternal insurers. The statistics here are based on 1985 Annual Reports from 541 companies available in the D.C. Department of Insurance at the time of the survey. Fraternal reports were not considered.

[5] The 1986 "Life Insurance Fact Book" reports $3.19 billion purchases of Ordinary Life Insurance purchases in D.C. in 1985. The difference may be caused by the annual reports not included and by fraternal insurance written.

[1] "Purpose, Prohibition of Discrimination in the Provision of Insurance Act of 1986." Council of the District of Columbia, p. 2.

[2] Ibid.

[3] Ibid.

[4] "Statement of Carol B. Thompson on Bill 6-343, Attachment A."

SURVEY RESPONSE BY 50 COMPANIES WRITING THE LARGEST PREMIUM VOLUME OF INDIVIDUAL LIFE INSURANCE IN THE DISTRICT OF COLUMBIA IN 1985

Surveyed companies	Premium [1]	Survey response
New York Life	$5,412,000	No.
Massachusetts Mutual	5,321,000	No.
Metropolitan Life	5,159,000	No.
Connecticut General	4,403,000	Yes.
Prudential	3,657,000	No.
Alexander Hamilton	3,294,000	No.
New England Mutual	3,172,000	Yes.
United of Illinois	2,974,000	Yes.
Federal Kemper	2,523,000	No.
Confederation Life	2,397,000	No.
Keystone Provident	2,266,000	No.
Northwestern Mutual	2,231,000	No.[2]
Franklin Life	2,167,000	No.
Equitable Life (NY)	1,951,000	No.
John Hancock	1,815,000	Yes.
E. F. Hutton	1,684,000	No.
Equitable Variable Life	1,670,000	No.
New York Life & Annuity	1,634,000	No.
Massachusetts Indemnity	1,563,000	No.
Aetna Life & Annuity	1,476,000	No.
Home Life	1,417,000	No.[2]
Phoenix Mutual	1,399,000	No.
Mutual of New York	1,347,000	No.
Connecticut Mutual	1,269,000	Yes.
Penn Mutual	1,203,000	No.
Transamerica Occidental	1,149,000	No.
Southwestern Life	1,111,000	No.
Lincoln National	1,062,000	No.
Mutual Benefit Life	1,013,000	No.
First Colony Life	965,000	No.
General American	924,000	No.
Crown Life (Can)	894,000	No.
Guardian Life	795,000	No.[2]
Executive Life (Cal.)	785,000	No.
Provident Life & Accident	710,000	No.
Kemper Investors	692,000	No.
Metropolitan Insurance & Annuity	664,000	No.
Aetna Life Insurance	641,000	No.
State Farm Life	610,000	No.
State Mutual Life	604,000	No.
Mutual of Omaha	601,000	No.
Bankers Life (Iowa)	576,000	No.
IDS Life Insurance (Minn.)	574,000	No.
Pacific Mutual	545,000	No.
Bankers Life & Casualty	532,000	No.
Central Life (Iowa)	529,000	Yes.
National Life of Vermont	502,000	No.
Colonial Penn	488,000	Yes.
Western & Southern	465,000	Yes.
Sun Life (Can.)	458,000	Yes.
Total	81,292,000	

[1] Ordinary life insurance written in 1985 for D.C. residents.
[2] With limitations.

AIDS AND INSURANCE: THE RATIONALE FOR AIDS-RELATED TESTING

(By Karen A. Clifford* and Russel P. Iuculano**)

Acquired Immune Deficiency Syndrome (AIDS) is potentially the most serious health threat the United States has ever faced. The disease, although unknown in this nation until 1981, may afflict as many as 270,000 Americans by 1991, causing an estimated 179,000 deaths.[1] Most of these deaths will occur among the 1 to 1.5 million Americans already infected with the virus, many of whom do not yet show signs of illness.[2]

Although the immediate danger posed by AIDS to Americans has understandably attracted a great deal of attention, the epidemic also threatens the country's economic well-being and the solvency of its health care system. In the rush to ensure that persons with AIDS are treated fairly, some legislatures have enacted and others are considering laws which, by mandating the abandonment of time-honored and sensible underwriting principles, endanger the financial stability of many insurers.

The United States Public Health Service estimates that the annual direct cost of health care for the estimated 171,000 AIDS patients expected to be alive in 1991 will be between eight billion and sixteen billion dollars.[3] This figure assumes a per case cost of $46,000 to $92,000.[4] Some studies predict considerably higher costs.[5] A large portion of these health care costs will be borne by insurance companies. Yet, high as they are, these figures underestimate the total impact of AIDS on the insurance industry because they do not include the cost of outpatient health care, including counseling and home health care costs. Moreover, these studies do not reflect claims incurred for loss of income due to disability, and they do not in any way measure the impact on the life insurance business. Insurers expect to pay billions of dollars for AIDS-related claims over the next several years as they fulfill contractual responsibilities to policyholders who are or become AIDS patients.[6] Estimates indicate that the insurance community has already paid a significant portion of the health care costs associated with AIDS, from thirteen to sixty-five percent in some hospitals.[7]

Insurance is founded on the principle that policyholders with the same expected risk of loss should be treated equally. Infection with the AIDS virus is now known to be a highly significant risk factor, one that cannot be ignored by any actuarially sound insurance system. Yet some lawmakers, understandably motivated by sympathy for persons with AIDS, are giving serious consideration to a prohibition on any use of AIDS-related testing for insurance purposes, a ban that would seriously distort the fair and equitable functioning of the insurance pricing system.

This Commentary argues that insurers must be allowed to continue using AIDS-related testing to determine insurability. Part I begins with an explanation of some fundamental principles of insurance and examines how these principles might apply to individuals at risk for developing AIDS. Parts II through IV then review both the legal and medical rationales behind testing by insurers and set forth recent actions by several jurisdictions that have prohibited AIDS-related testing for insurance purposes. Part V concludes that such actions present potential dangers to both insurers and the insurance-buying public. Finally, Part VI suggests an alternative means of financing the AIDS-related costs of individuals who are denied insurance.

I. BASICS OF INSURANCE UNDERWRITING

Even a cursory review of the fundamentals of insurance underwriting underscores the unprecedented challenges and implications the AIDS crisis holds for the life and health insurance industry. Underwriting is generally defined as the "process by which an insurer determines whether or not and on what basis it will accept an application for insurance." [8] The primary goal of underwriting is the accurate prediction of future morality and morbidity costs.[9] An insurance company has the responsibility to treat all its policyholders fairly by establishing premiums at a level consistent with the risk represented by each individual policyholder. As one observer has noted, "[b]asic to the concept of providing insurance to persons of different ages, sexes, . . . occupations and health histories . . . [is] the right of the insurer to create classifications to recognize the many differences which exist among individuals." [10] Individual characteristics that have an impact on risk assessment, such as age, health history and general physical condition, gender,[11] occupation, and use of alcohol and tobacco, are analyzed separately and in combination to determine their effects on mortality.[12] "It is the understanding of the way these various [characteristics] influence mortality that enables companies to classify applicants into groups or classes with comparable mortality risks to be charged appropriate premium rates." [13]

At last count, some 158 million Americans under the age of sixty-five were covered by some form of group health insurance, and nine million more were covered solely by individual health insurance.[14] About ninety percent of the insured population is covered by group heath insurance, and forty-seven percent is covered by group life insurance.[15] Group insurance underwriting involves an evaluation of the risk of a group—for example, employees, members of a labor union, or members of an association—to determine the terms on which the insurance contract will be acceptable to the insurer.[16]

In contrast to underwriting for individual insurance, insurers underwriting group life and health insurance consider only the relevant characteristics of the group, not of the individuals who comprise the group. Such an approach operates "on the premise that in any large groups of individuals there will only be a few individuals who have medical conditions of [significant] severity and frequency which would, using individual underwriting standards, make them either a substandard or noninsurable risk." [17] Thus, the issue of testing for the presence of the AIDS virus, its antibodies, AIDS-related complex (ARC), or the active presence of AIDS relates only to new coverage for which evidence of insurability is required.[18]

II. FAIRNESS AND EQUITY REQUIRED BY INSURANCE LAW

The insurance industry has long been subject to statutory rules requiring the fair and equitable treatment of insured parties in the underwriting process. The Unfair Trade Practices Act (UTPA), developed by the National Association of Insurance Commissioners (NAIC), was, by 1960, enacted in some form in all states and the District of Columbia.[19] The central tenet of the UTPA is its distinction between fair and unfair discrimination. State insurance laws modeled on the NAIC Act both compel discrimination in certain situations and prohibit unfair discrimination in others.[20] For example, the Act deems it inequitable to charge identical premiums for life insurance to a sixty-year-old man in poor health and a twenty-year-old woman in good health.[21] In such a case, an insurer must differentiate between the two to determine an equitable premium: "[r]ates should be adequate but not excessive and should discriminate fairly between insureds . . . so that each insured will pay in accordance with the quality of his risk." [22]

Likewise, section 4(7)(a) of the UTPA prohibits any insurer from "making or permitting any *unfair* discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance." Section 4(7)(b) contains a similar provision for health insurance that proscribes "unfair discrimination between individuals of the same class and having essentially the same hazard." [23] We contend that persons who have been infected by the AIDS virus are not of the same class and risk as those who have not been infected.

The proper definition of "fairness" in the underwriting context has been the subject of litigation. In *Physicians Mutual Insurance Co.* v. *Denenberg*,[24] for example, the Pennsylvania Insurance Commissioner had revoked his approval of several of Physi-

Footnotes at end of article.

cians Mutual's health insurance policy forms.[25] Each of the policy forms in question provided for an initial premium of one dollar, regardless of the type of risk insured.[26] The Commissioner's action was based on his determination that the policy forms "effected unfair discrimination and . . . were not in accord with sound actuarial principles."[27] Agreeing with the Commissioner's ruling, a Pennsylvania state court found that "[t]he $1.00 premium in the first month in no way relate[d] actuarially to the risk involved and [was] discriminatory."[28] To underwrite within the spirit of state antidiscrimination laws, an insurer is bound to accord similar treatment in the underwriting process to those representing similar health risks.[29]

Last year, Washington became the first state to address the practical application of its Unfair Trade Practices Act to the underwriting of AIDS. The state's insurance department had promulgated a rule establishing minimum standards to be met by insurers in underwriting the AIDS risk. The regulation construed the state's UTPA "to *require* grouping of insureds into classes of like risk and exposure" and the "charg[ing of] a premium commensurate with the risk and exposure."[30] The department's rule stresses the Act's mandate that underwriting considerations for AIDS be consistent with underwriting considerations for AIDS be consistent with underwriting considerations for other diseases. It notes, by way of example, that "policies issued on a standard basis should not be surcharged to support those issued to insureds suffering from an ailment."[31]

The Washington regulation illustrates that although, on its face, the UTPA seems to impose only a negative duty on insurers, closer examination reveals that under the Act insurers have a positive duty to separate insureds with identifiable, serious health risks from the pool of insureds without those risks. Failure to do so represents a forced subsidy from the healthy to the less healthy. To meet the fundamental fairness requirements of the UTPA and to address the concern for unfair discrimination, insurers must continue to use objective, accurate, and fair standards for appraising the risk of AIDS. As will be shown below, the tests for infection by the AIDS virus indisputably identify an actuarially significant risk of developing AIDS. If the insuring process is to remain fair to other applicants and policyholders, insurers must be permitted to treat tests for infection by the AIDS virus in the same manner as they treat medical tests for other diseases.[32] To ignore the risk levels associated with infection and treat a seropositive individual on the same terms as one not similarly infected would constitute unfair discrimination against noninfected insureds and, therefore, violate the states' Unfair Trade Practices Acts.[33]

III. AIDS ANTIBODY TESTS ARE VALID UNDERWRITING TOOLS

AIDS is caused by a virus that has been given various scientific designations but is chiefly known as HTLV-III. When the HTLV-III virus enters the bloodstream, it begins to attack certain white blood cells (T-lymphocytes) which are vital to the body's immune defenses. In response to infection with the virus, the white blood cells produce antibodies. A person generally develops antibodies two weeks to three months after infection.[34]

A protocol of tests, known as the ELISA-ELISA-Western blot (WB) series, is considered highly accurate for determining the presence of infection with the HTLV-III virus. A person with two positive ELISA tests and a positive WB is a true confirmed positive with 99.9% reliability.[35] The insurance industry and the medical profession commonly administer the ELISA-ELISA-WB series of tests.[36]

Several developments have established the reliability of the series of AIDS antibody tests used by insurers. The blood test series is consistent with the Centers for Disease Control's (CDC) definition of HTLV-III infection, which provides that "[f]or public health purposes, patients with repeatedly reactive screening tests for HTLV-III/LAV antibody (e.g. [ELISA]) in whom antibody is also identified by the use of supplemental tests [including the Western blot test] should be considered both infected and infective."[37]

Further evidence of the reliability of these tests comes from the findings of the Wisconsin State Epidemiologist, who was recently directed by state law to determine whether any test or series of tests was "medically significant and sufficiently reliable" for detecting the presence of antibodies to HTLV-III.[38] The epidemiologist concluded, after a comprehensive review of the relevant medical literature, that two positive ELISA tests followed by a positive WB are "medically significant and sufficiently reliable" for detecting the presence of HTLV-III antibody.[39]

Nonetheless, when analyzing a test's validity for underwriting purposes, reliability, in and of itself, is not sufficient. A test must also be established as an effective and accurate predictor of future mortality and morbidity costs. In June 1986, the CDC estimated that 20% to 30% of those infected will develop the invariably fatal disease over the next five years.[40] In July of the same year, the National Institutes of Health predicted that, over the next six to eight years, as many as 35% of HTLV-III antibody positive persons may develop AIDS.[41] On October 29, 1986, the Institute of Medicine of the National Academy of Sciences issued a 374-page report, Confronting AIDS, which estimated that up to 50% of all those infected with the virus might develop full-scale AIDS within ten years.[42]

Quite apart from signaling the risk of developing AIDS itself, HTLV-III infection may herald the onset of other illnesses such as ARC or neurological disease. Studies cited by the CDC found that 25% of those who were confirmed positive with the HTLV-III antibody developed ARC within two to five years.[43] An individual suffering from ARC may have a weakened immune system and manifest such symptoms as night sweats, weight loss, fatigue, fever, gastrointestinal symptoms, and enlargement of the lymph nodes, and may become disabled as a result.[44] Due to the chronic nature of these ailments, ARC may, in and of itself, give rise to substantial medical expenses.

Despite the wealth of medical data that lends support to AIDS-related testing for insurance purposes, utilization of such tests is sometimes questioned because there are a significant number of individuals who have tested positive but have not yet developed AIDS. This viewpoint, however, demonstrates a fundamental lack of familiarity with basic insurance principles. Underwriting is, by its very nature, concerned with probabilities, not certainties; no one knows how many infected people will eventually develop AIDS. Even assuming that "only" twenty percent will contract AIDS during the first five years, there is a demonstrable risk that a large percentage of infected individuals will develop AIDS in year six and beyond.

A twenty percent asumption implies that 200 of each 1000 applicants testing positive on the ELISA-ELISA-WB series will develop AIDS within five years and, therefore, die within approximately seven years.[45] In comparison, life insurance mortality tables estimate that, of a standard group of 1000 persons aged thirty-four, only about seven and one-half (as opposed to 200 in 1000) will die within the first seven years from any causes.[46]

The substantially greater risk represented by persons who test positive for HTLV-III infection is obvious. The comparison of 200 deaths to seven and one-half deaths indicates that a person infected with the AIDS virus is, over a seven-year period, twenty-six times more likely to die than is someone in "standard" health.[47] The actuarial significance of these percentages is overwhelming and cannot be ignored. Because such tests are reliable, accurate, and effective predictors of risk, they must be considered appropriate as underwriting tools.

IV. LEGISLATIVE RESTRICTIONS ON AIDS-RELATED TESTING

Until recently, the right of insurance companies to inquire into and test for health conditions affecting mortality and morbidity was generally accepted within the industry and rarely questioned outside of it. However, a fundamental misunderstanding of insurance principles, coupled with the desire to prevent discrimination against homosexuals, has led to the passage of laws in several jurisdictions granting individuals infected with AIDS a favored status in the underwriting process. These laws substantially impede the insurance industry's ability to assess risk, thereby undercutting the industry's financial stability and compromising its ability to pay future claims.

In April 1985, for example, the California legislature enacted a law that provided that "the results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome . . . shall not be used in any instance for the determination of insurability or suitability for employment."[48] In July 1985, the Wisconsin legislature enacted a similar but more restrictive measure.[49] Most recently, in 1986, the District of Columbia enacted D.C. Act 6-170, the most restrictive legislation of its kind in the country.[50] It prohibits the use of *all* AIDS-related tests for a five-year period, including tests for the AIDS antibody, tests to appraise the condition of the immune system, and tests to identify the existence of the AIDS virus itself. The Act further forbids the use of personal characteristics such as age, marital status, geographic area of residence, occupation, sex, or sexual orientation for the purpose of predicting whether an individual will develop AIDS or ARC.[51]

On August 5, 1986, the American Council of Life Insurance (ACLI) and the Health Insurance Association of America (HIAA) brought suit against the District of Columbia in the United States District Court for the District of Columbia, arguing that the Act violated both the fifth amendment and the District of Columbia's Home Rule Act.[52] On September 19, 1986, in *American Council of Life Insurance* v. *District of Columbia*,[53] a district court upheld the Act, though it did not do so on the basis of the city council's allegations regarding the reliability, accuracy, or predictive value of the

AIDS tests. In fact, the court appeared to agree with the plaintiffs that presently available evidence refuted those premises upon which the city council based the Act. For example, the court stated that the plaintiffs had offered "persuasive evidence that the tests accurately target a group of individuals with significantly higher risks." [54] The court upheld the constitutionality of the law, however, because the evidence presented by the plaintiffs, ACLI and HIAA, had not been available to the city council at the time the bill was under consideration.[55] The court further observed: "[a]lthough [we] agree[] that in light of this evidence the D.C. Council should be encouraged to reconsider its decision, this report was not before the Council last spring and therefore cannot prove the irrationality of the law." [56]

The court seriously questioned the wisdom of the Act's five-year moratorium on all AIDS-related testing; "The nature of the rapidly changing landscape of AIDS research suggests that the D.C. Council may have acted too hastily in imposing the five-year moratorium on rate increases. . . . [T]he court agrees with the plaintiffs that new evidence on the accuracy of AIDS tests for insurance purposes and the everchanging breakthroughs in AIDS research raise serious questions about imposing a five-year ban on screening applicants for AIDS. . . ." [57] This decision thus calls into question whether similar legislation recently introduced in other jurisdictions will pass constitutional muster in light of the medical and scientific data that now supports the credibility of the ELISA-ELISA-WB series.

A major impetus behind these restrictive laws has been the concern that insurance companies be prevented from discriminating against homosexuals. The life and health insurance industry share that concern. In fact, the ACLI and HIAA have endorsed guidelines, adopted by the NAIC in December 1986,[58] that set forth two general propositions: "No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation. . . . Sexual orientation may not be used in the underwriting process or in the determination of insurability." [59] The insurance industry, by supporting these guidelines, refutes the contentions of certain groups that sexual orientation has a place in the underwriting process. Rather, the industry seeks only to use the best medical knowledge available to assess accurately the level of risk an applicant represents. Although members of the industry are in substantial agreement that an applicant's sexual orientation is not an appropriate underwriting tool,[60] they are in equally strong agreement that current state-of-the-art tools for predicting the AIDS risks, as exemplified by the ELISA-ELISA-WB sequence, are valid for that purpose and should be used accordingly in a responsible fashion.

V. DANGERS OF ADVERSE SELECTION

Adverse selection is generally defined as the tendency of persons with poorer than average health expectations to apply for or renew insurance to a greater extent than persons with average or better health expectations.[61] Such a process results in unfair, inequitable treatment of the latter because it results in the subsidization of high risk individuals by those at low risk. As a practical matter, insurance companies generally are not faced with the underwriting challenge of determining whether an applicant does or does not have full-scale AIDS. People are more likely to want to buy insurance at the onset of infection, when they already represent a very high level of risk. Thus, the main underwriting challenge facing insurers is that of identifying people in earlier stages of the disease.

Evidence already exists of significant AIDS-related adverse selection against insurance companies. The HIAA and ACLI initiated a joint survey of their member companies in the fourth quarter of 1985.[62] The survey found AIDS-related claims for life insurance to be heavily concentrated in the first two years after issuance of the policies—forty-four percent by total claim amounts.[63] This pattern strongly suggests that these individuals knew or suspected that they had been infected by the AIDS virus prior to the time they purchased insurance. This adverse selection not only endangers the financial stability of insurance companies but also unfairly burdens the other policyholders who must support the increased claims through higher premiums.

Several mechanisms usually operate to protect an insurer from the perils of adverse selection. However, the unusual characteristics of AIDS dilute the effectiveness of these protective mechanisms and, thus, render the insurer especially vulnerable to the dangers of adverse selection.

A. The Incontestability Clause in Individual Life and Health Insurance

In June 1986, the United States Public Health Service stated that "[t]he latency period between infection and overt AIDS averages 4 or more years in adults." [64] A clear underwriting challenge confronts insurers because this four-year average latency period must be reconciled with laws in most states that require life and individual health insurance policies to contain an "incontestability clause." [65] The incontestability clause prevents the insurer from disputing the validity of a policy after the policy has been in force during the life of the insured for a period of two years from its date of issue. In essence, the clause "safeguards an insured from excessive litigation many years after a policy has already been in force and assures him security in financial planning for his family, while providing an insurer a reasonable opportunity to investigate." [66] Even prior to the running of the two-year period, misrepresentations, omissions, or incorrect statements do not prevent recovery under the policy unless the insurer can show: (1) that the misrepresentations,[67] omissions, or incorrect statements were fraudulent; (2) that they were material to the acceptance of the risk by the insurer; or (3) that the insurer, in good faith, would not have issued the policy at the same premium rate, or at all, if the true facts had been made known.[68] Moreover, once the incontestability clause takes effect, even actual fraud in the application cannot be contested by the insurer unless it is expressly excepted in the clause itself.[69]

Because the fear of an AIDS epidemic is very real for certain groups in our society, applicants for life insurance who believe they have been infected with the virus very well may misrepresent their health history or their present physical conditions when applying for coverage. These misrepresentations would normally be grounds for rescission of the policy; however, after the time period in an incontestability clause has passed, benefits cannot be denied on the ground that ill health or physical disability existed at the time the policy was issued.

Given an average latency period of four years for AIDS, coupled with legislative prohibitions against insurance-related testing, it becomes relatively simple for an individual with knowledge of his or her infected status to make misrepresentations regarding such knowledge with reasonable assurance that the incontestability period will expire before "suspicious" symptoms appear that alert the insurer to the possibility that misrepresentation has occurred.

B. Pre-existing Conditions in Health Insurance

Both individual and group short-term and long-term disability benefit plans and medical care expense plans may contain a pre-existing conditions limitation that excludes or limits the benefits for an injury or sickness that was in existence during a specified period of time—usually three to six months—before a person becomes insured. Insurance company practices vary as to the size of the group and the types of coverage to which this limitation applies.[70] As a general rule, the likelihood of a pre-existing conditions limitation being included in a disability policy is inversely proportional to the size of the group—the larger the group, the less likely the inclusion of such a provision.[71]

Insurers usually waive a pre-existing conditions clause for persons previously insured when the plan has been transferred from another insurer. Likewise, it is customarily waived for an increase in coverage by the same insurer.[72] For the average uninsured starting employee, however, a pre-existing conditions clause generally applies. The rationale for this practice is to discourage the adverse selection that may result when individuals change jobs primarily for insurance purposes.

Pre-existing conditions are covered on the same basis as any other "condition" once the individual has been insured for a certain period of time. As a general rule, "the pre-existing conditions limitation in a medical care expense policy ceases to apply on the earliest of the following dates: (1) the end of three consecutive months during which no charges were incurred for the pre-existing condition or any related condition; (2) the end of six consecutive months during which the employee was continuously insured and actively-at-work; (3) the end of twelve consecutive months during which the person was continuously insured." [73] The protection normally afforded an insurer through a pre-existing condition clause diminishes substantially as a result of the lengthy AIDS latency period. It is highly likely that the cut-off date for pre-existing conditions will have passed long before the appearance of symptoms. Thus, the very nature of AIDS renders the usual protections against adverse selection minimal at best.

Blood tests taken before the commencement of coverage that are positive for HTLV-III antibodies might prompt an insurer to utilize a pre-existing conditions exclusion. For instance, New York interprets such condition to be the "existence of symptoms which would ordinarily cause a prudent person to seek diagnosis, care or treatment within a two-year period preceding the effective date of the coverage of the insured person." [74] Positive antibody tests would, in all likelihood, motivate a reasonable individual to obtain further medical attention.[75] Thus, if such a condition were present and were to come within the time limits set for a

pre-existing condition, an insurer arguably would be justified in denying coverage for AIDS.[76] For any disease other than AIDS, the identical situation would invariably lead to a denial of coverage. Although reasonable analysis would seem to indicate that infection with the HTLV-III virus should be deemed a "condition" for purposes of a pre-existing conditions clause, resolution of this issue will inevitably rest with the judiciary.

VI. AVAILABILITY OF HEALTH INSURANCE

As representatives of an industry that endorses AIDS-related blood testing to ensure the equitable treatment of all insurance applicants in the underwriting process, we must address an inevitable consequence of effective underwriting—the denial of health insurance to some high-risk applicants, particularly those with HTLV-III infection. For those covered by group health insurance, various laws operate to prevent an interruption in coverage when an individual is no longer eligible for group coverage, such as upon termination of employment. The availability of continued insurance protection was significantly bolstered by the ninety-ninth Congress. Federal law now requires, with some minor exceptions, that all employers with twenty or more employees provide continuation of health coverage for up to eighteen months to employees after termination of their employment (for reasons other than gross misconduct) or a reduction in hours.[77] Several states also require continuation of group coverage, at the group rate, for varying periods of time.[78] Given that most AIDS patients die within two years of the manifestation of AIDS-related symptomatology,[79] federal and state continuation laws effectively assure that a significant portion of AIDS-related health care costs will be borne by the health insurance industry. In the face of current projections on the spread of AIDS, these laws will, in all probability, take on added significance by ensuring the continued availability of health insurance coverage for many Americans.

A. Pools for Uninsurables

Despite the fact that a majority of Americans have private health coverage,[80] some individuals do not have access to group coverage and are medically uninsurable for individual health insurance. Medical uninsurability is not, however, a phenomenon suffered exclusively by those at risk for developing AIDS. Individuals suffering from developmental disabilities, physical or mental impairments, or chronic health conditions account for a large number of those who are unable to obtain individually purchased health insurance. Estimates place the number of uninsurables in the country today at one million.[81]

Some argue that a quick and easy solution to this problem would be to force insurers to discard the underwriting process and to assume all future health care costs of AIDS patients, thereby ignoring the risk these individuals represent. Although the goal of ensuring accessibility to quality health care is certainly a laudable one, this simplistic and ill-founded approach demonstrates a basic misunderstanding of the insurance mechanism. Further, it fails to provide for the intake of premiums sufficient to cover the expected claims. If the insurance industry cannot collect premiums commensurate with the underlying risk, it will simply not have the money to satisfy the inevitable claims that are submitted. If such a policy were implemented, some companies would surely face major solvency problems. Indeed, if risk assessment were abandoned and if it were generally understood by all that insurance could be purchased after the development of an illness, the public would have no incentive whatsoever to purchase health insurance. Such a policy could have grave and serious consequences for this country's health care system.

State pools for uninsurables have been suggested as one solution to the problem. Common sense indicates—and indeed experience has shown—that such pools can reasonably be expected to sustain substantial losses. Once such losses are determined, insurance companies contribute assessments based on their pro rata share of premium volume in that state. Eleven states have enacted into law such pools.[82]

A recognized difficulty in financing these pools, however, is that the losses from each pool cannot be shared equally by all health insurance providers—the commercial insurers, Blue Cross and Blue Shield, health maintenance organizations, and self-insured employers—because of the Employee Retirement Income Security Act (ERISA) of 1974.[83] In short, plans that are self-funded—those that finance benefits by paying claims directly out of the assets of the employer or union trust fund rather than through the purchase of group insurance coverage—may not be treated as insurers. Under state law, employers who choose to insure employee benefits must comply with the multitude of legislative and regulatory requirements, such as state risk pools. However, section 514 of ERISA preempts state law as it related to employee benefit plans.[84] A state law requiring a self-funded employer to participate in a pool would be a law that "relates to" employee benefit plans and would, therefore, be subject to federal preemption. Thus, the self-insurance community is shielded by federal law from participation in the state pools.

The establishment of state pools could, therefore, serve as a strong incentive for employers to self-insure to avoid assessments by the pool, premium taxes by the state, and the need to comply with other state laws and regulations. As more insured plans switch to the self-insurance mechanism, a shrinking of the available insurance base upon which to impose assessments to pay for AIDS claims and other claims handled by that state's pool would occur. Consequently, the assessments per policy or group would steadily rise, thereby encouraging even more plans to switch to the self-insured market.

An intelligent approach to the national problem of uninsurability does not necessitate, nor is it well-served by, threatening the underpinnings of the private health insurance industry, an industry currently responsible for the payment of $113.6 billion of this nation's health care bill.[85] To prevent the inevitable loss of state revenue and regulatory control, a solution could appropriately be sought at the federal level.[86] Indeed, the ninety-ninth Congress was witness to the introduction of just such legislation.[87] Had it been enacted, this legislation would have imposed a tax on most employers who did not voluntarily participate in state pools that meet certain minimum standards. Thus, the bill would have established tax incentives for the states to establish pools that offer comprehensive health insurance to all citizens regardless of their health status, thereby assuring that the social responsibility of providing coverage to the uninsurable population would be fairly apportioned.

Unless and until appropriate state and/or federal laws are passed, legislation that requires only the insurance industry to engage in health care pooling for those medically uninsurable will represent a financial burden on the health insurance industry that is unshared by self-insurers, resulting in a dislocation of the forces of marketplace competition. Absent such initiatives, state pools for uninsurables fail to address effectively the problem of insuring potential AIDS patients and could, in fact, create other significant problems in the process.

VII. CONCLUSION

To operate in a voluntary market, insurance underwriting must appraise the risk of an unknown and unanticipated occurrence and spread that risk over a large number of individuals. The risk must be assessed as accurately as possible because the whole price structure of insurance depends on the principle that individuals who present the same expected risk of loss pay the same premium. When an insurer is able to estimate accurately the risk to which it is exposed, it can, in turn, be more precise in pricing the cost of the insurance.

Contrary to this principle, several jurisdictions have imposed legal constraints which place AIDS outside the normal medical and regulatory rules pertaining to underwriting for other diseases. Although it is legally permissible for an insurer to obtain medical information about an applicant who may contract any other disease, such as heart disease or cancer, some states grant AIDS carriers special treatment by completely exempting them from relevant tests.

The tests for infection by the AIDS virus are extremely accurate in the same sense that any tests used in the insurance business can be accurate: they provide a basis for an objective determination of significantly higher risks and, hence, risk-based pricing. Legislation intended to force life and health insurers to ignore reliable, scientific evidence of a person's increased risk of contracting a fatal disease will result in significant inequities to policyholders. Given the potential magnitude of the AIDS epidemic and the substantial likelihood that gay rights advocates will seek additional legal constraints on AIDS-related testing by insurers, the financial consequences of AIDS to all involved—insurers, policyholders, and the public—will become even more severe.

Because the life and health insurance industry's livelihood is dependent on insuring persons against premature death and the costs of disability, it is as concerned as the public health community with curbing this tragic disease. Although the industry is fully cognizant of the concerns of those who have been infected with the AIDS virus, it must also consider its responsibility to those who have not been infected. If projections of AIDS cases materialize, public policy makers will be faced with an increasingly pressing need to achieve a balance between competing concerns. This balance need not, and indeed should not, be achieved at the expense of an industry that will inevitably bear a substantial amount of the costs associated with the AIDS crisis.

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[1] *See* U.S. Public Health Service, Public Health Service Plan for the Prevention and Control of AIDS and the AIDS Virus 5 (Report of the Cool-

font Planning Conference, June 4-6, 1986 [hereinafter Public Health Service Plan].

[2] *See id.*

[3] *See* Institute of Medicine, National Academy of Sciences, Confronting AIDS: Directions for Public Health, Health Care, and Research 21 (1986) [hereinafter Confronting AIDS]. This figure substantially underestimates actual expenses associated with AIDS because it does not include aggregate medical expenses associated with AIDS-related complex (ARC) patients or infected individuals. These expenses may outstrip all other costs associated with AIDS because of the larger number of ARC or seropositive individuals and because of the length of treatment they undergo. One study estimated the average hospital stay for AIDS patients to be between 13 and 25 days, at an average charge of from $740 to $950 per hospital day. *See* Scitovsky & Rice, *Estimates of the Direct and Indirect Costs of Acquired Immunodeficiency Syndrome in the United States, 1985, 1986, & 1991, 102* Pub. Health Rep. 10 (1987).

[4] *See* Public Health Service Plan, *supra* note 1, at 15.

[5] *See, e.g.,* Hardy, Rauch, Echenberg, Morgan & Curran, *The Economic Impact of the First 10,000 Cases of Acquired Immunodeficiency Syndrome in the United States*, 255 J. Am. Med. Ass'n 209, 210 (1986) (estimating hospitalization costs of approximately $147,000 per case for the first 10,000 AIDS cases).

[6] If, in the year 1991, 54,000 people die of AIDS, as has been projected by the United States Public Health Service, *see* Public Health Service Plan, *supra* note 1, at 5, and if one-half of those people owned $50,000 of individual life insurance—a conservative estimate—the resulting claim liability of the insurance industry would be $2.7 billion.

[7] *See* Confronting AIDS, *supra* note 3, at 165.

[8] Health Insurance Association of America, A Course in Group Life and Health Insurance pt. A, at 379 (1985) [hereinafter HIAA 1985 ed.]

[9] "Mortality" is defined as "the death rate at each age as determined from prior experience." "Morbidity" is the "incidence and severity of sickness and accidents in a well-defined class or classes of persons." *Id.* at 366.

[10] Bailey, Hutchison & Narber, *The Regulatory Challenge to Life Insurance Classification*, 25 Drake L. Rev. 779, 780 (1976) (footnote omitted).

[11] *In Manufacturers Hanover Trust Co. v. United States*, 775 F. 2d 459 (2d Cir. 1985), *cert. denied*, 106 S. Ct. 1490 (1986), the Second Circuit upheld the Internal Revenue Service's use of gender-based mortality tables to compute the value of reversionary trust interests. The court concluded that categorizing individuals by gender and calculating different costs and benefits on the basis of this group characteristic did not discriminate against individuals and did not involve any intent to discriminate against men or women. *See id.* at 465, 469.

[12] *See* R. Mehr, E. Cammak & T. Rose, Principles of Insurance 657-59 (8th ed. 1985); C. Will, Life Company Underwriting 6, 8-19 (1974); Bailey, Hutchison & Narber, *supra* note 10, at 785.

[13] C. Will, *supra* note 12, at 6.

[14] *See* Letter from Thomas D. Musco, HIAA Director of Statistics, to the *Harvard Law Review* (Mar. 31, 1987) (citing unpublished 1986 Health Insurance Association of America Survey) (on file at Harvard Law School Library).

[15] *See* Public Relations Division, Health Insurance Association of America, Source Book of Health Insurance Data: 1986 Update 6; Letter from Suzanne K. Stemnock, ACLI Program Director, to the *Harvard Law Review* (Apr. 16, 1987) (citing a forthcoming 1984 Life Insurance Marketing and Research Association Survey) (on file at Harvard Law School Library).

[16] Groups must have characteristics that permit the insurance company to predict, within reasonable limits, the probable claim costs under the contracts issued. The underwriting of a new group involves a general assimilation and evaluation of all the relevant factors to be considered. Common factors include, but are not limited to, the size of the group, type of industry, number of eligible lives, cost sharing involved, type of insurance plan, and previous coverage and experience. *See* HIAA 1985 ed., *supra* note 8, at 153.

[17] *Id.* Although no screening takes place in most group situations, there are at least three instances in which a group plan may require evidence of insurability. These exceptions include: (1) small groups, (2) late entrants to a group plan, (3) large amounts of life insurance that are used to supplement basic coverage. It is common to use individual underwriting standards in these situations due to the increased danger of adverse selection—the tendency of persons with poorer than average health expectation to apply to insurance to a greater extent than persons with average or better health expectations. Underwriting standards are stricter for small groups, for example, because of size of the group is insufficient to spread the risk broadly enough to absorb the effect of adverse selection. The same rationale supports the use of evidence of insurability in the group area for "late entrants." These are employees who decline coverage when first eligible but later seek to be covered. Finally, every group life insurer has a "guaranteed issue" amount, the maximum face amount it will approve without requiring evidence of insurability. Individuals seeking coverage above the guaranteed issue amount may be required to furnish a statement of health or to undergo a medical examination. *See id.* at 204-07.

[18] In the United States, individual health insurance accounts for 10% of the health insurance in force, *see* Health Insurance Association of America, HIAA Annual Survey of Health Insurance Coverage (1984) [hereinafter HIAA Annual Survey], and individual life insurance approximately 58% of the life insurance in force, *see* American Council of Life Insurance, 1986 Life Insurance Fact Book 30.

[19] *See* Bailey, Hutchinson, Narber, *supra* note 10, at 782.

[20] *See id*, at 782.

[21] *See id.*

[22] Id. (quoting A. Mowbray, R. Blanchard & C. Williams, Insurance 411 (6th ed. 1969) (emphasis omitted); *accord* Thompson v. IDS Life Ins. Co., 274 Or. 649, 654, 549 P.2d 510, 512 (1976) (en banc) ("[I]nsurance, to some extent, always involves discrimination, to a large degree based on statistical difference and actuarial tables. The legislature specifically intended . . . to only prohibit *unfair* discrimination in the sale of insurance policies." (emphasis in original (footnote omitted)).

[23] National Association of Insurance Commissioners, An Act Relating to Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance, 1972 Proc. NAIC I 493, 495 (as amended).

[24] 15 Pa. Commw. 509, 237 A.2d 415 (1974).

[25] *See id.* at 511, 327 A.2d at 416.

[26] *See id.*

[27] Id. at 515, 327 A.2d at 418.

[28] Id. at 516, 327 A.2d at 419.

[29] *Cf.* S. Huebner & K. Black, Life Insurance 4 (10th ed. 1982) (stating that equitable principles require those with more serious health risk to be charged higher premiums).

[30] WASH. ADMIN. CODE § 284-90-0910(2) (effective Nov. 14, 1986) (emphasis added).

[31] Id.

[32] In opposing AIDS-related testing by insurers, gay rights advocates have placed particlar emphasis on laws prohibiting consideration of the sickle cell trait. Sickle cell *trait*, however—as opposed to the disease of sickle cell *anemia*—presents only a minimal increased risk of mortality or morbidity. As a study prepared by the National Academy of Sciences noted, "[s]ickle-cell trait (AS) has been considered—except in situations that involve exposure to significant hypoxia, dehydration, or acidosis—as a benign and relatively innocuous condition." NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMY OF SCIENCES. THE S-HEMOGLOBINOPATHIES: AN EVALUATION OF THEIR STATUS IN THE ARMED FORCES 1-2(1973) (FOOTNOTE OMITTED).

[33] A different interpretation of the Unfair Trade Practices Act was made in Massachusetts when the Commissioner of Insurance, on December 12, 1986, issued a "Policy Statement," which announced that the use of AIDS antibody tests by life and health insurers constituted an unfair trade practice under that state's version of the Act, *see* MASS. GEN. L. ch. 176D, § 3(7) (1984), and that violators would be subject to an enforcement action. *See* Letter from Peter Hiam, Commissioner of Insurance to All Life/Health Insurance Companies (Dec. 12, 1986) (Policy Statement Re: Application Form Questions Inquiring About AIDS and ARC). The validity of the Policy Statement may be subject to legal challenge because the Massachusetts Legislature expressly declined to enact legislation in 1986 that would have prohibited life and health insurers from requiring AIDS antibody tests as a condition of insurability. *See* S. 489, Reg. Sess., § 2 (1986). Moreover, the Policy Statement was issued without any prior notice, opportunity for comment, or public hearing as required by the Massachusettes Administrative Procedures Act. *See* MASS. GEN. L. ch. 31, § 4 (1984).

[34] *See* U.S. DEP'T OF HEALTH AND HUMAN SERVICES, SURGEON GENERAL'S REPORT ON ACQUIRED IMMUNE DEFICIENCY SYNDROME 10 (1986).

[35] *See* J. SLAFF & J. BRUBAKER, THE AIDS EPIDEMIC 201 (1985) (citing Dr Robert Gallo, National Institutes of Health researcher and a co-discoverer of the HTLV-III virus).

[36] *See* American Council of Life Insurance & The Health Insurance Association of America, AIDS Survey of Member Companies 2 (Aug. 19, 1986) (unpublished survey) [hereinafter AIDS Survey of Member Companies].

[37] *CDC Classification System for HIV Infections*, 35 MORBIDITY & MORTALITY WEELKY REP. 334, 335 (1986).

[38] WIS. STAT. ANN. § 631.90(3)(a) (West Supp. 1986).

[39] J. DAVIS, SEROLOGIC TESTS FOR THE PRESENCE OF ANTIBODY TO HUMAN T-LYMPHOTROPIC VIRUS TYPE III: INFORMATION PURSUANT TO THE PURPOSES OF WISCONSIN STATUTE § 631.90 REGARDING THEIR USE IN UNDERWRITING INDIVIDUAL LIFE, ACCIDENT AND HEALTH INSURANCE POLICIES 22 (Wis. Dep't of Health and Social Servs., 1986) [hereinafter REPORT OF WISCONSIN EPIDEMIOLOGIST].

[40] *See* PUBLIC HEALTH SERVICE PLAN, *supra* note I, at 5. In 1985, the CDC cited studies in which 5% to 19% OF THOSE INFECTED WITH THE AIDS VIRUS WERE FOUND TO DEVELOP AIDS OVER A PERIOD OF TWO TO FIVE YEARS. *See Provisional Public Health Service Inter-Agency Recommendations for Screening Donated Blood and Plasma for Antibody of the Virus Causing Acquired Immunodeficiency Syndrome*, 34 MORBIDITY & MORTALITY WEEKLY REP. 5 (1985) [hereinafter *Recommendations for Screening*].

[41] *See* National Institutes of Health, *The Impact of Routine HTLV-II Antibody Testing on Public Health*, 6 CONSENSUS DEVELOPMENT CONFERENCE STATEMENT 10 (1986).

[42] *See* CONFRONTING AIDS, *supra note* 3, at 7.

[43] *See Recommendations for Screening, surpa note* 40, at 5.

[44] *See* REPORT OF WISCONSIN EPIDEMIOLOGIST, *surpa note* 39, at 3.

[45] *See* CONFRONTING AIDS, *supra note* 3, at 7 ("Most patients die within two years of the appearance of clincial disease; few survive longer than three years.").

[46] *See* SOCIETY OF ACTUARIES, TRANSACTIONS: 1982 REPORTS OF MORALITY AND MORBIDITY EXPERIENCE 55 (1985). That is the approximate mortality upon which the premium cost of an individual standard class life insurance policy for such a person is based.

[47] *See* Affidavit of Warren L. Kleinsasser, M.D. at 6, American Council of Life Ins. v. District of Columbia, 645 F. Supp. 84 (D.D.C. 1986).

[48] CAL. HEALTH & SAFETY CODE § 199.21(f) (West Supp. 1986) (effective Apr. 4, 1985).

[49] *See* WIS. STAT. ANN. § 631.90 (West Supp. 1986) (effective Nov. 23, 1985). This statute is more restrictive because it also prevents the insurance company from requesting whether an applicant has taken any tests for the presence of AIDS antibodies.

[50] *See* Prohibition of Discrimination in the Provision of Insurance Act, D.C. Law 6-132, 33 D.C. Reg. 3615-24 (1986) (to be codified at D.C. CODE ANN. §§ 35-221 to 35-229 (Supp. 1987)).

[51] *See id.* § 4(b)(1), (2) (to be codified at D.C. CODE ANN. § 35-223(b)(1), (2) (Supp. 1987)).

[52] D.C. CODE ANN. §§ 1-204, 1-233(a)(3) (1981). Section 1-233(a)(3) states in part that "[t]he Council shall have no authority to pass any Act . . . (3) [w]hich is not restricted in its application exclusively in or to the District."

[53] 645 F. Supp. 84 (D.D.C. 1986).

[54] *Id.* at 87.

[55] *See id.*

[56] *Id.* The "report" referred to by the court was the *Report of the Wisconsin Epidemiologist. See supra* note 39.

[57] 645 F. Supp. at 88 (emphasis added).

[58] *See* ADVISORY COMMITTEE ON AIDS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, MEDICAL/LIFESTYLE QUESTIONS AND UNDERWRITING GUIDELINES (1986).

[59] *Id.* § I(A), (B).

[60] *See* ACLI Minutes of the Board of Directors 9 (Nov. 16, 1986) (on file at Harvard Law School Library); HIAA Minutes of the Board of Directors 5 (Oct. 26, 1986) (on file at Harvard Law School Library).

[61] *See* HIAA 1985 ed., *supra* note 8, pt. A, at 347.

[62] *See* AIDS Survey of Member Companies, *supra* note 36, at 1. Three hundred twenty-five HIAA and ACLI member companies writing 72% of all health and life insurance business in the United States responded to the survey. *See id.* at 3.

[63] *See id.* at 3.

[64] PUBLIC HEALTH SERVICE PLAN, *supra* note 1, at 5.

[65] *See, e.g.,* ILL. ANN. STAT. ch. 73, para. 836(c) (Smith-Hurd Supp. 1986); N.Y. INS. LAW § 3203(a)(3) (West 1985).

[66] Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 247 N.E.2d 655, 299 N.Y.S.2d 835 (1969).

[67] The contract between the insurer and the insured consists of the policy and the application. The statements on the application both by the policyholder and by persons insured are considered representations. *See, e.g.,* MD. ANN. CODE art. 48A, § 374 (1979). If such representations are later found to be untrue, they may not serve as the basis for rescission unless they materially affected the underwriting of the coverage. *See* HIAA 1985 ed., *supra* note 8, pt. B, at 109. Generally, if a claim is submitted under a recently issued insurance policy, or circumstances indicate that further inquiry is appropriate, an insurer will initiate an investigation to ascertain whether misrepresentations were made in the application for insurance. If relevant health histories are discovered that were not disclosed in the application for insurance, the insurer may seek to rescind the policy.

Thus, if AIDS patients are less than truthful on their applications and such misrepresentations are "material" (as defined by appropriate state law), insurers would presumably exercise their legal options, consistent with any other material misrepresentations of health, and rightfully seek rescission of those policies.

[68] *See, e.g.,* Hyman v. Life Ins. Co. of N. Am., 481 F.2d 441 (5th Cir. 1973); Wissner v. Metropolitan Life Ins. Co., 395 F.2d 204, 205 n.1 (5th Cir. 1968) (applying FLA. STAT. ANN. § 627.409 (West 1984 & Supp. 1986)).

[69] *See* 43 AM. JUR. 2D *Insurance* § 768 (1982). Some states, however, provide that fraudulent misstatements in individual accident and health insurance applications are excepted from the application of the incontestability clause. *See, e.g.,* N.Y. INS. LAW § 3216 (d)(1)(B)(i) (West 1985).

[70] For example, in some companies this provision is not required for groups of 100 or more employees. *See* HEALTH INSURANCE ASSOCIATION OF AMERICA, A COURSE IN GROUP LIFE AND HEALTH INSURANCE pt. B, at 11 (1979) [Hereinafter HIAA 1979 ed.].

[71] *See generally* LIFE AND HEALTH INSURANCE HANDBOOK 463 (D. Gregg & Lucas eds. 1973); HIAA 1985 ed., *supra* note 8, pt. B, at 108-09.

[72] *See* HIAA 1979 ed., *supra* note 70, pt. B, at 11.

[73] *Id.* at 12.

[74] N.Y. COMP. CODES R. & REGS. tit. 11, § 52.2(u) (1982).

[75] Some would argue that the fatal nature of AIDS renders the pursuit of medical treatment nonsensical and futile. This assertion fails for two reasons. First, the fatality of an illness has never been established as preventing medicine from playing an important role in an individual's treatment. Those fearful that they may have symptoms indicative of other fatal illnesses (for example, Hodgkin's disease, Huntington's chorea, or certain brain tumors) still seek treatment for the physical and psychological comfort to be obtained from quality health care. The same is true of AIDS. Indeed, the arguments of the gay community on this point miss the mark in several respects. *Cf.* J. Levi & B. Schatz, AIDS-Related Issues and Insurance: A Position Paper 1, 4 (1986) (Position Paper of the National Gay Rights Advocates and National Gay and Lesbian Task Force on AIDS, submitted to the NAIC Advisory Committee on AIDS by Benjamin Schatz, Apr. 18, 1986) (noting the erosion of the doctor-patient relationship in the event of HTLV-III infection). If, as stated by the gay community, it should become evident that not all seropositive individuals will develop AIDS, medical advice on the health implications of being HTLV-III positive take on added significance. Absent such a finding, seropositive individuals would still need medical counseling to assist in the prevention of further transmission of the virus. Moreover, some individuals would be rightfully inquisitive about the theories currently being discussed in the medical community as to what co-factors have been discovered in seropositive individuals who went on to develop AIDS * * *.

[76] The authors must add the caveat that, to our knowledge, no company has adopted a policy that would consider seropositivity *alone,* without the presence of other symptoms, as a pre-existing condition.

[77] *See* Consolidated Omnibus Reconciliation Act of 1985, Pub. L. No. 99-272, §§ 10001-10003, *as modified by* the Tax Reform Act of 1986, Pub. L. 99-514, *and* the Sixth Omnibus Budget Reconciliation Act, Pub. L. 99-509.

[78] *See e.g.,* ILL. ANN. STAT. ch 73, § 367e (Smith-Hurd Supp. 1986) (requiring continuation for 60 days after date of termination); MD. REGS. CODE tit. 09, § 09.30.61.14 (1986) (requiring continuation for six months after termination of group coverage); MASS. ANN. LAWS ch 175 § 110D (Law, Co-op. 1977) requiring continuation for 31 days after the insured leaves a group * * *.

[79] *See supra* p. 1808.

[80] *See* STAFF OF THE SENATE SPECIAL COMMITTEE ON AGING, A PROFILE OF HEALTH BENEFITS AND THE UNINSURED 6 (Working Paper No. 1, Oct. 17, 1986) (referring to an American Medical Association estimate).

[81] *See* CONN. GEN. STAT. ANN. ch. 692 (West Supp. 1986); FLA. STAT. ANN. §§ 627.648-.649 (West 1984 & Supp. 1986); 1986 Ill. Laws 84-1478 (to be codified at ILL. STAT. ANN. ch. 73, paras. 1301-1314 (Smith-Hurd 1987)); IND. CODE ANN. §§ 27-8-10-1 to -8 (West 1986); 1986 Iowa Legis. Serv. 2181 (West 1986) (to be codified at IOWA CODE §§ 514E.1-.13 (West Supp. 1987)); MINN. STAT. ANN. §§ 62E.01-.16 (West 1986); 1985 Mont. Laws ch. 595 (to be codified at MONT. CODE ANN. §§ 33-22-1501 to -1505); NEB. REV. STAT. §§ 44-4201 to -4235 (Supp. 1986); N.D. CENT. CODE § 26.1-08 (1985); TENN. CODE ANN. §§ 56-39-101 to 121 (Supp. 1986); WIS. STAT. ANN. §§ 619.01-.18 (West 1980 & Supp. 1986).

[83] 29 U.S.C. §§ 1101-1462 (1982). The scope of this Commentary does not allow for a lengthy discussion of the uneven and inconsistent treatment accorded employee health benefits plans as a result of ERISA.

[84] *See id.* § 1144.

[85] Personal health care expenditures in the U.S. in 1985 amounted to $371.4 billion. Of that, the private insurance industry was responsible for the financing of $113.5 billion. *See* U.S. Dep't of Health and Human Servs., *National Health Expenditures, 1985,* 8 HEALTH CARE FINANCING REV. 20 (1986).

[86] It should be noted that some states have effectively overcome the ERISA problem by funding such pools either directly from the state's general revenue, *see, e.g.,* 1986 Ill. Laws 84-1478 (to be codified at ILL. ANN. STAT. ch. 73, para. 1312 (Smith-Hurd 1987)), or indirectly from the general revenue, by providing insurance companies a premium tax offset for assessments the responsibility of confronting and rectifying social inequities would be shared by society as a whole.

[87] *See* The Health Insurance Availability Act of 1985, H.R. 1770, S. 1372, 99th Cong., 1st Sess. (1985) (introduced by Rep. Kennelly (D-Conn.) and Sen. Heinz (R-Pa.)); *see also Access to Health Insurance and Health Care: Hearing Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Governmental Affairs,* 99th Cong., 2d Sess. 14 (1986) (statement of Sen. Heinz).

BETHESDA BAPTIST CHURCH,
Washington, DC, February 2, 1987.

The Honorable JESSE HELMS,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: We, the President, Officers, and Members of the Baptist Ministers' Conference of Washington, D.C. and Vicinity ask you to renew your effort to overturn D.C. Act 6-170, which was passed and signed by Mayor Barry last August, 1986.

Mr. Helms, if you have on hand the statement I read before the press conference and the D.C. Committee of the House of Representatives last year, and if you will check the open letter of my Committee Against D.C. Act 6-170, you will discover that practically every evil we warned against has come to pass. It is virtually impossible for a D.C. resident to obtain an individual life policy in the District of Columbia.

This letter of request comes on behalf of the Baptist Ministers' Conference of Washington, D.C. and Vicinity. Our Conference is an organization of Baptist pastors, evangelists, assistant and associate ministers of more than 600 members. We meet each Monday at the Trinidad Baptist Church, 1611 Benning Road, N.E., Washington, D.C. 20002. The Reverend Daniel Jackson is pastor.

President George Gilbert, on authority of the vote of the Body on Monday, February 2, 1987 directed me to make the above appeal to you.

We thank you for the concern you have shown for all the citizens of the District of Columbia, and the nation. If left alone, we feel certain that this unfair, unreasonable, unprofessional and anti-business law will spread throughout the nation. Congressional action must be taken against this Law.

Yours in Christian service,

JOHN D. BUSSEY
(For Rev. George C. Gilbert, President, The Baptist Ministers' Conference).

SPARROWORLD BAPTIST TEMPLE,
Washington, DC, January 30, 1987.

The Honorable JESSE HELMS,
United States Senate,
Washington, DC.

DEAR SENATOR HELMS: I write to you today not only as a pastor, but as a concerned husband and father as well.

My home and church, like the homes and churches of many other Christians like myself, lies within the jurisdiction of the District of Columbia, governed by those who have no compunction about violating the constitutional rights of the majority in order to appease a militant few.

Last year our City Council chose to ban all AIDS testing of life and health insurance applicants for the next five years. Now, not even a year since Mayor Barry signed the bill into law, 82% of our city's top insurers have stopped writing policies for individuals. Even the *Washington Post* noted that the nation's largest insurer, Metropolitan Life, and the second largest insurers, Aetna and State Farm, are among the options lost to us.

The D.C. law itself has the effect of giving preferential treatment to a deadly disease whereas the government's role should be to protect the people from its spread.

Senator Helms, you served as the champion of the people of the District last year when so many in Congress who often speak of their concern chose to look the other way. I urge you to act again in this Congress to assert the Constitutional protection of the rights of all by reintroducing a resolution of disapproval of the D.C. AIDS law.

Sincerely,

REV. CLEVELAND B. SPARROW, Sr.,
Chairman, Washington, DC.
Moral Majority.

THE THIRD WORLD ASSEMBLY, INC.,
Washington, DC, January 28, 1986.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

SENATOR HELMS: Rev. Cleveland Sparrow informed me today that there may be a chance of re-introducing H.J. Res. 366 to overturn D.C. A.I.D.S. bill 6-170.

The Health Committee of The Third World Assembly, Inc. and the Executive Board fully support H.J. Res. 366 in hope that the House will concur with the Senate in overturning this deadly legislation.

I congratulate Congressman Dannemeyer for introducing the resolution and you Senator Helms for leading the Senate to vote positively for H.J. Res. 366.

This D.C. A.I.D.S. Bill has caused more than 100 insurance companies to withdraw

from the District of Columbia since Bill 6-170 has become law.

Bill 6-170 has seriously jeopardized insurance underwriting rules and placed insurance companies at great risk in writing any insurance on an Aids victim.

Certain insuring companies refuse to insure policies over $25,000 that does not meet underwriting requirements; this amount includes accidental insurance.

It appears that such senseless legislation is causing anarchy in the District of Columbia. The D.C. Lobby for the Community of Special Interest in AIDS has extended into the Ward 3 community causing serious concerns among Ward 5 citizens because of an unregulated A.I.D.S. containment house at 2800 Otis Street, N.E.

Even regulatory bodies in the District of Columbia denies the need for licensing or a Certificate of Need for such a facility.

This AIDS crisis must be controlled and regulated before AIDS contaminate and destroy our entire social structure.

As a medical researcher, minister and insurance underwriter, you have my full support in any effort to contain this disease and save our Republic.

Respectfully,

REV. JOHN G. MARTIN, H.E.,
Founder/Executive Director.

SCHMITT INSURANCE SERVICES,
Washington, DC, January 11, 1987.

Senator JESSE HELMS,
Washington, DC.

DEAR SENATOR HELMS: I was pleased to hear that you are again going to try to have the District of Columbia Bill 6-343, the so-called "AIDS Bill" affecting insurance companies, repealed.

The life insurance industry in DC is nonexistent. My agency represents over 25 different carriers and none of them accept applications in DC any more. I recently tried to purchase life insurance on myself, and, after 21 years in the life insurance business, I am unable to acquire insurance I need very much at this time. I have two carriers who write disability income insurance and both offer low maximum benefits; I expect them to leave shortly.

I have had to cancel advertising in DC in fear of being accused of false advertisting, that of advertising a product I do not have. I no longer advertise in the Yellow Pages nor in newsletters published by charitable organizations such as the Fraternal Order of Police, and, because of this bill will probably have to move to Maryland or Virginia in order to maintain my Errors and Omissions Insurance.

DC residents now face a major problem, where do they go for needed life, health, and/or disability income insurance. Some companies permit us to take a DC resident to Maryland or Virginia and write the application there (Note: premium taxes go to those states, I am sure the tax coffers of these states are doing quite well.)

The DC Government has boxed itself in on this issue, however, I really feel that the main cause is John Ray. He will do nothing about the problem, mainly because of his ego and not for the concern of all the residents. I would offer this suggestion, since the DC Government (the resident taxpayers) are losing out on millions of dollars on premium taxes:

Why not eliminate Bill 6-343 and dedicate the resultant tax revenue for finding a cure for AIDS and/or taking care of AIDS victims who cannot help themselves. No one loses, everybody wins, and since we, the DC residents are going to have to pay for AIDS victims in the form of increased taxes anyway, why not do something positive for all concerned?

The AIDS problem, with respect to insurance, is being worked on nationally by the NAIC (National Association of Insurance Commissioners) and model legislation is being developed. The problem in DC is however, when will it come to fruition?

Try telling a young family they cannot protect themsevles in the event of death and/or disability, that they will have to wait. Perhaps, John Ray will take care of these people and their families. They're as much a special interest group as the Gay Alliance; they're full time tax payers who deserve more than they are getting from this administration. They are more than willing to take care of their financial responsibilities if given the chance. This administration (Marian Barry, Jr. et al) simply does not want the residents of DC to have the opportunity to take care of themselves, he does, however, pride himself on his appeal to the Gay Community, who, for the most part, are quite affluent. I guess political donations and free advertisement in Gay newspapers and magazines are more important to the Mayor.

Senator Helms, I certainly wish you the best in trying to provide a solution to this incredulous problem; please do not give up as there are many, many people out there who believe as you do and are only asking for the same rights and opportunities that residents of other states have.

Thank you for you help.

Very truly yours,

WALTER E. SCHMITT, CLU.

AETNA LAW DEPARTMENT,
Hartford, CT., August 12, 1986

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: Julie Bullard of your office requested information concerning Aetna's reaction to the "Prohibition of Discrimination in the Provision of Insurance Act of 1986." which became effective in the District of Columbia on August 7, 1986. The Act precludes insurers from properly identifying those individuals who are at risk for developing AIDS (acquired immune deficiency syndrome) and ARC (AIDS-related complex.) Under the new law, underwriting and rate-making decisions may not take into account the results of testing for the presence of antibodies to the HTLV-III virus, which has been associated with AIDS, or other evidence of immune deficiencies.

Aetna believes that the effect of this law will be to prohibit insurers from using appropriate medical information, thereby fundamentally compromising their ability to effectively and equitably underwrite and price business. For this reason, Aetna has instituted a moratorium on accepting new applications until further notice (unless contractually committed to do so) for individually underwritten life and health insurance policies in the District of Columbia.

Insurance is designed to provide protection against unforseen losses. If insurers are not permitted to identify individuals who are at demonstrably higher risk of contracting a serious illness, the insurance mechanism cannot operate and affordable insurance products cannot be made available. The expected claim costs for individuals who test positive for the presence of the HTLV-III virus are so much higher than for non-exposed insureds that the effect is a price spiral generated by the continuing addition of high risk individuals and the simultaneous loss of others who are priced out of the market. By restricting the insurance industry's use of sound underwriting principles, the new law would impose unfair economic burdens on the insurance-buying public in the District of Columbia and threaten the financial stability of the insurers to which the public looks for risk protection.

Aetna is strongly committed to doing business in the District of Columbia and supports responsible efforts to restore a positive insurance underwriting environment.

Sincerely,

MALCOLM O. CAMPBELL, Jr.

NATIONAL LIFE OF VERMONT,
January 12, 1987.

Senator JESSE HELMS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: I am writing at the request of your office regarding the legislation enacted in the District of Columbia which restricts the use of AIDS antibody tests in the insuring process and our Company's reaction to those restrictions.

We at National Life Insurance Company believe that as a result of the "Prohibition of Discrimination in the Provision of Insurance Act of 1986," it would no longer be a prudent business decision, or equitable to our current or future policyholders, to accept any life insurance and disability income insurance applications on the lives of residents of the District of Columbia, regardless of the jurisdiction in which the application is signed. These restrictions will be placed in force on February 1, 1987.

The need to take such severe measures is a direct result of the District of Columbia legislation. The Company believes that those suffering from AIDS and those at high risk of suffering from AIDS (test positive on the ELISA test) cannot be treated differently from those suffering from heart disease, cancer, and other life-threatening illnesses. The District's law in this regard prohibits insurers from using objective and reliable blood tests on applicants in order to assign them to appropriate risk classes. This prohibition unfairly discriminates against the Company and its policyholders. Our only alternative to withdrawing from the District of Columbia marketplace would be to charge all new policyholders higher premiums and force those at low risk of contracting AIDS to subsidize high-risk policyholders. This would be in violation of both our business ethics and the integrity of our underwriting processes.

Clearly, the very serious questions raised by the AIDS epidemic must be examined in a manner that is as compassionate as it is cautious. At National Life, we feel that our obligations extend far beyond the mere preclusion of life and disability insurance applications from the District of Columbia. Our contributions toward medical research and our active participation in industry groups which conduct educational campaigns aimed at preventing the spread of the disease are part of that response. However, we also have a business obligation to provide quality products and services at competitively advantageous costs to the public we seek and serve.

It is toward that end that we fully support any efforts which you might undertake to amend or repeal the District of Columbia

law which so severely restricts our conduct of business in the nation's capital.

Sincerely,

FREDERIC H. BERTRAND.

GEICO LIFE INSURANCE,
Washington, DC., January 14, 1987.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Building,
Washington, DC.

DEAR SENATOR HELMS: This is to confirm our oral response to an inquiry from your office regarding our decision not to accept applications for life or health insurance in the District of Columbia since the effective date of D.C. Act 6-170, the "Prohibition of Discrimination in the Provision of Insurance Act of 1986."

Enclosed are copies of letters from each of our two life insurance companies to the District's Superintendent of Insurance notifying her of our decision. For your information, we are not aware of any life insurance company that is currently accepting individual life insurance applications in the District.

Sincerely,

HERBERT L. DE PRENGER,
President.

THE MUTUAL LIFE INSURANCE CO. OF NEW YORK,
New York, NY., January 14 1987.

Hon. JESSE HELMS, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: On behalf of MONY Financial Services, I am pleased to reply to your inquiry regarding the impact of the recently enacted District of Columbia Council bill 6-343 entitled "Prohibition of Discrimination in the Provision of Insurance Act of 1986." As a direct result of this legislation on July 22, 1986, MONY Financial Services ceased to accept new applications for Individual Life Insurance and Individual Disability Income policies within the District of Columbia. This applied to applications for new coverage, as well as applications for increased protection under in-force contracts.

This action has been taken because of unrealistic restraints place on insurance underwriting by the subject local legislation. Among other things, Council bill 6-343 prohibits an insurer from using or requiring any tests to detect the presence of AIDS antibodies in the blood stream of an applicant for insurance. In addition, insurers cannot ask applicants to disclose whether a test to determine the presence of AIDS antibodies has been administered, nor can we use other selection data to predict whether an individual may, in the future, develop AIDS or AIDS Related Complex.

This interference with long-standing underwriting practice strikes at the very heart of our business: the ability to classify risk on the basis of medical and other information. We have reached the decision to cease writing new individual Life and Individual Disability business in the District because of the principle involved, as well as our obligation to protect existing and future policyholders from having to unfairly shoulder the potentially drastic losses that will occur if we are denied the ability to screen for high-risk applicants.

Our sympathy for the victims of this dreaded disease cannot, unfortunately, cloud our judgment on the overriding principle involved; we must be allowed to assess risk fairly or the whole structure or private insurance will crumble.

Indeed, for many years insurance underwriters have performed this task successfully and without discrimination in the invidious sense. In this regard, we believe that currently, from an underwriting perspective, AIDS is appropriately being considered in a manner identical to other life threatening diseases pursuant to traditional underwriting practices.

MONY Financial Services will continue to service existing Individual Life and Disability Income policies in the District of Columbia. And, we will continue to accept applications for guaranteed conversions of life and health coverage. It is our hope that the District of Columbia Council will, in the near future, reverse its decision so we may again properly underwrite all new business in its jurisdiction.

Sincerely,

LEE M. SMITH.

NEW YORK LIFE INSURANCE CO.,
New York, NY., January 7, 1987.

Attention: Ms. Mary Potter

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: You have asked whether we are writing business in the District of Columbia. Please be advised that New York Life Insurance Company and New York Life Insurance and Annuity Corporation have discountinued writing new individual life and disability insurance policies in the District of Columbia. This action was taken as a result of the enactment of the "Prohibition of Discrimination in the Provision of Insurance Act of 1986" (D.C. Act 6-170).

Sincerely,

MALCOLM MACKAY.

THE PRUDENTIAL,
Washington, DC, October 10, 1986.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: This letter is in response to a call from your staff to our Home Office in Newark earlier today. The Prudential has withdrawn from the individual life and health insurance market in the District of Columbia by reason of the effect of D.C. Act 6-170.

Sincerely,

PRIDE MARK,
Washington, DC, January 9, 1986.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: This letter is written in response to your concern as to the effect of the enactment of the Washington, D.C. Act 6-170 by the District of Columbia City Council.

This enactment has severely impaired the ability of insurers to properly underwrite life and health insurance on residents of the District of Columbia.

Our insurers have withdrawn from the marketplace. Applications written in the District of Columbia or written on District of Columbia residents are no longer accepted. It is our understanding that this decision shall be affirmative unless Act 6-170 is rescinded by the District of Columbia City Council.

We sincerely regret this decision by our insurers and that of the D.C. City Council. It is the consuming public who shall suffer because of the inability to obtain life and health insurance from any of the major insurers.

Those companies that have remained and are entering the marketplace do so in the absence of competitive pricing and perhaps inadequate resources or reserves to cover claims as they arise. This is a situation that affects us all if allowed to set a precedent within the industry of avoiding adverse selection in the underwriting of life and health insurance.

Your concern in this matter is appreciated and if we can be of further assistance, please give our office a call.

Sincerely,

HARRY L. STALEY,
President.

PILOT LIFE INSURANCE CO.,
Greensboro, NC, October 10, 1986.

Senator JESSE HELMS,
U.S. Senate Office Building,
Washington, DC.

Re D.C. Law 6-170.

DEAR SENATOR HELMS: We certainly do appreciate your help in attempting to overturn D.C. Law 6-170.

This is to confirm that Pilot Life has decided to discontinue the writing of individual life and health policies in the District of Columbia until this law is overturned.

Your continuing efforts are much appreciated by all of us.

Sincerely,

JAMES E. HARSHAW, CLU.

MUTUAL OF OMAHA,
Washington, DC, August 8, 1986.

Hon. JESSE HELMS, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: Bill number 6-343 passed by the District of Columbia has the effect of removing the company's right to adequately underwrite certain life and health risks.

Therefore, the companies, Mutual of Omaha and United of Omaha, have decided to discontinue marketing all life and health products except annuities and Medicare supplements in the District of Columbia.

Sincerely,

JAMES E. BARRETT,
Executive Vice President.

GREAT-WEST LIFE,
Englewood, CO, September 5, 1986.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

Attention: Ms. Julie Bullard.

DEAR SENATOR HELMS: The Great-West Life Assurance Company concluded that it would not continue to accept applications for individual life and disability insurance from residents of The District of Columbia.

While we regretted having to take this action we believe we had to in order to protect our participating policyholders and our shareholders.

Insurance is based on the simple concept of pooling comparable risks. Through the normal underwriting process we determine the degree of risk inherent in each life we underwrite. When we cannot pursue this underwriting process we cannot measure the risk we are undertaking.

Obviously, in life insurance, the applicant's present medical condition is a primary determinant of risk. Legislation such as Bill 6-343 that prohibits us from measuring this undermines the whole concept of pooling comparable risks.

To continue to do business on the terms required by the District's legislators would inevitably mean that our present policyholders would pay for increased mortality costs as risks that would not normally be insurable become covered due to our inability to properly underwrite them. To expose our current policyholders to this certainty is not sound management and not what they expect of us.

Everyone hopes that cures will be found for diseases that presently terminal. Until cures are found, private insurance should not be sued as a substitute for social policy.

Sincerely,

WILLIAM T. MCCALLUM,
Senior Vice President, Individual.

GREATER WASHINGTON
HEALTH UNDERWRITERS ASSOCIATION,
Washington, DC, February 2, 1987.

Hon. JESSE HELMS, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: On behalf of our organization, I would like to thank you for your efforts in Congress on bringing to light the problems of the D.C. AIDS law, Act 6-170.

Act 6-170 has effectively diminished the availability of commercial health insurance as well as disability and life insurance to citizens of the District of Columbia. Moreover, Act 6-170 is making all such insurance less affordable for many D.C. citizens.

To date, according to newspaper articles, some forty commercial insurance carriers which underwrote the majority of commercial insurance in D.C. have withdrawn from the District. The main reason for this mass exodus is due to the fact that, under Act 6-170, people who have been exposed to the AIDS virus are to be insured as if they were healthy. This is discriminatory to the standard insurance policy holders and to those who have other medical conditions for which they are rated as higher risks. More specifically, this means that insurance companies cannot underwrite the risk for these individuals who have AIDS as they do those individuals who have heart disease, high blood pressure, diabetes and other such illnesses.

The Association understands the problem of people who have been exposed to AIDS and their need for some kind of health protection. The D.C. Act, however, goes too far in addressing this problem. It has left the citizens an oligopoly of which in the absence of competition will leave D.C. citizens very high health premium costs and less access to health insurance and care.

Our Association suggests that the D.C. AIDS law, Act 6-170, be overturned or amended so that commercial insurers are able to return to the market. Following the proper disposition of Act 6-170, in order to provide access to health insurance, we suggest that the D.C. Government support Federal legislation to create risk pools for those who are unable to obtain health insurance for *any* medical reason, not just for exposure to AIDS.

Sincerely,

R. DAMIAN DUFOUR,
President.

Mr. HARKIN. Mr. President, I rise in opposition to the amendment of the distinguished Senator for a variety of reasons.

Had I been on the city council at the time this came up, I may very well have voted against the act. But that is not the issue here. The issue here, again, is one of how intrusive the Federal Government will be in the District of Columbia's running of its own affairs.

There is also another broader issue here, and it concerns what steps we in the Federal Government are going to take to begin regulating the insurance companies in America.

It is this Senator's opinion that we have a good insurance regulatory system right now in America, based upon the McCarran-Ferguson Act, and I think it is one that ought to continue.

It is based upon the power of the States and the State insurance commissioners to regulate insurance in each of the 50 States. It has worked well. There is nothing wrong with it.

So I see no reason for the Federal Government to now take an intrusive step into regulating insurance activities in any States, including the District of Columbia.

The District of Columbia is well within its power and well within its jurisdiction to pass this law. Now, however, as much as we may disagree with it, I may disagree with what some State may do in regulating insurance in that individual State but on the whole as a Nation I think we are best served by the present system that we have.

I think once we take the step of telling the District of Columbia what it can and cannot do in terms of regulating insurance, then it is a very short step beyond that to tell the State of Washington or to tell the State of North Carolina or the State of Iowa what they can or cannot do in terms of regulating insurance.

I think it is a dangerous precedent for us to take that step and one that I hope that Senators will not take lightly in voting on this amendment, however they may feel about the amendment itself.

I think Senators would be well advised to consider the implications of voting to have the Federal Government tell an established jurisdiction what it can and cannot do in terms of regulating insurance.

Mr. President, let me clear up a couple, I think, misinterpretations about the law itself. Act 6-170, the act that is now sought to be amended by the Senator from North Carolina, does not require insurers to sell insurance to persons with AIDS. The bill solely protects healthy persons.

The act expressly allows any test that is part of a doctor's diagnosis of AIDS under the guidelines of the Federal Center for Disease Control. The act expressly allows that.

In fact, Act 6-170 provides for an extraordinary 3-year contestability provision that would allow insurers an extra year to contest the policy of any policyholder whose claim arises from AIDS.

Because the average life expectancy of persons diagnosed with AIDS is less than 3 years, this provision effectively guarantees that no one with AIDS will buy insurance and collect.

So some of the points I think that the distinguished Senator from North Carolina is making just cannot hold because of this 3-year contestability provision that is in the law.

Therefore, I think because of this provision there will be less fraud in cases involving AIDS than there is in insurance claims generally.

Indeed, as the price of the protection provided in this bill anyone with AIDS who makes a legitimate insurance claim is likely to be contested.

Again, I would just say that, contrary to some extreme opponents, Act 6-170 would not increase the incidence of AIDS in the District; rather I think a counterargument would be made that this law would assist in the prevention and would assist in education efforts by removing disincentives from individuals to seek testing and counseling on a voluntary and confidential basis.

That is what we want. We want people to come in and to get tested on a voluntary basis on a confidential basis. We want to educate these people on what to do to control AIDS.

Again, if we adopt this, this I think will be a disincentive for people to come in on a voluntary basis.

I do not know how Senators feel about mandatory testing for AIDS. Maybe there are some who want every person to be mandatorily tested for AIDS, get everyone. We have been through that debate here, and I think it has been expressed here by the Senate and others that it is not in our best national interest if indeed we could even afford it.

So what we want is education, prevention and counseling on a voluntary and confidential basis, and I think Act 6-170 provides that.

Let me just repeat one more time: the act in question passed by the District of Columbia City Council does not allow people with AIDS to buy insurance. It does, however, protect healthy people from being denied insurance unfairly or discriminatorily.

That is really basically all that it does. As I said, the 3-year contestability clause in there I think would effectively preclude any kind of fraud in this matter.

Now, I have a letter dated last year, July 23, 1986, in opposition to a similar amendment that was offered last year, signed by Mr. John Ray, Democratic council member at large, Carole Schwartz, Republican council member at large, asking that this amendment be defeated.

So, Mr. President, I hope that when Senators arrive on the floor to vote on this measure, we understand that we are not voting on whether people with AIDS have to be sold insurance. That is not what the issue is. That is not what the act provides.

What it does say is that healthy people cannot be arbitrarily discriminated against. You cannot have red lining. If there is an area in which there is a high incidence of AIDS, you cannot say everybody has to pay a higher rate of insurance because of that. The act does not prohibit a legitimate doctor's diagnosis from being used, does not prohibit that at all.

As I said, it expressly allows any test that is part of a doctor's diagnosis of AIDS under these guidelines.

So is the issue home rule? Yes, that is an issue. I think a more important issue is whether or not we in the Federal Government are now going to be controlling insurance. Are we now going to say to the State of North Carolina that you cannot regulate insurance; we are going to do it here, or in Iowa, because once you take that step to regulate it in the District of Columbia you might as well take another short step and start regulating insurance all over the United States. That is basically what is at issue here.

Third, and no less important, is just the issue itself of whether or not we are going to say that we will allow certain red-lining principles to take place because of an area that may have a high incidence of AIDS.

As I said, the act expressly allows for doctors' diagnoses to be used in the provision of insurance in the District of Columbia.

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

Mr. HARKIN. I am delighted to yield.

Mr. NICKLES. I apologize. I missed part of the debate from both individuals and I am not as knowledgeable on this D.C. law.

Mr. HARKIN. 6-170.

Mr. NICKLES. 6-170.

Mr. HARKIN. Yes.

Mr. NICKLES. And I just got a copy of it and in reading section 4 it says:

> An insurer may not deny, cancel, or refuse to renew insurance coverage, or alter benefits covered or expenses reimbursable, because an individual has tested positive on any test to screen for the presence of . . . of AIDS.

Mr. HARKIN. Of any probable causative agent of AIDS.

Let us read the whole thing clearly.

Mr. NICKLES. I will read the entire paragraph.

So an insurer could not, if I am an insurer agent.

Mr. HARKIN. Please read.

Mr. NICKLES. Let us say I am—I started to say Equitable Life. I will say I am an Equitable Life agent in the District of Columbia and I have a potential client down the street. He is a lobbyist and he wants to buy $1 million worth of whole life insurance and it is our company policy that individuals before they purchase a certain amount of insurance, and I do not know where the cutoff where most insurance companies require medical examination, say $100,000. So the individual wants to buy $1 million worth of insurance.

I say, "OK, you have to take a physical."

If that individual takes a physical and tests positive for AIDS, can I deny him that insurance coverage because he tested positive for this disease?

Mr. HARKIN. I would say that in the case of an insurance company that had a potential client and said, "OK, we want you to take a physical and get a doctor's test to diagnose if you have AIDS as a condition for you getting insurance from us," that individual says, "OK, I agree to that, I will go get a doctor's test and make that available to the insurance company," and the doctor's diagnosis is in fact "Yes, you do have AIDS." Since the company can deny you coverage, they do not have to sell you insurance.

Mr. NICKLES. Mr. President, I want to clarify that because I think I noticed a little bit of an opportunity. If I am an insurance agent and I say "Yes, you have to take a physical for me to sell you 1 million dollars' worth of whole life insurance, but before I can sell you that policy, and I want to sell it very badly—it is a nice commission and so on—but in order for me to do that you have to take a physical and if proven positive, I cannot sell you the insurance or it is my company policy that we would not sell you the insurance," and the individual says "No, I wanted to buy the $1 million policy," the individual with AIDS, "But I refuse to take the test."

Now, is the insurance company prohibited from having that as a requirement?

Mr. HARKIN. It is not a requirement.

But let me see if I understand the question. A person wants to come and buy the policy. The insurance company says, "Before you get the policy you have to take a physical."

Mr. NICKLES. Right.

Mr. HARKIN. The insurance companies can do that.

Mr. NICKLES. If you test positive for AIDS we decline to.

Mr. HARKIN. We will decline.

Mr. NICKLES. We will decline. Is that it?

Mr. HARKIN. If you test and the doctor's diagnosis shows that you have AIDS, we will not sell you insurance.

It is my understanding that they can do that. I may be wrong, but it is my understanding that the insurance company can do that under this provision.

Mr. NICKLES. I think it is the real crux of the debate. It is not the way I understood it. Again, I do not claim to be an expert on this piece of legislation. I am reading it the way I read the legislation—correct me if I am wrong—it says:

> An insurer may not deny, cancel, or refuse to renew insurance coverage. . . .

So the insurer cannot deny, because an individual tests positive on any test to screen for the presence of any probable causative agent of AIDS, ARC, or the HTLV-III infection, including, but not limited to, a test to screen for the presence of any antibody to the HTLV-III virus, or because an individual has declined to take such a test.

Now, I find that as a contradiction of, or at least a confusion of, what the Senator was stating. I think it is an important issue.

I see the Senator from Connecticut and maybe he is more familiar with this legislation. But I am afraid, or at least it is my opinion—and maybe this is the right vehicle to do it on or maybe not—I am afraid, if I am reading section 4 correctly, the insurer cannot refuse to issue this policy because a person tests positive for AIDS and, therefore, you are going to find most insurers not providing the insurance for anyone in the D.C. area. And I think that is a regrettable conclusion. It may be well-intentioned, but possibly legislation that leaves much to be desired.

Mr. HARKIN. If I might just say this. As I said, I am not an expert in insurance, and I would be the first to admit that. I am just trying to read again from the same law that you have there and the explanation of it. Again, I am reading from page 16 of the report of the Council of the District of Columbia regarding this law. It says here: "the sections 4 and 5 prohibitions"—that is what you were reading from—

> "apply to any test to screen for the probable causative agent of AIDS, ARC, or the HTLV-III" . . .
>
> The rationale for the broad prohibition on the use of such tests is that none has yet been proven to be sufficiently reliable and accurate for identifying persons exposed to AIDS to permit its use for insurance purposes. The medical community and industry policymakers as well acknowledge uncertainty about the reliability of the tests in current use.
>
> "While the ELISA test for antibody to AIDS retrovirus is very sensitive and quite specific, the test is subject to a variety of errors. . . . It must be emphasized that up to 10 percent false positives may occur with the present ELISA tests, due to antibodies that react with cellular contaminants mixed in with the virus preparation."

So, in that regard, what they provided for, as I understand it in the bill, was for a 3-year contestability provision to allow insurers an extra year to contest the policy of any policyholder whose claim arises from AIDS. And so

that was written into the bill, also. Because the average life expectancy of persons diagnosed with AIDS is less than 3 years, this provision effectively guarantees that no one with AIDS will buy insurance and then collect.

Mr. NICKLES. I know the Senator is reading from an explanation and I will try and get a copy of that. I was reading from the bill. But I do not know that the 3-years would really be applicable now.

We have had some improvements. A lot of people can obtain the virus. There may be a distinction between carrying the virus and maybe that is where some of the miscommunication is being made. When they contract AIDS, the AIDS disease, or when they are carrying the virus, many people will carry the virus for years before it progresses into the fatal stage. And it may well be that the fatal stage does usually occur within 3 years once they contract it or move into that stage of what we commonly call the AIDS disease. But they can carry the virus for years.

So one could find out. They could test positive for the virus but not be into what the medical terminology is frank AIDS, not progressing to the deadly stages of the disease for several years.

My concern, again, with the language, with the law that the District of Columbia passed and the way I am interpreting the statute, as I read it—I am not reading the interpretation; I will try to find that if we cannot clear up the ambiguities—but the way the law reads is that the insurer cannot deny that policy for the person who wishes to refuse the test and, therefore, an insurer, once a person moves into the frank AIDS stage, it is a deadly disease, and no one has been able to survive from it. The insurers just, frankly, will not provide the insurance.

I think that has been the result in the last couple of years. I do not know that anybody is really writing life insurance in the District of Columbia.

Again, I find that to be a real tragedy. There are a lot of people in the District, I am sure, that would like to have that.

Mr. HARKIN. I do not know all the answers to the questions that the Senator has raised, but I would direct my friend's attention to section 6 of the bill. Under section 6, it says:

(a) Nothing in this act shall be construed as preventing or restricting insurers or their agents or employees from following standard procedures for determining the insurability of or establishing the rates or premiums for new applicants diagnosed by a licensed physician as having AIDS, provided that the procedures:

(1) Apply in the same manner to all other new applicants within the same category of insurance;

(2) Are justified on the basis of actuarial evidence, and;

(3) Comply with other laws and rules of the District.

I think what is important is the next paragraph:

(b) An insurer may request or require a new applicant to take a test otherwise prohibited by this act if:

(1) The test is administered by a licensed physician as a required element of a diagnosis of AIDS; and

(2) Other symptoms of AIDS, as specified by the Centers for Disease Control of the United States Public Health Service, are present to the degree that a licensed physician determines that administration of the test is medically indicated.

So at least there are those restrictions and provisions that an insurer may request or require these applicants to take the test that otherwise might be prohibited.

I cannot tell you I understand exactly all that that says and exactly what all the implications are.

Mr. NICKLES. I appreciate the Senator's comments.

Let me just ask one final question. I know this is on your time and I appreciate your indulgence.

But the way I am reading the last paragraph you read, in other words, if a person is an AIDS patient and has symptoms that are quite obvious and "are present to the degree that a licensed physician determines that administration of the test is medically indicated," I see that that person has progressed quite well through not only carrying the virus but into the frank AIDS evolution of the disease to the extent that they are dying. And, therefore, in that case, the insurer could deny coverage. But without that case or the case where a person has contracted the virus, the insurer, at least the way I am interpreting it right now, would still have to provide the coverage. And I am afraid the result would be they just would not do it.

Mr. HARKIN. Mr. President, I am not an expert in this area. I would just say that the reading of it seems to permit the insurance companies to do a lot of different things. But it does not require them to sell insurance to persons with AIDS. At least that is the way the explanation reads and that is the way the law reads. If there is something different, I would like to be advised of it.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, I can understand why the Senator from Iowa may be a bit confused. I am going to try to illustrate why much of what he has read and the conclusions he has drawn amount to non sequiturs.

The point is that a person may not be asked about or tested for AIDS infection. Now, obviously, if somebody comes in that has got the sores and all the other visible symptoms of AIDS itself, it would be the height of stupidity for the D.C Council to force insurance companies to insure them at the expense of other policyholders.

Senator Harkin raised the point of the effectiveness of the antibody tests currently on the market. He is right. One ELISA test—E-L-I-S-A—and that is the medical short term for enzyme-linked immunsorben assay. It is true that one ELISA test can yield a fairly high false or positive rate. He is right about that. But the procedure used by a whole host of people, including the Red Cross and the insurance industry and others, is to run the ELISA test and if a positive result occurs, the ELISA test is run again.

Nobody is denied insurance on the basis of one ELISA test. But the insurance company ought to have the right to run it again because—precisely what the Senator from Iowa said.

When it is run again, if a positive test result occurs, again, then the blood is subjected to what is known as western blot, b-l-o-t. Do not ask me to get into the medical technology of it. I have learned as much as I can but I do not know absolutely the details specifically.

But, in any case, this procedure has been determined to be effective.

In 1986 the Centers for Disease Control concluded, and let me quote:

For public health purposes, patients with repeatedly reactive screening for HTLV/LAV antibody (e.g. enzyme-linked immunsorben assay [ELISA] in whom antibody is also identified by the use of supplemental tests (e.g., western blot, * * *) should be considered both infected and infective.

How effective is this method for determining the presence of HIV infection, Mr. President? We are talking about infection. That is what this amendment is all about, and this is why the 600 ministers came up here and this is why the top insurance companies are pulling out in droves. Very few of them are left writing either life insurance or health insurance.

The evidence shows that the test that I alluded to just a second ago is very effective. According to a study done by the State epidemiologist of the State of Wisconsin:

A repeatedly reactive ELISA, validated by western blot, indicates a 94.7 percent likelihood of AIDS infection.

That is what is at issue here. Two ELISA's and a western blot are an effective method for determining the presence of HIV infection.

Statistics I read earlier about the longevity of anybody infected with AIDS do not need repeating now. I will simply say that because of the cost risk the insurance companies feel that they should not be hemmed in from testing for AIDS infection. That is what we are talking about.

I emphasize that the State of Wisconsin which once prohibited insurance companies from testing for the

AIDS antibody now allows insurance companies to use this series of tests to determine insurability.

Another fact Senators should know, according to Dr. Robert Redfield of the virus division of Walter Reed Hospital, using the series of tests conducted by the Defense Department, the percentage is even higher than the 94.7, in terms of being effective and accurate, Dr. Redfield has been quoted as saying, and I quote:

> Conditions now employed in the DOD program * * * less than 1 in 50,000 people with a low prevalent population will falsely test positive after the first western blot; a second blood sample (which the DOD requires) and a new western blot reduce the probability of a false positive to less than 1 in 50,000 times, or less than 1 in 2.5 billion.

That seems to me, Mr. President, to indicate a high degree of accuracy of the test.

I yield the floor.

Mr. NICKLES. Would the Senator yield for a question?

Mr. HELMS. Certainly.

Mr. NICKLES. I asked the Senator from Iowa some questions about how this works in reality, looking at the law and so on. Is it the Senator's belief that if an insurance agent wishes to require an applicant for life insurance to take a test to find out whether or not they test positive in carrying the virus, that they cannot use that information to deny a person a life insurance policy?

Mr. HELMS. Well, just the same way if they tested positive for cancer or for any other infirmity that insurance companies may deny coverage for, or put a higher rate on or whatever.

Mr. NICKLES. But is it the result of this law that the insurance company could not deny coverage? Here again, take that hypothetical: An individual in Washington, DC, wants to purchase $500,000 worth of life insurance. They happen to have—or test positive for AIDS, AIDS infection, or are carrying the virus. It has not progressed into the frank stage, into the deadly stages yet.

Does this law prohibit the insurance company from denying him that insurance coverage?

Mr. HELMS. I will say to the Senator: Yes, of course, it does. But it prohibits even asking, let alone testing.

Mr. NICKLES. I am not sure exactly when this was passed. I do not see a date. Do you know when?

Mr. HELMS. Are you talking about the D.C. law? it was August 7, I believe.

Mr. NICKLES. 1986. What is the result? Have insurance companies basically vacated the DC area?

Mr. HELMS. Absolutely. There has been a mass exodus. It is a wonder there have not been traffic accidents leaving the city. If I was in the insurance business, I would leave, too. That is precisely what happened.

Mr. HARKIN. I wonder if the Senator has any data on that? The data I have, as of April of this year, is that there are 600 licensed insurance companies in the District. Of those, the District has the following information: 17 have notified the District that they are not writing policies. The District has learned that there are nine others that will not write policies and seven others have announced in the news media they will not write policies. That is a total of 33 out of 600 licensed insurance companies in the District.

I know there is a rumor about. I do not know if it is just rumor. I just wonder if the Senator has any data on this so-called traffic jam of insurance companies leaving the District of Columbia? Second, I understand that even though they may not be writing individual policies they are, indeed, still writing group policies. So if you are in the group they are still writing group policies. I just wonder if the Senator has any data on it?

Mr. HELMS. We do have data. I already alluded to it and I put it in the RECORD by unanimous consent. But I will say that about 82 percent of the top 50 companies have gotten out entirely. I do not go by insurance agents or whatever. But the point is that the rates are being adjusted by those who are yet remaining in the city, and I expect they will be out of business shortly. But the insurance companies are just not going to cope with this kind of liability when death is highly probable, statistically, once a person is infected. I do not blame the insurance companies.

That is the reason the 600 black ministers came up here. They are fearful about this thing and they said it has already worked a hardship on their congregations, which total about 150,000 people in the city.

I thank the Senator. I yield the floor.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Connecticut.

Mr. WEICKER. Mr. President, as I view the legislation that has been posed, I have to ask the question as to why the concern? I could not possibly tell you what the insurance law practiced in North Carolina is; or Oklahoma; or Iowa. Why the concern about the District of Columbia?

I do not think any of us here is prepared to give a full background on our knowledge of why the insurance laws of the District of Columbia are on the books, how they got there, the legislative history, the purpose. I do not think we are prepared to do that task.

I have to say to myself, well, the reason why it is the District is if anybody tried to do this in the State of Connecticut, I can assure you we would be sitting here all day and all night, and the same would hold true for any of my colleagues. We all know as far as insurance laws are concerned we have left that up to each State. Why this patronizing measure insofar as the District of Columbia is concerned? Is it the fact that they have no Senators here? I suspect it probably is. I am not going to involve myself with what the insurance laws are of Oklahoma or North Carolina. I do not have the time. I suspect the State legislatures do and they give a great deal of thought to it.

I suspect that probably the council here in the District gave thought to what their particular circumstances were.

I also suspect that the state of the knowledge was rather imperfect when the legislation was drafted and passed in August 1986. Much has been learned since that time. So probably the legislation is imperfect both as to its drafting and as to its effect. And it is my understanding that based on these imperfections, even at this time, the government of the District of Columbia is meeting with insurers and others to try to perfect the law. It is a long, involved process and I do not need to give any lectures to my colleagues on the floor about that. They know that process because we go through it every day here on the floor.

I would suggest that a matter such as this be left in the hands of the legislative body of the District of Columbia.

Indication has been given that there are some insurance companies that refused to write coverage. That is one of the impacts that legislation can have. So be it. When that happens, legislation is modified, it is corrected, it is brought up to date. That is what will happen here in the District.

But I think to go ahead and pick out one particular governmental institution and one particular disease and try to legislate out here on the floor of the U.S. Senate makes no sense at all.

Then I have to ask a second question: Why this particular disease? Does anybody know the status of District law as it relates to typhoid or smallpox, dysentery, measles? I doubt it.

Why the problem here with AIDS? Why do we focus on this particular disease and put it in a special category? What is the status of District laws when it comes to syphilis or gonorrhea, or one of those sexually transmitted diseases between people who are quote "straight"? What is the status of the District law on that? Are we prepared to answer that question?

Mr. HELMS. If the Senator will yield, I will answer.

Mr. WEICKER. I will be glad to yield, if the Senator will tell me what the status of District law is with regard to other diseases.

Mr. HELMS. They have a law with respect to gonorrhea.

Mr. WEICKER. What is the penalty? What is allowed?

Mr. HELMS. There is no penalty.

Mr. WEICKER. I suppose the imperfect knowledge that might exist in the District Council is far more perfect than any knowledge of the Senator from North Carolina or the Senator from Connecticut. I am sure you can tell me the insurance laws of the State of North Carolina. I might be able to give you some indication about the laws of the State of Connecticut. But why the interest in the District of Columbia?

Mr. HELMS. Because it is our responsibility.

Mr. WEICKER. No, it is not our responsibility.

Mr. HELMS. The Senator from Connecticut is wrong about that.

Mr. WEICKER. It is not our responsibility. This is not the same relationship that existed 20, 30, 40 years ago. This is not a colony any longer. This is an entity unto itself, with its own legislative body and its own mayor. Why the interest in AIDS? Why not be interested in some other disease?

I understand the interest of the distinguished Senator from North Carolina in AIDS. I have seen some of the documents that come from his office. It does not credit to this body.

Mr. HELMS. Mr. President, come on. I ask the Chair to advise the Senator how far he can go in a comment like that.

Mr. WEICKER. I would suggest——

Mr. HELMS. I appeal to the Chair. The Senator has overspoken himself and I want the Chair to rule on that.

Mr. WEICKER. A parliamentary inquiry. I ask what the Chair is supposed to rule on.

The PRESIDING OFFICER. The Senator from Connecticut has the floor and he will confine his comments to the subject matter of the amendment.

Mr. WEICKER. This amendment is another effort to focus on a tragedy in a negative way, in a way that has never been the habit or custom of this Nation when one is hurting or ill. Never before until now has there been any other response to illness or hurt but that we want to help.

Now we have all sorts of judgments being passed, all sorts of inquisitiveness about what people's statuses are and what legislation they passed, who should be helped, and who should not be helped.

Whoever heard these questions arise in the pasts? Why this particular disease? Why this particular entity of government?

The entity of government being attacked by this amendment cannot defend itself. It does not have two Senators. Believe me, we would have a filibuster on this floor if we tried to pass this amendment if it involved any other State of the Union, if they were concerned. But the District does not have Senators. I will not filibuster this. It will go to an up-or-down vote. But one of the bases for that vote should be that were there representatives of the District, then they could inflict on us exactly what is being inflicted on them today by this particular amendment.

I can understand that the distinguished Senator from Iowa, who I think responded very ably to the very well put question by the distinguished Senator from Oklahoma, did not have all the answers. We do not have all the answers.

The legislative body of the District itself does not have all the answers.

Much of what we pass on the floor here we amend the next year and we amend the year after that based on experience. That is exactly what is happening here. At the present time discussion is going on between the insurance industry and the District. Obviously the District of Columbia does not want the insurance companies chased out of the District of Columbia.

What they wanted to do was to ensure that there would not be discrimination against a category of people at a time when many thought that that category of persons, minority groups, were especially vulnerable to the disease of AIDS. That is the fact of life.

They wanted to make sure they were not going to be discriminated against. I think that is a proper legislative purpose.

Now, as the tests have become more refined, as we understand the at risk populations, then the legislation is going to have to be refined, and that the District will learn through experience. It does not need the help of the distinguished Senators from North Carolina, Connecticut, Oklahoma, or Iowa.

Mr. President, I have been wrestling with the issues related to the AIDS crisis for a few years now, long before some other people finally got caught up in it and I know only a few things: No. 1, an awful lot of people are hurt and dying out there who basically need money in terms of research to alleviate their hurts. That is the only way you are going to beat this—money for research into the discovery of adequate chemotherapy to halt the progression and the shedding of the virus; and money which will go to ultimately discovering the vaccine that will eliminate the disease. I know there are an awful lot of young people we can prevent from getting AIDS as long as we put money into education to give them a very explicit education about what causes AIDS.

These are the things that have to be done. I do not think we have the time to go searching around the corner to find out what the D.C. Council did on AIDS. I know we do not have the money for that. I suggest that we would not tell other local governments, never mind the District of Columbia what to do. Why not tell New York what it should do, Charlotte, NC; Oklahoma City, OK; Hartford, CT. Let us really take this to where it belongs?

Our job is to do the job that is impossible of being accomplished either by the cities or the States. Find the cure. Do the education. Provide the money because it is massively needed.

Here we sit wasting the time of the Senate on just plain trivia, and trivia that is very hurtful. I wish all this time and effort were expended in these other areas which have suffered from the lack of money and a lack of interest—and that comes all the way from the top to the bottom, I might add, as far as the Government of the United States is concerned.

I yield the floor, and I certainly hope that this amendment will be defeated on the terms that we do not know any more than that council knew. They probably know more than we do now since they have been consulting with the insurers and they have the experience. And if we are going to tell them what to do about AIDS in the District government, then maybe we ought to tell every other city council in the United States what to do about every disease. And if we consider it morally OK, we will not tell them. If we consider it morally bad, we will. I again repeat I think less judgment passed and more help given is what is needed in this particular situation.

Mr. HELMS addressed the Chair.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HELMS. Will the Senator allow me a couple minutes to respond?

Mr. HARKIN. I just want to make one point.

Mr. HELMS. Sure.

Mr. HARKIN. Then I will yield the floor.

Mr. President, I thank the Senator from Connecticut for a very fine statement. I share his sentiments precisely. I do not mean to take any more time to repeat what the Senator said except for one point I wanted to make before the close of the debate on this topic, and that had to do with the rumored flight of insurance companies from the District of Columbia.

As the distinguished Senator from Connecticut said, I know of no one in the District of Columbia government, no one on the city council who wants to see insurance companies flee the District of Columbia. That would be bad for business, bad for growth, and they do not want that. They want

business and they want growth in the District of Columbia. And so if this is happening, then what will happen then is the District of Columbia City Council is going to refine this law, revise it, make changes that are needed if in fact there is this flight of insurance companies from the District of Columbia.

The best thing to spur the District of Columbia to make needed revisions or changes is not, as the Senator from Connecticut says, the actions of this body, which is an intrusion on the home rule of the District of Columbia and which we would not visit upon any other State in terms of their insurance laws, but the best thing to get them to revisit, revise, and change the law is the pressure that will be put on them by these insurance companies and by individuals, the individuals who cannot get the insurance and the insurance companies that cannot operate here and the businesses that will be affected. That will spur the needed changes, not the rhetoric, some misguided actions taken by this body.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, the distinguished Senator from North Carolina wanted to make some comment. I ask unanimous consent that I may yield the floor to the Senator without losing my right to the floor.

The PRESIDING OFFICER. Hearing no objection, it is so ordered. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I thank the Chair. Of course, I thank the distinguished majority leader.

Senator WEICKER is my friend and we often disagree, but we agree to disagree agreeably and I do not think that he really meant what he said.

But he mentioned this amendment, as I understood him, as being trivia. I would suggest that he tell that to the 600 black ministers in the District of Columbia who do not think it is trivia, who came to me representing 150,000 members of their congregations. Enough about that. I would emphasize that they are black ministers representing for the most part, I am sure, black congregations. But so much for the implication that this was somehow tied into some racial thing. It simply is not so, and I think the Senator knows that.

As for the repeated suggestions that this has something to do with home rule and our overstepping the bounds of our prerogatives and our responsibilities, I say again that I have put in the RECORD relating to this bill that we have before us about 10 provisions imposing legislative restrictions on the District of Columbia. So you can pick and choose. You can take whatever side you want. But let us look at the home rule charter as enacted into law in 1973 and then we will talk about this home rule business. The charter recognizes clearly the constitutional power of Congress to legislative over the District of Columbia.

Now, Senators may not like that. They may not know that. But it is a fact of life. It is a part of the statute. Let me read the law just so there will be no further misunderstanding about it: "Notwithstanding any other provision of this act"—and this is the Home Rule Act of 1973—the Congress of the United States reserves the right at any time to exercise its constitutional authority as legislature for the District by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the council—that means the District of Columbia Council—"by this act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this act and any act passed by the council."

Now, the 600 black ministers who are pleading for help on this, representing their congregations of 150,000 people, understand. And I say again that a disaster is looming over the horizon in terms of the insurance business in the city.

Now, Senator WEICKER referred to the District of Columbia "or any other State." Those are his exact words. I would remind him that the District of Columbia is not a State and, if I have anything to do with it, it is not likely to be one soon.

Mr. NICKLES. Will the Senator yield for a question?

Mr. BYRD. Mr. President, I have the floor.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. Mr. President, I would yield for that purpose, but I hope to bring this debate to a close and get on with this bill so we can get to war powers. I yield to the Senator without losing my right to the floor.

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

Mr. NICKLES. I thank the Senator.

The Senator from North Carolina mentioned the home rule statute, but in reading the Constitution under article I, section 8, it gives to Congress, and correct me if I am wrong, "the authority to exercise exclusive legislation in all cases whatsoever over such district."

And am I not correct that the Senator is trying to exercise some degree of control over some legislation that was passed by the District?

Mr. HELMS. The Senator is absolutely correct, I will say to him. Furthermore, the very committee that reported out this bill has exercised that right at least eight times on provisions in the bill.

So there is the possibility of some sanctimony or chide when an effort is made on behalf of these 600 black ministers and this congregation. That is what I am doing it for. I did not dream this thing up. They came to me, Mr. President, and I say to the Senator from Oklahoma, I think they are right. I think the Senate ought to stand behind them.

Mr. KERRY. Mr. President, I rise in opposition to the amendment of the Senator from North Carolina.

The issue raised by our colleague is very simple: What is the role of the Congress in legislating purely local issues regarding the District of Columbia?

To answer this question we need look no further than the opening lines of the 1973 legislation which created the present form of local government for Washington. In granting home rule to the District we declared:

It is the intention of Congress to the greatest extent possible, consistent with the constitutional mandate, to relieve Congress of the burden of legislating upon essentially local District matters.

If any area of economic regulation has been considered historically to be local in nature, it is the regulation of insurance. Ever since the enactment of the McCarran-Fergusen Act in 1945, the Congress has taken a hands-off position with respect to State and local regulation of insurance. The result is a highly sophisticated and effective system of State law and regulation governing our country's insurance industry.

That system of State regulation takes into account the differing interests and policies unique to each State. For example, a growing number of States are enacting legislation similar to that recently enacted by the District of Columbia council. Both California and Wisconsin restrict the right of insurance companies to discriminate in coverage involving HTLTV-3 carriers. My own State of Massachusetts and five others—New York, Illinois, California, Louisiana, and Maryland—all prohibit discriminating in writing insurance policies involving the sickle-cell trait. Illinois, Maine, and New York also prohibit special insurance treatment of persons who have been exposed to the drug DES.

The recently enacted legislation of the District of Columbia council is in this tradition and reflects the considered judgment of the District's elected political officials about what is in the interests of the citizens who elected them.

Indeed, the local legislation which would be overturned by Senator HELMS was enacted by a unanimous vote of all 13 elected representatives—Republican and Democratic—on the District of Columbia council.

Mr. President, I can think of no area of District government policy more ap-

propriately covered by the language which was just cited from the 1973 Home Rule Act than the regulation of insurance.

If we in Congress are to begin second guessing the District government on an issue as local in nature as this, then we will be setting a dangerous precedent for the business of the Senate to be interrupted any number of attempts to interfere in District government affairs.

We have far too many serious responsibilities which only we in the Senate can address, to be distracted with requests to function in the place of a local city council.

Mr. President, apart from the obvious fact that the amendment of the Senator from North Carolina violates the mandate of the 1973 home rule statute and threatens to distract the Senate with innumerable local issues in the future—I believe there is another strong reason for opposing it.

The most important reason is that it is simply wrong for us to impose our will on a District of Columbia government which is unrepresented in this body.

The abolition of slavery, universal suffrage—for men and women—the principle of one person one vote, have brought to the governing of our State and local governments a sense of fairness and equity not imaginable 200 years ago.

One of the few remaining obstacles to the perfection of democratic principles of Government in the United States is the archaic status of the District of Columbia.

More than 600,000 of our Nation's citizens are permanent residents of the District of Columbia. They are all Americans. They pay taxes, they serve in the Armed Forces, they attempt to participate in local self-governance, as do the citizens of everyone of the 50 States. Yet they are completely unrepresented by voting membership in the Congress of the United States.

The amendment of the Senator from North Carolina serves to highlight this inequity.

Without exception, every elected official of the District of Columbia government supports the local legislation the Senator would overrule. Yet he would impose his own will on them and the constituents they represent.

I strongly believe that approval of this amendment would be a giant step backward in the development of this Nation as well as an inappropriate use of the Senate's time and energy.

If we in Congress are to concern ourselves with the welfare of the citizens of the city of Washington, we would do far better to devote ourselves to seeing that they 1 day can send one of their own to this body to speak for them, and to end the anachronistic system of denial of basic democracy which has blighted our Nation's Capital for generations.

Mr. President, 13 people have spoken for the District of Columbia. Yet the District of Columbia, of all the places in the United States, where there are 600,000 of our Nation's citizens who pay Federal taxes, are subject to the Armed Forces and everything else, has no representation in Congress. There is no reason that several Senators should overturn that expressed will of their elected body, their elected officials.

Mr. GORE. Mr. President, I rise to speak against the amendment.

Let me say at the outset that I have serious reservations about the wisdom of the District's AIDS law. While I oppose medical underwriting in health insurance, it is a time honored principle in life insurance. Unfortunately, the D.C. law prohibiting medical underwriting applies to both health insurance and life insurance.

But the wisdom behind the law is not the issue before us today. The issue is whether Congress is going to keep going back to this issue which was decided last year. The issue is, are we going to reach out and interfere with the insurance laws of the District of Columbia, after they are in place and, after the 30-day period reserved to the Congress to veto a District law before it takes effect has elapsed.

We had an opportunity to pass judgment on this matter during the 30 days allotted, last year. We debated it, we voted on it, and in the end the District's law stood. I voted to strike down the District's law, because as I said before I don't think it is properly sensitive to the differences between health and life insurance. But once the law is in place, it is wrong to keep going back and rehashing it.

I couldn't agree more strongly with the powerful statement of the Senator from Connecticut. It is indeed tragic that we continue to take up the Senate's time on this issue while failing to begin debate on real solutions to the AIDS crisis.

Over 42,000 Americans now have AIDS; 23,000 lives have been lost, yet the country is still forced to feel its way through a shroud of fear that this administration has allowed to grow around AIDS. The time has long since passed to make clear to the American people that this war is against a disease and not the individuals who suffer from it.

A vote for the Helms amendment sends the wrong message to the American people. I urge the Senate to reject it.

Mr. CRANSTON. Mr. President, I rise in opposition to the amendment being offered by the Senator from North Carolina [Mr. HELMS]. I believe that it is totally inappropriate for the U.S. Senate to interfere with a law that was passed by the District of Columbia more than 1 year ago dealing with insurance. As my colleagues well know, insurance issues in general have been traditionally left to the States to decide. We would be reversing that long-standing policy by now trying to reverse the D.C. insurance law.

Mr. President, it is my understanding that the insurance industry does not want congressional interference in this matter. I have been informed that negotiations are currently taking place between the local community and the insurance industry to come up with a compromise that would be agreeable to everyone involved. The industry should be able to work out an agreement through the regular local process without the Senate intruding in its business.

I would also point out that over 15 States, including the State of California, have adopted policies—similar to the D.C. law—restricting insurers' use of the test for the antibody to the human immunodeficiency virus.

Mr. President, although I do not believe that the central issue raised by this amendment is whether the D.C. law is good public policy or not, we in the Congress must begin to address the issues raised by that law. In addition to coping with a fatal disease, individuals with AIDS are also forced to confront discrimination—in housing, employment, health care, insurance, and many other areas. That is a major deterrent for individuals at risk to agree to be tested and receive counseling. It is difficult to imagine anything more tragic than a person discovering that he or she has tested positive for the AIDS antibody and then being denied health insurance.

Mr. President, at the same time that we are encouraging people to be tested for the AIDS antibody and to be counseled with respect to avoiding transmission of the virus, this amendment could be interpreted as sending a message that the Senate does not believe that the test result should be kept confidential. I don't think that's a message that the Senate should support directly or indirectly.

Mr. President, for all the reasons I have cited, I believe that this amendment should be defeated.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, is there an inclination to get to a vote on this amendment and then proceed to final passage?

Mr. President, I ask unanimous consent that the vote occur on or in relation to the pending amendment immediately, and that immediately following the disposition of the amendment one way or the other the Senate proceed immediately to third reading without further debate, without further motion or action of any kind, without further quorum call, and then

vote immediately on the bill itself without further debate, motion, point or order or action whatsoever.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I move to table the Helms amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Iowa to lay on the table the amendment of the Senator from North Carolina. On this question, 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 Illinois [Mr. SIMON], is necessarily absent.

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

The result was announced, yeas 44, nays 55, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—44

Adams	Gore	Mitchell
Biden	Graham	Moynihan
Boschwitz	Harkin	Packwood
Bradley	Heinz	Pell
Breaux	Inouye	Proxmire
Bumpers	Johnston	Reid
Burdick	Kennedy	Riegle
Chafee	Kerry	Rockefeller
Cohen	Lautenberg	Sarbanes
Conrad	Leahy	Specter
Cranston	Levin	Stafford
Durenberger	Matsunaga	Stennis
Evans	Melcher	Weicker
Fowler	Metzenbaum	Wirth
Glenn	Mikulski	

NAYS—55

Armstrong	Garn	Nunn
Baucus	Gramm	Pressler
Bentsen	Grassley	Pryor
Bingaman	Hatch	Quayle
Bond	Hatfield	Roth
Boren	Hecht	Rudman
Byrd	Heflin	Sanford
Chiles	Helms	Sasser
Cochran	Hollings	Shelby
D'Amato	Humphrey	Simpson
Danforth	Karnes	Stevens
Daschle	Kassebaum	Symms
DeConcini	Kasten	Thurmond
Dixon	Lugar	Trible
Dodd	McCain	Wallop
Dole	McClure	Warner
Domenici	McConnell	Wilson
Exon	Murkowski	
Ford	Nickles	

NOT VOTING—1

Simon

So the motion to lay on the table was rejected.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. NICKLES. 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 occurs on the amendment offered by the Senator from North Carolina [Mr. HELMS].

Mr. HELMS. Mr. President, I am willing to vitiate the rollcall on the amendment inasmuch as the motion to table failed, and I ask unanimous consent that the yeas and nays be vitiated.

Mr. ADAMS. Mr. President, reserving the right to object, does that mean we are going to have to have another rollcall on this amendment?

Mr. HELMS. It will be precisely the opposite, I say to the Senator.

Mr. ADAMS. I withdraw my objection.

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

The question is on the adoption of the amendment by the Senator from North Carolina.

The amendment (No. 813) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, each appropriations bill is subject to a spending limit known as a 302(b) allocation. As chairman of the Senate Committee on the Budget, I am pleased to report that the District of Columbia appropriations bill, H.R. 2713, is under its 302(b) budget authority ceiling by less than $50 million and under its 302(b) outlay ceiling by less than $50 million. I commend the distinguished chairman of the subcommittee, Senator HARKIN, and the ranking minority member, Senator NICKLES, for their success in crafting this bill.

Mr. President, I have a table from the Budget Committee showing the official scoring of the District of Columbia appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

DISTRICT OF COLUMBIA—SPENDING TOTALS

[Senate-reported, dollars in billions]

	Fiscal year 1988	
	Budget authority	Outlays
BILL SCORING		
H.R. 2713, Senate-reported bill (new BA and outlays)	0.6	0.6
Outlays from prior-year BA and permanent appropriations	+(1)	+(1)
Bill total	.6	.6
Subcommittee 302(b) allocation	.6	.6
Difference	−(1)	−(1)
COMPARISONS		
Bill total above (+) or below (−):		
President's request	+(1)	+(1)
House-passed bill	−(1)	−(1)

(1) Less than $50,000,000.

Note.—Details may not add to totals due to rounding. Prepared by Senate Budget Committee.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and 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 a third time.

Mr. NICKLES. 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 bill having been read the third time, the question is, Shall the bill pass?

On this question, 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 Illinois [Mr. SIMON] is necessarily absent.

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

The result was announced—yeas 76, nays 23, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—76

Adams	Ford	Moynihan
Bentsen	Fowler	Murkowski
Biden	Glenn	Nickles
Bingaman	Gore	Nunn
Bond	Graham	Packwood
Boren	Grassley	Pell
Boschwitz	Harkin	Pressler
Bradley	Hatfield	Pryor
Bumpers	Hecht	Quayle
Burdick	Heinz	Reid
Byrd	Hollings	Riegle
Chafee	Inouye	Rockefeller
Chiles	Johnston	Rudman
Cochran	Kassebaum	Sanford
Cohen	Kennedy	Sarbanes
Conrad	Kerry	Sasser
Cranston	Lautenberg	Simpson
D'Amato	Leahy	Specter
Danforth	Levin	Stafford
Dixon	Lugar	Stennis
Dodd	Matsunaga	Stevens
Dole	McConnell	Trible
Domenici	Melcher	Warner
Durenberger	Metzenbaum	Weicker
Evans	Mikulski	
Exon	Mitchell	

NAYS—23

Armstrong	Heflin	Roth
Baucus	Helms	Shelby
Breaux	Humphrey	Symms
Daschle	Karnes	Thurmond
DeConcini	Kasten	Wallop
Garn	McCain	Wilson
Gramm	McClure	Wirth
Hatch	Proxmire	

NOT VOTING—1

Simon

So the bill (H.R. 2713), as amended, was passed.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I yield to the manager without losing the floor.

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate insist on its amendments to H.R. 2713, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. HARKIN, Mr. LAUTENBERG, Mr. REID, Mr. STENNIS, Mr. NICKLES, Mr. GRASSLEY, and Mr. HATFIELD, conferees on the part of the Senate.

Mr. BYRD. Mr. President, I yield to the distinguished Senator not to exceed 4 minutes.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I thank you for the opportunity to bring an important piece of legislation to the Senate today. I am going to be very brief to conform with the consent.

I hold in my hand here just some of a large number of letters that I have received urging that the Senate take action on this particular matter, so I am pleased to be able to introduce today a bill with the unwieldy name: the Medicare Private Health Plan Capitation Improvement Act of 1987.

(The remarks of Mr. DURENBERGER pertaining to the introduction of legislation will be found later in today's RECORD under Statements on Introduced Bills and Joints Resolutions.)

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I call for regular order.

LEGISLATIVE BRANCH APPROPRIATIONS, 1988

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 2714, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2714) making appropriations for the legislative branch for the fiscal year ending September 30, 1988, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in bold-face brackets, and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2714

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending September 30, 1988, and for other purposes, namely:

TITLE I—CONGRESSIONAL OPERATIONS

SENATE

MILEAGE OF THE VICE PRESIDENT AND SENATORS

For mileage of the Vice President and Senators of the United States, $60,000.

EXPENSE ALLOWANCES OF THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, MAJORITY AND MINORITY LEADERS, MAJORITY AND MINORITY WHIPS, AND CHAIRMEN OF THE MAJORITY AND MINORITY CONFERENCE COMMITTEES

For expense allowances of the Vice President, $10,000; the President Pro Tempore of the Senate, $10,000; Majority Leader of the Senate, $10,000; Minority Leader of the Senate, $10,000; Majority Whip of the Senate, $5,000; Minority Whip of the Senate, $5,000; and Chairmen of the Majority and Minority Conference Committees, $3,000 for each Chairman; in all, $56,000.

REPRESENTATION ALLOWANCES FOR THE MAJORITY AND MINORITY LEADERS

For representation allowances of the Majority and Minority Leaders of the Senate, $10,000 for each such Leader, in all $20,000.

SALARIES, OFFICERS AND EMPLOYEES

For compensation of officers, employees, clerks to Senators, and others as authorized by law, including agency contributions, $207,417,500 which shall be paid from this appropriation without regard to the below limitations, as follows:

OFFICE OF THE VICE PRESIDENT

For the Office of the Vice President, $1,145,000.

OFFICE OF THE PRESIDENT PRO TEMPORE

For Office of the President Pro Tempore, $153,000.

OFFICE OF THE DEPUTY PRESIDENT PRO TEMPORE

For the Office of the Deputy President Pro Tempore, $90,000.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

For Offices of the Majority and Minority Leaders, $1,388,000.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

For Offices of the Majority and Minority Whips, $431,000.

CONFERENCE COMMITTEES

For the Conference of the Majority and the Conference of the Minority, at rates of compensation to be fixed by the Chairman of each such committee, $556,500 for each such committee; in all, $1,113,000.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY AND THE CONFERENCE OF THE MINORITY

For Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority, $270,000.

OFFICE OF THE CHAPLAIN

For Office of the Chaplain, $115,000.

OFFICE OF THE SECRETARY

For Office of the Secretary, $8,005,000.

ADMINISTRATIVE, CLERICAL, AND LEGISLATIVE ASSISTANCE TO SENATORS

For administrative, clerical, and legislative assistance to Senators, $109,605,500.

OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER

For Office of the Sergeant at Arms and Doorkeeper, $44,161,000.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

For Offices of the Secretary for the Majority and the Secretary for the Minority, $905,000.

AGENCY CONTRIBUTIONS

For agency contributions for employee benefits, as authorized by law, $40,036,000.

OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE

For salaries and expenses of the Office of the Legislative Counsel of the Senate, $1,764,000.

OFFICE OF SENATE LEGAL COUNSEL

For salaries and expenses of the Office of Senate Legal Counsel, $633,000.

EXPENSE ALLOWANCES OF THE SECRETARY OF THE SENATE, SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE, AND SECRETARIES FOR THE MAJORITY AND MINORITY OF THE SENATE

For expense allowances of the Secretary of the Senate, $3,000; Sergeant at Arms and Doorkeeper of the Senate, $3,000; Secretary for the Majority of the Senate, $3,000; Secretary for the Minority of the Senate, $3,000; in all, $12,000.

CONTINGENT EXPENSES OF THE SENATE

SENATE POLICY COMMITTEES

For salaries and expenses of the Majority Policy Committee and the Minority Policy Committee, $1,101,500 for each such committee; in all, $2,203,000.

INQUIRIES AND INVESTIGATIONS

For expenses of inquiries and investigations ordered by the Senate, or conducted pursuant to section 134(a) of Public Law 601, Seventy-ninth Congress, as amended, section 112 of Public Law 96-304 and Senate Resolution 281, agreed to March 11, 1980, $57,161,000.

EXPENSES OF UNITED STATES SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

For expenses of the United States Senate Caucus on International Narcotics Control, as authorized by section 814 of the Foreign Relations Authorization Act passed by the Senate on July 31, 1985, $325,000.

SECRETARY OF THE SENATE

For expenses of the Office of the Secretary of the Senate, $666,300.

SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

For expenses of the Office of the Sergeant at Arms and Doorkeeper of the Senate, $66,174,000: Provided, That of the amounts appropriated under this head in the Legislative Branch Appropriations Act, 1986 (Public Law 99-151), $2,250,000 shall remain available until September 30, 1988.

MISCELLANEOUS ITEMS

For miscellaneous items, $10,183,000.

STATIONERY (REVOLVING FUND)

For stationery for the President of the Senate, $4,500, for officers of the Senate and the Conference of the Majority and Conference of the Minority of the Senate, $8,500; in all, $13,000.

ADMINISTRATIVE PROVISIONS

SEC. 1. (a) The table and the sentence immediately following such table in subsection (d)(1) of section 105 of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(d)(1)), is amended to read as follows:

"$716,102 if the population of his State is less than 1,000,000;

"$736,873 if such population is 1,000,000 but less than 2,000,000;

"$786,938 if such population is 2,000,000 but less than 3,000,000;

"$851,385 if such population is 3,000,000 but less than 4,000,000;

"$904,114 if such population is 4,000,000 but less than 5,000,000;

"$931,810 if such population is 5,000,000 but less than 6,000,000;

"$959,505 if such population is 6,000,000 but less than 7,000,000;

"$988,799 if such population is 7,000,000 but less than 8,000,000;

"$1,019,689 if such population is 8,000,000 but less than 9,000,000;

"$1,066,029 if such population is 9,000,000 but less than 10,000,000;

"$1,126,745 if such population is 10,000,000 but less than 11,000,000;

"$1,173,084 if such population is 11,000,000 but less than 12,000,000;

"$1,202,644 if such population is 12,000,000 but less than 13,000,000;

"$1,232,204 if such population is 13,000,000 but less than 14,000,000;

"$1,261,764 if such population is 14,000,000 but less than 15,000,000;

"$1,291,324 if such population is 15,000,000 but less than 16,000,000;

"$1,320,884 if such population is 16,000,000 but less than 17,000,000;

"$1,350,444 if such population is 17,000,000 but less than 18,000,000;

"$1,380,004 if such population is 18,000,000 but less than 19,000,000;

"$1,402,107 if such population is 19,000,000 but less than 20,000,000;

"$1,424,210 if such population is 20,000,000 but less than 21,000,000;

"$1,446,313 if such population is 21,000,000 but less than 22,000,000;

"$1,468,416 if such population is 22,000,000 but less than 23,000,000;

"$1,490,519 if such population is 23,000,000 but less than 24,000,000;

"$1,512,622 if such population is 24,000,000 but less than 25,000,000;

"$1,534,725 if such population is 25,000,000 but less than 26,000,000;

"$1,556,828 if such population is 26,000,000 but less than 27,000,000;

"$1,578,931 if such population is 27,000,000 but less than 28,000,000; and

"$1,601,034 if such population is 28,000,000 or more.

"For any fiscal year, the population of a State shall be deemed to be whichever of the following is the higher:

"(I) the population of such State (as determined for purposes of this paragraph) for the preceding fiscal year; or

"(II) the population of such State as of the first day of such fiscal year, as determined by the latest census (provisional or otherwise) conducted prior to such first day by the Bureau of the Census within the Department of Commerce.

"If the population of any State, as determined under the preceding sentence, is not evenly divisible by 1,000,000, the population of such State shall be deemed to be increased to the next higher multiple of 1,000,000.

"If, for any period after a fiscal year has begun, the census figures of the most recent census conducted prior to the first day of such year have not been officially released, then, for such period, in the administration of this paragraph, it shall be assumed that the population of each State is the same as such State's population (as determined for purposes of this paragraph) for the preceding fiscal year.

"In the event that the term of office of a Senator begins after the first month of a fiscal year or ends (except by reason of death, resignation, or expulsion) before the last month of a fiscal year, the aggregate amount available for gross compensation of employees in the office of such Senator for such year shall be the applicable amount contained in the preceding table, divided by 12, and multiplied by the number of months in such year which are included in the Senator's term of office, counting any fraction of a month as a full month.".

(b) The amendment made by this section shall be effective in the case of fiscal years beginning after September 30, 1987.

SEC. 2. (a) Effective with respect to pay periods beginning on or after October 1, 1987, the Chaplain of the Senate shall be compensated at a rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The second proviso, under the headings "SENATE" and "Office of the Chaplain", of the Legislative Branch Appropriation Act, 1970 (Public Law 91-145) is amended to read as follows: "Provided further, That the Chaplain of the Senate may appoint and fix the compensation of a secretary".

SEC. 3. (a) Section 192 of title I, Chapter IX, of the Supplemental Appropriations Act, 1985 (Public Law 99-88; 99 Stat. 349; 2 U.S.C. 68-5) is amended—

(1) by striking out "and", where it appears immediately after "Minority Whip of the Senate,", and inserting in lieu thereof "one for the attending physician, one as authorized by Senate Resolution 90 of the 100th Congress"; and

(2) by inserting immediately before the period at the end of such section the following: ", and such additional number as is otherwise specifically authorized by law".

(b) The amendments made by subsection (a) shall be effective in the case of fiscal years ending after September 30, 1986.

SEC. 4. Section 151(a) of Public Law 99-591 (100 Stat. 3341-3355) is amended by striking out "during fiscal year 1987".

SEC. 5. Section 213 of the Act entitled "An Act Making Appropriations for Military Construction for Department of Defense for the Fiscal Year Ending September 30, 1987 and for Other Purposes" as contained in Public Law 99-591 is amended—

(1) in subsection (a), (1), (E) by adding at the end thereof the following new sentence: "If a chairman has not been selected by majority vote of the other members within 10 days of the acceptance of this amendment, then the Senate Majority Leader and the Speaker of the House of Representatives in consultation with the Minority Leaders of the Senate and House of Representatives, will appoint a chairman. Pending selection of a chairman the Democratic and Republican designees of the Senate shall act as interim chairman only for the purpose of administration of the Commission, and that the Commission shall take no action on administrative matters without the approval of both acting chairmen. Any meetings of the Commission convened in the absence of a permanently selected chairman shall be chaired, on a rotation basis by each of the appointed members of the Commission in the following order: the Republican designee of the House, the Democratic designee of the House, the Republican designee of the Senate and the Democratic designee of the Senate.:"

(2) by amending subsection (g) to read as follows:

"(g) The Commission shall terminate on September 30, 1988.".

HOUSE OF REPRESENTATIVES

PAYMENTS TO WIDOWS AND HEIRS OF DECEASED MEMBERS OF CONGRESS

For payment to Lucie C. McKinney, widow of Stewart B. McKinney, late a Representative from the State of Connecticut, $89,500.

MILEAGE OF MEMBERS

For mileage of Members, as authorized by law, $210,000.

HOUSE LEADERSHIP OFFICES

For salaries and expenses, as authorized by law, $3,456,000, including: Office of the Speaker, $798,000, including $18,000 for official expenses of the Speaker; Office of the Majority Floor Leader, $708,000, including $10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader, $789,000, including $10,000 for official expenses of the Minority Leader; Office of the Majority Whip, $621,000, including $5,000 for official expenses of the Majority Whip and not to exceed $149,950 for the Chief Deputy Majority Whip; Office of the Minority Whip, $540,000, including $5,000 for official expenses of the Minority Whip and not to exceed $79,150 for the Chief Deputy Minority Whip.

MEMBERS' CLERK HIRE

For staff employed by each Member in the discharge of his official and representative duties, $175,199,000.

COMMITTEE EMPLOYEES

For professional and clerical employees of standing committees, including the Committee on Appropriations and the Committee on the Budget, $50,062,000.

COMMITTEE ON THE BUDGET (STUDIES)

For salaries, expenses, and studies by the Committee on the Budget, and temporary personal services for such committee to be expended in accordance with sections 101(c), 606, 703, and 901(e) of the Congressional Budget Act of 1974, and to be available for reimbursement to agencies for services performed, $329,000.

CONTINGENT EXPENSES OF THE HOUSE

STANDING COMMITTEES, SPECIAL AND SELECT

For salaries and expenses of standing committees, special and select, authorized by the House, $52,418,000.

ALLOWANCES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For allowances and expenses as authorized by House resolution or law, $189,047,000, including: Official Expenses of Members, $81,523,000; supplies, materials, administrative costs and Federal tort claims, $20,119,000; furniture and furnishings, $1,005,000; stenographic reporting of committee hearings, $550,000; reemployed annuitants reimbursements, $1,118,000; Government contributions to employees' life insurance fund, retirement funds, Social Security fund, Medicare fund, health benefits fund, and worker's and unemployment compensation, $84,110,000; and miscellaneous items

including, but not limited to, purchase, exchange, maintenance, repair and operation of House motor vehicles, restaurants, interparliamentary receptions and gratuities to heirs of deceased employees of the House, $622,000: *Provided,* That effective upon enactment of this Act, an amount not to exceed $132,000 shall be made available by transfer from the appropriation for "House office buildings, 1987, No year" for deposit in the account established by section 208 of the First Supplemental Civil Functions Appropriations Act, 1941 (40 U.S.C. 174k(b)).

Such amounts as are deemed necessary for the payment of allowances and expenses under this head may be transferred between the various categories within this appropriation, "Allowances and expenses", upon the approval of the Committee on Appropriations of the House of Representatives.

COMMITTEE ON APPROPRIATIONS (STUDIES AND INVESTIGATIONS)

For salaries and expenses, studies and examinations of executive agencies, by the Committee on Appropriations, and temporary personal services for such committee, to be expended in accordance with section 202(b) of the Legislative Reorganization Act, 1946, and to be available for reimbursement to agencies for services performed, $4,300,000.

SALARIES, OFFICERS AND EMPLOYEES

For compensation and expenses of officers and employees, as authorized by law, $54,529,000, including: Office of the Clerk, $14,917,000; Office of the Sergeant at Arms, including overtime, as authorized by law, $21,180,000; Office of the Doorkeeper, including overtime, as authorized by law, $7,915,000; Office of the Postmaster, $2,517,000, including $48,124 for employment of substitute messengers and extra services of regular employees when required at the salary rate of not to exceed $16,766 per annum each; Office of the Chaplain, $75,000; Office of the Parliamentarian, including the Parliamentarian and $2,000 for preparing the Digest of Rules, $716,000; for salaries and expenses of the Office for the Bicentennial of the House of Representatives, $243,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, $870,000; for salaries and expenses of the Office of the Legislative Counsel of the House, $3,025,000; six minority employees, $447,000; the House Democratic Steering Committee and Caucus, $721,000; the House Republican Conference, $721,000; and other authorized employees, $1,182,000.

Such amounts as are deemed necessary for the payment of salaries of officers and employees under this head may be transferred between the various offices and activities within this appropriation, "Salaries, officers and employees", upon the approval of the Committee on Appropriations of the House of Representatives.

ADMINISTRATIVE PROVISIONS

SEC. 101. Of the amounts appropriated in fiscal year 1988 for the House of Representatives under the headings "Committee employees", "Standing committees, special and select", "Salaries, officers and employees", "Allowances and expenses", "House leadership offices", and "Members' clerk hire", such amounts as are deemed necessary for the payment of salaries and expenses may be transferred among the aforementioned accounts upon approval of the Committee on Appropriations of the House of Representatives.

SEC. 102. (a) One additional employee is authorized for each of the following:

(1) the House Democratic Steering and Policy Committee; and

(2) the House Republican Conference.

(b) The annual rate of pay for the positions established under subsection (a) shall not exceed 60 percent of the annual rate of pay payable from time to time for level V of the Executive Schedule under section 5316 of title 5, United States Code.

JOINT ITEMS

For joint committees, as follows:

CONTINGENT EXPENSES OF THE SENATE

JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, [$3,197,000] *$3,284,000.*

JOINT COMMITTEE ON PRINTING

For salaries and expenses of the Joint Committee on Printing, $1,071,000.

CONTINGENT EXPENSES OF THE HOUSE

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, $4,359,000, to be disbursed by the Clerk of the House.

For other joint items, as follows:

OFFICE OF THE ATTENDING PHYSICIAN

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including (1) an allowance of $1,000 per month to the Attending Physician; (2) an allowance of $600 per month to one Senior Medical Officer while on duty in the Attending Physician's office; (3) an allowance of $200 per month each to two medical officers while on duty in the Attending Physician's office; (4) an allowance of $200 per month each to not to exceed twelve assistants on the basis heretofore provided for such assistance; and (5) $963,600 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, such amount shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, $1,543,000, to be disbursed by the Clerk of the House.

CAPITOL POLICE

GENERAL EXPENSES

For purchasing and supplying uniforms; the purchase, maintenance, and repair of police motor vehicles, including two-way police radio equipment; contingent expenses, including advance payment for travel for training or other purposes, and expenses associated with the relocation of instructor personnel to and from the Federal Law Enforcement Training Center as approved by the Chairman of the Capitol Police Board, and including $85 per month for extra services performed for the Capitol Police Board by such member of the staff of the Sergeant at Arms of the Senate or the House as may be designated by the Chairman of the Board, [$1,752,000] *$2,531,000,* to be disbursed by the Clerk of the House: *Provided,* That the funds used to maintain the petty cash fund referred to as "Petty Cash II" which is to provide for the prevention and detection of crime shall not exceed $4,000: *Provided further,* That the funds used to maintain the petty cash fund referred to as "Petty Cash III" which is to provide for the advance of travel expenses attendant to protective assignments shall not exceed $4,000: *Provided further,* That, notwithstanding any other provision of law, the cost involved in providing basic training for members of the Capitol Police at the Federal Law Enforcement Training Center for fiscal year 1988 shall be paid by the Secretary of the Treasury from funds available to the Treasury Department.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs, [$100,000,000] *$85,000,000,* to be disbursed by the Clerk of the House, to be available immediately upon enactment of this Act: *Provided,* That funds appropriated for such purpose for the fiscal year ending September 30, 1987, shall remain available until expended.

CAPITOL GUIDE SERVICE

For salaries and expenses of the Capitol Guide Service, [$1,040,000] *$1,175,000,* to be disbursed by the Secretary of the Senate: *Provided,* That none of these funds shall be used to employ more than [twenty-eight] *thirty-three* individuals: *Provided further,* That the Capitol Guide Board is authorized, during emergencies, to employ not more than two additional individuals for not more than one hundred twenty days each, and not more than ten additional individuals for not more than six months each, for the Capitol Guide Service.

STATEMENTS OF APPROPRIATIONS

For the preparation, under the direction of the Committees on Appropriations of the Senate and House of Representatives, of the statements for the first session of the One-hundredth Congress, showing appropriations made, indefinite appropriations, and contracts authorized, together with a chronological history of the regular appropriation bills as required by law, $20,000, to be paid to the persons designated by the chairman of such committees to supervise the work.

OFFICE OF TECHNOLOGY ASSESSMENT

SALARIES AND EXPENSES

For salaries and expenses necessary to carry out the provisions of the Technology Assessment Act of 1972 (Public Law 92-484), including reception and representation expenses (not to exceed $3,000 from the Trust Fund), and rental of space in the District of Columbia, and those necessary to carry out the duties of the Director of the Office of Technology Assessment under section 1886 of the Social Security Act as amended by section 601 of the Social Security Amendments of 1983 (Public Law 98-21), and those necessary to carry out the duties of the Director of the Office of Technology Assessment under part B of title XVIII of the Social Security Act as amended by section 9305 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272), [$16,435,000] *$17,464,000: Provided,* That none of the funds in the Act shall be available for salaries or expenses of any employee of the Office of Technology Assessment in excess of 143 staff employees: *Provided further,* That no part of this appropriation shall be available for assessments or activities not initiated and approved in accordance with section 3(d) of Public Law 92-484, except that funds shall be available for the assessment required by Public Law 96-151: *Provided further,* That none of the funds in this Act shall be available for salaries or expenses of employees of the Office of Technology Assessment in connection with any reimbursable study for which funds are provided from sources other than appropriations made under this Act, or be available for any other administrative expenses incurred by the Office of Technology Assess-

ment in carrying out such a study, except that funds shall be available for and reimbursement can be accepted for salaries or expenses of the Office of Technology Assessment in connection with the assessment required by section 101(b) of Public Law 99-190.

BIOMEDICAL ETHICS

SALARIES AND EXPENSES

For the Biomedical Ethics Board and the Biomedical Ethics Advisory Committee, as authorized by section 381 of the Public Health Service Act (Public Law 99-158), $500,000: Provided, That of the amounts appropriated under this head in the Legislative Branch Appropriations Act, 1987 (Public Law 99-500 and Public Law 99-591), shall remain available until September 30, 1988.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

For salaries and expenses necessary to carry out the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), [$18,148,000] *$18,481,000: Provided,* That none of these funds shall be available for the purchase or hire of a passenger motor vehicle: *Provided further,* That none of the funds in this Act shall be available for salaries or expenses of any employee of the Congressional Budget Office in excess of 226 staff employees: *Provided further,* That any sale or lease of property, supplies, or services to the Congressional Budget Office shall be deemed to be a sale or lease of such property, supplies, or services to the Congress subject to section 903 of Public Law 98-63.

ARCHITECT OF THE CAPITOL

OFFICE OF THE ARCHITECT OF THE CAPITOL

SALARIES

For the Architect of the Capitol; the Assistant Architect of the Capitol; the Executive Assistant; and other personal services; at rates of pay provided by law, $6,123,000.

TRAVEL

Appropriations under the control of the Architect of the Capitol shall be available for expenses of travel on official business not to exceed in the aggregate under all funds the sum of [$10,000] *$20,000.*

CONTINGENT EXPENSES

To enable the Architect of the Capitol to make surveys and studies, and to meet unforeseen expenses in connection with activities under his care, $50,000.

CAPITOL BUILDINGS AND GROUNDS

CAPITOL BUILDINGS

For all necessary expenses for the maintenance, care and operation of the Capitol Building and electrical substations of the Senate and House Office Buildings, under the jurisdiction of the Architect of the Capitol, including furnishings and office equipment; not to exceed $1,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; purchase or exchange, maintenance and operation of a passenger motor vehicle; for expenses of attendance, when specifically authorized by the Architect of the Capitol, at meetings or conventions in connection with subjects related to work under the Architect of the Capitol, [$13,024,000] *$13,108,000,* of which $360,000 shall remain available until expended.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant, [$3,308,000] *$3,517,000.*

SENATE OFFICE BUILDINGS

For all necessary expenses for maintenance, care and operation of Senate Office Buildings; and furniture and furnishings, to be expended under the control and supervision of the Architect of the Capitol, $24,039,000, of which $3,015,000 shall remain available until expended.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House Office Buildings, including the position of Superintendent of Garages as authorized by law, $31,563,000, of which $8,010,000 shall remain available until expended.

CAPITOL POWER PLANT

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; for lighting, heating, and power (including the purchase of electrical energy) for the Capitol, Senate and House Office Buildings, Congressional Library Buildings, and the grounds about the same, Botanic Garden, Senate garage, and for air conditioning refrigeration not supplied from plants in any of such buildings; for heating the Government Printing Office and Washington City Post Office and heating and chilled water for air conditioning for the Supreme Court Building, Union Station complex and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation; $25,400,000: *Provided,* That not to exceed $1,950,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 1988.

ADMINISTRATIVE PROVISIONS

SEC. 103. Notwithstanding any other provisions of law, the Architect of the Capitol is hereby authorized to (1) develop a pilot program to determine the economic feasibility and efficiency of centralizing certain maintenance functions, to assign and reassign, without increase or decrease in basic salary or wages, any person on the employment rolls of the Office of the Architect of the Capitol, for personal services in any buildings, facilities, or grounds under his jurisdiction for which appropriations have been made and are available; (2) maintain appropriate cost and productivity records for the program; and (3) report to appropriate authorities, including the Committees on Appropriations, on the results of the program, together with recommendations for continuation or expansion of the program.

SEC. 104. The Architect of the Capitol, under the direction of the Joint Committee on the Library, is authorized to accept donations to restore and display the Statue of Freedom model.

[SEC. 105. Each of the amounts provided under the heading Architect of the Capitol, beginning on line 11, page 12 through line 19, page 14; and on page 21, lines 10 through 16, shall be reduced by 2.8 percent.]

LIBRARY OF CONGRESS

CONGRESSIONAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946, as amended by section 321 of the Legislative Reorganization Act of 1970 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, [$43,000,000] *$44,453,000: Provided,* That no part of this appropriation may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration or the Senate Committee on Rules and Administration: *Provided further,* That, notwithstanding any other provisions of law, the compensation of the Director of the Congressional Research Service, Library of Congress, shall be at an annual rate which is equal to the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

For authorized printing and binding for the Congress; for printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (44 U.S.C. 902); printing and binding of Government publications authorized by law to be distributed to Members of Congress; and for printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, [$70,900,000] *$72,700,000: Provided,* That funds remaining from the unexpended balances from obligations made under prior year appropriations for this account shall be available for the purposes of the printing and binding account for the same fiscal year: *Provided further,* That this appropriation shall not be available for printing and binding part 2 of the annual report of the Secretary of Agriculture (known as the Yearbook of Agriculture) nor for copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under 44 U.S.C. 906: *Provided further,* That, to the extent that funds remain from the unexpended balance of fiscal year 1984 and fiscal year 1985 funds obligated for the printing and binding costs of publications produced for the Bicentennial of the Congress, such remaining funds shall be available for the current year printing and binding cost of publications produced for the Bicentennial: *Provided further,* That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years.

This title may be cited as the "Congressional Operations Appropriation Act, 1988".

TITLE II—OTHER AGENCIES

BOTANIC GARDEN

SALARIES AND EXPENSES

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, $2,295,000.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

For necessary expenses of the Library of Congress, not otherwise provided for, including the Speaker's Civic Achievement Awards Program, subject to authorization, development and maintenance of the Union

Catalogs; custody, care and maintenance of the Library Buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center in the Library; preparation and distribution of catalog cards and other publications of the Library; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, [$147,635,000] *$148,631,000,* of which not more than $5,000,000 shall be derived from collections credited to this appropriation during fiscal year 1988 under the Act of June 28, 1902, as amended (2 U.S.C. 150): *Provided,* That the total amount available for obligation shall be reduced by the amount by which collections are less than the $5,000,000: *Provided further,* That, of the total amount appropriated, $4,944,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other materials including subscriptions for bibliographic services for the Library, including $40,000 to be available solely for the purchase, when specifically approved by the Librarian, of special and unique materials for additions to the collections.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Copyright Office, including publication of the decisions of the United States courts involving copyrights, $19,431,000, of which not more than $7,000,000 shall be derived from collections credited to this appropriation during fiscal year 1988 under 17 U.S.C. 708(c), and not more than $931,000 shall be derived from collections during fiscal year 1988 under 17 U.S.C. 111(d)(3) and 116(c)(1): *Provided,* That the total amount available for obligation shall be reduced by the amount by which collections are less than the $7,931,000*: Provided further, That $150,000 of the unobligated balance of that part of the appropriation "Salaries and Expenses, Copyright Office" for the fiscal year 1987, for the acquisition of a stand-alone data system for the processing of cable television statements and jukebox registrations, shall remain available until September 30, 1988.*

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

For salaries and expenses to carry out the provisions of the Act approved March 3, 1931, as amended (2 U.S.C. 135a), $37,390,000.

FURNITURE AND FURNISHINGS

For necessary expenses for the purchase and repair of furniture, furnishings, office and library equipment, $6,010,000, of which $4,781,000 shall be available until expended only for the purchase and supply of furniture, shelving, furnishings, and related costs necessary for the renovation and restoration of the Thomas Jefferson and John Adams Library Buildings.

ADMINISTRATIVE PROVISIONS

SEC. 201. Appropriations in this Act available to the Library of Congress shall be available, in an amount not to exceed $101,390 of which $23,900 is for the Congressional Research Service, when specifically authorized by the Librarian, for expenses of attendance at meetings concerned with the function or activity for which the appropriation is made.

SEC. 202. (a) No part of the funds appropriated in this Act shall be used by the Library of Congress to administer any flexible or compressed work schedule which—

(1) applies to any manager or supervisor in a position the grade or level of which is equal to or higher than GS-15; and

(2) grants the manager or supervisor the right to not be at work for all or a portion of a workday because of time worked by the manager or supervisor on another workday.

(b) For purposes of this section, the term "manager or supervisor" means any management official or supervisor, as such terms are defined in section 7103(a) (10) and (11) of title 5, United States Code.

SEC. 203. Appropriated funds received by the Library of Congress from other Federal agencies to cover general and administrative overhead costs generated by performing reimbursable work for other agencies under the authority of 31 U.S.C. 1535 and 1536 shall not be used to employ more than 65 employees.

SEC. 204. No funds shall be expended by the Library of Congress for the purpose of providing long-term special study facilities for profit or non-profit business enterprises until guidelines for such use are approved by the Joint Committee on the Library.

SEC. 205. (a) AMENDMENTS RELATING TO DUTIES OF ARCHITECT OF THE CAPITOL AND LIBRARIAN OF CONGRESS.—Section 1 of the Act entitled "An Act to abolish the Office of Superintendent of the Library Building and Grounds and to transfer the duties thereof to the Architect of the Capitol and the Librarian of Congress", approved June 29, 1922 (ch. 251, par. 1, 42 Stat. 715; 2 U.S.C. 141), as amended by the Act of June 12, 1970 (Public Law 91-280, 84 Stat. 309; 2 U.S.C. 141), is further amended by striking out "the care and maintenance of the grounds,".

(b) AMENDMENTS RELATING TO GROUNDS OF THE MADISON BUILDING.—Section 2 of the Act entitled "Joint Resolution to authorize the Architect of the Capitol to construct the third Library of Congress building in square 732 in the District of Columbia to be named the James Madison Memorial Building and to contain a Madison Memorial Hall, and for other purposes", approved October 19, 1965 (Public Law 89-260, 79 Stat. 986) is amended by striking out "and the care of the surrounding grounds", and adding a new second sentence which reads, "The care and maintenance of the grounds surrounding the building authorized by this joint resolution shall be under the Librarian of Congress".

(c) EFFECTIVE DATE.—This Act shall take effect on the date of the enactment of this Act.

ARCHITECT OF THE CAPITOL

LIBRARY BUILDINGS [AND GROUNDS]

STRUCTURAL AND MECHANICAL CARE

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings [and grounds, $6,965,000] *$6,820,000,* of which $365,000 shall remain available until expended.

COPYRIGHT ROYALTY TRIBUNAL

SALARIES AND EXPENSES

For necessary expenses of the Copyright Royalty Tribunal, $666,000, of which $533,000 shall be derived by collections from the appropriation "Payments to Copyright Owners" for the reasonable costs incurred in proceedings involving distribution of royalty fees as provided by 17 U.S.C. 807.

GOVERNMENT PRINTING OFFICE

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

For necessary expenses of the Office of Superintendent of Documents, including compensation of all employees in accordance with the provisions of 44 U.S.C. 305; travel expenses (not to exceed $117,000); price lists and bibliographies; repairs to buildings, elevators, and machinery; and supplying publications to the Depository Library and International Exchange Programs, $25,300,000, of which $5,500,000 representing excess receipts from the sale of publications shall be derived from the Government Printing Office revolving fund: *Provided,* That $300,000 of this appropriation shall be apportioned for use pursuant to section 3679 of the Revised Statutes, as amended (31 U.S.C. 1512), with the approval of the Public Printer, only to the extent necessary to provide for expenses (excluding permanent personal services) for workload increases not anticipated in the budget estimates and which cannot be provided for by normal budgetary adjustments.

GOVERNMENT PRINTING OFFICE REVOLVING FUND

The Government Printing Office is hereby authorized to make such expenditures, within the limits of funds available and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the "Government Printing Office revolving fund": *Provided,* That not to exceed $5,000 may be expended on the certification of the Public Printer in connection with official representation and reception expenses: *Provided further,* That during the current fiscal year the revolving fund shall be available for the hire of eight passenger motor vehicles: *Provided further,* That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further,* That the revolving fund shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for grade GS-18: *Provided further,* That the revolving fund shall be available to acquire needed land, located in Northwest D.C., which is adjacent to the present Government Printing Office, and is bounded by Massachusetts Avenue and the southern property line of the Government Printing Office, between North Capitol Street and First Street. The land to be purchased is identified as Parcels 45-D, 45-E, 45-F, and 47-A in Square 625, and includes the alleys adjacent to these parcels, and G Street, N.W. from North Capitol Street to First Street: *Provided further,* That the revolving fund and the funds provided under the paragraph entitled "Office of Superintendent of Documents, Salaries and expenses" together may not be available for the full-time equivalent employment of more than 5,237 workyears.

ADMINISTRATIVE PROVISION

SEC. 205. Funds authorized to be expended by the Government Printing Office for fiscal year 1988, not to exceed [$27,500] *$55,000,* shall be available without regard to the 25 per centum limitation of section 322 of the Economy Act of June 30, 1932, as

amended, for the repair, alteration, and improvement of rented premises.

GENERAL ACCOUNTING OFFICE

SALARIES AND EXPENSES

For necessary expenses of the General Accounting Office, including not to exceed $5,000 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for grade GS-18; hire of one passenger motor vehicle; advance payments in foreign countries in accordance with 31 U.S.C. 3324; benefits comparable to those payable under sections 901(5), 901(6) and 901(8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), 4081(6) and 4081(8), respectively); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries and travel benefits comparable with those which are now or hereafter may be granted single employees of the Agency for International Development, including single Foreign Service personnel assigned to A.I.D. projects, by the Administrator of the Agency for International Development—or his designee—under the authority of section 636(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(b)); [$334,777,000] *$340,820,000*: *Provided*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the Joint Financial Management Improvement Program (JFMIP) shall be available to finance an appropriate share of JFMIP costs as determined by the JFMIP, including but not limited to the salary of the Executive Director and secretarial support: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of Forum costs as determined by the Forum, including necessary travel expenses of non-Federal participants. Payments hereunder to either the Forum or the JFMIP may be credited as reimbursements to any appropriation from which costs involved are initially financed: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the American Consortium on International Public Administration (ACIPA) shall be available to finance an appropriate share of ACIPA costs as determined by the ACIPA, including any expenses attributable to membership of ACIPA in the International Institute of Administrative Sciences: *Provided further*, That this appropriation shall be available to finance a portion, not to exceed $50,000, of the costs of the Governmental Accounting Standards Board: *Provided further*, That $50,000 of this appropriation shall be available for the expenses of planning the triennial Congress of the International Organization of Supreme Audit Institutions (INTOSAI) to be hosted by the U.S. General Accounting Office in Washington, D.C., in 1992, to the extent that such expenses cannot be met from the trust authorized below: *Provided further*, That the General Accounting Office is authorized to solicit and accept contributions (including contributions from INTOSAI), to be held in trust, which shall be available without fiscal year limitation for the planning, administration, and such other expenses as the Comptroller General deems necessary to act as the sponsor of the aforementioned triennial Congress of INTOSAI. Monies in the trust not to exceed $10,000 shall be available upon the request of the Comptroller General to be expended for the purposes of the trust.

TITLE III—GENERAL PROVISIONS

SEC. 301. No part of the funds appropriated in this Act shall be used for the maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration.

SEC. 302. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 303. Whenever any office or position not specifically established by the Legislative Pay Act of 1929 is appropriated for herein or whenever the rate of compensation or designation of any position appropriated for herein is different from that specifically established for such position by such Act, the rate of compensation and the designation of the position, or either, appropriated for or provided herein, shall be the permanent law with respect thereto: *Provided*, That the provisions herein for the various items of official expenses of Members, officers, and committees of the Senate and House, and clerk hire for Senators and Members shall be the permanent law with respect thereto.

SEC. 304. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 305. (a) The Architect of the Capitol, in consultation with the heads of the agencies of the legislative branch, shall develop an overall plan for satisfying the telecommunications requirements of such agencies, using a common system architecture for maximum interconnection capability and engineering compatibility. The plan shall be subject to joint approval by the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate, and, upon approval, shall be communicated to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate. No part of any appropriation in this Act or any other Act shall be used for acquisition of any new or expanded telecommunications system for an agency of the legislative branch, unless, as determined by the Architect of the Capitol, the acquisition is in conformance with the plan, as approved.

(b) As used in this section—

(1) the term "agency of the legislative branch" means, the office of the Architect of the Capitol, the Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the Congressional Budget Office; and

(2) the term "telecommunications system" means an electronic system for voice, data, or image communication, including any associated cable and switching equipment.

SEC. 306. For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), the term "program, project, and activity" shall be synonymous with each appropriation account in this Act, except that the accounts under the general heading "House of Representatives" shall be considered one "program, project, and activity", and the accounts under the general heading "Senate" shall be considered one "program, project, and activity".

[SEC. 307. (a) Notwithstanding section 105 of title 4, United States Code, or any other provision of law, no person shall be required to pay, collect, or account for any sales or use tax, or any personal property tax, with respect to an essential support activity or function conducted by a nongovernmental person in the Capitol, the House Office Buildings, the Senate Office Buildings, the Capitol Grounds, or any other location under the control of the Congress.

[(b) As used in this section—

[(1) the term "essential support activity or function" means a support activity or function so designated by the Committee on House Administration of the House of Representatives or the Committee on Rules and Administration of the Senate, acting jointly or separately, as appropriate;

[(2) the term "personal property tax" means a tax of a State, a subdivision of a State, or any other authority of a State, that is levied on, levied with respect to, or measured by, the value of personal property;

[(3) the term "sales or use tax" means a tax of a State, a subdivision of a State, or any other authority of a State, that is levied on, levied with respect to, or measured by, sales, receipts from sales, or purchases, or storage or use of personal property; and

[(4) the term "State" means a State of the United States, the District of Columbia, or a territory or possession of the United States.

[(c) This section shall apply to any sale, receipt, purchase, storage, use, or valuation taking place before, on, or after the date on which this section is enacted.

[SEC. 308. The Architect of the Capitol and such officers of the House as are designated by the Speaker shall undertake a detailed review of all functions, services, programs, and activities now performed by the Architect of the Capitol and officers of the House pursuant to law or regulation. Such review shall emphasize the rules and laws now governing their activities and the funds and personnel employed to carry out those activities with a view toward reassigning such activities to the Architect of the Capitol or the appropriate House officer. Necessary management and audit staff from the General Accounting Office shall be used in the determination of what transfers should be made in fiscal year 1988 with a preliminary report to be submitted to the House Committee on Appropriations, the Committee on House Administration, and the House Office Building Commission by the close of business December 31, 1987. A final report shall be submitted by February 15, 1988, and the necessary transfers of funds and personnel shall be undertaken on a timely schedule thereafter. The House Committee on Appropriations shall have authority to transfer such funds as may be necessary between the accounts of the Architect of the Capitol and House officers or the contingent fund as needed to accomplish such actions as recommended in the report and as approved by the House Office Building

Commission. This section shall be effective upon enactment.]

SEC. 307. Paragraph (1) of section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended to read as follows:

"(1) Each recommendation of the President which—

"(A) is transmitted to the Congress pursuant to subsection (h) of this section; and

"(B) is approved by a joint resolution agreed to by the Congress,

shall be effective as provided in paragraph (2) of this subsection.".

SEC. 308. (a) None of the funds appropriated for fiscal year 1988 by this or any other Act may be obligated or expended by any entity of the Executive Branch of the United States Government for any of the following purposes:

(1) The procurement of any printing, binding, reproduction or composition of work related to the production of government materials, unless such procurement is performed by the United States Government Printing Office.

(2) The procurement of any printing, binding, reproduction or composition equipment.

(3) The printing, binding, reproduction or composition of government materials, by any individual Executive Branch printing, binding, reproduction or composition facility, in excess of 105 percent of the volume of printing, binding, reproduction or composition work performed by such facility in fiscal year 1987.

(4) The establishment or operation of any new facility, the purpose of which is to print, bind, compose or reproduce multiple copies of government materials.

(b) Notwithstanding paragraphs (1) and (2) of subsection (a), individual printing, binding, reproduction or composition work costing $1,000 or less per individual contract may be procured directly by the issuing department or agency, if such work is not of a continuing or repetitive nature.

This Act may be cited as the "Legislative Branch Appropriations Act, 1988".

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, under the order that was entered, I believe either of the two leaders or either of the two managers could call back the DOD authorization. That is what I had in mind when I asked for regular order.

The PRESIDING OFFICER. That is contained in the order. The majority leader has that right.

Mr. BYRD. Mr. President, I exercise that right.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the unfinished business, which is S. 1174, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Weicker-Hatfield Amendment No. 712, to require compliance with the provisions of the War Powers Resolution.

(2) Byrd Amendment No. 732 (to Amendment No. 712), of a perfecting nature, to provide that Congress express its support for (1) a continued U.S. presence in the Persian Gulf and the right of all non-belligerent shipping to free passage in the Gulf; (2) continued work with the countries in the region and with our Allies to bring about a de-escalation of the conflicts in the region, and to bring a halt to those activities which threaten the freedom of navigation in international waters in the region; and (3) diplomatic efforts underway in the United Nations and elsewhere to bring about an early resolution of the conflict between Iran and Iraq, identify the actions which led to the current conflict and contribute to its continuation, achieve a cease-fire as called for by United Nations Security Council Resolution 598, and take early action toward imposing sanctions on any party which refuses to accept a cease-fire.

HOSTILITIES IN THE GULF

Mr. BYRD. Mr. President, the Senate once again turns to the issue of our current involvement in the reflagging and escorting of vessels in the Persian Gulf.

If the Byrd-Nunn-Bumpers-Adams-Sasser amendment is adopted, the Senate will be on record as opposing the reflagging and convoy escort operation until such time as the operation is specifically authorized by Congress.

There is a need for the Senate to act. The tensions in the Persian Gulf are not going to diminish as long as the Iran-Iraq war is raging. And the risks to American forces in the gulf will remain as long as the war against shipping in the gulf continues.

In regard to the war in the gulf, it is worth noting that in the days since the introduction of this amendment, Iraq has flown hundreds of sorties against shipping in the gulf. The United States continues to provide convoy service for reflagged Kuwaiti tankers at the same time that Kuwait's ally Iraq intensifies the war in the gulf. Mr. President, our policy in the Persian Gulf is working at cross purposes; 1987 is the year of the open tilt to Iraq, as if to balance off 1986, the year of the secret tilt toward Iran. Tilting as a policy, open or secret, in either direction at the same time we take the position internationally that the war be brought to an end, is a policy which might profitably be junked.

The Senate has already devoted hours to this subject, and has had several votes in relation to it. Senators SASSER, WARNER, and GLENN visited the Persian Gulf region at the request of the two leaders and reported back with their assessments earlier this summer. The Armed Services, Foreign Relations, and Intelligence Committees examined administration policy throughout the summer and expressed grave reservations about the course of action being pursued.

After considering this information, the Senate voted on a resolution calling on the administration to delay its plan to reflag the Kuwaiti tankers until more was understood about the potential threats to our forces in the region, and until our policy objectives had been clarified, and in order to give the diplomatic process—the search for a diplomatic solution to the Iran-Iraq war—a chance to work.

Despite these efforts in the Senate, and despite the fact that a clear majority favored the approach recommended, we were unable to obtain cloture in order to pass that resolution.

About 1 week ago, the Senate refused to invoke the War Powers Act. The Senate's action was followed shortly by the operation against the Iranian ship laying mines in the gulf and the sinking of another ship by a mine. We have recently had reports of still more mine-laying in the gulf.

Mr. President, I make it clear that this Senator supports the actions that were taken by the American helicopters in firing against the Iranian ship. There is no debate on that point.

Mr. President, as a result of these developments, a group of Senators have worked hard over the past 2 days to forge an approach to policy in the gulf which addresses the grave and longstanding reservations about the reflagging and convoying policy but which would not require the United States to pull out of the gulf or reduce its historic and vital commitments. This is the intent of the amendment I and other Senators have introduced to the amendment of the Senator from Connecticut.

The Byrd-Nunn amendment is a carefully targeted amendment. It aims at the actions which have exacerbated and intensified the increased tensions in the gulf and have resulted in the buildup of American naval forces there. These actions are the decisions to reflag and escort the Kuwaiti tankers.

It is very important to be clear on what the amendment does not do. It does not—repeat, not—require the withdrawal of any—repeat, any—United States forces from the Persian Gulf—not one single helicopter, not one battleship, not one airplane, not one man or woman in military uniform, not one patrol boat, from the Persian Gulf.

Instead, it would have the desirable effect of reviewing the option of giving our forces new flexibility, a definite military advantage. It does not reduce military options in the gulf—instead, it expands them. Our naval vessels need not be straightjacketed into a demand-

ing escort regime, but could be far freer to execute a fuller range of operational capabilities with the same assets.

The amendment does not require any reduction in the U.S. military presence in the Persian Gulf region. In fact, it reaffirms that commitment in the strongest terms. The sponsors of this amendment favor a continued presence of the United States in the gulf. We favor the continued close cooperation with our allies and friends in the region. We favor the diplomatic efforts to solve and bring to an end the Iran-Iraq war. The Byrd-Nunn amendment does not invoke the specific procedures of the War Powers Resolution. That resolution, if invoked, would require all—the word is any, any meaning all—any U.S. Armed Forces; that is the War Powers Act—to be withdrawn from the region unless the Congress authorized their deployment. That is too blunt an instrument we think in this particular instance to deal with this particular problem.

So we need a sharper instrument for this problem, and that is what the Byrd-Nunn amendment provides.

The Byrd-Nunn amendment calls on the President to report within 30 days—not within 48 hours as the War Powers Resolution requires—and it sets forth certain specific requests that the President is to address in that report to the Congress. It calls on the President to submit that report within 30 days on the continued reflagging and convoying of the tankers. It requires the President to justify this policy in terms of our larger national objectives and to account for the costs of the operation.

Congress is then given 60 days in which to approve the continued escort operation. If Congress at the end of 60 days has not authorized such reflagging and escorting, then such reflagging and escorting must end. But there are no restrictions placed on the numbers of U.S. naval forces in the gulf at the end of the 90 days, or on their right to take actions to defend themselves. As I say, every boat, every plane, every helicopter, every minesweeper, every man, every woman, in U.S. military uniform that is out there now in the gulf can stay.

This amendment, contrary to what those downtown who do not understand it have said, does not require the United States to pull out. It does not pull the rug out from under anybody. It does not require the United States to withdraw its forces from the Persian Gulf. It does not require the United States to get out of the Persian Gulf. It simply drives toward the one target, that being the reflagging and escorting of vessels as we are seeing under the current policy.

When the reflagging was originally announced, the Pentagon, claimed that it would required no additional forces. Remember that? The Pentagon said no additional forces would be required. They then proposed a modest increase in forces. By now, a substantial armada has been assembled, and the cost of the operations will mount. For how long are we committeed to the convoying and escorting? How long, Mr. President, how long? Will the buildup continue? It is open ended, with no strings attached. No end in sight, no termination date. That is the administration's current policy.

It is most interesting to now hear the Chairman of the Joint Chiefs of Staff state in testimony on September 29, yesterday, before the Armed Services Committee, that the U.S. Navy underestimated, underestimated, the threat of mine warfare in the gulf.

Of course, that was obvious. It did not take the Chairman of the Joint Chiefs of Staff to see that or say that. We saw that; everybody saw it. It was embarrassing to the administration when it was obvious that that was something that had not been thought of. The threat of mine warfare certainly had not been planned against, had not been provided for. So the Chairman of the Joint Chiefs of Staff says the U.S. Navy underestimated the threat of mine warfare in the gulf. He also stated that he hopes to draw down our forces there "to a more reasonable level."

Well, what is a "more reasonable level"? So, now we have the public admission of what some of us knew all along; namely, that the reflagging and convoying operation was hastily considered and ill conceived; that the administration rushed into it without fully considering the consequences; and that the administration is now faced with an open-ended and very expensive operation about which they have not the faintest idea, not the faintest idea of its ultimate cost or its duration. It can go on and on.

Some questions must be answered if this policy is to have the support of the American people. After all, they furnish the fighting men and women. They furnish the treasure, and they ought to have some answers.

These are the questions which the Byrd-Nunn amendment sets forth and on which the Congress can then vote. The reflagging and escorting would, by law, come to an end—unless the Congress authorized the extension of that policy. It might do that. I might vote to do that. But we need the information that we have asked for. We need to have some debate based on the report that would be sent to the Congress in the implementation of the amendment by the President.

What we are asking is for the President to come to the Congress with his report, explain his policy coherently, and build support for it. The amendment is a reasonable proposal which deserves the support of the Senate.

Mr. President, I will move shortly—I do not mean to keep other Senators from speaking, but I will move to table my own amendment and I will vote against the tabling motion. I urge other Senators to vote against my motion to table the Byrd-Nunn amendment.

Now, why would I do this? Mr. President, I have sought to get an agreement for a time limitation on this amendment. I have at one point indicated that I would be happy to lift this amendment out of this bill, lay it down in a separate resolution, if I could get consent to call up the resolution and have a time limit for debate on such resolution.

The distinguished managers of the bill, Mr. NUNN and Mr. WARNER, along with their colleagues on both sides of the aisle within the committee and on the floor, have worked hard, long, arduous hours in an effort to bring this bill to the floor. Heavens knows, I have tried and tried and tried again to get the bill up. I was delayed in that until a fortuitous circumstance presented itself.

I do not want to see this bill delayed further. I want to see the bill go to conference. It is a very important bill. It has many important items in it, provisions, policy matters, amendments, and it needs to go to conference with the other body. That will be a long hard conference, I anticipate. Mr. NUNN and Mr. WARNER will spend long hours and days and probably even weeks in that conference.

I want to see this bill go to conference. But, Mr. President, the matter before the Senate is a matter of great importance to this Nation. It is a matter affecting the fortunes and blood of the American people, their sons, their daughters, the taxpayers of this country. They should at least be given an answer. They should have some understanding as to what this reflagging operation is costing now, and as to how long it is likely to go on.

Mr. President, the people of this country should not be asked to give their sons and daughters in the implementation of a policy about which they know very little, and which this administration is unwilling to come to the Congress and explain. The Constitution of the United States gives to the Congress the power to declare war, and to nobody else. And what we are talking about here is certainly germane or relevant to that provision in the Constitution which speaks of the declaration of war. We are not advocating a declaration of war. But our sons, and daughters, and our grandchildren cannot be expected to be taken into far away places without the support of their fathers, mothers, and grandparents who are paying the taxes. The elected representatives of the people who are in this body and in

the other body have a right to know and to participate in any decision to continue the reflagging operation.

This administration takes the position that it is omnipotent, omniscient, and omnipresent. It knows everything, it can do anything, it does not have to answer any questions, and it does not have to go up on the Hill and lay its cards on the table.

Why does it want to go it alone? I cannot understand that. Why does it want to go it alone? It would seem to me that the administration would much prefer to have Congress as an equal partner in this venture, because Congress after all has the control of the purse but that is a very slow operation. The use of the purse takes time.

We are in a situation in the gulf now where something can happen any minute, any hour, any day. And we continue to get the back of the hand from the administration to those of us who feel that a law is on the books whether we like it or not and it should not be ignored.

I have not been completely at ease with the verbiage of the law that is on the books. But it is there. And until somebody has an opportunity to test it in the courts, if a court will indeed open its doors to the Congress for standing, then who is going to say?

Alexander Pope said, "Who shall decide when doctors disagree?" Well, who shall decide when the other end of Pennsylvania Avenue and this end disagree?

We go a bit further. We need to have the report, the information, the data that we are requesting so we will know whether or not we disagree. Perhaps we will not disagree. What is the administration afraid of?

Mr. President, I have simply wanted a time agreement on this amendment. Let us vote in 3 hours, 4 hours, 2 hours, 10 hours, but let us vote.

I cannot get that time agreement. And I cannot get an agreement thus far that would allow us to take this question outside this bill, put it into a separate resolution, call it up the next day after the DOD authorization bill has passed, and have a time limitation thereon, so there would be no filibuster. But that being the case, the only way I can hope to get some kind of a vote is to move to table my own amendment, vote against tabling it, and hope that the Senate will vote not to table so as to indicate that the Senate feels that it has a voice in this matter and that it ought to be given an opportunity to exercise its will in the matter to table that amendment.

It is a question of such statute, standing, and seriousness that it is entitled to be voted on.

So, I will move to table the amendment. But, as I say, I do not intend to summarily do that. I would be glad to yield the floor to Senators for a certain amount of time.

I do not seek to limit anybody, but would the distinguished Senator give me some idea how long he would wish?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. Does the majority leader yield the floor?

Mr. BYRD. I have not. I was wondering if the distinguished Senator would tell me if he would wish the floor for a half hour, 15 minutes, or whatever.

Mr. WARNER. Mr. President, this Senator would like to have 15 minutes. I know the minority leader is anxious to have some time. As a courtesy to the sponsor of the underlying amendment, it would seem to me that question should be placed to him. I hope I could receive recognition of the Chair, following the majority leader's yielding the floor, in an effort to engage in a brief colloquy. I wonder if he would extend me the courtesy to remain for a few minutes?

Mr. BYRD. Absolutely, I will.

Mr. WARNER. I think there are other Senators who desire to speak.

Mr. BYRD. I am sure there are. I would not want to be at this time tomorrow making my motion to table. That is the only reason I am seeking some limitation. I could move to table now that I have the floor and that would shut off all debate. I would not do that.

I ask unanimous consent that I may yield the floor for not to exceed 45 minutes, after which I be recognized by the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, and I think I am compelled to object—I am not at this moment fully knowledgeable on the range of interest and the time required on this side of the aisle. I do object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. WARNER. Mr. President, the distinguished majority leader characterized his amendment as an important one, and I agree with that. As he knows, I have tried as best I could to work out a compromise, not only in terms of the amendments but also with the time agreements. And I have not given up. I am just hopeful that the distinguished majority leader will await the arrival of the Republican leader and through some consultations try to isolate a time period that would be more convenient.

Mr. ADAMS. Mr. President, would the majority leader yield for a question?

Mr. BYRD. Yes. Could I get a response? The distinguished Senator from Virginia has been very considerate, understanding, and cooperative. He has worked with the Democratic leadership in trying to develop an approach that might have hopefully gotten bipartisan support. I want to yield the floor.

I try to be a reasonable man, and at the end of the 45 minutes I fully expect that the Republican leader will be on the floor. And if he wants time, of course I would yield further. But I do not want to yield the floor and have the Senator take the floor, keep the floor, and 3, 4, 5 hours, 5 or 6 hours, until it is an hour in the day when I do not want to move to table.

What does the Senator propose?

Mr. WARNER. Mr. President, first I request the opportunity to address the Senate with respect to my views on the Byrd-Nunn amendment, and in part on the underlying amendment. I would think 15 to 20 minutes would be sufficient.

I would hope to ask one or more questions of the distinguished majority leader specifically addressing provisions of that matter, and provide a framework for the debate. Then, of course, having gained the floor, I would yield the floor and let the regular order of business of the Senate proceed on this amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield the floor for 1 hour and that I may again be recognized.

May I assure the Senator that if the distinguished Republican leader were here, if the Senator from Connecticut here had not been recognized, I would yield again. I simply want to protect my right to move to table today at a reasonable hour.

Mr. WARNER. I wonder, since the distinguished majority leader has the floor, if he is willing to accord this Senator the courtesy of speaking on the amendment. If we could await the arrival of the Republican leader before addressing——

Mr. BYRD. That is fine. I do not want to wait too long on the arrival of someone. I want to accommodate the Republican leader and the distinguished Senator from Virginia.

Mr. WARNER. Mr. President, I wonder if those listening could inform the Republican leader that we need his presence on the floor and provide the majority leader or myself with information as to when he can likely be on the floor.

Mr. ADAMS. Mr. President, will the majority leader yield?

Mr. BYRD. I am going to first accommodate the Senator from Virginia.

Mr. WARNER. I will seek recognition, and then I will yield to the Senator for the purpose of a question to me or the majority leader.

Mr. BYRD. I have not yielded the floor yet.

The PRESIDING OFFICER. Is there a unanimous-consent request pending? Did the majority leader put a unanimous-consent request?

Mr. BYRD. Yes—that I yield for not to exceed 1 hour.

Mr. WARNER. I have to object, pending the arrival of the minority leader, with no disrespect to my good friend.

Mr. BYRD. If the Republican leader is not too long. He knows I would go another half-hour or another hour for the Republican leader. I bend over backwards for him—yesterday, today, and tomorrow.

I am not a hard man to get along with, but I do know my rights, and I know what can happen if I give up the floor. I may be the majority leader, but I cannot take the floor from any other Senator. I am going to protect my right to the floor, because I am going to move to table this amendment. That is the only way I can get a vote on it. I cannot get a vote up or down. So we are going to have a vote one way or the other.

Mr. ADAMS. Mr. President, will the majority leader yield for a question, without losing his right to the floor?

Mr. BYRD. Yes, I yield.

Mr. ADAMS. I want to support the majority leader in his statement and in his holding the floor.

I have many things I might want to say on this resolution, also. I want to give the opportunity to the distinguished Senator from Virginia to speak. We have had ample opportunity to speak on this, and I think it is essential that we have a motion to table today. I intend to support the majority leader by voting against the motion to table. I will give up my time to the Senator from Virginia.

It is not a question of getting the floor. It is a question of having the motion to table this afternoon, because we need to move this bill on.

The Senator has been very cooperative. It is the only way the majority leader said we can do it. I hope he will maintain the floor, give people an opportunity to talk, and that we move to table.

I thank the Senator for yielding to me, and I hope he keeps the floor.

Mr. BYRD. I do not want to keep the floor. I thank my friend from Washington.

Mr. President, I ask unanimous consent that time on this amendment be limited to 2 hours, the time to be equally divided between myself and the distinguished Republican leader or the manager.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, regrettably, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I make one more try.

I am not going to wait here forever. I have had this happen too many times, in which I wait on somebody, and I wait and I wait. In some instances, they never get to the floor the same day. I have some honor. If I promise that I will not make a certain motion until a Senator is back on the floor and he does not get back that day, I am shut out.

I ask unanimous consent that there be an hour and a half for debate on this matter, that 1 hour be for the other side of the aisle and that I retain 30 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, again this is a matter on which I feel obligated to have a consultation with the minority leader and other Members on this side, and it is with regret that I have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. I will hold the floor and yield it to any Senator who wishes me to yield.

Mr. WARNER. Mr. President, will the distinguished Senator yield?

Mr. ADAMS. Mr. President, will the Senator yield?

Mr. BYRD. I would like to yield to this Senator first.

Mr. WARNER. I thank my good friend, the majority leader. I shall now engage in a colloquy with him, in the form of a question, regarding his amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield for such purposes, without losing my right to the floor.

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

Mr. WARNER. Mr. President, first, I think—I do not think, I know—that the President and members of his Cabinet and members of the Joint Chiefs have always expressed a willingness to consult with Congress on the policy in the gulf. I stand by that statement, and the record of their number of appearances, I think, substantiates it.

Furthermore, the President has tried and has succeeded, as have his predecessors—all of them, Democrat and Republican—to act within the spirit of and consistent with the War Powers Act, but has not conceded to the act itself because of the reservations of this President and all his predecessors regarding its unconstitutionality.

Having said that, we go directly to the amendment of the distinguished Senator from West Virginia. The Senator gave a very eloquent set of remarks about the concern that every one of us has regarding the men and women in the Armed Forces in the Persian Gulf; and, I am certain that the Senator wished to include the men and women of the Armed Forces of the other allied nations who have responded to the call of our President and others to come and join in an effort to bring about a degree of stability and, hopefully, eventual peace in that region, and the risks that are being taken by the citizens of the Gulf States that are right under the barrel of the Iranian Armed Forces.

Mr. President, recognizing the objective of the proponents of this amendment to bring Congress in and to get a united front, to join with the President, if that be the case, after reasonable debate--to join with the President, to create a united front between the legislative and the executive branches—then I say to my good friend that this amendment appears to this Senator to have missed the mark.

I say that because the amendment was crafted to go only to the policy of the reflagging; and the proponents have said that not one unit need be removed, not one sailor, one soldier, or airman, not one ship, not one airplane. But if we were to address the issue of the gulf only in terms of reflagging, then suppose it were the military judgment of our commanders in the area to move in tomorrow to take out Farsi Island, which is the launching pad from which some attacks are now being inflicted upon innocent merchant ships. It is a jump-off point for the smaller boats bringing the mines into the sealanes of international transit.

If this amendment were construed in a way that Congress either backed or disagreed with the President on the reflagging issue, then there is that much broader issue about the gulf policy as a whole.

To what extent would a President be able to interpret an action by Congress on the Byrd amendment as giving him the authority to go in and take out a Silkworm site if that site posed a threat to our Armed Forces and other armed forces and to innocent shipping?

Mr. BYRD. Does the Senator want me to answer that question?

Mr. WARNER. Yes.

Mr. BYRD. There will be no inhibitions on the President's authority to go in and take out the Silkworms if they present a threat to U.S. Forces in the gulf.

Mr. WARNER. I judge then that this amendment simply goes to the reflagging; but, if Senators have a broader concern about the propriety of utilizing force for other military objectives in that area, then I do not know what is to preclude, should the Senate adopt this amendment, another Senator, assuming procedurally he could do it on this legislation or a subsequent piece of legislation, from bringing up the very thing that the Senator from Connecticut is raising: Namely, should not we look at this situation in the gulf under the law of the land, the War Powers Act.

Mr. BYRD. Mr. President, will the Senator allow me to answer that question?

Mr. WARNER. Yes.

Mr. BYRD. They can do that right now. The adoption of this amendment does not give any Senators any additional rights over which they today have without this amendment.

Mr. WARNER. But if it is the objective, Mr. President, and indeed it is the laudable objective, to have the Congress join the President in the implementation of the present policy in the gulf, then why restrict it to just the reflagging element? Why not let the War Powers Act in its entirety be discussed by the body; and if that were to be done—and I will address later some points on the unconstitutionality—if that were to be done, then this body is on record not just to reflagging but on record with respect to the use of military force implementing the policy on a very broad plain, and it seems to me once this body passes judgment on the broader issue then a Senator, although procedurally the Senator could bring up and challenge the policy the second time, there would be the precedent that this issue was considered by the Senate in its broadest context and we are on record or not on record, as the case may be, in support of the President.

Mr. BYRD. Does the Senator want me to answer that question?

Mr. WARNER. Yes.

Mr. BYRD. Mr. President, in this amendment we are not saying that the President ought to withdraw forces from the gulf.

So far, as I am concerned, there is no point in debating the War Powers Resolution at this juncture. We are trying to narrow the thrust so that we only go to that issue which has already exacerbated and intensified the tension in the gulf and which has caused and is causing the American people concern; namely, reflagging and escorting of the ships.

Now, for weeks, we have been raising our expressions of concern and anxiety and apprehension with respect to this policy. That is what the amendment goes to. That is what it is skillfully, I think, molded to address; nothing beyond that.

Mr. WARNER. Mr. President, I just respectfully disagree with the leader. It seems to me, if we focus on but one element of the policy; namely, reflagging, and do not give all elements of the policy a full hearing and manifest our support for the broader policy in the gulf, then we will be revisiting and revisiting this issue after each and every incident that occurs in the gulf.

Mr. ADAMS addressed the Chair.

Mr. WARNER. Now if I may recognize——

Mr. BYRD. May I comment on that?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. Yes, Mr. President.

That is a little like Bre'er Rabbit, who pleaded, "Do anything else with me. But please don't throw me into the briar patch." Yet, that was exactly where he wanted to go.

So what the Senator is saying is, let us discuss the War Powers Act.

That is just what this amendment is avoiding because if we go to the War Powers Act, then the hue and cry would be: "Now you see, that is what I told you; they want to pull us out of the gulf; they want to pull the rug out from the Commander in Chief; they want to withdraw our forces; they want us to get out of the gulf."

This amendment prevents that from being an argument that has any semblance of reason.

(Mr. KERRY assumed the chair.)

Mr. WARNER. Mr. President, I wonder if the distinguished leader will entertain another question.

Mr. BYRD. Yes.

Mr. WARNER. One of the most serious reservations that this Senator has, and I think many have, about the War Powers Act, is carried forth into this amendment, and that is the procedure by which the Congress addresses the issue. Following the War Powers Act, and I have with no disrespect termed the amendment of the Senator from West Virginia as War Powers II, following that model, it allows inaction by the Congress to trigger action by the President, requiring him to pull out the support necessary for reflagging, which incidentally is a litmus test in the view of the Gulf States.

Mr. BYRD. If the Senator will yield, it does not require him to pull anything out of the gulf.

Mr. WARNER. The support, Mr. President, I say in conjunction with reflagging, is no longer within the President's province if this amendment's resolution of approval is not enacted by Congress to give him that authority; and that reaches the point I wish to make—one House of the Congress of the United States could simply sit back and do nothing, and the clock ticks, under the Byrd amendment, and requires the President to take certain actions.

Now, that is the inaction of the Congress that would force the action of the President. And I say that is unconstitutional.

Mr. BYRD. Mr. President, I say to that, the Constitution's framers, who write that great document, did not say that the declaration of war could be enunciated by a single body of the two bodies. One House can sit back and do nothing and there will not be any declaration of war.

So what is new and unconstitutional about this approach?

Mr. ADAMS. Mr. President, will the majority leader yield for a question? I do not want to interrupt the Senator from Virginia.

Mr. BYRD. Let me yield to Senator WARNER first.

May I say to the distinguished Senator that, because there is no termination date to the reflagging policy, suppose a year from today the United States has had to send land armies over there and we are still taking the side of one of the belligerents, what then? We are today tilting on the side of Iraq. Everybody knows which side started the war. Everybody knows Iraq started that war. I do not know why everybody is tiptoeing around the question about who started the war.

But does that mean that, 1 year or 2 years from today when we still have not had an opportunity for the Congress to make its voice heard, we are still going to fall back on the argument that, well, one House of the Congress could prevent action and therefore hold the President's hands?

Mr. WARNER. Mr. President, will the distinguished leader agree with me that his amendment in that respect is a blueprint of the War Powers Act; it is a direct parallel?

Mr. BYRD. No; it is not a direct parallel except——

Mr. WARNER. In terms of the action by the two Houses.

Mr. BYRD. No; it is not a parallel in that this amendment does not require the President—where is the War Powers Act? Let me read that.

Mr. WARNER addressed the Chair.

Mr. BYRD. For the moment I yield for a further question.

Mr. WARNER. I continue to say, as I interpret the amendment, that it forces the President to take action if the Congress does not. Look at the wording. Paragraph 3 says certain actions will take place:

> * * * the President shall terminate the registration of reregistered vessels under U.S. law and terminate the use of United States armed forces to escort reregistered vessels in the Persian Gulf region, unless the Congress has enacted a law providing specific authorization for such use and reregistration.

One House could, by virtue of inaction, or both Houses as the case may be—and I do not wish to disparage my fellow colleagues in the Senate nor in the House of Representatives—either House could, by virtue of inaction, force the President to cease to provide such military support as he deemed necessary for the purposes of escorting reregistered vessels.

Mr. BYRD. Yes; there is nothing new about that. One House may prevent the passage of the DOD authorization bill. One House may prevent a declaration of war. What is unconstitutional about that?

What this amendment does not do and what has been wrongfully, if mis-

takenly, said at the other end of the avenue, it does not require the President to pull one jot and tittle—not one helicopter, not one individual, not one boat, not one minesweeper, not one airplane, not one battleship, not one barge out of the Persian Gulf. Not one. It just says, "Give us a report. Take 30 days."

Perhaps we ought to tighten that up and make that parallel the War Powers Act—48 hours; give us a report.

Here is what it says. Here are some of the things that are required in that report. Few people may have read the amendment. Let us read what would be required.

This report shall also include a discussion of the following—

(A) the extent to which the policy of protecting reregistered vessels supports U.S. regional strategy;

And we have asked for this in classified and in unclassified form. So if it is classified, we are taking that into account.

(B) the anticipated duration of the operation;

What is wrong with that? The President sent up a letter the other day. He did not address that question in his letter, which was purported to be some kind of a report. I assume that it was to be some semblance or some excuse for the report that is required within 48 hours but without acknowledging that the War Powers Act even exists. The letter did not say what the anticipated duration of the operation would be.

(C) the objectives of the escorting operation and how the administration measures progress toward those objectives;

(D) the funds which have been expended to date.

Tell us how much has been expended to date on the escort operation and the anticipated future requests for funds.

Normally, when the Department heads and the President and Agencies come before the Congress or submit their budget messages, they indicate what the anticipated needs will be for the future.

The anticipated future requests for funds, including any requests for reimbursement of previously expended funds;

(E) the impact of these operations on the diplomatic efforts to achieve a negotiated settlement of the Iran-Iraq war;

(F) the commitments which have been made, if any, by other governments to support this operation, and the commitments, if any, which have been made by the United States to those governments.

There should not be anything secret about all that. At least if it is classified, the elected representatives of the people know it.

(G) the impact these operations have had on the operational deployments and readiness of U.S. forces in other regions.

In other words, what impact is this operation having on our NATO strength? What impact is it having on U.S. forces elsewhere? These are some of the questions that the Congress is entitled to have answered if it is going to make a considered and reasoned judgment on whether or not to authorize the extension of the current policy there.

Mr. WARNER. Mr. President, I will ask a few more brief questions. I see other Senators desiring to be recognized, if the majority leader cares to respond to questions.

Another grave concern I have about the proposal by the distinguished Senator from West Virginia is that the procedure in his amendment, albeit ad hoc for the Persian Gulf, would set a precedent, so the next problem we have that could be interpreted as requiring action under the War Powers Act would then prompt Members of the Congress again to tailor a special piece of legislation to care for that situation, and on and on and on. We would begin to establish precedents which would have that effect. And I would come back to my last question; I am still not able to determine what happens to the War Powers Act itself if the amendment of the Senator from West Virginia is adopted.

Is the President still obligated to comply with that War Powers Act? Is this not a two-track system now, with two trains leaving the station, one the War Powers Act and the other War Powers Act 2 which is the Byrd amendment?

So I ask my good friend two questions:

Which track or both tracks must the President take? And do we not establish a precedent for future actions whereby we will have to tailor every situation with a new piece of legislation?

Mr. BYRD. Mr. President, whether or not we have to tailor every piece of legislation for a new situation depends upon how forthright the administration wants to be. This administration has not been forthright. It is even to this moment unwilling to recognize even the existence of the War Powers Act. It says it is unconstitutional. That act has not been rendered unconstitutional by any court in this land.

So when we are dealing with an administration that gets the bit in its teeth and is determined to go hog wild in any direction it chooses and turns the back of its hand to the representatives of the people duly elected, then we might not be surprised to see others, if new situations arise. And the administration does not want to level with the Congress, it does not want to sit down and give whatever report is required, and wants to even deny that circumstances that clearly exist even exist. It wants to pretend that imminent hostilities do not exist in the gulf.

This amendment is a result which originates with a cause. The cause is evident. The anxiety is here. Members of the Senate feel that the administration is not abiding by the law of the land. And there is no way we can force it to, except through the power of the purse, but that takes a long time. Exigencies in the Persian Gulf will not wait that long.

So we have tailored an amendment which does not jerk the rug out from under the President, which does not bring the United States out of the gulf, which does not force the President of the United States to terminate the use of any U.S. Forces in the gulf.

Mr. WARNER. If the distinguished leader will take one more question of not more than 2 or 3 minutes, then I will be glad to, at this point, allow others to address the majority leader if they so desire. I note the presence on the floor of the distinguished minority leader.

Mr. President, I respectfully disagree, that the President has gone hog wild. If we need any better proof of that, look at the allies who have come in to join us in this mission of peace. Look at the reaction of the American people to this policy as reflected in the polling. More and more recognize the wisdom of what he is trying to do.

I agree with the distinguished leader. It is time for the Congress to look this issue squarely in the eye. But let us do it through legislation that requires us to do it up front and to be active and to express our voice, and to do so in a reasonable period of time.

If we are going to inject ourselves into decisions of foreign policy involving use of the Armed Forces of the United States, particularly in this situation, then let us do it and do it quickly. And let us stand up and be counted.

For that reason I ask the distinguished leader if he might give me the courtesy, during whatever period he might have, of looking at a piece of legislation that I would propose. And if he would accord me the courtesy of allowing it to be printed.

I send it to the desk, Mr. President, for that purpose.

The PRESIDING OFFICER. The amendment will be received and printed.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

Mr. WARNER. This draft amendment recognizes the President still has but 48 hours to make a report but then calls on the Congress, within the period of 21 days, to make its decision and then stand and be counted, if it disapproves, in a joint resolution of disapproval.

So that we are full partners with the executive branch and our voices are heard and our votes are counted and the American people will know exactly how we stand as the legislative body. Mr. President, I would like to describe

this proposal to modify the War Powers Resolution.

It would still require the President to submit a report within 48 hours after introducing military forces into a situation of hostilities or imminent hostilities.

It would still provide expedited procedures for Congress to express its will on the military operation.

But Congress would now work its will through an expedited resolution terminating use of funds, rather than through a resolution of approval. This would correct one of the existing provisions most often attacked as unconstitutional, and establish the War Powers Act on a more sound basis.

Also, it would strike some sections from the War Powers Act which are unnecessary and possibly incorrect statements of constitutional law.

Finally, it would change the timeframe for expedited action, from 60 days for a resolution of approval—the current procedure—to 21 days for an expedited resolution of disapproval.

The proposal is very specific in saying how the present War Powers Resolution would be modified.

Section 2(c) is stricken, as unnecessary and perhaps an incorrect statement of constitutional law.

Section 5(b) would be replaced with an entirely new section, providing expedited procedures for considering a resolution terminating funding, rather than a resolution of approval.

Section 5(c) is stricken as unnecessary and as a clearly unconstitutional intrusion on the President's authority as Commander in Chief and Chief Executive for foreign policy, and as probably conflicting with the Chada doctrine stated by the Supreme Court in 1983.

Section 6 is modified to reflect the 21-day period for expedited congressional consideration, rather than the 60-day period.

Section 7 is stricken as unnecessary because it provides procedures for consideration of a concurrent resolution, the authority for which is stricken from the resolution.

Let me explain also the basis for the 21-day calendar period.

After the event which begins the process, the President would have 48 hours to make his report. Then the 21-day clock begins. It would include 5 days to introduce a proposed resolution of disapproval, 2 days for committee action, and 3 days for floor action. Then the resolution of disapproval would be sent to the other body, where it would also be considered under expedited procedures. Two days in committee, 3 days for floor action, followed by 3 days for conference, and 3 additional days for floor debate. That should be a total of 21 calendar days.

I am not certain that 21 days is the correct amount of time. This was the shortest time period that seemed possible. It could be adjusted.

It would have certain advantages over the current procedure.

It directly addresses the issue of how to reconcile the War Powers Act with the real-world situation in the Persian Gulf.

It avoids an ad hoc approach to dealing with the War Powers Act generally.

It establishes a more solid basis for the constitutional authority of Congress to act. Congress still could terminate a military operation, but this directive would be based on the well-defined power of the purse.

I think that pretty well describes the proposal.

Mr. BYRD. The problem is the fact that the President can veto it. If the President vetoes the disapproval legislation, it takes two-thirds of both Houses to enact the policy that a majority of Congress stood for in the beginning.

Second, with respect to my words with respect to, "hog wild," I do not take back those words.

Any of us who saw Mr. Weinberger's statement on TV last Sunday, and who read about it in the newspapers the next day, can understand exactly what I mean.

Mr. Weinberger referred to this amendment as an absurdity, or some such. Well, what does he expect out of the elected representatives of the people? A blank check? He must think that the administration is God.

"Why should 'God' be questioned by that group of men and women on the Hill up there?" Democrats and Republicans. He is talking about Republicans, too, not just Democrats.

"The very idea, that those people up there would question us. Why, we in the executive branch are above being questioned. We are not elected. I am an appointed official of the United States. I am a Cabinet officer. I am not elected by the people. But the very idea of those people up there questioning us, saying that there are hostilities going on the gulf. Why, of course, everybody knows there are no hostilities over there. At least they haven't reached the degree necessary before the War Powers Act is invoked."

That is what I mean by hog wild. He said: They ought to be over here and talk to the servicemen and see what they think. Mr. Weinberger may have talked to some servicemen, I respect him for that. He ought to get back here on the streets, back in the hills of West Virginia and talk to people over there, in the hills and valleys of West Virginia, whose sons and daughters are in the gulf or who may be sent to the gulf.

Let me say to you on that point, West Virginia stands back of no State in this Union in its patriotism. No State in the Union exceeded West Virginia in deaths in Vietnam or in Korea, from the standpoint of percentage of the total eligible manpower available. So I speak for a patriotic people.

But even those patriotic people have a right to know when this policy is going to end. When will the Congress have an opportunity to judge it? They have a right to know how much it is costing now. What is going to be the cost of this operation? They have a right to know. What is so singularly mysterious about this operation that the American people should not be able, through their elected representatives, to have an opportunity to vote on this amendment?

Mr. President, the distinguished Republican leader is on the floor and I want to yield to the Republican leader for any reasonable time that he would wish. But I want to be protected, because I intend to make a motion to table.

Mr. President, I ask unanimous consent that I may yield to the distinguished Republican leader for 30 minutes or whatever it is he would require.

Mr. DOLE. Ten minutes?

Mr. BYRD. Ten minutes? I yield the floor to the distinguished Republican leader and I shall then regain the floor.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered. The Senator from Kansas, the minority leader, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished majority leader, and I also thank my colleague from Virginia. I was testifying before the AIDS Commission panel. I am sorry I was not here at the outset.

I am going to recommend if there is going to be a motion to table that we all vote against it, and I would hope that all my colleagues would vote against the distinguished majority leader's motion to table his own amendment because I think we do need a debate. This is very important business.

If the amendment is not tabled, why, then, we will have a chance to debate it further or debate it at some other time, and there are some very fundamental questions I think we need to address.

I do not really believe that the American people believe that the Congress can conduct these operations. That is precisely what the effort here is. Under the amendment offered by the distinguished majority leader, if nothing happened in 60 days in the Congress, that would be the end. We do not have to do anything.

The last time I checked, Ronald Reagan was President. The last time I checked, he was trying to make foreign policy. All these things that we have heard about: We ought to know

this—all we have to do is have a hearing before the Armed Services Committee, I assume, tomorrow morning, to find out all the information. Do we want to pass some law to get information we have already acquired?

Every time the President of the United States commits American forces to back up American interests, Democrat or Republican, there is somebody out there ready to second-guess the President and they jump up and say: "Oh, you can't do that unless we say OK." I do not suggest for a moment that we do not have a role to play in the Congress. We have a very important role to play. But I think it is about time we considered seriously if that is really the way we want to operate.

Is that really the role the Constitution gave the Congress or the role we want to play?

Last time I checked, the Constitution said the President was Commander in Chief. Not the Republican leader. Not the Democratic leader. Not anybody in the House of Representatives. Not the chairman of the Armed Services Committee or anyone else on the Senate floor. We have only one President at a time. In this case, this President was elected overwhelmingly in 1984.

I think we all had some serious reservations about reflagging. This Senator did, and I expressed those reservations. But I also said at that time, it is a done deal. We were given all kinds of reasons why it was necessary. Somebody even suggested we were making money on it, $5 million per ship. That did not make much sense to this Senator.

But now we are in the Persian Gulf and now, as the distinguished Senator from Virginia pointed out, our allies are cooperating. The Japanese are saying: Yes; we are even willing to pay some money. Others are sending their ships there and we have a cooperative effort.

I am not certain what the problem is, but apparently the feeling around here is Ronald Reagan cannot do the job; that somehow we ought to second-guess Ronald Reagan whether it is on this or the next issue. Right in the height of a crisis we are going to mount some ongoing offensive here in the U.S. Senate which I believe affects our credibility. I do not know what happens if this would pass and become law. It is not going to happen. The President would veto it. I think the veto would be sustained. But I must ask what our allies may be thinking today and what our adversaries may be thinking today, if they know Congress is going to take care of the problem, challenge the President's actions, challenge our reliability or our commitments?

Apparently, they do not want to face directly an up or down vote on the War Powers Act, or at least some of them. I do not. I do not think we need to do either. So, we are sort of creating a son of War Powers so we could pretend we are somehow tying the President's hands and were not going after his constitutional authority and power on his policy.

But the basic issue is the same. We are trying to skirt a direct attack on the policy by getting into a debate on the executive-congressional relations. I think we have to be very frank and candid about it. And the majority leader has been.

We talk about War Powers, the Constitution, executive-congressional relations, but in reality is that all just a kind of a cover for what is really at issue, at stake here, and that is the policy that this President set in the Persian Gulf? Does the President have political authority to see that commitment through?

Those are the real issues. First the policy. Now that we have had the policy, is Congress going to pull the rug out from under the President and under our allies and everyone else in the process?

I think we have a responsibility. We ought to have the courage to raise, debate and vote on the real issues, the policy and political issues, clearly and straightforwardly.

If we disagree with the President as individuals or as the Senate as a whole, should we just stand up and say so, that, "We do not agree with your policy, Mr. President," and then take the political consequences?

It would not be hard, it would not take a long time to draft that kind of a resolution. In fact, we have one already drafted. It is one sentence. This is it:

The Senate disapproves of the policy the President established in the Persian Gulf.

Vote it up or down. Why all the smokescreen? Why all the mirrors? This is the question.

I would be willing to put that to a vote. I think the majority of the Senate would vote against that.

It is not that we disapprove the policy. We want to be on both sides of the issue so that if something goes wrong we can say, "We told you so." Or if something goes wrong, we can say, "Well, the Congress was in their weighing in."

Maybe we can offer a substitute to the pending amendment of the majority leader of one sentence, not very complicated. It would not take much debate. It would clear the air. We could all stand up and say, "I agree" or "I disagree" with the President's policy.

I do not think we will do that. Some want to take potshots at the President from behind some constitutional, legal facade. We want to say the policy is bad, that it is sort of bad, we would not vote against it, but we are not going to be given that opportunity. You might be a little later on.

We do not want to shoot down the policy, we just want to fire at it every day or two on the Senate floor, keep everybody nervous, keep the President nervous, our allies nervous. I am not certain about the adversaries. Maybe they are not quite as nervous. But we ought to shoot it up or down.

If we do not want to go after it directly, then maybe we have to go after it indirectly through votes on the War Powers Act. That is being suggested by some. I do not agree with them.

Now, we have the son of War Powers and we can shoot down the President's policy and America's commitment and keep our hands clean. That is what we are doing.

If that is what we are doing, we just ought to admit it.

I voted for the War Powers Act in 1973. It was a special time and a special need. I was a cosponsor of that act, too, as I recall.

I think the distinguished Senator from Virginia has been working on something that might have merit. I have only looked at an outline.

But maybe we would have a process where we could rethink the War Powers Act and modernize it, bring it up to date.

There is not one word in the War Powers Act about terrorism, not one word, because in 1973 there was not much terrorism. We did not have any terrorist acts; we did not have any airport bombings. There is not one word in the War Powers Act about what would happen if the President was to take some action because of terrorism, whether he would be impelled to invoke the War Powers Act.

I think Congress, as I say, certainly has a role to play. I must say I certainly have nothing but the highest regard for the distinguished majority leader. No one ever questions his patriotism or anyone in his State, which he just alluded to.

But I really believe there are times we can have a different view in this body without it being partisan. We can have disagreements without being disagreeable. I do not suggest anyone has been disagreeable.

But I am the Republican leader. We do not have a Republican in the White House. I think he is carrying a heavy responsibility with the activities in the Persian Gulf and other places around the world. I am not certain what we contribute to the debate, to our policy, or to the President's efforts to make it work by this daily, almost daily, attack on the President's efforts in the Persian Gulf.

I would hope if we did anything, depending on what may be worked out later—we are still trying to work out some agreement with the majority leader—we ought to set aside this

whole question of the War Powers Act, take it out of the DOD authorization bill, and go ahead and proceed on the SALT amendment. We can get a time agreement on that. Maybe we can get a time agreement on the War Powers Act or some amendment thereto. But in the meantime, it would seem to me that it would not be in our interest—I am not certain we have the votes, probably not—to table the amendment of the distinguished Senator from West Virginia, the majority leader. That amendment provides us an opportunity to focus on the problem, if there is a problem.

I think if the majority leader moves to table his amendment, it would indicate we would need additional debate. I would hope my colleagues on this side would not vote to table. It probably would not be tabled, in any event. I really believe if we are going to continue to debate the War Powers Act, maybe one place to start would be in a committee somewhere, to go back and take a look at the War Powers Act. We have a lot of experts on both sides of the aisle, people who have spent a lot of time on a daily basis, a weekly basis, whatever, looking at the War Powers Act and other provisions. Maybe we ought to take a look at it.

It would seem to me, if I read the amendment correctly, as I have been listening to a very good debate between the Senator from West Virginia and the Senator from Virginia, that it states pretty clearly on page 4, paragraph 3 that:

> Within 60 days after the report required by paragraph (2) is submitted, or 90 days after enactment of this act, whichever is sooner, the President shall terminate the registration of reregistered vessels under U.S. law and terminate the use of the U.S. Armed Forces to escort reregistered vessels in the Persian Gulf region, unless the Congress has enacted a law providing for the specific authorization for such use and reregistration.

Maybe I have missed something, but it would seem to me if we did not do anything, as far as any role in the Persian Gulf, it would end, unless I misread it. I do not believe anyone in this Chamber suggests that we ought to just end our role. Maybe there would be a resolution introduced, but, if not, we are out of the Persian Gulf. We would be there without any authority.

I do not think that is what we intend.

President Reagan may not be perfect, he may make mistakes, but I will bet the great majority of the American people support our efforts in the Persian Gulf as they supported our efforts yesterday when we said we should not be buying anything from Iran that would give them money to buy Silkworm missiles or whatever it might be to fire weapons at American ships.

I guess the point is we do not want to make it any more difficult for American servicemen in that area or for the President, who is the Commander in Chief.

If this were passed, I do not think we would reinforce the public's view that we have an interest there; we do not get much oil from there. We complain about our allies for not doing enough and now they are doing more. But we know full well if that source of oil is cut off, it is going to have an impact around the world, in every State in this country; it is going to raise the price.

So we do have an interest there. We do not want to turn it over to Iran. We do not want the Soviets to take it by default. We do have an interest in some of the gulf coast states in the Persian Gulf area. We may not want the responsibility but there is no one else to assume it. We are the superpower on which many free nations rely.

So I hope in the spirit of debate and bipartisanship we might still reach some agreement on a separate package, on a War Powers Resolution. And if the majority leader wishes, we could maybe go ahead and proceed on SALT, or legislative appropriations, while we are trying to work that out.

I thank the majority leader for yielding.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia, the majority leader.

Mr. BYRD. Mr. President, the distinguished Senator who is the leader on the other side of the aisle has spoken about the policy. That is just what has intrigued this Senator all along. What is the policy? What is the administration's policy in the Persian Gulf?

That is what we would like to know. Perhaps we would have some better grasp of what the administration's policy is, if we could have the answers to the questions that would be raised in the amendment, if the amendment were to be adopted.

The Republican leader wants to know what our allies might think of us if this amendment is adopted. What did they think of us when we sold arms to Iran in exchange for hostages? What was our policy then?

Mr. President, the distinguished Republican leader spoke of partisanship. We want to be partners with the administration in a policy. If that policy, after due consideration by the Congress, is a policy that involves the treasure and blood of Americans, we think we ought to be a part of it; we ought to be in on it.

Why does the administration veer away from the suggestion that the Congress be a partner?

The Republican leader has indicated, I got from his statement, if Congress does not do anything within 60 days, or if the President sends up a report, Congress may just sit down and do nothing and forget about it.

If they have taken care to read the expedited procedures portion, Senators will find that the procedures provided therein will allow quick action on the part of this Congress. The matter cannot be just put aside. If any Senator wishes to introduce a resolution or any Member of the House anent the policy that is the target of the trust of this amendment, he or she may do so. And the expedited procedures provide that that resolution is discussed within the appropriate committee, the Foreign Relations Committee, or be discharged and any Member may make the motion to go to it on the calendar. So the expedited procedures in this amendment will not only allow but will guarantee that the Congress will do something. It may authorize the further extension of the policy.

Now, Mr. President, we want to be a partner with the administration if the policy is right. First, we have to know what the policy is. That is one thing we are asking: What is the policy? We want to be a partner if it is right. It seems to me that the administration would profit by having the Congress on board if the policy is a good one.

Second, we want to abide by the Weinberger doctrine. Let us take a look at the Weinberger doctrine. Secretary Weinberger made a speech to the National Press Club in Washington on November 28, 1984. I shall ask that the entire speech be included in the RECORD at the conclusion of my remarks, but reading therefrom I begin with this sentence:

> I have developed six major tests to be applied when we are weighing the use of U.S. combat forces abroad. Let me now share them with you.
>
> First, the United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or that of our allies * * *
>
> Second, if we decide it necessary to put combat troops into a given situation, we should do it wholeheartedly and with the clear intention of winning. If we are unwilling to commit the forces or resources necessary to achieve our objectives, we should not commit them at all * * *
>
> Third, if we do decide to commit forces to combat overseas, we should have clearly defined political and military objectives.

I would like to see that doctrine implemented here.

> And we should know precisely how our forces can accomplish those clearly defined objectives.

I subscribe to the Weinberger doctrine. That is what we are asking for in this amendment.

> And we should have and send the forces to do just that * * *
>
> Fourth, the relationship between our objectives and the forces we have committed—their size, composition and disposition—

must be continually reassessed and adjusted if necessary.

I subscribe to that doctrine. That is the Weinberger doctrine. Let us continually reassess the objectives and the forces. Let us adjust them if necessary. If necessary, let us increase them.

He goes on to say in this speech to the National Press Club in Washington on November 28, 1984:

We must continuously keep as a beacon light before us the basic questions—

Here are the basic questions—

"Is this conflict in our national interest?" "Does our national interest require us to fight, to use force of arms?" If the answers are "Yes," then we must win. If the answers are "No," then we should not be in combat.

Fifth. Before the U.S. commits combat forces abroad—

Now, gentlemen, if I may have the attention of all my colleagues, this is a cardinal plank in the Weinberger doctrine. I want all Senators who are within the sound of my voice to listen to this cardinal precept in the Weinberger doctrine.

Fifth, before the United States commits combat forces abroad, there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress.

Do my colleagues subscribe to that? Do you subscribe to that?

Before the U.S. commits combat force abroad, there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress.

I subscribe to that doctrine, and the Byrd-Nunn amendment is in full accordance with that sound doctrine. That is sound doctrine, that fifth paragraph.

Mr. Weinberger went on to say:

This support cannot be achieved unless we are candid in making clear the threats we face. The support cannot be sustained—

Now, get this. Get this. This is almost holy writ.

The support cannot be sustained without continuing and close consultation. We cannot fight a battle with the Congress at home while asking our troops to win a war overseas or, as in the case of Vietnam, in effect asking our troops not to win but just to be there.

Mr. President, I am going to yield to the distinguished Senator from Connecticut 15 minutes. But I understand Senators are all willing to now vote on this tabling motion. That would be perhaps some indication that they want to debate the matter further, or at least would like to have a vote up or down on the amendment. They do not want to table it.

But as we continue to wrestle with our conscience and within our hearts over these matters, I would like for us to keep in mind the Weinberger doctrine that he expounded before the National Press Club in Washington on November 28, 1984. And I hope if anybody has found a retraction to that doctrine by our eminent Secretary of Defense anywhere that they would bring that retraction forth and we could include it in the RECORD with this very clear outline of the Secretary of Defense's position with respect to when the United States commits combat forces abroad.

I repeat: "* * * there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress."

Mr. President, I yield to the distinguished Senator from Connecticut and I apologize to him for imposing on his patience. I yield 20 minutes to the distinguished Senator.

Mr. WEICKER. I thank my distinguished colleague from West Virginia.

The PRESIDING OFFICER. Without objection, the Senator from Connecticut is recognized.

If I may interrupt the Senator before he begins, I believe the Senator from West Virginia wanted to submit something for the RECORD.

Mr. BYRD. Yes.

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

[From the U.S. News & World Report, Dec. 24, 1984]

CASPAR WEINBERGER, SECRETARY OF DEFENSE

Some on the national scene think they can always avoid making tough decisions. Some reject entirely the question of whether any force can ever be used abroad. They want to avoid grappling with a complex issue because, despite clever rhetoric disguising their purpose, these people are in fact advocating a return to post-World War I isolationism. While they may maintain in principle that military force has a role in foreign policy, they are never willing to name the circumstance or the place where it would apply.

On the other side, some theorists argue that military force can be brought to bear in any crisis. Some of these proponents of force are eager to advocate its use even in limited amounts simply because they believe that if there are American forces of any size present they will somehow solve the problem.

Neither of these two extremes offers us any lasting or satisfactory solutions. The first—undue reserve—would lead us ultimately to withdraw from international events that require free nations to defend their interests from the aggressive use of force. * * *

The second alternative—employing our forces almost indiscriminately and as a regular and customary part of our diplomatic efforts—would surely plunge us headlong into the sort of domestic turmoil we experienced during the Vietnam War without accomplishing the goal for which we committed our forces. Such policies might very well tear at the fabric of our society, endangering the single most critical element of a successful democracy: A strong consensus of support and agreement for our basic purposes. * * *

Recent history has proven that we cannot assume unilaterally the role of the world's defender. We have learned that there are limits to how much of our spirit and blood and treasure we can afford to forefeit in meeting our responsibility to keep peace and freedom. So while we may and should offer substantial amounts of economic and military assistance to our allies in their time of need, and help them maintain forces to deter attacks against them—usually we cannot substitute our troops or our will for theirs.

We should only engage our troops if we must do so as a matter of our own vital national interest. We cannot assume for other sovereign nations the responsibility to defend their territory—without their strong invitation—when our own freedom is not threatened.

In those cases where our national interests require us to commit combat forces, we must never let there be doubt of our resolution. When it is necessary for our troops to be committed to combat, we must commit them in sufficient numbers, and we must support them as effectively and resolutely as our strength permits. When we commit our troops to combat, we must do so with the sole object of winning. * * *

Just as clearly, there are other situations where United States combat forces should not be used. I believe the postwar period had taught us several lessons. And from them, I have developed six major tests to be applied when we are weighing the use of U.S. combat forces abroad. Let me now share them with you:

First, the United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or that of our allies. * * *

Second, if we decide it is necessary to put combat troops into a given situation, we should do so wholeheartedly and with the clear intention of winning. If we are unwilling to commit the forces or resources necessary to achieve our objectives, we should not commit them at all. * * *

Third, if we do decide to commit forces to combat overseas, we should have clearly defined political and military objectives. And we should know precisely how our forces can accomplish those clearly defined objectives. And we should have and send the forces needed to do just that. * * *

Fourth, the relationship between our objectives and the forces we have committed—their size, composition and disposition—must be continually reassessed and adjusted if necessary. * * * We must continuously keep as a beacon light before us the basic questions: "Is this conflict in our national interest?" "Does our naltional interest require us to fight, to use force of arms?" If the answers are "Yes," then we must win. If the answers are "No," then we should not be in combat.

Fifth, before the U.S. commits combat forces abroad, there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress.

This support cannot be achieved unless we are candid in making clear the threats we face. The support cannot be sustained without continuing and close consultation. We cannot fight a battle with the Congress at home while asking our troops to win a war overseas or, as in the case of Vietnam, in effect asking our troops not to win but just to be there.

Finally, the commitment of U.S. forces to combat should be a last resort.—From a speech to the National Press Club in Washington on November 28.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BYRD. Mr. President, I yield without losing my right to the floor.

Mr. WEICKER. Mr. President, there have been some very eloquent arguments relating to the matter before the Senate. And I have the difficult job in trying to bring us back to square one; and, that is we are a government of laws and not of men. I appreciate listening to various and sundry doctrines, but they are not law. I appreciate hearing of proposed amendments from my colleagues that relate to the matter at hand. But they are not law. I enjoy hearing the opinions of various Senators as to constitutionality of the law. But they are only opinions.

During this great celebration of the Constitution we do not celebrate the piece of paper. We celebrate a process. We celebrate a process that brings us to the point that we are a government of laws. We do not conjecture as to what is law or what is not law. Once gone through the constitutional process there is only the constitutional process to undo it. It cannot be undone by conjecture or debate.

That is why I am unwilling to take this quantum jump from disregarding the War Powers Act to discussing policy and how we are going to amend it, et cetera, et cetera.

If 100 men and women in this body refuse to obey the law, then really I suppose there is nothing wrong with Col. Oliver North or Bernard Goetz. They do not have our constitutional responsibilities. So maybe they have a choice, a bad one, but maybe they have a choice.

But we have the responsibility, and, therefore, I think the Nation has a right to look to us to uphold this constitutional process. How do you just disregard a law? Everybody admits the fact that we are in hostilities or in situations of imminent hostility. Nobody denies it—not the Secretary of Defense, not the President, no Senator on this floor. Yet the law is very specific as to what takes place once that situation occurs.

Maybe it is that we now determine the law by what succeeds or what fails. Grenada, which was again in violation of the law, succeeded. Therefore, it was legal. Contra aid has not been so successful. Therefore, maybe it violated the law in various respects. I mean, is that now the criteria, what succeeds or what fails?

The time to address these matters is now, not later, not when there has been success or when there has been failure. The time to address these matters is now.

I will vote initially against the tabling motion on the Byrd-Nunn amendment only to keep this matter before the body. But sooner or later the matter that has to be resolved is up or down on the Weicker amendment. And I would like to know how you vote against it. I want each Senator to stand up and say, "well, I am voting against the Weicker amendment knowing that the law certainly applies in this situation, but I really do not like the law." If that happens then we become like anybody else. We pick and choose those laws which we care to obey. If we do not like a law, we do not obey it, and we are no longer a government of laws. We are inanimate. I do not think that is the example the U.S. Senate should set.

I have no problem at all, I might add, if the U.S. Senate wants to do away with that part of the law which embodies the War Powers Act. Fair enough, through the constitutional process, do it. But to ignore the act, that devastates this process. And we have no Government. And I think my colleagues are well aware that this has been done again and again and again in the name of expediency, in the name of patriotism, or in the name of self defense.

Believe me, those who seek mischief in the gulf, whatever side—Iran, Iraq, I do not care—will succeed beyond their wildest dreams if we continue to ignore our constitutional process. They do not have to win any military victories. They will cut the heart out of this Nation and what it stands for.

That is what has me riled more than anything else before this body. Even in the debate, everybody skips over the War Powers Act: some say, "Maybe we will have to change it." Some say, "There are some parts of it I did not like. I used to be a cosponsor," and so forth, as if the law did not apply.

If somebody, anybody, can tell me why it does not apply—I do not care whether you are for or against the Byrd amendment or the Weicker amendment—tell me why the War Powers Act does not apply. Is there one person in this body who can stand up and say that by the provisions of this law, it is not now called into force? Is there one person who can stand up and say that?

That being the case, why do we not obey it? Because it is inconvenient to a President? Because it is inconvenient to a political party? Because it is inconvenient to a philosophy? Or because it offends some particular personal feelings?

The fact is that the war powers law is not an idea. It is not just a legacy of Jack Javits. It is the law of the land, and it ought to be obeyed. It is being flouted, and it is being flouted by those in the highest places, and that does not just mean Ronald Reagan. It means every man and woman in this body who chooses to ignore it or in some way delay or obviate its application.

It is time to stand up and be counted. But before we stand up and be counted on what the policy ought to be in the Persian Gulf, I think we ought to stand up and be counted on what the policy ought to be in the United States of America—whether indeed we have now become a government of men rather than a government of laws.

That is a meaty subject, but that is exactly the issue before us. If we cannot get by that first issue, that first confrontation, there really is not much point to anything we do here, no matter what we do and no matter how secure we think it is in the constitutional process, when we choose to ignore it.

I am not willing to sacrifice that on the altar of the Persian Gulf.

That is the most basic tenet to the greatness of this Nation. That is the issue that confronts us. And we are all part of it. It is not a matter—again I repeat—of fingerpointing, that it is somebody else's problem. This one is ours.

I hope that the motion of the distinguished majority leader is denied, for one reason—that we might all agree in this body to have three votes: No. 1, on the defense authorization bill; No. 2, on the War Powers Act; and No. 3, on the policy in the Persian Gulf.

That is what we were elected to do. The results of those votes then make us accountable to the people who sent us here, and we are not wandering around in a fog of constitutional and parliamentary maneuvers.

I know how I feel on the defense authorization bill. I know how I feel about upholding the law of the land. And I am beginning to know how I feel—and how I will vote—relative to the policy in the Persian Gulf.

So let us have three votes. I am sure the majority leader and the minority leader would be glad to agree, without filibuster, to have three votes. If anybody wants to play games and say, "I agree to one and not the other"—I beg your pardon. I guess there is a fourth: SALT II. But let us have those votes.

That is the reason for my support of this motion, and I hope we would move from that point to having all of us, in our various ways, reaffirm our belief in what it is we are supposed to be doing here.

I yield back to the majority leader.

Mr. WARNER. Mr. President, will the majority leader yield?

Mr. BYRD. Mr. President, I want to yield to Mr. ADAMS, and I also want to yield to Mr. WARNER.

Mr. WARNER. My remarks would be of 1 minute's duration.

Mr. President, I say to my good friend and colleague from Connecticut that the amendment I have at the desk is in the nature of an amendment to the War Powers Act and simply states that it is the obligation of this institution to face the issue squarely,

right in the eye, and not to duck behind the possibility of inaction.

Mr. QUAYLE. Mr. President, will the majority leader yield for a question?

Mr. BYRD. I yield.

Mr. QUAYLE. Could I be put on the list to have some time after the Senator from Washington speaks?

Mr. BYRD. Yes. I do not want to wait too long.

Mr. QUAYLE. Ten or fifteen minutes, after the Senator from Washington.

Mr. BYRD. Mr. President, how much time does the Senator from Washington wish?

Mr. ADAMS. Two minutes.

Mr. BYRD. I yield to the distinguished Senator from Washington, retaining my right to the floor.

The PRESIDING OFFICER (Mr. DIXON). Without objection.

The Senator from Washington.

Mr. ADAMS. Mr. President, many words have been spoken on this, and that is why I do not wish to extend this debate but wish to move to the motion to table. I will vote against the motion to table so that this body can avoid what has happened to us over the past several weeks, of having to resort to parliamentary activity and to other activity to carry out, as the Senator from Connecticut has very eloquently stated, the law as it exists.

I thank the majority leader and those who have worked to see that the Senate carries out its responsibilities under the Constitution.

I do not think there is any question, I say to the leader, as he so well stated, that we are in hostilities, imminent hostilities. We have triggered the War Powers Act; not the Senate, not any activities that have taken place here. The reality and the activities that took place by an administration policy that reflagged some vessels, convoyed some vessels, and proceeded with a particular action created that situation. It triggered the law.

We have taken every possible action that is required by the Senate now and every action has been taken to carefully tailor within the confines of this act to remove the worst part of it, not to remove all the ships, not to do away with everything in the Persian Gulf, but to go specifically at the thing that is causing the problem.

There may be another way to do it, I say to the leader, but I think what has been done to this point was an effort to try to accommodate that difficult situation.

I hope we will vote down the motion to table. I hope the motion to table occurs very quickly, and I hope that we can then move to SALT II and finish this bill which everybody has worked on so very hard and this issue then is finished.

Mr. President, we have had a good deal of debate about the applicability of the War Powers Resolution to the situation in the Persian Gulf and the Gulf of Oman. I think the issue is significant enough to deserve debate—and I also believe it is important enough to demand that the U.S. Senate, one way or another, make a judgment about this issue. So while I welcome continued debate, I also anticipate a vote.

Prior to that vote, I do want to address the arguments made by opponents of this amendment. I have listened carefully to those arguments; after all, sometimes one can learn from criticism. Last week, for example, when I joined with Senators HATFIELD, BUMPERS, and MURKOWSKI in offering an amendment to invoke the War Powers Resolution, the distinguished Senator from Indiana and others criticized that proposal and indicated that if we applied a pure war powers test to the situation in the gulf, we might end up having to withdraw all American forces from the region. Since I would not want that to happen, I took the criticism to heart; as we drafted the pending amendment, we tightened it up by focusing narrowly on the issue of reflagging and convoying those reflagged vessels.

I am, then, willing to listen to arguments and respond to the concerns that critics raise. But I cannot accept these final arguments being made against the current amendment. Let me describe the nature of that criticism by quoting some comments that have been made.

Earlier this week, the distinguished minority floor manager of this bill, the Senator from Virginia, suggested that "we should not at this time be engaging in the debate because we should stand united." The Senator also asked "why at this time should we launch the debate, which debate could send the message of uncertainty and require other world leaders to say let us wait a little while to see what happens in the Congress of the United States?"

Now if I understand that argument properly, it is the old Vietnam chestnut: "We have to follow the President of the United States wherever he wants to take us." Well, that just makes no sense to me. If we really believed that, we wouldn't debate this bill or most other defense bills. After all, other nations know by now there is a difference between what a President states and the Congress and Nation finally do over as long-term foreign policy.

This "lets not undercut the President" is a shopworn argument. We heard it in Vietnam—we heard it and listened to it at the cost of over 50,000 American lives. We have heard it—and too often listened to it—every time the President meets with a Soviet leader. I wonder, however, if we will hear it when the President sends an INF Treaty up to the Senate. I intend to support that treaty. I hope the Congress and Nation will do this and it will be a national policy.

After all, this is not a monarchy. The President doesn't hold supreme sway over the realm of foreign affairs. In fact, the founders were particularly concerned about a President's tendency to get involved in "foreign entanglements" and, as a result, gave the Congress substantial power in that area. Presidents may not like it; some of our allies may find it different while some assume the parlimentary body must decide, our adversaries may take comfort in it sometimes—but Americans ought to understand that open debate is an essential part of our constitutional democratic process. It is absurd to say that Congress can modify a President request for weapons, but they cannot even debate a Presidential request to use those weapons in a manner that involves the war power of the Constitution.

You know, Mr. President, if the concern is timing, let me point out that if the administration had voluntarily complied with the War Powers Resolution requiements when the Congress was initially discussing it, this issue would be behind us by now. The Congress would have already made a decision to authorize or modify or reject the administration policy in the region.

In addition, in terms of timing, I would suggest to my colleagues that sooner or later we are going to address this issue. If we don't do it on a War Powers Resolution vote, we will when we get a supplemental appropriation request designed to pay for the operations; and if not then, we will debate it on the continuing resolution; and if not then, we will do it on a regular appropriation or authorization bill. Sooner or later, this issue will be addressed. My point is that we ought to do it sooner. We owe that to our President—he needs to know if the Congress supports this policy before he invests more in it. We owe it to our allies—they need to know where we stand. We owe it to our adversaries—they need to know what our intentions are. And we owe it to our men and women in uniform—they need to know if the Congress and Nation approves and is in support of their mission.

One of the lessons we all seemed to have learned from the Iran-Contra affair is that the administration cannot make policy in secret—they cannot withhold information from the Congress, they cannot lie to us. We all seem to have concluded that the Congress had a right to know what some people in the administration were doing about selling weapons to Iran and providing funds to the Contras. My point, Mr. President, is simply this: if doesn't make much sense for the Congress to know what the admin-

istration is doing if it we are then told that we are powerless to stop or modify or even approve that action. Why did we want to know, why should we have known, the details of the Iran-Contra affair? So we could use our legitimate legislative power to prevent or stop it.

I would suggest to my colleagues that in the gulf we know about the policy. It isn't secret. And I cannot understand why some suggest that, with that knowledge, we are powerless to act while at the same time claiming that if we had had knowledge about the Iran-Contra affair we would have acted to halt it. I just don't think it is possible to maintain both positions at the same time.

In the same context, I would remind my colleagues that months ago, when we debated an amendment I offered to delay the reflagging operation, we were told that the administration was actively consulting with the Congress about the policy. I'm not sure there ever was such consultation, but let me accept for the moment the claim that there was. My question is: Why did the administration even bother to consult with us? If we have no right to a role in the decision, why did they ask us what we thought about it? I would suggest to my colleagues that the Congress had a right to be consulted while the policy was being made, we certainly have a right to be involved when the policy is being implemented. I cannot believe that people are seriously arguing that we have a right to give advice before a decision is made but no right to give advice and direction after it is adopted.

I do not, then, accept the main arguments advanced against this amendment. So let me spend a little time discussing the arguments in favor of the amendment.

To begin with, if we adopt this amendment we will simply be following the law—the law we all swore to uphold when we took the oath of office. Let me read from some of that law. The War Powers Resolution has, as its purpose, "to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations." (Section 2(a).)

That, of course, raises a factual question: have our Armed Forces been introduced into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances?

The answer is clear. Of course we are in imminent hostilities. Lets look at some facts.

To begin with, lets look at how the House report which accompanied the war powers resolution defined "imminent hostilities." The committee wrote that,

> The word hostilities was substituted for the phrase armed condlict * * * because it was considered somewhat broader inscope. In addition to a situation in which fighting actually has begun, hostilities also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. Imminent hostilities denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict.

Despite the *Stark* incident one could, I assume, somehow argue that "no shots have been fired" at American forces in the region. But one cannot argue that such shots may be fired. In fact, that was precisely the point made by the distinguished minority leader yesterday when we were debating his amendment to cut of Iranian imports. I do not have his specific words in front of me at this moment, but I remember them very clearly. During debate on his amendment, the minority leader suggested that it made no sense for us to buy Iranian products which would allow the Iranians to use our cash to buy Silkworm missiles which could then be used against American forces in the region. The Senate accepted that reasoning and that amendment by a vote of 98 to 0. What we are seeking to do today is simply accept the logic of that argument. The Iranians shouldn't be able to use our money to attack our forces—and our forces should be in a situation where such attacks are imminent unless the Congress has specifically authorized such action.

Let me also indicate that it seems clear the Secretary of Defense is concerned about hostilities. In the Washington Post of Wednesday, September 30, we are told that the Secretary indicated that U.S. forces may attack suspected minelayers before weapons are dropped overboard. The Post quotes Secretary Weinberger as saying "when there is a hostile act committed, we don't have to wait for anything more to go and take appropriate action. The same is true when hostile intent is discovered." Well, Mr. President, we don't have to wait for anything else either: We can conclude based on those statements by the Secretary of Defense that we are in a situation in which imminent involvement in hostilities is clearly indicated by the circumstances.

The factual situation is clear. And, as a result, the war powers resolution is clearly operational.

Given those facts, we can—though we are not obligated to—debate the wisdom of applying the war powers requirements. As I have already indicated, the sponsors of this amendment have engaged in that debate and decided that a pure war powers would not be a good policy. That is why we have narrowed and focused the terms of this amendment so that it applies exclusively to the reflagging and convoying components of our policy in the region. And if others want to debate the wisdom of making a congressional decision on even that narrow subject, let me make a couple of comments.

First, those who oppose congressional involvement suggest that a period of indecision would be harmful. But as I have already indicated, sooner or later there will be such a period. We will raise this issue in other forums and on other bills. Better to resolve it now before events expand our role and increase our investment.

Let me also add, again from this morning's Washington Post, that if people are concerned about indecision, they will find it in the administration. Secretary Weinberger is characterized as claiming that U.S. forces will stay in the gulf for a long, long time. In the same story, Admiral Crowe is quoted as saying "we are looking at ways to draw down our forces to a more reasonable level" in the region. Now for goodness sake, what are we to make of all this. Can there be any more confusion or indecision? And if Admiral Crowe is looking for a way to reduce our forces, then one way to do it might be to stop convoying reflagged vessels while retaining American vessels in the gulf to protect American vessels and make clear our commitment to freedom of navigation.

Second, those who oppose congressional involvement seem to fear that our decision is a foregone conclusion: We will force the President to withdraw. Let me make this point very clearly: As a cosponsor of this amendment, I have not reached a judgment about that issue. I start from a premise which I believe is universally shared: We have a right and a reason to be in the Persian Gulf. No one is advocating cut and run. What we are advocating is that we define and determine the nature of our commitment so that we have a policy in place which will allow us to stay the course. The decisionmaking process mandated by this amendment gives the President time to make his case to the country and the Congress. I have not and will not prejudge the strength of that case. I know I have concerns. Senator NUNN's report to the majority leader raised a number of troubling questions about the policy. I don't think those questions have been answered. The administration needs to answer them. And this process will give them an opportunity to do so.

Third, some have suggeted that this is all a political issue. That is simply not the case. I say to my colleagues that no one is trying to embarass the President to score political points. This isn't a game. This is a decision

which effects the future of our country and the lives of young men and women. The whole point of the war powers resolution is to avoid politics. For example, when the war powers resolution was used in Lebanon, it was precisely the fact that the Congress was involved which prevented the death of our marines from becoming a political issue. The Congress was involved: it had authorized their presence. If we wanted to play a political game, we would be better off not raising the issue, not involving the Congress in the decisionmaking process. That way, if everything in the region worked out, we could say we supported the policy; and if it failed, we could blame the President. In terms of pure politics, we would be better off keeping our hands clean. But this isn't politics—this is a basic decision about the use of American military force in an extremely dangerous region of the world. And at least this Democratic Senator is willing to take the risks of taking responsibility for making a decision about that policy.

Let me conclude, for the moment, by indicating that no one in the Senate wants the United States to fail in the gulf. We recognize the validity of the concerns which requires a naval presence in the region. We share those concerns. But we are obligated, by the law and the Constitution, to do more than share concerns. We have to share responsibility. We have to shape policy. And that is precisely what this amendment will allow us to do.

The PRESIDING OFFICER. I inform the Senator that the time has expired.

Mr. BYRD. Mr. President, I yield to the distinguished chairman of the Foreign Relations Committee 5 minutes with the understanding that I retain my right to retain the floor after 5 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Rhode Island.

Mr. PELL. Mr. President, I thank the majority leader very much indeed for his courtesy.

Mr. President, clearly the frightening modern-day madness of an unrestrained armed conflict was beyond the comprehension of the drafters of our Constitution over 200 years ago. However much to their credit and craftsmanship, they produced a document that is still vibrant and relevant to our current problems. The framers of the Constitution had the good sense to create a mechanism of government which assures a system of checks and balances that permits action, flexibility and—in serious matters—the expression of the common will.

That is why the Constitution divides the power to conduct war between the President and the Congress. There can be no doubt that there is a constitutional intention to endow the President with all the powers that ultimately adhere to a military commander but, at the same time, to withhold from him the ultimate authority on the gravest political decision of whether to declare war. This is a power that rests clearly with the Congress.

In 1973, in an effort to reassert this power, the Congress passed the war powers resolution. The passage of this resolution was a recognition on the part of Congress that it has a duty to assure itself a central role in decisions by the United States to use armed force.

Under the war powers resolution, the President must consult with Congress "in every possible instance" before introducing the Armed Forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." Under section 4(a)(1), the President must report to Congress on the status of U.S. troops in such situations. Section 5(b), the engine of the resolution, requires the President to withdraw such troops within 60 to 90 days unless Congress authorizes their continued presence.

The war powers resolution does not, as some have charged, tie the President's hands or deny him his rightful powers. Rather, the legislation provides the method by which the Congress and the President can render a collective judgment on the question of whether to risk war. Congress must not shy away from the acceptance of its constitutional responsibilities regarding the commitment of U.S. forces to hostilities.

The amendment before the Senate today seeks to accomplish the purpose of the war powers resolution, but avoids the constitutional debate which would result from mandating executive branch compliance with the war powers resolution. While I personally would prefer the war powers route, this amendment does provide us with an adequate mechanism to exercise our constitutional responsibilities with regard to the administration's reflagging and convoying policy.

In addition, I want to point out to my colleagues that over 100 Members of Congress have brought an action against President Reagan asking the Federal district court to order the transmittal of a report under section 4(a)(1) of the war powers resolution. I want to emphasize that, regardless of the outcome of the vote on this amendment, the court should draw no inference as to whether Congress now believes a report is not required to be filed under current law. The effect of the adoption of this amendment would be to impose an independent reporting requirement on the President. The applicability of the reporting requirement of the war powers resolution is a separate matter. Under the war powers resolution, a report is required if the events described in that section occur, and those objective facts are not affected by any action Congress may take or decline to take in conjunction with the pending Byrd-Nunn amendment.

I yield the floor.

Mr. BYRD. Mr. President, I thank my friends, Messrs. WEICKER, ADAMS, and PELL for expressions of support for the amendment.

Mr. WARNER. Mr. President, would it be possible to ask through the majority leader a question to the distinguished chairman of the Foreign Relations Committee?

The PRESIDING OFFICER. Will the majority leader yield?

Mr. BYRD. Yes, I will yield for that purpose.

Mr. WARNER. Mr. President, the question I place to my colleague, the distinguished chairman, is as I listened very carefully to his comments, do I understand him to say that the War Powers Act remains the law of the land and that if the Byrd amendment is to be adopted the President continues to be under obligations to complete each and every part of the War Powers Act irrespective of the adoption of the amendment by the distinguished majority leader?

Mr. PELL. Mr. President, that would be my view and my preference, but I have yet to see it acquiring the support of my colleagues.

Mr. WARNER. I beg pardon.

Mr. PELL. That would be my view and wish. But I do not see it happening.

Mr. WARNER. In other words, it is the Senator's understanding that if the Byrd amendment is adopted, the President is now on two tracks. He must continue down track 1 with the War Powers Act, file the report, and the Congress must act accordingly, and then there is a second track, the Byrd amendment, and he must proceed on that at the same time and the Congress does likewise.

Is that the Senator's opinion?

Mr. PELL. As a practical matter, if the Byrd amendment passes, I think the amendment to push ahead on the War Powers Act will lose some of its steam.

Mr. WARNER. I do not understand the statement, Mr. President. Could the Senator characterize it in some other way?

Mr. PELL. I would say exactly what I said, that if the Byrd amendment passes—it is an excellent amendment—the effort to mandate compliance with the War Powers Act will be preempted. While supporting the Byrd amendment, I would prefer that the President support the War Powers Act.

Mr. WARNER. It still remains the law of the land.

Mr. PELL. It still remains the law of the land.

Mr. WARNER. There is no steam to enforce it.

Mr. PELL. It is still the law of the land.

Mr. WARNER. I think I understand. I thank the Senator.

The PRESIDING OFFICER. The majority leader is still recognized.

Mr. BYRD. Mr. President, I understand that Mr. QUAYLE wished to address some remarks to the amendment.

Mr. QUAYLE. May I have 10 minutes?

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield the floor temporarily to Mr. QUAYLE for not to exceed 10 minutes after which I regain the floor.

The PRESIDING OFFICER. Is there objection to the request of the majority leader for a unanimous consent to yield 10 minutes to the distinguished Senator from Indiana?

Without objection, it is so ordered.

The Senator from Indiana is recognized for 10 minutes.

Mr. QUAYLE. Mr. President, let me begin to try to respond to the question that was raised by the Senator from Connecticut [Mr. WEICKER] concerning the law of the land and the war powers resolution.

His basic underlying contention is that since we have imminent hostilities the War Powers Act automatically applies.

Let me say to my friend from Connecticut, and he is not here, let us go back and examine the War Powers Act. Let us take a look at what it says and then let us look at 1987 on how we deal with a piece of legislation that is certainly in all probability, much of it and all of it, unconstitutional, certainly overly broad. But how do we in 1987 and today comply with the law of the land?

I would say that in examining imminent hostilities and the War Powers Act, the War Power Act was passed after the Vietnam undeclared war. The War Powers Act was passed to prevent this Nation from venturing and going into another situation where we are basically going to have an undeclared war without declaring war, and the War Powers Act was to serve as a compromise between what the executive branch had to do as far as to provide troops and the congressional branch responsibilities as far as declaring war. Never again were we going to allow unilaterally, basically, to get this Nation into an undeclared war.

That was certainly the driving motivation behind the War Powers Act. There is no doubt about it that that is the reason that we have this legislation.

Now as to imminent hostilities, do imminent hostilities refer to acts of terrorism? I believe in 1973, as the Republican leader has pointed out, they did not even discuss terrorism. Terrorism was not a problem in 1973. Terrorism is a problem of megaproportions today, Mr. President. Terrorism is what is happening in the Persian Gulf today. It is not conventional warfare. It is terrorism.

And furthermore, when you look at the words "imminent hostilities," imminent hostilities of entering into a situation on the side of a combatant nation, entering into a situation on the side, going back in our history, of South Vietnam which was a combatant nation at that time with North Vietnam, a nation that was engaged in war. In this particular situation we are not entering on the side of a combatant nation. We are entering on the side of Kuwait to escort those ships.

And so, therefore, I think you can make a very good argument, because of the overly broad aspect of the War Powers Act, because of its questionable constitutionality, of how best do we deal with this situation? Do we automatically invoke the War Powers Act every time we are confronted with a terrorist type of situation? Many that say they support the War Powers Act say there is no mention of rescuing hostages in the consultation process. They want to skip that part of it. Well, this piece of legislation is unconstitutional, it is overly broad, but we have got to figure out a way to deal with it.

But I daresay that it is not automatic and that imminent hostilities talk about conventional warfare and we are looking at terrorism.

It has been asked by the majority leader and others, when is this going to end? When is our reflagging going to end? I would say that it will probably end when you regain stability, when the Iran-Iraq war hopefully comes to an end, or you get some sort of regional stability over there and you have free navigation of international waters.

But I think that what his amendment will do—and we will get into this debate more—this amendment, which basically denies reflagging unless the Congress says that you can go ahead with it, is saying that this policy ought to end, that the reflagging ought to end unless the Congress acts.

Is that the kind of message that we want to send to terrorism? So it is not when is this policy going to end, it is when are we going to leave? When are we going to get out of there?

Well, do we want to send a message like that to our allies; to our adversaries?

You know, once again the superpower, the United States, cannot make up its mind. The President can make up his mind. The President is very decisive. He knows what he wants to do. But now the Congress wants to get in and to sort of quarterback the situation, play commander in chief, try to see what they want to do.

But these amendments that we have, I believe, shows how this body, in looking at this situation, is absolutely gripped with paralysis, absolutely gripped with self doubt, Mr. President.

Let me just examine very quickly the resolution offered by the distinguished majority leader and others.

> Congress expresses its support for:
>
> (1) a continued U.S. presence in the Persian Gulf and the right of all non-belligerent shipping to free passage in the gulf.

Fairly straightforward statement. But then it goes on and says under subparagraph 3 on page 4 that—

> The President shall terminate the registration of reregistered vessels under U.S. law and terminate the use of United States armed forces to escort reregistered vessels in the Persian Gulf.

I mean, we are going to be there, but we are not going to carry on reregistered flagging. I mean, we cannot have it both ways. I know we would like to have it both ways, and I believe that is what we are trying to do. As the Republican leader indicated, we do that best sometimes, to have it both ways.

It has been said: What is the policy in the Persian Gulf? What is our policy? Well, it has been said time and time again what our policy is. And if there is uncertainty, I am sure that the administration will be glad to come up to any hearing, to the chairman of the Senate Foreign Relations Committee, the chairman of the Senate Armed Forces Committee, the chairman of any committee; call a hearing of the entire Senate, if we want to find out what the policy is, if there is some uncertainty about what the policy is.

I do not think there is that uncertainty. I think the policy is rather straightforward. And, I might add, the policy, I believe, is succeeding. The policy is that you are going to have the free navigation of international waters. And we are certainly seeing the oil continue to come out.

Our policy is one that we simply are not going to abdicate the Persian Gulf to our chief adversary in the world, the Soviet Union. I would say, Mr. President, that had the President of the United States not decided to reflag those ships and had the Soviet Union done it, we would have had amendments on this floor scolding the President of the United States for abdicating our responsibility in the Persian Gulf. I daresay that would be happening if the President had not made that decision to reflag those ships. We would be having scores of amendments saying:

> What in God's name are you doing, Mr. President? Don't you know the Persian Gulf is in our national security interest and you simply want to turn it over to the Soviet Union?

The President said no. He reaffirmed a bipartisan foreign policy, which I wish we had more of, by saying the Persian Gulf is in our national security interest, as did former President Jimmy Carter, who first initiated this policy. That is certainly the policy of the Persian Gulf.

Finally, Mr. President, the policy is the United States of America is looking the terrorist nation of Iran right in the eye and say,

> You are not going to export your revolution and the war to other states in the Persian Gulf; that you are not going to export your terrorism and carry that to other states in the Persian Gulf.

Mr. President, we have heard complaints about lack of consultation. We have had consultation. We have had good consultation. We have had good communication. We have had recommendations.

As a matter of fact, I would say the reason the *Missouri* is there is because of the recommendation of a very distinguished Senator in this body, a Senator on the Armed Services Committee. He said,

> By golly, we ought to have a battleship in there. If we are going to go in there, let's make sure that we have a presence.

The administration listened and responded.

So I hope, Mr. President, there is no doubt about what the policy is. In the face of terrorism, we ought to think before we get too involved in all these resolutions about what kind of message, what kind of effect you are going to have on the men and women in the Persian Gulf that are over there right now. I daresay that adopting these amendments could be very, very counterproductive.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, does the Senator from Nebraska wish to address some remarks?

Mr. EXON. I do.

Mr. BYRD. Mr. President, I ask unanimous consent that I may be permitted to yield to the distinguished Senator from Nebraska 5 minutes without losing my right to the floor.

The PRESIDING OFFICER. The majority leader asks unanimous consent that he be permitted to yield 5 minutes to the distinguished Senator from Nebraska without losing his right to the floor. Is there any objection? There is none. The Chair recognizes the Senator from Nebraska for 5 minutes.

Mr. EXON. I thank the Chair and I thank my friend and leader of the U.S. Senate.

I am here today as the floor manager of the defense authorization bill, and I wish we could find some kind of a compromise to move ahead on that. Because, as has been said earlier, Mr. President, there is a long, difficult road ahead in meeting with the House of Representatives and working out the difficulties on the two bills.

But since we are into this matter, let me say a few words about it. I am very fearful, Mr. President, that too much of the debate, as often occurs on the floor of the U.S. Senate, gets into partisanship. And I think that we always try to frame our discussions, while not saying so, in the terms of Republicans versus Democrats and what one side or the other is trying to do or not to do to the President of the United States.

One of the sad parts of the debate is that it is being framed, maybe intentionally or otherwise, on the floor of the U.S. Senate as us against them; as those who do not understand and want to do great damage to the leader of the free world, the President of the United States.

I think that is not the desire. I assure all that that is not the desire of those who are supporting the idea that we need to follow the law of the land, as so well stated by the majority leader and the distinguished Senator from Connecticut, who made the point, and I think it is a key point, that we are supposed to follow the Constitution.

Mr. President, we all walked down this aisle at one time or another. Every one of us here walked down here, walked over there, put our hand on the Bible, and we took an oath of office to uphold the Constitution and the laws of the United States of America.

Whether we like it or not, War Powers Act is a part of the law of the land. Indeed, it was passed by a previous session of the U.S. Senate and was vetoed by the then sitting President and, sure enough, it was overriden in the Congress.

I simply say, Mr. President, my suggestion of the way out of this would be, first, to those who say that we ignore that law, what they should do is put up a forthright amendment to repeal the War Powers Act and let us see if that is what we want to do. That is one way of handling it. If that is part and parcel of the suggestion made by my friend from Virginia, I compliment him for that. We are dancing around the issue, Mr. President.

I, for one, want to say that I support the present action of the Commander in Chief in the Persian Gulf. I am confident that that statement I have just made is shared by the vast majority of the people who are trying to see that we live up to the law of the land.

I think that we too often try to make politics out of something when it is simply not there. As my great, and late, colleague from the State of Nebraska, Senator Ed Zorinsky was prone to say: There are too many Republican Senators and there are too many Democratic Senators and not enough U.S. Senators.

I want to assure the Chair and those who do not see this matter my way that I believe that we have an obligation to stand up and take a stand for or against the position that the Commander in Chief has taken in the Persian Gulf. Because I happen to believe that some time we are going to look back and be sorry for the fact that we did not, as a U.S. Senate, stand up and follow the law of the land.

We are supposed to be the part of the Congress, one-half of it, that declares war. We are falling right back into the same trap, right or wrong, that we did in Vietnam. I think it was wrong that the Congress never took any positive action. They sat back and carped and complained and after it was all over said: Don't blame us.

We are trying to be helpful to the President of the United States in these circumstances and to discharge our responsibilities that we undertook when we took our oath of office.

I just wish reason would prevail, Mr. President, and we could get together on some kind of a compromise as U.S. Senators and move on to the business of the Senate.

I thank the majority leader.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, the distinguished chairman of the Appropriations Committee wishes to address the Senate for 5 minutes. I ask unanimous consent that I may yield the floor for 5 minutes to Mr. STENNIS, without losing my right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. BOREN. Mr. President, I would like to object. What is the situation?

The PRESIDING OFFICER. The Senator from Oklahoma has an inquiry?

Mr. BOREN. Does time control? Or are Senators allowed to debate this in any manner?

The PRESIDING OFFICER. The majority leader has control of the floor, may I say to the Senator from Oklahoma, and is asking for unanimous consent, from time to time, to accommodate other Members who care to speak, while retaining his right to the floor.

Mr. BOREN. I have no objection.

The PRESIDING OFFICER. Does the Senator from Oklahoma desire time, which I am sure he could obtain from the majority leader who is prepared to yield time to the Senator from Mississippi?

Mr. BOREN. The Senator from Oklahoma would at some point like to make remarks for about 5 minutes and would certainly like to defer to the distinguished chairman and Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Oklahoma is advised that the majority leader has asked

unanimous consent to yield 5 minutes to the distinguished Senator from Mississippi. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, and I shall not object, I wonder if the majority leader at some point in time would, through unanimous consent, seek the right of Senators who have spoken today to expand in the RECORD their remarks?

Mr. BYRD. Yes.

Mr. President, I ask unanimous consent that Senators may revise and extend their remarks in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Mississippi is recognized for 5 minutes.

Mr. STENNIS. Mr. President, I certainly thank the gentleman for yielding. I assumed the floor from a sense of duty, Mr. President. I have not had a chance to prepare remarks but I just think I ought to testify as a witness to being here when these matters arose.

I came here, incidentally, to see if I could make some contribution toward a world court. I had not been here long and we were in Korea, without any declaration of war. It impressed me tremendously.

Shortly thereafter, we had another lesson. We were in Vietnam, struggling here for a resolution. Finally, the War Powers Act law that is on the books now was signed. My contribution was small because I had to absent myself some. But I remember the intensity of the hard work, the universal conclusion of the need; that it was the foremost problem before the newly created post-World War II environment and something must be done.

I want to mention the late Senator from New York, Mr. Javits. That wonderful mind that he had spun faster, it seemed, and more accurately than anyone else's. And what good was in those words, those paragraphs, a large part of it—all contributed some—but a large part of it was due to him and his perseverance.

The thing that I realize more than anything else, every day, based on the days I have been here, is the absolute necessity that we must meet this occasion in a better fashion and a more unanimous fashion than we have heretofore.

So my remarks are just a testimonial relating to that. I do not see how we can expect it to be done, as good as the leadership may be, in a matter of days or months or any brief time. It is going to tax us to the limit; not only us, but others.

I think we ought to yield to that major fact and make the most exhaustive, thorough application of all of our talents, looking for a way, and then work just as hard trying to put that way together and make it right.

I commend those that are trying to do this today. God speed them on. I yield the floor.

The PRESIDING OFFICER. The majority leader?

Mr. BYRD. Mr. President, I would be happy to yield to both distinguished Senators.

Mr. BUMPERS. Mr. President, the Senator from Oklahoma was on the floor before I was.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I would ask the majority leader if he would yield 5 minutes to me for my remarks?

Mr. BYRD. Mr. President, I yield the floor for 5 minutes to the distinguished Senator from Oklahoma, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Senator from Oklahoma is recognized for 5 minutes.

Mr. BOREN. Mr. President, I thank the distinguished majority leader. I also wish to express my appreciation for the remarks that have just been made by the distinguished senior Senator from Mississippi. I am always impressed by the wisdom of his remarks, the experience behind the perspective which he brings.

The same, of course, is true of the distinguished majority leader as he seeks to grapple with this very real problem.

This Senator certainly would not pretend to have the answer to working out a new mechanism through which the Congress can participate in a meaningful way with the President of the United States in the formulation of foreign policy. It is very clear that we can have no consistent bipartisan foreign policy for this country unless there is adequate consultation and a meeting of the minds between the executive branch and the legislative branch.

The President can change a decision. The President can start a policy. But the President cannot continue a policy unless it has support within the Congress sufficient to sustain it.

It is not good for the United States of America for there to be a division of opinion as to which policy should be followed. Neither the Congress nor the President can then systematically carry out continuity in foreign policy that this country so badly needs.

When the United States makes a foreign policy decision, the rest of the world needs to know that it is America's foreign policy decision; that America is going to stand behind it. That means the totality, and particularly the two policymaking branches of the Government, are going to support it and sustain it.

I have very real concerns, Mr. President, that I must express about the current method of doing so. I simply cannot, in my own conscience, feel I can support the pending amendment.

My problem is this: While Congress should participate, while the President should have consulted with us in advance, and there were no such consultations—and that was an initial mistake by the executive branch—I do not think it is in the national interest of this country, and this is the reason why I think we should, as the Senator from Mississippi suggests, sit down and think about how we structure this kind of constructive participation.

I do not think it is in the interest of the crisis which we now face for us to set a period of time, be it 30, 60, or 90 days, during which time decisions are suspended in the eyes of the rest of the world.

The United States, by taking this action, is announcing we are suspending a final decision, final commitment to policy, for a certain period of time.

We are sending notice to those who would test our will and resolve, who might try to inflict punishment on our own young people exposed to certain dangers in the Persian Gulf right now, that we are in the state of limbo or suspension about the decisions we are going to make.

That kind of public expression of indecision through some artificially contrived time deadline I think is simply not in the interest of the United States of America.

Is it in the interest to have the President go ahead and make policy on his own without consultation with Congress? Certainly not. Can we have consistent bipartisan foreign policy without the cooperation and involvement in a partnership effort with the Congress? Certainly not.

So, Mr. President, I have great sympathy. I understand that the majority leader has tried to pinpoint the matter. He is not calling for withdrawal of military presence from the Persian Gulf. He has tried to narrow the focus. He has talked only in terms of the technical means by which reflagging and convoying are going on. I understand that. I think that is an expression on his part of the kind of dilemma he faces, how as the leader of this body can he assure that the Senate and the Congress of the United States have an appropriate role and voice in foreign policy.

How can he do that in a constructive way without undermining the President, without undermining the position of this country as the rest of the world watches us, watches these policy deliberations?

I do not know the answer, Mr. President, but I hope we will seize this opportunity to see that the exact formula, which is an artificial one spelled out in the War Powers Act, is badly in need of revision. It was derived to meet certain circumstances from the Vietnam war.

There is still a need for cooperation, a need for bipartisanship. There is a need for unity as we face the outside world that we have never had before. I simply do not believe that at this particular moment the way to show that unity, that resolve, that common commitment, and in a way to make it less likely that others will test us or try to inflict damage on us—I do not think the way to do that now is to set up an artificial period of time in which we highlight our period of indecision to the rest of the world.

While legitimate concerns have been raised by the majority leader and by others, I would hope we would find a way other than the one now before us to try to deal with the issues, and I think in the course of that we should consider meaningful and major revision of the War Powers Act itself.

I thank the majority leader for yielding time.

Mr. BYRD. Mr. President, I yield 1 minute to the distinguished Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I think the suggestion by the distinguished chairman with whom I am privileged to serve is a worthy one. I listen to this today and I thought about it last night, and I would say to the Senator from West Virginia, perhaps we should consider establishing, and I know the word is suspect, a commission, not unlike the Greenspan Commission which reviewed social security. This could be a totally bipartisan commission to look at the War Powers Act and to give the executive branch and the Congress some guidance.

I am going to develop further that idea as we go along, I would say to my distinguished leader and others who might be interested in making a contribution.

It seems to me we should enable a group of persons in whom we have confidence to look at this complex law, to look at the relationship between the executive and the legislative branches and perhaps render some suggestions. These are improvements which could be made to the war powers resolution which would make it more useful to us all.

I thank the majority leader for yielding.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Arkansas for 8 minutes without losing my right to the floor, and then, I will ask for a vote on a motion to table. I am telling Senators now that after the distinguished Senator from Arkansas speaks, and I yield 10 minutes, I intend to move to table. I am going to ask for regular order after 15 minutes into that rollcall. They might start now to come to the floor.

The PRESIDING OFFICER. I think the Senator from Virginia has an inquiry to make.

Mr. WARNER. Reserving the right to object, and I do not intend to object because the majority leader has been most gracious, would the majority leader put just some flexibility in the event that I might want to take a minute or two to engage in a colloquy with one of the original movers in this body of the current debate? He came to the floor some weeks or 10 days ago and initiated this matter. I just would like to have some flexibility.

Mr. BYRD. Mr. President, I will extend that by saying I will move to table at 5 o'clock. That gives the distinguished Senator from Arkansas 10 minutes and 5 minutes for any colloquy.

I ask unanimous consent that my rights be protected.

The PRESIDING OFFICER. Is there any objection?

There being no objection, the Senator from Arkansas is recognized for 10 minutes.

Mr. BUMPERS. Mr. President, I doubt that much new can be said, indeed probably nothing new can be said here this afternoon, that has not been said in the previous debates we have had on this issue. Nevertheless, I think it is important that we make a record so everything is being transcribed in the CONGRESSIONAL RECORD, to be there for our children and grandchildren to look at some day.

I think it is also important for us to make a history as to what the Senate did and how it conducted itself in the face of this so-called Persian Gulf policy.

I have heard it said on the floor today that the President is the only person who is elected by all the people.

That is not true. There are 100 Senators here who are elected by all the people of the United States. The people of Arkansas elected me. The people of Georgia elected my friend from Georgia, Senator FOWLER, and so on. And they did not elect us to come up here and take leave of our senses or to roll over and play dead every time the President decided to get into some kind of adventurous policy that might lead this country into war.

They expect me to stand on my feet and protect the interests of the United States in a legitimate way, and that is precisely what I intend to honor.

The President said in the Washington Times today in what they described as an exclusive interview, that he was not obligated to consult with us on this because as he understood the War Powers Act he was only supposed to notify us when he sent American forces against another force or against another nation.

I invite any of my opponents on this to show me where in the War Powers Act any such language as that is found. That is right out of thin air.

The War Powers Act is as clear as the nose on your face, and there is nothing in it that says the President must only notify us when he sends American forces against another nation or against another force.

It says when he introduces forces into an area of hostilities or an area of imminent hostilities.

You cannot improve on that language. It is clear.

The distinguished minority leader said, "Well, we are already there."

I ask you to search your conscience. Is that a legitimate reason to say that we must stay there forever if the President so chooses because we are already there?

What kind of nonsense is that?

And then you have heard this endless argument, absolutely endless ad infinitum, about the Congress has no right to interfere in the conduct of foreign policy, that the President has a constitutional right to conduct foreign policy.

Let me ask you, did you hear that argument yesterday when we were voting to cut off all purchases of everything from Iran? Did you hear the White House say, "We do not want the Dole amendment telling the United States that we cannot import oil, pistachios or anything else from Iran. We are opposed to that. That is our right, to conduct foreign policy."

That is the record of the past 24 hours.

And so what did the Senate do about the President's right to conduct foreign policy? We said 98 to zip, "You do not have a right to conduct foreign policy if we disagree with you." And yet when it comes to jeopardizing the lives of my sons and yours for a policy which has never been explained to Congress or the American people, this socratic argument surfaces about never interfering with the President's right to conduct foreign policy, and the White House has tried desperately to frame the debate as though the Congress is a bunch of cowards wanting to cut and run, wanting to take us out of the Persian Gulf.

Nothing could be further from the truth. The majority leader has made this point time and time again. They know it. They heard it. They know exactly what this amendment says. We have been very generous, Mr. Leader, in narrowing the focus of this amendment, very carefully crafting it to say leave your warships there. We always had warships in the Persian Gulf and we always will. We have that right. Nobody is arguing that. So I say to those who oppose this amendment, do not debase yourself by making false accusations against those of us in favor of this, as though we want to cut and run.

I do not know whether or not the Supreme Court will ever address the constitutionality of this issue. Frankly, I doubt it. I would like to make that whole constitutional argument here, but I can tell you one thing: So far as we are concerned, the War Powers Act is constitutional because it has not been declared unconstitutional. It is the law of the land. As I said time and time again, when the law is on the books duly signed or a veto overridden, the President does not have the right to flaunt it. Ordinary citizens downtown do not have a right to violate the law, nor does the President.

We want to know, Mr. President, how long are we going to be there? We want to know, Mr. President, what kind of a force do you foresee going into the gulf? You said six ships would be enough. Four months ago, Mr. President, you told Congress four to six ships would be more than adequate to convoy Kuwaiti tankers. Today there are between 31 and 40 ships in or near the Persian Gulf.

Oh, I listened to these arguments, Senator. I can go back to the Vietnam debates, and I can read what the Senators who insisted on staying in Vietnam said. It will sound like a broken record of what I have heard here today. The very same argument is being made: Do not undercut the President; we cannot cut and run; we are the most powerful Nation on Earth. Anything except doing something sensible and rational for a change.

What are we going to get out of it? Not one single tanker, Mr. President, has been sunk since that war started. Ninety-nine percent of the oil has been shipped out of the Persian Gulf. You tell me how having 41 ships in the Persian Gulf is going to improve on that. The President says we have to get the oil out. You tell me, do you think the President by sending 100 ships in there can get out more than 99 percent of the oil? Of course, he cannot. Kuwait and the other nations in the Persian Gulf still will hardly let us land a helicopter on their soil, and do not pay us one red dime for our expenses. Our allies have a few little minesweepers and a couple of fighters in there and that is the extent of their help.

I have heard the distinguished Senator from Virginia make that point two or three times: Our allies are all onboard. You look at how strongly they are onboard. Britain had to be dragged kicking and screaming into a policy with which she did not agree.

And so, Mr. President, we say to the President of the United States, we want to make a decison on this.

I know some Senators here who are going to vote for this amendment, or at least vote not to table it, but 60 days from now if this became law, we start debating a joint resolution: Shall we stay in the Persian Gulf or shall we get out, those same Senators will vote with the President. But we want to know the cost. How many ships is it going to take? Are we weakening ourselves in the rest of the world? Are we going to reflag other Nations' ships? And 100 other questions I could ask. We want to know, Mr. President.

If the Supreme Court says we do not have standing or that is a political dispute between the President and the Congress, then when the appropriations process comes up, Senator, we will say none of the funds herein may be used to continue this policy. We have the right of the purse string. But I would like to be informed as to where we are headed with this policy before I vote to cut off all money.

Finally, Mr. President, I want to say to those who will oppose this amendment and who will vote to table, what would it take, what would it take you, Senator, to vote for this amendment? Ask yourself. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, did the distinguished Senator from Virginia wish to take advantage of the last 3 or 4 minutes that remain?

Mr. WARNER. Mr. President, I will take but a few minutes, but I defer to the majority leader if he wishes to take the last minutes; it is debate on his motion to table.

Mr. BYRD. If I might yield the floor for 2 minutes to the—first of all, does the Senator wish to speak now?

Mr. WARNER. Yes; I would say a few minutes speaking now. Perhaps we should state what is to be done now so other Senators listening can understand. I would ask for 3½ minutes.

Mr. BYRD. Mr. President, I yield to the distinguished Senator for 3½ minutes.

Mr. WARNER. Am I to understand the majority leader——

Mr. BYRD. And 2 minutes to the distinguished Senator from Oregon. Either way.

The PRESIDING OFFICER. The majority leader asks unanimous consent for 3½ minutes for the Senator from Virginia and 2 minutes for the Senator from Oregon. Is there any objection? The Senator from Virginia is recognized for 3½ minutes.

Mr. WARNER. Mr. President, as I listened to my colleague from Arkansas, he again went back—and we can go back in the RECORD and find the same basic statements—to concern about policy in the gulf, part of which is reflagging. If we adopt this amendment, we may restrict ourselves from looking at other issues relating to the gulf.

If it is the decision of this body, and I hope it is not, that we invoke the War Powers Act in one way or another, then let us look it square in the eye and let us look at the entire policy, not just take one part of it, so that we can put at rest, hopefully, any question of support for the President in a resolution as provided by the amendment that I have asked to be printed, a joint resolution which would give a clear signal to our Nation, to our allies, and all those working for peace that the President has joined the Congress. So I hope we vote not to table, such that we can continue this debate, such that in some way or another this body can continue other ideas as to how to resolve this question. Like the Senator from Oklahoma, I am gravely concerned that any timetable invites an enemy to tailor their tactics in accordance with that timetable. My amendment does have a timetable, but it is the shortest possible timetable that this Senator could fashion to meet this situation. I am certain other Senators can improve on it; I take no pride in authorship, but I hope other Senators will take the time to look at the amendment which will be printed. I thank the distinguished leader.

Mr. BYRD. Mr. President, I yield to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 2 minutes.

Mr. HATFIELD. Mr. President, a way by any other name or armed hostilities, unlike a rose, still stinks. I think the semantics again in which we engage to try to say, in effect, we are not in an area that could create a full-fledged armed hostility or war is just that, an argument in semantics. Again, I suggest we talk to the parents of the 41 American young people that have already been lost there.

I am going to vote for the Democratic substitute, but I am not going to vote for it with a great deal of enthusiasm because I believe that the premise is wrong. It is seeking to substitute doctrine for law. We have a law that clearly lists our options. Those who think we only have one option, and that is to declare war, should reread the War Powers Act. We have other options. The Congress is going to dictate in effect under the War Powers Act a part of this policy. It is going to have that responsibility.

I think the reflagging and the escort question is too narrow a target. The target is peace and war and whether or not we are going to permit the President of the United States to once again, as we have had that experience in Vietnam through a gradual system, get us into full-fledged war or whether we call it a police action. We still have a congressional responsibility we have to face up to under the War Powers Act. And I hope that we have the courage to do that. I wish we could do it directly.

Mr. GLENN. Mr. President, I rise to support the amendment of my colleagues which says, in effect, that the

Senate considers the provisions of the War Powers Act to have been triggered by the escorting operation the United States has undertaken for reflagged Kuwaiti tankers in the Persian Gulf. Now I know that this administration, like all administrations since this provision was enacted, has a constitutional objection to the War Powers Act. However, it is the law of the land, duly enacted and currently in effect. The Constitution, whose bicentennial we celebrated this very week, obligates the President to "take care that the laws be faithfully executed." It does not say he shall faithfully execute the laws he likes, or only those he agrees with. If a President disagrees with a law, he's perfectly free to seek its revocation. However, I believe it is fundamentally contradictory to our system of government for a chief executive to simply ignore the law.

Mr. President, I remind my colleagues again that Congress has the constitutional power to declare war—to commit the lives of American men and women to fight and even die for this country. Now I am not suggesting that we declare war against Iran, but the difficulty is that we have already involved American servicemen in hostilities with Iran without exercising the congressional check and balance established in the Constitution. Clearly the framers of the Constitution intended that when Americans are asked to fight and possibly die for their country, approval of the Congress is mandatory. When American servicemen and women are committed to hostilities by the President, the Congress, as the duly elected representatives of the people of this country, has a constitutional responsibility to approve or disapprove such a critical decision. The problem is, Mr. President, that in this nuclear age of "limited wars," we may never declare war again in the classical World War I and World War II sense. I certainly hope we do not; but not having a formal declaration of war does not mean that this country will not be involved in hostilities or that Americans will not be killed.

In Korea, where I had firsthand experience, over 33,000 Americans were killed and over 100,000 wounded. This was our first limited war which was fought without any formal congressional endorsement of U.S. involvement. In Vietnam, nearly 50,000 Americans were killed and another 153,000 were wounded. American military involvement in this limited war was endorsed by the Congress in the Tonkin Gulf resolution, which essentially gave the President an open-ended endorsement to pursue a war which would last nearly 10 years.

Mr. President, it was from this Vietnam experience that the War Powers Act evolved. Some means had to be found to satisfy the constitutional requirement that Congress has the right to declare war—even if the hostilities are described as a "limited war," a "police action," a "peacekeeping operation," or exercising "freedom of the seas." The War Powers Act was presented in 1973 as an attempt to fulfill—not to alter, amend, or adjust the intent of the framers in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of Armed Forces into hostilities.

I would acknowledge that the War Powers Act, as presently constructed, may not be the best way to satisfy that constitutional requirement. Overall I believe it represents a reasonable balance of executive and congressional responsibilities in this critical area. It allows the President flexibility to act quickly, but preserves a role for the Congress in deciding if a military operation should continue. Nevertheless, at some later date, when the United States is not already involved in hostilities, I would be open to consideration of any suggestions on how the current act might be improved.

In the meantime, War Powers is the law of the land. Clearly, Mr. President, if there ever was a situation which the act was designed to cover, it is the situation which the act was designed to cover, it is the situation we find in the Persian Gulf today. We have some 40 warships currently devoted to the gulf protection regime, we have over 20,000 U.S. military personnel on duty there, we have surveillance aircraft, fighter aircraft, and mine sweeping boats and helicopters. U.S. forces face the very real threat of mines, gunships, and air and land based missiles—not to mention suicide squads and other acts of terrorism.

We have already lost 37 American lives. We have authorization for "imminent danger pay" for military personnel operating in the gulf. And finally we have a U.S. military helicopter launching a justified, yet lethal, attack on an Iranian Navy vessel laying mines in the gulf's shipping lanes. What sort of tortured logic allows the administration to maintain, in the face of the helicopter gunship attack and the authorization of what used to be termed combat pay, that U.S. forces have not been introduced into a situation where imminent involvement in hostilities is clearly indicated? Hostilities are not just imminent in the gulf today, they are a reality.

While I am convinced that the provisions of the War Powers Act do apply to the Persian Gulf situation, I do not necessarily believe U.S. forces should be precipitously withdrawn. On the contrary I believe the United States should maintain a strong military presence in the gulf for as long as our national interests require it. With all due respect to my colleagues who argue that mandating War Powers compliance would send a signal of lack of United States resolve, I believe that they are confusing the question of invoking War Powers with the subsequent question of whether or not to continue our gulf operation. I do not share my colleagues pessimistic assessment of the impact of invocation of the War Powers Act.

Rather I look at the War Powers process as an opportunity to develop a bipartisan, congressional-executive consensus on gulf policy. Such a consensus can only strengthen the position of the United States by demonstrating unity and resolve to friend and foe alike.

A recent editorial in the Akron Beacon Journal presents a succinct yet compelling rationale for the application of the War Powers Act to the situation in the gulf. I ask unanimous consent that that editorial appear in the RECORD.

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

WAR POWERS IN THE GULF

The 1973 War Powers Act is not the most precisely worded law Congress has ever passed. It requires a president to inform lawmakers within 48 hours when he introduces troops into a situation of "imminent hostilities." The troops must be withdrawn after 60 days unless Congress authorizes their continued presence.

Arguments usually turn on the imprecision of the words "imminent hostilities." The ambiguity allows presidents to claim a narrow definition; Democratic and Republican presidents have resisted the law, insisting that it infringes on presidential flexibility. On Capitol Hill, the view is often very different: "Imminent hostilities" has come to mean a situation that poses a clear threat to the lives of American servicemen.

The debate has surfaced again in light of this week's confrontations in the Persian Gulf. An American helicopter justifiably attacked an Iranian ship that was laying mines in the open seas, and then an American warship fired warning shots at a harassing Iranian Hovercraft. Sen. John Glenn and others have called for the War Powers Act to be invoked. Their case is compelling.

The gulf has become an enormously dangerous place. The United States has roughly two dozen combat vessels in the region, an extraordinary concentration of naval power. The British and French are there, along with the combatants, Iran and Iraq. In his speech to the U.N. General Assembly, Ali Khamenei, the Iranian president, offered a ludicrous version of this week's events, calling the Iranian vessel a merchant ship when mines were there for all to see on the evening news. What was most troubling, however, was his fierce pledge to retaliate. Whether bluff or not, his words signal increasing tensions.

This week's events make it hard to avoid the conclusion that American servicemen face "imminent hostilities." The War Powers Act should be set in motion. The President may not like the law—some in the administration believe it's unconstitutional—but that is no matter. It must be fol-

lowed. Significantly, Caspar Weinberger, the secretary of defense, described the Iran mine-laying as a "hostile act." His choice of words seems to justify invoking the law.

The White House should not shudder at the prospect. The act offers an opportunity to build bipartisan support for its policy, which is confused in some details but remains basically sound. Indeed, the purpose of the law is not to encourage congressional meddling but to achieve cooperation between the president and Congress. It's an insurance policy of sorts against a serious blunder.

A greater measure of unity in Washington will also aid U.N. efforts to gain a cease-fire in the Iran-Iraq war. The Iranian president defiantly rejected a cease-fire this week. With Congress and the president sending a signal of stiff American resolve, Tehran may eventually see the wisdom of a negotiated settlement.

Iran is the key to bringing peace to the gulf and maintaining stability there. The War Powers Act could be an important tool for showing Iranian leaders how costly it would be to continue their war with Iraq.

The PRESIDING OFFICER. Under the previous order the appointed hour having arrived, the majority leader is recognized to move to table the Byrd amendment No. 732. The majority leader.

AMENDMENT NO. 732, AS MODIFIED

Mr. BYRD. Mr. President, I thank the Chair. I send to the desk a modification which I was allowed to send under the order previously entered. This modification pertains only to the expedited procedures section.

The PRESIDING OFFICER. The majority leader has a right to modify his amendment.

The amendment, as modified, is as follows:

Strike all after subsection (a) of the amendment and insert in lieu thereof the following:

(b) Congress expresses its support for:

(1) a continued U.S. presence in the Persian Gulf and the right of all non-belligerent shipping to free passage in the Gulf;

(2) continued work with the countries in the region and with our Allies to bring about a de-escalation of the conflicts in the region, and to bring a halt to those activities which threaten the freedom of navigation in international waters in this region; and

(3) diplomatic efforts underway in the United Nations and elsewhere to bring about an early resolution of the conflict between Iran and Iraq, identify the actions which led to the current conflict and contribute to its continuation, achieve a ceasefire as called for by United Nations Security Council Resolution 598, and take early actions toward imposing sanctions on any party which refuses to accept a ceasefire.

(c) The Congress determines that the circumstances in the Persian Gulf and the Gulf of Oman meet the conditions established in Section 4(a)(1) of the War Powers Resolution.

(2) Within thirty days after the date of enactment of this Act, the President shall submit a report to the Congress, in classified and unclassified form. The report shall provide a complete review of the policy of escorting vessels which had flown the flag of any country bordering the Persian Gulf on June 1, 1987, and which are currently or were formerly registered under the flag of the United States. This report shall also include a discussion of the following—

(A) the extent to which the policy of protecting reregistered vessels supports U.S. regional strategy;

(B) the anticipated duration of the operation;

(C) the objectives of the escorting operation and how the Administration measures progress toward those objectives;

(D) the funds which have been expended to date on the escort operation and the anticipated future requests for funds, including any request for reimbursement of previously expended funds;

(E) the impact of these operations on the diplomatic efforts to achieve a negotiated settlement of the Iran-Iraq war;

(F) the commitments which have been made, if any, by other governments to support this operation, and the commitments, if any, which have been made by the United States to those governments; and

(G) the impact these operations have had on the operational deployments and readiness of U.S. forces in other regions.

(3) Within sixty days after the report required by paragraph (2) is submitted, or 90 days after the date of enactment of this Act, whichever is sooner, the President shall terminate the registration of reregistered vessels under U.S. law and terminate the use of United States armed forces to escort reregistered vessels in the Persian Gulf region, unless the Congress has enacted a law providing specific authorization for such use and registration.

(e)(A) The provisions of this subsection shall apply to the introduction and consideration in a House of Congress of a joint resolution introduced pursuant to subsection (c)(3).

(B) For purposes of this subsection, the term "joint resolution" means only a joint resolution with no preamble, the matter after the resolving clause of which is "that the Congress authorizes the escorting of reregistered vessels in the Persian Gulf and the registration of those vessels under United States law, and which is introduced within 3 session days after the date on which the report of the President described in subsection (c)(2) is received by Congress.

(C) For purposes of this subsection, the term "session days" means days on which the respective House of Congress is in session.

(2) A joint resolution introduced in the House of Representatives shall be referred to the Committee on Foreign Affairs of the House of Representatives. A joint resolution introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate. Such a joint resolution may not be reported before the 8th session day after its introduction.

(3) If the committee to which is referred a joint resolution has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after its introduction, such committee shall be deemed to be discharged from further consideration of such joint resolution and such joint resolution shall be placed on the appropriate calendar of the House involved.

(4)(A) When the committee to which a joint resolution is referred has reported, or has been deemed to be discharged under paragraph (3) from further consideration of such joint resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the consideration of the joint resolutions are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the respective House until disposed of. If any such motion to proceed is agreed to, it shall not be in order to move to proceed to the consideration of any other such resolution introduced in that House.

(B) Consideration of the joint resolution, and all amendments and debatable motions in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between and controlled by the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. Amendments which are germane and relevant to the joint resolution are in order under a two-hour time limitation for each amendment. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order.

(C) Immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the joint resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(5) If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the joint resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House, if such resolutions are identical, or on the joint resolution of the other House if not identical, with the text of the resolution of the first House deemed inserted in lieu of the text of the resolution of the second House.

(C) all motions required for the disposition of amendments between the Houses shall be deemed without debate. Debate on a conference report on any such joint resolution shall be limited to one hour.

(6) This subsection is enacted by the Congress—

(A) as an exercise of rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(e) For purposes of this section, the term "reregistered vessels" means vessels which had flown the flag of any country bordering the Persian Gulf on June 1, 1987 and which are currently or were formerly registered under the law of the United States.

Mr. BYRD. Mr. President, I move to table the amendment. It is the amendment which I proposed on behalf of Mr. NUNN, Mr. BUMPERS, Mr. ADAMS, and Mr. SASSER, and I shall vote against my own tabling motion. I urge other Senators to do likewise.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

Mr. BYRD. This will be a 15-minute rollcall.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia to lay on the table the amendment, as modified, of the Senator from West Virginia.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 1, nays 99, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—1

Boren

NAYS—99

Adams	Glenn	Moynihan
Armstrong	Gore	Murkowski
Baucus	Graham	Nickles
Bentsen	Gramm	Nunn
Biden	Grassley	Packwood
Bingaman	Harkin	Pell
Bond	Hatch	Pressler
Boschwitz	Hatfield	Proxmire
Bradley	Hecht	Pryor
Breaux	Heflin	Quayle
Bumpers	Heinz	Reid
Burdick	Helms	Riegle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Chiles	Inouye	Rudman
Cochran	Johnston	Sanford
Cohen	Karnes	Sarbanes
Conrad	Kassebaum	Sasser
Cranston	Kasten	Shelby
D'Amato	Kennedy	Simon
Danforth	Kerry	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stafford
Dixon	Levin	Stennis
Dodd	Lugar	Stevens
Dole	Matsunaga	Symms
Domenici	McCain	Thurmond
Durenberger	McClure	Trible
Evans	McConnell	Wallop
Exon	Melcher	Warner
Ford	Metzenbaum	Weicker
Fowler	Mikulski	Wilson
Garn	Mitchell	Wirth

So the motion to table amendment No. 732, as modified, was rejected.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Madam President, the overwhelming vote shows just how uncomfortable Senators are with the administration's policy of reflagging and convoying in the Persian Gulf and how uncomfortable and unclear the American people are with respect to the administration's policy of reflagging and escorting in the Persian Gulf.

Before we go any further with that policy, the American people, their representatives in Congress, want that policy reviewed. That is what the vote showed. That is clear by the outcome of this vote.

Madam President, it is obvious we are not going to get an up or down vote on this amendment today. In the interest of pressing ahead with the action on the DOD authorization bill, I have discussed with the distinguished Republican leader and with the two distinguished managers of the bill the possibility of getting an agreement on the SALT amendment which is remaining of the two issues that still need to be resolved. We might get a time agreement on the SALT amendment, go to that amendment and begin the debate thereon and vote either, say, by 11 o'clock tomorrow on it or 10 o'clock in the morning on the SALT amendment.

What would the distinguished Republican leader say?

Mr. DOLE. Madam President, if the majority leader will yield, I disagree with his characterization of the vote. I know he did not expect me to disagree, but I would indicate that it probably reflects a desire for a lot of debate, a lot more debate on a very important issue, and we are very pleased to support the majority leader in this.

Mr. BYRD. I thank the Senator. My heart overflows with emotions and gratitude.

Mr. DOLE. I must say it is a little trick I learned last year on an amendment of mine. When I announced I was going to move to table my own amendment, I suddenly discovered everybody wanted to table my amendment.

Mr. BYRD. They wanted to cooperate.

Mr. DOLE. They wanted to cooperate.

I do think we can get an agreement to go to SALT which keeps everything moving and maybe a suggestion we are also able to say to the majority leader that we could probably do the legislative appropriations bill in 1½ hours, maybe do that this evening and start on SALT tomorrow morning and maybe complete action on SALT by midafternoon. We do not lose anything that way and we are moving on appropriations bills, and it would seem to me we can get out at maybe 7 or 8 o'clock today.

Mr. BYRD. If that is agreeable with the distinguished Senator from Georgia and the distinguished Senator from Virginia, I will ask unanimous consent.

Madam President, the amendment on SALT, I believe, would be the amendment by Mr. BUMPERS.

UNANIMOUS-CONSENT AGREEMENT

Madam President, I ask unanimous consent that during the remainder of the Senate's consideration of S. 1174, the DOD authorization bill, all amendments dealing with the issue of SALT be limited to a total of 8 hours to be equally divided between the offeror of the amendment and the manager of the bill; if the manager of the bill agrees with the amendment, then the time in opposition thereto be given to the ranking manager, or if he agrees with the amendment, then to the minority leader.

Mr. WARNER. Madam President, I disagree very strongly with the amendment and therefore would qualify and I must say to my good friend, the majority leader, I have indicated to certain Members on this side that they would be granted specific amounts of time and that was a foundation by which the distinguished Republican leader was able to work out this agreement.

So I would feel obligated now to control certainly a portion of the time.

Mr. NUNN. Madam President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. NUNN. The manager of the bill is in favor of the substance of what the authors of the amendment are attempting to do but the manager of the bill has reluctance about some aspects of writing this into law, and so the manager of the bill would be somewhat in an ambivalent position, and I suggest that under those conditions the Senator from Virginia manage the time in opposition and I would work with him and I hope he would be kind enough to cooperate.

Mr. WARNER. Madam President, we will work in the same cooperative spirit we have in these past years.

The PRESIDING OFFICER. Is there objection to the majority leader's unanimous-consent request?

Mr. BUMPERS. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. As I understand it the unanimous-consent agreement was just for a straight 8-hour time period, with the time to be controlled by the distinguished Senator from Virginia and myself; is that correct?

Mr. BYRD. That is correct. However, if there are amendments in the second degree, I think we have to be careful here that the offerer of the amendment in the second degree be given some time.

I prefer, Madam President, to word the agreement differently. I would prefer that the distinguished Senator

from Arkansas [Mr. BUMPERS] be permitted to call up his amendment, that the War Powers amendment be temporarily laid aside until the Bumpers amendment and any amendments thereto have been disposed of, and that there be not to exceed 8 hours overall on such amendments and motions in relation to the same.

Mr. BUMPERS. Madam President, reserving the right to object. I would like very much to add something to the unanimous-consent agreement, Mr. Leader, to the effect that no motion to recommit would be in order and that, at the expiration of the 8-hour period, a motion to table, if somebody chooses to make one, may do so, and if that motion to table fails, that we immediately have an up or down vote on the amendment.

Mr. BYRD. Madam President, I would be happy to include that in the request. I should say that there is a Senator, Senator HOLLINGS, I think has to be contacted about this time agreement, because it seems to me that he was assured that we would contact him. So I include that in the request, that no motion to recommit, with or without instructions, be in order and that a tabling motion upon the expiration or yielding back of the time be in order, but that if the tabling motion fails, then there is no time agreement on the amendment and it is open for further debate. Is that the way the distinguished Senator wished to have it put?

Mr. BUMPERS. No, it is not, Mr. Leader. What I was proposing was that at the expiration of 8 hours, if the Senator from Virgina, or any other Member in opposition to the amendment chooses to move to table the amendment, that they would have a right to do that, and following the vote on the motion to table, and assuming that the motion to table fails, that there would be no time intervening between that and an up or down vote on the amendment.

Mr. BYRD. I see. Yes.

Madam President, I would include that request as worded in my overall request.

Mr. DOLE. Madam President, I wonder if the majority leader might restate the entire unanimous consent request. I was talking with somebody when he was having an exchange with the Senator from Arkansas.

Mr. LEAHY. Madam President, before the Senator does that, would the Senator clarify—and I believe I know the answer to this—but would the Senator be willing to clarify that it is the intention of the unanimous-consent agreement to get a vote on Bumpers-Leahy by the end of the 8-hour period; that is, that were it not tabled, we will reach finality by the end of that 8-hour period?

Mr. BYRD. Yes, that would be the intention.

Mr. LEAHY. I came in missing the very first part of the request.

The PRESIDING OFFICER. The distinguished minority leader had asked to be recognized.

Mr. BYRD. No, I am recognized, but I am yielding to the distinguished Republican leader. I believe he wanted me to restate the request.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. Madam President, Mr. HOLLINGS has been contacted. He wants a total of 10 hours, and Mr. HOLLINGS wants to control 1 hour.

Madam President, I ask unanimous consent that the pending War Powers amendments be temporarily laid aside and that the Senate proceed to the consideration of the amendment by Mr. BUMPERS dealing with SALT; that there be an overall time limitation on that amendment and amendments thereon and motions in relation to same of not to exceed 10 hours, to be equally divided and controlled in accordance with the usual form, provided that Mr. HOLLINGS has control of 1 hour of the total 10 hours; provided further that no motion to recommit, with or without instructions, be in order and that a tabling motion at the conclusion of the 10 hours, the expiration thereof or the yielding back thereof, be in order and that, if such tabling motion having been made fails, the Senate then proceed without further debate, motion, amendment, point of order, or action of any kind to a vote up or down on the Bumpers amendment, as amended, if amended, at that time.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Madam President, I think originally we had provided in the original unanimous-consent agreement that if the amendment was adopted it could be further amended, is that correct?

The PRESIDING OFFICER. The original agreement simply provided that there be no limitation on the number of such amendments. It would not permit an amendment to language previously agreed to.

Mr. DOLE. What was the last part?

The PRESIDING OFFICER. It would not permit an amendment to language previously agreed to.

Mr. DOLE. Madam President, I think there may be some problem with that on this side now that I reflect on it, because I know this Senator has two SALT amendments that might not be appropriate unless the Bumpers amendment were adopted. I think the Senator from Indiana, Senator QUAYLE, has an amendment that would not be appropriate until we had some final disposition.

In addition, I think, as I understand the unanimous-consent request, the motion to table would not come until the end of the 10 hours.

Mr. BYRD. Or the yielding back thereof. At the end of 10 hours or the yielding back thereof, which means that if Mr. BUMPERS used 4 hours and the other side, say, had not used any time, it would mean it would have to yield all its time back and move to table.

Mr. DOLE. And we would be precluded from tabling at the earliest opportunity, is that my understanding?

Mr. BYRD. Yes; under the standard policy that Senators may not be permitted to table except by unanimous consent until such time as controlled by the offerer of the tabling motion at least has expired.

Mr. DOLE. Madam President, after suggesting to the majority leader that we might be able to get consent, I find myself in the position now of not being able to agree to the request just made. I wonder if we might have a brief quorum call to see if we can work it out.

Mr. WARNER. Madam President, before that, I am wondering, during the course of the quorum——

The PRESIDING OFFICER. The majority leader has the time.

Mr. DOLE. Let us get a quorum call and discuss this.

Mr. WALLOP. Madam President, would the majority leader yield, reserving the right to object, before the quorum call?

As I understand it, the unanimous-consent request would make the entirety of the SALT II issue rise and fall on that one single vote? Or two, I guess—if there is a tabling motion, on the Bumpers amendment? There would be no other, in essence, SALT II amendment permitted?

I would just have to say, Mr. Leader, before you go into the quorum call, that would not be satisfactory, and probably is not wise from the standpoint of the whole Senate.

Mr. BYRD. I did not hear the last part.

Mr. WALLOP. In my opinion, I would have thought that there may be some people on the other side who might wish to try to tailor that, were it to pass in its present form, but do not want to particularly vote against the Senator's position.

Mr. BYRD. Well, Mr. President, I was simply trying to provide enough detail in the request so that we could have an orderly procedure. I will be glad to desist and have a quorum call and let us sit down and see if we can work out a different approach.

The first approach that I submitted was so ambiguous and open and free-wheeling that Senators would hardly know where their rights are at any time, who has what right, and when that right terminates. So I was trying to structure the amendment in the way they are usually structured here,

so as to protect all Senators in their rights.

I am willing, of course, to withdraw my request for the time being.

Mr. PRYOR. Madam President, if I may ask a question of the leader?

A moment ago the distinguished majority leader mentioned the possibility of a legislative appropriation bill, I believe, coming up this evening.

I am wondering if that idea has been dropped or if that is still a possibility.

Mr. BYRD. No. I think that is indeed a good possibility. I think it is.

Mr. PRYOR. Is that a piece of legislation that will take a lengthy amount of time? Are there many amendments to this?

Mr. BYRD. I believe the distinguished Republican leader, when he discussed the possibility of having the legislative appropriation bill up—did he suggest a time limitation on it?

Madam President, let me try this for size. I ask unanimous consent that the Senate go to that part of the order which has already been entered that provides for taking up the legislative appropriations bill and with the understanding that either of the two leaders or either of the managers may at any time call for the regular order and bring back the DOD authorization bill. This would allow us, in the meantime, to try to reach a time agreement on the SALT amendment. In the meantime we would be making progress. I believe the manager of the legislative appropriations bill are ready to go.

Mr. BUMPERS is the manager on this side.

So I make that request.

Mr. MATSUNAGA. Reserving the right to object, while the managers are getting ready on that, I would like to make a unanimous-consent request to proceed for 5 minutes.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. MATSUNAGA be permitted to proceed in morning business and that he be permitted to speak therein and that then the Senate proceed with consideration of the legislative appropriation bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Hawaii.

JAPANESE-AMERICANS AND THE U.S. CONSTITUTION

Mr. MATSUNAGA. Madam President, I rise to inform my colleagues of yet another event to mark the 200th anniversary of our Constitution: one with special meaning for me as an American of Japanese ancestry, who first learned of the U.S. Constitution and its "Bill of Rights" in the public schools in Hawaii.

I refer to an exhibit opening tomorrow at the Smithsonian Institution's National Museum of American History entitled: "For a More Perfect Union: Japanese-Americans and the U.S. Constitution." The exhibit tells the story of Japanese immigrants who first came to America 110 years ago, and who with their American born children and grandchildren were incarcerated in American style concentration camps during World War II, for no reason other than that they were of Japanese ancestry. Graphically portrayed are the uprooting from their homes along the west coast of 120,000 Americans and their alien parents, their relocation and concentration in internment camps, surrounded by barbed wire fences, watch towers and armed guards.

If further tells the story of the aftermath of that period, a story which is still unfolding with the recent passage in the other chamber of reparations legislation. This chapter of their story tells of the struggle ever since the internment to correct that injustice and obtain the rights guaranteed all Americans by the Constitution. As a Smithsonian Institution brochure on the exhibit observes, "The exhibition is a case study in the process of constitutional decision-making and citizen action within the constitutional framework."

The lesson to be gained from the Japanese-American story in this bicentennial of our Constitution is that constitutional guarantees might readily be suspended, under the guise of national security, if racial prejudice and fear are allowed to upset that delicate balance between the rights of citizens and the power of the state, which the framers of our Constitution strove so hard and so diligently to achieve.

Madam President, I urge all my colleagues, their staff and family members to see this exhibit at the Smithsonian Institution's National Museum of American History. I am sure it will shock their sense of liberty, justice, and fair play which we take for granted in this great country of ours. I wish also to invite them to the opening ceremony to be held at 10 o'clock tomorrow morning on the west front of the Capitol, where several thousand Japanese-Americans from throughout the country, under the aegis of the National Japanese American Historical Society, the National Japanese American Citizens League, and the National Nisei Veterans Committee, will gather to observe this occasion. In a short program former Supreme Court Justice Arthur Goldberg will address the group, as will Congressmen MINETA, MATSUI and AKAKA, Congresswoman SAIKI, Senator INOUYE and myself. Our own Reverend Richard Halverson will give the invocation, and Bishop Kenryu Tsuji of the Ekoji Buddhist Temple will deliver the benediction. The colors will be presented by a unit of the famous 100th Battalion, 442d Infantry from Hawaii, and the U.S. Army Band will perform. I hope all my colleagues, their families an staff will make every effort to attend.

My senior colleague from Hawaii, Senator INOUYE, joins me in extending this invitation.

I thank the majority leader and I yield the floor.

LEGISLATIVE BRANCH APPROPRIATIONS, 1988

Mr. BYRD. Madam President, I ask unanimous consent that the Senate resume consideration of the legislative appropriations.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill [H.R. 2714] making appropriations for the legislative branch for the fiscal year ending September 30, 1988, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will resume consideration of the bill.

The Senate resumed consideration of the bill.

Mr. BUMPERS. Madam President, I am pleased to bring to the Senate the fiscal year 1988 legislative branch appropriations bill. The bill is within our allocation under the budget resolution.

Overall, the bill totals $1.8 billion, which reprsents a 5-percent increase over the fiscal year 1987 enacted level. It is $176 million below the amount requested, and, when compared with items jointly considered with the House, we are $1.3 million below their allowance.

This bill contains two titles. Title I represents congressional operations and title II includes other support agencies, such as the General Accounting Office, the Copyright Office of the Library of Congress, and the non-congressional segments of the Architect of the Capitol. We are recommending an increase of 4 percent in congressional operations over the fiscal year 1987 amount and a 5-percent increase in the other support agencies.

For the Senate we are recommending $346.7 million. Included in this figure are the normal salaries and expenses of Senate leadership and officers.

In addition to our usual series of budget hearings, we held a special hearing May 14 on Capitol Security and heard testimony on the status and alternatives to the so-called Whip's Security Plan. At that hearing, our Sergeant at Arms, Henry Giugni, made an interim proposal for several steps that could be taken now to enhance security. We have provided for these needed enhancements.

We are recommending that the Capitol Police hire six additional canine explosive detection teams consisting of an officer and a dog. At our hearing we received testimony that stated that this is the best existing technology for bomb detection. This allowance will permit them to have a total of 12 dog teams to screen parked cars in the underground garages and streets adjacent to the office buildings and Capitol, as well as respond to specific bomb searches. Testimony revealed that the dogs must be rested periodically as they lose their ability to sense explosives during periods of prolonged work. This has limited the effectiveness of the current complement of teams.

The committee is also recommending funds to purchase a series of metal detectors and x ray machines for all entrances to the Senate office buildings and the Capitol. This will require anyone entering these buildings, including staff, to walk through a metal detector and have their briefcases or packages x rayed. This is the same procedure we all follow before boarding an airplane. It is estimated that the cost of this will be $1.2 million, including 39 positions. These will not all be police officers. The Sergeant at Arms has made a very innovative proposal to utilize handicapped individuals for much of this work. They can look at an x-ray screen as well as anyone.

And finally, we are recommending $500,000 to perform a pilot delivery center program for the Capitol. This will permit a test of a proposal to have all deliveries destined for the Capitol taken to a remote site, probably the Hart building garage, and have the items screened and the delivery truck sealed before proceeding to the Capitol. This will ensure that no explosive devices can be smuggled into the Capitol Building.

Before concluding a discussion of Capitol security I want to state flatly that there are no funds in this bill for a fence around the Capitol.

The committee has also included $4.7 million to begin the process of automating Senators' State offices. This has been identified as one of the highest priorities among Senate users. This will make the same equipment available to the State offices as is now available to the Washington offices. It will also provide for improvements to the data communications system to support this project.

The committee has also included the request $1.4 million for upgrading the Senate legislative information system, [LEGIS]. This will allow for the development of a system that will be easier to use, contain more information, and replace the decade-old information retrieval system.

For the House of Representatives we have included the same amount that the House themselves allowed, $529.6 million. As you know, it is a matter of longstanding agreement that the two Houses do not interfere in the operation of the other.

The bill also includes a provision, approved by the Senate 84 to 4 on July 31, 1987, that requires that any future congressional pay raise be approved by vote before it can be effective.

Madam President, other items that may be of interest to the Senate are a recommendation of $85 million for official mail expenses; this is $15 million below the House and is $6 million below the fiscal year 1987 amount.

For the Office of Technology Assessment the committee has recommended $17.5 million. This is a reduction from the request, but $1 million more than the House, and reflects those items they wish to have restored.

Similarly, we have restored a $1.5 million cut by the House to the Congressional Research Service, as they requested. Also, for the Library of Congress we have included $918.5 million, a restoration of $1 million, as requested, over the House. We believe that this will give the new Librarian, Dr. Billington, a good start.

Madam President, the committee has recommended deleting a provision that would cut all accounts under the Architect of the Capitol by 2.8 percent. We are recommending reductions totaling $22.8 million in the various accounts within the Architect's office, but are still providing for the essential care and maintenance of the Capitol Buildings and Grounds.

Finally, for the General Accounting Office we have restored at $6 million cut by the House. A portion of these funds will go for travel to certain audits. The Comptroller General has become very concerned about their continuing ability to respond to congressional requests in a timely way. Staff travel has been cut in recent years, it is now to a point where responsiveness and product quality are in jeopardy, so we have restored some of those funds. We have not, however, restored $6 million requested for the next phase of renovation and asbestos removal from the GAO headquarters building on G Street. They have been at this now for 2 years and expect that it will take another 10 years and be very expensive. We want them to talk with GSA and get some sort of a cost sharing and final cost estimate before we commit any more funds.

Madam President, before yielding I want to take this opportunity to thank the chairman of the Appropriations Committee, Senator STENNIS, and our distinguished ranking member Senator HATFIELD for their assistance in bringing this bill out of committee. And to note the contribution of the Senator from Iowa [Mr. GRASSLEY]. He has attended our hearings and made suggestions, that are reflected here, that have made this a better bill.

Madam President, I now yield to my distinguished colleague, Senator GRASSLEY.

Mr. GRASSLEY. Madam President, I thank the chairman for yielding.

Madam President, the Legislative Branch Appropriations Act recommended by the Committee on Appropriations provides a total of $1,801,107,300 for the operations of the legislative branch in fiscal year 1988. Of this amount, $1,232,708,300 is for congressional operations and services provided solely to Congress, and the balance of $568,399,000 is for other agencies, such as the General Accounting Office, whose responsibilities are not limited to serving Congress.

The total recommended is $176,934,500 below the President's budget request and $78,705,386 above the amounts enacted to date for fiscal year 1987. In keeping with longstanding practice, the bill as passed by the House of Representatives included no funds for items pertaining strictly to the Senate, so with the committee's inclusion of Senate items, the recommended bill is substantially over the amount of the House bill. Comparing only those items considered by both Houses, however, this bill is $1,286,000 below the House-passed bill.

Madam President, I should note that the bill before us is within the allocation established pursuant to section 302(b) of the Budget Act, and printed in Senate Report 100-144. Senator BUMPERS, the chairman of our subcommittee and the manager of the bill, has already summarized the major provisions of the bill, and additional information is provided in Senate Report 100-158.

I believe Senators should support and vote for this bill as recommended by the committee. It meets the requirements of our congressional operations and our support agencies in a responsible manner, within the constraints necessitated by the growth of our Federal budget deficit. I hope that we can pass this bill and get to conference with the House as quickly as possible, so that we might send this measure to the President for his approval.

Finally, I want to emphasize to the Senate that this bill contains in section 307 the Grassley language relative to congressional pay raises that was adopted on the debt limit bill on July 31 by a vote of 84 to 4. That language does not rescind or modify the pay increase that went into effect earlier this year. It simply provides that any future increases that may be recommended cannot be effective unless and until they have been approved by a vote of both Houses. If Members of Congress are to be paid more, at the very least they ought to publicly vote on the matter, and not try to sneak

through a pay raise as we did early this year.

With that, Mr. President, I thank my colleague, Senator BUMPERS, again for his cooperation with me and my side of the aisle on this matter. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, provided no point of order under rule XVI shall be considered to have been waived if the request is agreed to.

The ACTING PRESIDENT pro tempore. Is there objection to the request?

Mr. GRASSLEY. Mr. President, I just want to make clear to my colleagues that these amendments have been agreed to by myself and everybody on this side of the aisle and there is no objection.

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

AMENDMENT NOS. 815-821

Mr. BUMPERS. Mr. President, I send to the desk seven amendments which are mostly technical in nature and ask that they be considered en bloc.

The ACTING PRESIDENT pro tempore. Is there objection to the unanimous-consent request? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes amendments numbered 815-821.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT No. 815

At page 11 after line 5 insert the following:

"SEC. 6. Subsection (i) of Section 814 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93), as amended by Public Law 99-151, is amended by striking out '1987' and inserting '1988'.

AMENDMENT No. 816

On page 4, line 22, immediately before the period insert a colon and the following: *"Provided,* That the amounts appropriated to the Office of the Legislative Counsel of the Senate for Fiscal Year 1987 shall remain available until September 30, 1988".

AMENDMENT No. 817

On page 11, between lines 5 and 6, insert the following new section:

SEC. . Effective in the case of fiscal years beginning after September 30, 1986, the first sentence of section 107(a) of the Supplemental Appropriations Act, 1979 (Public Law 96-38; 2 U.S.C. 69a), is amended by striking out "$2,000" and inserting in lieu thereof "$4,000".

AMENDMENT No. 818

On page 3, line 20, immediately before the period insert a colon and the following: *"Provided,* That, from funds appropriated to the Conference of the Majority and from funds appropriated to the Conference of the Minority for any fiscal year, such Conference may utilize such amounts as it deems appropriate for the specialized training of professional staff, subject to such limitations, insofar as they are applicable, as are imposed by the Committee on Rules and Administration with respect to such training when provided to professional staff of standing committees of the Senate".

AMENDMENT No. 819

On page 11, between lines 5 and 6, insert the following new section:

SEC. 6. The Chairman of the Majority or Minority Conference Committee of the Senate may, during the fiscal year ending September 30, 1988, at his election, transfer not more than $50,000 from the appropriation account for salaries for the Conference of the Majority and the Conference of the Minority of the Senate, to the account, within the contingent fund of the Senate, from which expenses are payable under section 120 of Public Law 97-51 (2 U.S.C. 61g-6). Any transfer of funds under authority of the preceding sentence shall be made at such time or times as such chairman shall specify in writing to the Senate Disbursing Office. Any funds so transferred by the chairman of the Majority or Minority Conference Committee shall be available for expenditure by such committee in like manner and for the same purposes as are other moneys which are available for expenditure by such committee from the account, within the contingent fund of the Senate, from which expenses are payable under section 120 of Public Law 97-51 (2 U.S.C. 61g-6).

AMENDMENT No. 820

On page 43, line 9, insert "(a)" before "Paragraph".

On page 43, insert between lines 19 and 20 the following new subsection:

(b) Paragraph (2) of section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended by striking out "end of the 30-day period" and inserting in lieu thereof "date of enactment of such joint resolution".

AMENDMENT No. 821

At page 40 beginning on line 18 strike all down through line 2 on page 41.

Mr. BUMPERS. Mr. President, these are basically housekeeping measures. One is technical in nature. One is, for example, a request of the majority and minority leaders. Another is a request from the Secretary of the Senate to transfer $2,000 within existing funds. There are no additional moneys included in these amendments. I ask for the adoption of those seven amendments.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. GRASSLEY. Mr. President, again these amendments have been reviewed by this side of the aisle and our staffs. I have no objection to them and we accept them.

The ACTING PRESIDENT pro tempore. If there is no further debate, the question occurs on adoption of the amendments en bloc.

The amendments (Nos. 815-821) were agreed to.

AMENDMENT NO. 822

Mr. BUMPERS. Mr. President, I send one additional amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 822:

On page 6 at line 6 strike "$66,174,000" and insert in lieu thereof "$68,021,000".

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, during the consideration and markup of this bill, I found a project of which I was not aware. It dealt with our computer systems. We are all familiar with the Senate's LEGIS system. That system is 10 years old and it needs to be simplified and expanded. The bill contains $1.4 million to carry out that initiative, which was part of the task force report of the Rules Committee last June. The upgrade will not be completed until 1990. Forty-three Senators have had access to outside information systems as a pilot program in their offices. Quite frankly, I do not know how those 43 Senators were chosen. The Senator from Arkansas was not one of them. I do not know whether the Senator from Iowa was or not. But after having looked at the program and some of the Senator's offices who have it, I found it to be a very efficient system and one that every Senator ought to have.

This amendment adds the money to provide that system for all 100 Senators at $1,000 a month for each Senator; the 10 leadership offices would have one; the Secretary of the Senate would have one; and the Senate committees would have one. This takes into consideration Senate committees October 1 through February 29. And then there is money here so that the wire services are available to each of those offices under that system.

I ask approval of that amendment.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, originally there was some debate of whether or not we ought to do this, but I have had a chance to hear from several of my colleagues on this question and I feel this is a good move that Senator BUMPERS, the manager of the bill, is taking. I am supporting it and I hope this body will adopt it.

The ACTING PRESIDENT pro tempore. If there is no further debate on the amendment, the question occurs on the adoption of the amendment of the Senator from Arkansas.

The amendment (No. 822) was agreed to.

Mr. BUMPERS. Mr. President, I understand that this is all the amendments that I have.

Mr. GRASSLEY. We have no more amendments on this side.

Mr. BUMPERS. I understand that Senator WILSON is on his way with an amendment and so I, with the Senator's permission, will put in a quorum call until he arrives.

Mr. GRASSLEY. I was speaking for myself. There are no more amendments I have been given or I personally have but, yes, it is my understanding that Senator WILSON does have an amendment.

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

The ACTING PRESIDENT pro tempore. The absence of a quorum is noted. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

Mr. BYRD. Mr. President, while awaiting the arrival of a Senator to call up an amendment to the legislative appropriations bill, I make this parliamentary inquiry for the record. What is the amendment that will be pending before the Senate when the Senate returns to the consideration of the DOD authorization bill?

The ACTING PRESIDENT pro tempore. The Chair will state to the majority leader that the pending amendment on the defense authorization bill will be the Byrd amendment to the Weicker amendment.

Mr. BYRD. I thank the Chair.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

Mr. BYRD. Mr. President, I ask for regular order.

The ACTING PRESIDENT pro tempore. Regular order has been called for.

Mr. BYRD. Mr. President, I ask that the DOD authorization bill come back before the Senate.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

The Senate resumed consideration of the bill.

CLOTURE MOTION

Mr. BYRD. Mr. President, I send a cloture motion to the desk on the Byrd-Nunn amendment.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Byrd-Nunn amendment, No. 732, to the Weicker amendment, No. 712, to S. 1174, a bill to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

Senators Robert C. Byrd, J.J. Exon, Dale Bumpers, Tom Harkin, George J. Mitchell, Howard M. Metzenbaum, Quentin Burdick, Frank R. Lautenberg, Tim Daschle, Jim Sasser, Brock Adams, Alan Cranston, Carl Levin, Jeff Bingaman, Kent Conrad, and Wendell H. Ford.

LEGISLATIVE BRANCH APPROPRIATIONS, 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to the legislative appropriations bill.

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

The Senate resumed consideration of the bill.

Mr. BUMPERS. 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. HELMS. 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. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the legislative appropriations bill, H.R. 2714.

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

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair.

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. BUMPERS. 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. STENNIS. Mr. President, I am very happy that we are here today to present before the Senate the legislative branch appropriations bill for fiscal year 1988. This bill, which provides a total of approximately $1.8 billion in new budget authority for fiscal year 1988, reflects the diligent care and able effort which our entire committee has rendered. In particular, however, it is evidence of the hard work and excellent leadership of subcommittee Chairman BUMPERS and the ranking minority member, Senator GRASSLEY. I also wish to compliment the highly skilled work of the staff of their subcomittee: Mr. Timothy Leeth, Mr. J. Keith Kennedy, and Mrs. Lula Joyce.

I now wish to briefly highlight a few important items regarding this bill.

First and foremost, I am pleased to report that this bill is below the 302(b) allocation for budget authority and outlays. This is essential, in my opinion, for all appropriations bills which are to be taken up for consideration on the Senate floor.

Second, the committee's $1.8 billion in budget authority recommendations regarding H.R. 2714, are only slightly above the fiscal year 1987 level. However, in the committee's serious attempt to impose fiscal restraint during a period of budgetary discipline, the bill was reduced approximately $177 million below the President's requested funding level.

Finally, I would ask my colleagues to resist any further amendments to the committee-reported bill. Any amendment adding additional funds would violate the bill's spending ceiling set by the subcommittee's 302(b) allocation. Let me also mention that the Senate rules do not permit legislative amendments to appropriations bills.

In conclusion, I firmly support this bill and ask that it be adopted so that we can proceed to conference with our House counterparts in a timely manner.

Mr. President, I yield the floor.

Mr. CHILES. Mr. President, each appropriations bill is subject to a spending limit known as a 302(b) allocation. As chairman of the Senate Committee on the Budget, I am pleased to report that the legislative branch appropriations bill, H.R. 2714, is under its 302(b) budget authority ceiling by $74 million and under its 302(b) outlay ceiling by $61 million. I commend the distinguished chairman of the subcommit-

tee, Senator BUMPERS and the ranking minority member, Senator GRASSLEY for their success in crafting this bill.

Mr. President, I have a table from the Budget Committee showing the official scoring of the legislative branch appropriations bill and I ask unanimous consent that it be printed in the RECORD.

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

SENATE BUDGET COMMITTEE SCORING OF H.R. 2714—LEGISLATIVE BRANCH—SPENDING TOTALS

[Senate-reported bill, dollars in millions]

	Fiscal year 1988	
	Budget authority	Outlays
Bill Scoring		
H.R. 2714, Senate-reported (new budget authority and outlays)	1.8	1.6
Outlays from prior-year budget authority and permanent appropriations	0.1	0.2
Bills enacted this session: 1987 Supplemental (Public Law 100-71)	—	+(1)
Adjustment to conform mandatory programs to resolution assumptions	+(1)	+(1)
Bill total	1.9	1.9
Subcommittee 302(b) allocation	2.0	1.9
Difference	−0.1	−0.1
Comparisons		
Bill total above (+) or below (−):		
President's request	−0.1	−0.1
House-passed bill	−(1)	−(1)

[1] Less than $50 million.

Details may not add to totals due to rounding.
Prepared by the Senate Budget Committee.

Mr. FORD. Mr. President, I would like to ask the Senator from Alaska [Mr. STEVENS], a question regarding the applicability of section 308 of the committee bill.

Mr. STEVENS. I will be happy to respond to the Senator from Kentucky.

Mr. FORD. Does this section of the bill apply to all Government printing facilities and activities, without exception?

Mr. STEVENS. I thank the Senator for his question and respond that the answer is "no," it is not intended to apply across the board. The purpose of the amendment is to maintain the status that existed prior to the adoption of the change in Federal Acquisition Regulations. It is intended to prevent agencies and departments from printing, or procuring on their own, work that previously would have been directed to the Government Printing Office. To allow agencies such autonomy would raise Government printing prices as competition is diminished and would also tend to limit the availability of the printed information to the public.

On the other hand, there are printing facilities and categories of work that, in the past, have been exempted from the requirement that they make use of the GPO-administered system. These include printing plants aboard Navy ships, Army mobile field printing units, and the facilities of security and intelligence gathering agencies. It made no practical sense in the past to direct the work of these facilities to GPO, and this amendment is not intended to change or impair in any way the status or activities of these vital facilities.

The ACTING PRESIDENT pro tempore. 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.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered.

SCHEDULE

Mr. BYRD. Mr. President, I think we should possibly discuss the program for tomorrow, before we go out this evening. This will be the last rollcall vote for the day. We have to have some understanding before Senators break and run for the doors.

Senators should be alerted by both cloakrooms that a rollcall vote is about to occur on passage of the appropriations bill. Several of them are some distance away, so this will give them a little time.

Let me ask a question for the record: Could we vote on the Verity nomination in the morning, at 9 o'clock, so that all Senators would know that we are going to have a rollcall vote?

Mr. DOLE. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. DOLE. I am advised that we could not do it by 9 o'clock, but hope sometime tomorrow we may be able to dispose of that nomination.

Mr. BYRD. Very well.

What do Senators see for the prospects of continuing action on the DOD authorization for this evening?

How about catastrophic illness?

Mr. DOLE. I would have to check on that. I know there have been meetings between Senator PACKWOOD's staff and Senator BENTSEN's staff.

We are about to submit at least a suggestion to the majority leader on SALT.

Mr. BYRD. 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. 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.

ORDERS FOR THURSDAY

RECESS UNTIL 8:15 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:15 tomorrow morning.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that the following Senators be recognized to speak tomorrow morning before the two leaders are recognized: Mr. PROXMIRE, 5 minutes; Mr. PRYOR, 10 minutes; Mr. SANFORD, 15 minutes, and that the two leaders then have their 5 minutes each tomorrow following the others that have been named and the Senate at 9 o'clock proceed to consider the unfinished business, the DOD authorization bill.

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

PROGRAM

Mr. BYRD. Mr. President, there will be a rollcall vote at 9 o'clock tomorrow morning. There will be a 30-minute rollcall vote and without holding the Senate any further at this time, the distinguished Republican leader and I are going during the vote to try to get something else up. We are consulting about various and sundry measures to use as a kind of a second track and we will explore that during the vote. I would hope that it would be catastrophic illness. I think there is a necessity for the Senate going to that quickly because Mr. BENTSEN, who is chairman of the Finance Committee, has the reconciliation measure, he has the trade bill in conference, and he has just a few days in which he could give some time to the catastrophic illness legislation. So we will try to clear that, at least take it up at such time as we may hit a little roadblock on the DOD authorization bill, or once that bill has been disposed of, and then the Senate would be on the catastrophic illness legislation if it has not disposed of it prior to that. Senators now are aware of the fact that there will be a rollcall vote in the morning at 9 o'clock. It will be 30 minutes, and the regular order will be called for at the end of the 30 minutes.

So, Mr. President, I yield the floor.

LEGISLATIVE BRANCH APPROPRIATIONS, 1988

The Senate continued with the consideration of H.R. 2714.

Mr. BYRD. Mr. President, this will be the last rollcall vote today and I thank all Senators.

The ACTING PRESIDENT pro tempore. The question now occurs on the adoption of the bill, H.R. 2714, as amended.

The question is, Shall the bill pass?

On this question, 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 Illinois [Mr. SIMON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

Mr. BYRD. Regular order.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—79

Adams	Ford	Moynihan
Baucus	Glenn	Murkowski
Bentsen	Gore	Nickles
Biden	Graham	Nunn
Bingaman	Grassley	Packwood
Bond	Harkin	Pell
Boren	Hatfield	Pryor
Boschwitz	Heinz	Quayle
Bradley	Hollings	Reid
Breaux	Inouye	Riegle
Bumpers	Johnston	Rockefeller
Burdick	Karnes	Rudman
Byrd	Kassebaum	Sanford
Chafee	Kennedy	Sarbanes
Chiles	Kerry	Sasser
Cochran	Lautenberg	Simpson
Cohen	Leahy	Specter
Cranston	Levin	Stafford
D'Amato	Lugar	Stevens
Danforth	Matsunaga	Symms
Dixon	McCain	Thurmond
Dodd	McClure	Trible
Dole	McConnell	Wallop
Domenici	Melcher	Warner
Durenberger	Metzenbaum	Weicker
Evans	Mikulski	
Exon	Mitchell	

NAYS—19

Armstrong	Hatch	Proxmire
Conrad	Hecht	Roth
Daschle	Heflin	Shelby
DeConcini	Helms	Wilson
Fowler	Humphrey	Wirth
Garn	Kasten	
Gramm	Pressler	

NOT VOTING—2

Simon	Stennis

So the bill (H.R. 2714), as amended, was passed.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. FORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senate insist on its amendments to H.R. 2714, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. BUMPERS, Ms. MIKULSKI, Mr. REID, Mr. STENNIS, Mr. GRASSLEY, and Mr. HATFIELD conferees on the part of the Senate.

Mr. BYRD. Mr. President, I know some Senators want to transact some morning business shortly so I will not delay them long.

Upon the disposition of the DOD authorization bill the Senate will proceed to the consideration of the catastrophic illness bill, that is the House bill.

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. Let me indicate as I did earlier that I had 12 Senators to contact on this bill. We have contacted 12. Nine have indicated no objection. We still have three to go back to in the morning. Maybe with that last indication, it might make it a bit easier. In other words, it would follow the disposition of the DOD authorization bill.

Mr. BYRD. Yes, it would follow DOD.

Mr. DOLE. If I could check that out early in the morning, maybe following the 9 o'clock vote, I would be in a better position to respond.

Mr. BYRD. I will not request that for the time being. I should state for the record so that all Senators will be alert to the intention of the majority leader, it is my intention upon the disposition of the DOD authorization bill to go to the catastrophic illness. I will seek to go by unanimous consent. That being not granted, I will proceed by motion and put a cloture motion on that motion if I cannot get the motion.

I will withdraw the request for this evening.

Mr. President, I thank the distinguished Republican leader for his cooperation. May I say that the Senate has disposed of four appropriations bills now. I thank the Republican leader for his assistance in making it possible for the Senate to go to these bills. I will have more to say with respect to the managers on both sides of the four bills.

The PRESIDING OFFICER (Mr. DASCHLE). The Republican leader.

Mr. DOLE. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is the Byrd-Nunn amendment.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close debate on S. 1174, the D.O.D. Authorization bill:

Senators Bob Dole, Malcolm Wallop, Steve Symms, Chuck Grassley, Jake Garn, Dan Quayle, Pete Wilson, Strom Thurmond, Ted Stevens, Chic Hecht, Thad Cochran, Don Nickles, John McCain, Daniel J. Evans, Paul Trible, James A. McClure, Jesse Helms, and Rudy Boschwitz.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate now go into morning business for not to exceed 30 minutes and that Senators may speak therein for up to 5 minutes each.

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

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

REID TAKEOVER AMENDMENT

Mr. REID. Mr. President, last evening I offered an amendment which was eventually withdrawn in the face of a threatened filibuster by the senior Senator from Colorado and the junior Senator from Texas. It was withdrawn not because it lacked merit, nor because it could not have won passage or even cloture, but because pushing it would have delayed other legislation vital to our country.

Though withdrawn, the issue is not dead, and I wish to speak to some of the points so vehemently raised last night by the gentlemen in opposition.

The amendment offered was designed to extend the time period during which tender offers must remain open. Most, I think would agree that it was a reasonable and moderate short-term answer to a problem we have seen throughout our Nation in the past few years. Some, however, obviously disagreed.

Their arguments are what I wish to discuss. The junior Senator from Texas called a challenge to the practice in which T. Boone Pickens and others of his ilk engage, an attempt to destroy the American free enterprise system. If corporate raids which leave companies shattered, cities desolate, and workers unemployed by the tens of thousands are the Senator's idea of the heart of free enterprise, then he must believe that antitrust violations and insider trading are its soul.

The Senator offered to read to us from the wealth of Nations. I wish he had. I wish he had. It might have proved educational. Adam Smith, and I do not pretend to be an economist, but Adam Smith seemed to favor reinvestment of capital, not the concept of forcing companies into assumption of

unbearable debts. I should think that the Senator would have been happier reading Arthur Laffler, the man who has done so much to bring this Nation to the brink of the worst depression since the 1930's.

The Senator from Colorado told us that he was offended by the term "corporate raider." I would inquire how he would characterize Mr. Pickens. Before he answers, however, he might want to speak to some of the 80,000 employees who have lost their jobs as a result of corporate raids.

You know, it struck me as interesting last night that once again we saw certain Members from the other side of the aisle rushing to the weapon of delay, the tactics of obstruction, in defense of big corporate money. Where have I seen that before, I thought.

Of course, I remembered. S. 2. Those where the same arguments given with the same vehemence in opposition to campaign reform. Is it not interesting that the party which fought so bitterly against limiting getting and spending in the campaign arena, produced the opponents to a provision designed to slow down the process by which their corporate fat cat contributors loot targets of opportunity.

The Senator from Colorado also accused the Senator from Nevada of acting on behalf of special interests; of offering a bill on behalf of special interests. I know he was not talking about Newmont Mining. The only campaign contributions from Newmont in the last Senate race went to my Republican opponent. But, you know what, I have a little confession to make. He is right. I did it. I offered that bill on behalf of special interests. There are 1,500 men and women in Elko, NV, who stand to lose their jobs if Mr. Pickens' track record is any indication.

They are nice folks. They work hard. They go to church. They like their families. In fact, they like to have something to eat and a roof over their heads. That is my special interest, Senator. You caught me. I have to confess. But I want you to know something. Each one of those people in Elko, and their spouses, and their kids, are special to me. Each one is a special interest to me. Those are the special interests I represent. And you know what? I am proud of it.

Mr. DANFORTH addressd the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

COMMEMORATING SISTER PATRICIA ANNE KELLEY

Mr. DANFORTH. Mr. President, on behalf of Senator BOND and myself I rise to make this statement commemorating Sister Patricia Anne Kelley.

Today Missouri mourns the loss of one of its great daughters, Sister Patricia Anne Kelley. Truly a modern day Saint, Sister Kelley displayed a compassionate and steadfast commitment to the poor and elderly. A member of the Sisters of Charity of the Incarnate Word, she devoted her life to the underprivileged of Missouri and the Nation. Sister Kelley served as executive director of Missouri Energycare and president of Dollar-Help, Inc., two charitable organizations dedicated to providing energy assistance to the elderly and the poor. She founded Missouri Energycare as a vehicle to provide fuel and weatherization assistance to low income families, and went on to form the National Fuel Funds Network as a forum for people across the country who shared these concerns.

Sister Kelley was a lifetime resident of St. Louis, but became a familiar force in Jefferson City, MO, and Washington, DC, where she supported financial assistance to the needy. On April 30, 1987, she testified before the House Appropriations Committee to increase funding for the Low Income Home Energy Assistance Program [LIHEAP]. She was also in Washington last week to meet with our staff members, and those of the Senate Appropriations Committee, in an attempt to restore a devestating subcommittee cut in the LIHEAP appropriations. An indefatigable champion of society's less fortunate members, Sister Kelley's advocacy never wavered.

Sister Kelley entered her religious order, the Sisters of Charity of the Incarnate Word, upon graduating in 1955 from Incarnate Word Academy in Normandy, MO. After working for many years as a teacher, she returned from a year-long retreat determined to devote the rest of her life to the poor. She threw herself into this cause with a level of devotion and compassion seldom matched in today's world. Her pervasive zeal compelled her into destitute neighborhoods where only angels would go. Clearly an angel herself, Sister Kelley embodied the spirit of her favorite passage from the Bible: "The needy will not be forgotten, nor the hope of the poor taken away," (Psalm 9).

It is fitting on this day of her wake, when her life is celebrated by the thousands of people whose lives she touched, that we include this tribute in the RECORD. Sister Patricia Anne Kelley left a great legacy of love and devotion to the poor. May her work be long remembered, may her spirit live on, and may her vision inspire all who follow in her steps.

ELIZABETH DOLE

Mr. DANFORTH. Mr. President, I rise today to commend and congratulate this Nation's longest serving Secretary of Transportation, Elizabeth Dole. Secretary Dole leaves a legacy of success based on intelligence, sensitivity, hard work, and perseverance.

In my years in Washington, I've never seen a Cabinet officer as well informed or professionally dedicated as Elizabeth Dole. She is masterful in her command of transportation issues. This knowledge is coupled with a charming tenacity that reassures her allies and persuades her opponents.

Let me give an example. In early 1985, Secretary Dole announced the selection of Norfolk Southern as the winning bidder for Conrail, the federally owned freight railroad. Mrs. Dole's presentation of this proposal before the Commerce Committee was superb. We were a skeptical audience, and she overwhelmed us with facts. But that was just the beginning. That spring, as the committee drafted Conrail legislation, she conscientiously made her case in public forums and private meetings. She made dozens of phone calls. She buttonholed doubting Senators. She simply never gave up. After months of persistent effort, Conrail sale legislation finally passed and committee and the full Senate.

When it became obvious that the House would not approve the Senate-passed measure, Secretary Dole showed that her tenacity was tempered by political common sense. Instead of letting the sale idea die, she shifted gears. She became an active player in helping the Congress craft a compromise public offering sale of the railroad. The plan was signed into law 20 months after the original sale proposal was announced. When it comes to selling a railroad, Elizabeth Dole wrote the book.

Her negotiating skills were displayed again the following year during congressional debate on the transfer of the National and Dulles airports to a regional authority. From the spring of 1986 to the following autumn of 1987, Secretary Dole worked the issue at every opportunity. Although this proposal faced active opposition in the Senate and benign neglect in the House, Mrs. Dole prevailed. The transfer was included in the fiscal year 1987 continuing resolution.

Mr. President, I want to take a moment to address one other issue which has been discussed a great deal recently—Secretary Dole's leadership on safety issues.

During my 11 years in the U.S. Senate, I've taken every opportunity to press for stronger safety standards in our Nation's transportation systems. Elizabeth Dole has been a valuable ally in this fight. She's done a truly amazing job. Time and time again, she has had to fight uphill battles on transportation safety issues within the administration. She has fought those battles with loyalty and grace. When she won partial victories, she was often criticized by all sides—

those within the administration for pushing too hard, and some of us on the Hill and outside for not going far enough. Yet she never complained; she just persevered. There are many examples of her determination and commitment.

In 1983, the Supreme Court ordered DOT to reexamine its rulemaking on automobile passive restraints. In response, DOT reinstated its phase-in requirement of either automatic seatbelts or airbags unless two-thirds of the U.S. population were covered by mandatory seatbelt laws. Elizabeth Dole can take credit for this delicate compromise.

Was this solution something I wanted? No. My long-time advocacy of mandatory airbags is well known. But there are many in this administrtation and in the Congress who wanted no passive restraint requirement, who would never want airbags to be required.

Elizabeth Dole had to fight hard for half a victory. As a result of her tenacious leadership behind the scenes, 29 States and the District of Columbia now enforce mandatory seatbelt laws. Also, 25 percent of all 1988 cars will contain passive restraints and 10 manufacturers have announced plans to equip future models with airbags. I still hope we can go farther, but Elizabeth Dole deserves credit and our thanks for helping to achieve this degree of progress.

Whether it's random drug testing of transportation safety employees, or the 21-year-old drinking age, or any one of a number of tough and controversial transportation issues, Elizabeth Dole has been in the forefront of safety initiatives.

Ernest Hemingway once defined courage as "grace under pressure." There are different kinds of courage. Elizabeth Dole has certainly exhibited that grace under pressure which is the hallmark of a great public servant. This administration and the American people have been fortunate to have the benefit of her talents and skills. She will be missed.

Mr. President, I yield the floor.

Mr. WILSON. Mr. President, the Senator echoes my sentiments.

Mr. DANFORTH. I think there are others who feel the same way.

Mr. DOLE. Yes. I thank the Senator.

THE CALENDAR

Mr. BYRD. Mr. President, may I inquire of the distinguished acting Republican leader if the following calendar orders have been cleared on his side: Calendar Order No. 329, Calendar Order No. 330, and Calendar Order No. 332?

Mr. WILSON. They have been cleared.

Mr. BYRD. I thank the Senator.

I ask unanimous consent, Mr. President, that the Senate proceed seriatim to the consideration of those matters.

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

ALPHA PHI ALPHA MEMORIAL TO MARTIN LUTHER KING, JR.

The Senate proceeded to consider the bill (S. 322) to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, which has been reported from the Committee on Rules and Administration, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—Subject to subsection (b), the Alpha Phi Alpha Fraternity is authorized to establish a memorial to Martin Luther King, Jr. in the District of Columbia and its environs in accordance with the Act entitled "An Act to provide standards for placement of commemorative works certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001, et seq.), to honor Martin Luther King, Jr.

(2) DEFINITIONS.—For purposes of paragraph (1), the term "the District of Columbia and its environs" has the same meaning given to such term by section 2(e) of such Act.

(b) EXPENSE TO THE UNITED STATES.—The United States shall not pay any expense of the establishment of the memorial under subsection (a).

Mr. SARBANES. Mr. President, last January we had the opportunity to celebrate the second national holiday to commemorate the birthday of Dr. Martin Luther King, Jr. Now the Senate will take another step to honor one of the Nation's distinguished and admired leaders. With the passage of S. 322, we will authorize Alpha Phi Alpha, Inc., the oldest black fraternity in the United States, to begin an effort to establish a Martin Luther King Memorial in the District of Columbia. I urge my colleagues to support this important bill, which I introduced earlier this year and which is cosponsored by 26 Senators.

Dr. King was a member of Alpha Phi Alpha Fraternity having belonged to the Sigma Chapter in Boston, MA. Alpha Phi Alpha was founded in 1906 at Cornell University and now has 700 chapters throughout the United States. Its membership includes Supreme Court Justice Thurgood Marshall as well as many of our Nation's elected officials. The fraternity has formally endorsed the Martin Luther King, Jr., Memorial as one of its major national projects.

Dr. King dedicated his life to achieving justice and enfranchisement for all Americans—goals he sought through nonviolent means. He inspired thousands to follow his principles of nonviolence and to join in the national movement for voting rights and justice for all. Passage of this bill in conjunction with the national holiday would strengthen the effort to give appropriate recognition to Dr. King as an outstanding figure in our evolving history.

This legislation provides that the monument be established at no cost to the United States. It conforms to the provisions of Public Law 99-652 passed last year establishing new procedures for locating memorials to individuals in the District of Columbia. I want especially to thank the chairman of the Senate Committee on Rules, Senator WENDELL FORD, for his efforts in moving this bill through the committee. The committee's report on this bill makes it clear that the bill's intention is that the procedures under Public Law 99-652 be started on passage of this bill. The report states, "it is expected that upon enactment of S. 322 the necessary activity of fund raising, planning, and design will begin promptly, and the processes of Public Law 99-652 can go forward."

Mr. President, it is my hope that young people who visit the memorial to Dr. King will understand that it recognizes not only his achievements but also his principles as a guide for the future. First among these is the reconciliation of the races and the inclusion of all our citizens in the mainstream of American life—objectives which are essential to the fundamental health of our Nation. Second is Dr. King's dedication to achieving his goals through nonviolent means. I congratulate Alpha Phi Alpha on this important undertaking, and I urge the Senate to pass this important legislation.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPENDITURES BY THE SELECT COMMITTEE ON INTELLIGENCE

The Senate proceeded to consider the resolution (S. Res. 192) relative to expenditures by the Select Committee on Intelligence, which had been reported from the Committee on Rules and Administration with an amendment.

The amendment was agreed to.

The resolution, as amended, was agreed to.

The resolution, as amended, is as follows:

That (a) section 20(b) of Senate Resolution 353 (99th Congress), agreed to March

13, 1986, is amended by striking out "$1,864,131" and inserting in lieu thereof "$1,884,131".

(b) Section 20(b) of Senate Resolution 80 (100th Congress), agreed to January 28, 1987, is amended by striking out "$1,926,804" and inserting in lieu thereof "$1,963,054".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. WILSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LIBRARY OF CONGRESS POLICE

The bill (H.R. 2249) to change the title of employees designated by the Librarian of Congress for police duty and to make the rank structure and pay for such employees the same as the rank structure and pay for the Capitol Police, was considered.

Mr. SARBANES. Mr. President, I want to thank the chairman of the Senate Committee on Rules, Senator WENDELL FORD, for his assistance in bringing H.R. 2249 to the floor of the Senate, and I rise in strong support of this bill, which I introduced in the Senate. This legislation, which passed the House on July 21, 1987, reconciles the rank, structure and pay for the Library of Congress police to that of the Capitol and Supreme Court police. The Library of Congress, now the largest in the world, is one of the most open of national libraries, and the security of its varied collections is of the greatest importance. The police force plays a major role in seeing that this objective is carried out. The Library of Congress welcomes thousands of readers, researchers, and foreign dignitaries from all over the world and as the Library's acquisitions have grown over the years it has become necessary to expand, requiring increased reliance on the police force. The responsibilities of the LOC police force, in many instances, are similar to the Capitol and Supreme Court police forces. Nevertheless, the pay scale of the Library of Congress police force has remained capped for better than 13 years while the other two Capitol Hill police forces have continued to receive increases. I feel that this situation needs to be addressed.

The men and women of the LOC police force are dedicated to the responsibility of providing quality protective services for the historians, scholars, students, teachers, and Members of Congress, who use this great national repository of knowledge and information. In my view if we want to continue to ensure optimum access to the Library's collections, we need to provide fair and equitable financial security for the members of the police force, and I urge that my colleagues pass this important legislation.

The bill was ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO POSTPONE CONSIDERATION OF SENATE JOINT RESOLUTION 187

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 308, Senate Joint Resolution 187, a joint resolution complying with the requirements of section 274(f)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985, be indefinitely postponed.

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

OLDER AMERICANS ACT AUTHORIZATION

Mr. BYRD. Mr. President, on behalf of Messrs. KENNEDY, HATCH, INOUYE, and EVANS, I ask that the Chair lay before the Senate a message from the House on H.R. 1451.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 1451) entitled "An Act to amend the Older Americans Act of 1965 to authorize appropriations for the fiscal years 1988, 1989, 1990, and 1991; to amend the Native Americans Programs Act of 1974 to authorize appropriations for such fiscal years; and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. BYRD. Mr. President, I move, on behalf of Mr. KENNEDY and others, that the Senate insist on its amendment and agree to a conference with the House on the disagreeing votes between the two Houses and that the Chair be authorized to appoint Senate conferees.

The motion was agreed to, and the Presiding Officer [Mr. DASCHLE] appointed Mr. KENNEDY, Mr. MATSUNAGA, Mr. PELL, Mr. COCHRAN, and Mr. HATCH conferees on the part of the Senate for all but the Native American programs portion of the bill; and Mr. INOUYE, Mr. MELCHER, Mr. DECONCINI, Mr. BURDICK, Mr. DASCHLE, Mr. EVANS, Mr. MURKOWSKI, and Mr. MCCAIN conferees on the part of the Senate for the Native American programs title only.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1417.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1417) entitled "An Act to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Developmental Disabilities Assistance Extension Act of 1987".

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.) is amended—

(1) in section 130, by striking "$50,250,000" and all that follows and inserting "such sums as may be necessary for fiscal years 1988 through 1990.";

(2) in section 143, by striking "$13,750,000" and all that follows in the first sentence and inserting "such sums as may be necessary for fiscal years 1988 through 1990.";

(3) in section 154, by striking "$9,000,000" and all that follows and inserting "such sums as may be necessary for fiscal years 1988 through 1990."; and

(4) in section 163, by striking "$2,700,000" and all that follows and inserting "such sums as may be necessary for fiscal years 1988 through 1990.".

SEC. 3. ADDITION OF FAMILY SUPPORT SERVICES TO LIST OF PRIORITY SERVICES WITH RESPECT TO PERSONS WITH DEVELOPMENTAL DISABILITIES.

(a) IN GENERAL.—Section 102(11)(C) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(11)(C)) is amended—

(1) by striking "and";

(2) by striking the period and inserting a comma; and

(3) by adding at the end "and family support services.".

(b) DEFINITION OF FAMILY SUPPORT SERVICES.—Section 102(11) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(11)) is amended by adding at the end the following new subparagraph:

"(I) The term 'family support services' means services designed—

"(i) to strengthen the role of the family as the primary care-giver;

"(ii) to prevent out-of-home placement;

"(iii) to reunite families with family members who have been placed out of the home; and

"(iv) to maintain family unity.".

(c) CONFORMING AMENDMENT.—Section 102(11)(D) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(11)(D)) is amended by striking "family support services,".

SEC. 4. REVISION OF DEFINITION OF SUPPORTED EMPLOYMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES.

Section 102(11)(F) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(11)(F)) is amended—

(1) by striking "paid" the first place it appears and inserting "competitive"; and

(2) by amending clause (i) to read as follows:

"(i) is for persons—

"(I) with developmental disabilities who are members of groups for which competitive employment has not historically occurred, or

"(II) for whom competitive employment has been interrupted or intermittent because of a developmental disability,

who, because of their disabilities, need intensive ongoing support to perform in a work setting;".

SEC. 5. REQUIREMENT OF PROVISION OF NOT LESS THAN ONE PRIORITY SERVICE TO PERSONS WITH DEVELOPMENTAL DISABILITIES.

(a) IN GENERAL.—Section 122(b)(4)(B) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6022(b)(4)(B)) is amended to read as follows:

"(B) The plan must provide for not less than one of the five priority services. The plan may, in the discretion of the State, provide for more than one priority service, or for one or more services described in section 102(11)(A)(ii), or both.".

(b) STRIKING OF CERTAIN REQUIREMENT WITH RESPECT TO EXPENDITURES OF PAYMENTS.—Section 122(b)(4) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6022(b)(4)) is amended—

(1) by striking subparagraph (C); and

(2) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(c) CERTAIN REQUIREMENT WITH RESPECT TO EXPENDITURES OF PAYMENTS.—Section 122(b)(4)(D)(i) of the Developmental Disabilities Assistance and Bill of Rights Act (as redesignated in subsection (b)(2)) is amended by striking "service activities in the priority services." and inserting "services described in subparagraph (B).".

SEC. 6. REVISION IN CATEGORIES OF REPRESENTATIVES ON STATE PLANNING COUNCIL.

Section 124(a)(3)(B)(ii) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6024(a)(3)(B)(ii)) is amended by inserting "or previously institutionalized" after "institutionalized".

SEC. 7. REPORTS BY STATES WITH RESPECT TO SERVICES PROVIDED TO PERSONS WITH DEVELOPMENTAL DISABILITIES.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.) is amended by adding at the end the following new part:

"PART F—DEVELOPMENTAL DISABILITIES STATUS REPORT

"REQUIREMENT OF CERTAIN ASSURANCES WITH RESPECT TO REPORT

"SEC. 171. (a) For each of the fiscal years 1988 through 1990, the State plan required in section 122 must contain or be supported by assurances satisfactory to the Secretary that, not later than September 30, 1990, the State will submit to the Secretary a report containing a comprehensive description of—

"(1) the eligibility standards established by the State for the receipt of services by persons with developmental disabilities;

"(2) a description of the services provided by the State to individuals with developmental disabilities;

"(3) the extent to which the State is meeting the needs of persons with developmental disabilities;

"(4) the extent to which the State is carrying out the purpose of this title, including a description of the manner in which the State has construed, and is construing, the term 'developmental disability';

"(5) the recommendations of the State for meeting the needs of all persons in the State with developmental disabilities, including recommendations with respect to appropriate initiatives by the State and by the Federal Government; and

"(6) with respect to the matters referred to in paragraphs (1) through (5), the views of persons in the State with developmental disabilities and the views of persons in the State who are advocates for persons with developmental disabilities.

"(b) For each of the fiscal years 1988 through 1990, the State plan required in section 122 must contain or be supported by assurances satisfactory to the Secretary that, in preparing the report required in subsection (a), the State will—

"(1) conduct a study for the purpose of obtaining the information required in subsection (a)(6) and will, in conducting such study, survey a representative sample of persons in the State with developmental disabilities and a representative sample of persons in the State who are advocates for persons with developmental disabilities; and

"(2) provide public notice with respect to the development of the report and such opportunities as may be necessary to provide interested persons an opportunity to present comments and recommendations with respect to the report.

"REQUIREMENT OF SUBMISSION OF STATEMENT OF PROGRESS WITH RESPECT TO REPORT

"SEC. 172. For each of the fiscal years 1989 and 1990, the State plan required in section 122 must contain a statement of the progress made by the State with respect to completing the report required in section 171.".

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1987, or upon the date of the enactment of this Act, whichever occurs later.

Amend the title so as to read: "An Act to amend the Developmental Disabilities Assistance and Bill of Rights Act to extend the programs established in such Act, and for other purposes.".

Mr. HARKIN. Mr. President, on behalf of myself, Mr. WEICKER, Mr. KENNEDY, Mr. HATCH, Mr. SIMON, Mr. STAFFORD, Mr. ADAMS, Mr. COCHRAN, and Mr. METZENBAUM, I rise to urge the passage of an amendment in the nature of a substitute to S. 1417, as amended by the House of Representatives—substitute amendment. We would like to commend our colleagues on the House side, particularly Representatives WAXMAN and MADIGAN, for their willingness to work together to develop this substitute amendment which will enhance the productivity, independence, and integration into the community of persons with developmental disabilities.

In the absence of a conference report on this legislation, we make this joint statement as members of the Subcommittee on the Handicapped and as cosponsors of the legislation. It is our understanding that the members of the House Subcommittee on Health and the Environment will be making an identical statement.

On July 21, 1987, the Senate unanimously passed S. 1417, the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987—the Senate bill—to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act—the act. On August 4, 1987, the House of Representatives passed H.R. 1871, the Developmental Disabilities Assistance Extension Act of 1987 and then agreed to strike all after the enacting clauses of the Senate bill and insert in lieu thereof the provisions of H.R. 1871, as passed by the House—the House amendment.

The substitute amendment to S. 1417, which we are considering today, incorporates many of the provisions contained in the Senate bill and the major principles included in the House amendment. This joint statement will focus only on the major differences between the Senate bill and the substitute amendment.

SPECIALIZED SERVICES OR SPECIALIZED ADAPTATIONS OF GENERIC SERVICES.

Section 102(8) of the Senate bill includes illustrations of "specialized services or special adaptions of generic services"—services—with respect to each of the Federal priority areas, case management activities, child development activities, community living activities, and employment activities, and services with respect to two or more Federal priority areas or services with respect to a State priority area.

The Senate bill included the illustrations in order to describe what a comprehensive State system of services might include; it was not intended to suggest that funds provided under the basic State grant were to be used to pay for a particular service included in the list of illustrations. Funds provided under the basic State grant are to be used for priority area activities which include, among other things, activities to increase the capacities and resources of agencies to develop such a system of services, the conduct of studies and analyses, gathering of information, development of model policies, presentation to policymakers, demonstrations, outreach and training.

In order to avoid any confusion regarding the purposes for which basic State grant funds are to be used—priority area activities—the substitute amendment deletes the illustrations of "specialized services or special adaptations of generic services" from the legislation. However, because these illustrations reflect possible components of a comprehensive State system, we are including them in this joint explanatory statement.

With respect to case management activities, the term "specialized services or special adaptations of generic services" includes—

First, participation by a case manager in the development of a comprehensive individualized habilitation plan under section 123; second, referral to, and coordination of, social, health, educational, support and other serv-

ices as identified in such individualized habilitation plan; third, monitoring to ensure the access, by the person with developmental disabilities and the family of such person, to appropriate services and to determine progress in meeting goals and objectives specified in such individualized habilitation plan; and fourth, the provision of assistance to a person with developmental disabilities to enable such person to obtain access to all services to which such person is entitled, and to effect changes in the service delivery system that will result in increased access to services for such person.

With respect to child development activities, the term "specialized services or special adaptations of generic services" includes early intervention services.

With respect to community living activities, the term "specialized services or special adaptations of generic services" includes—

First, inhome services, such as personal aides and attendants and other domestic assistance and supportive services; second, special living arrangements; third, group living services; fourth, recreation, socialization, and leisure time services; fifth, nonvocational social development services; and sixth, placement and continuing support services.

With respect to employment activities, the term "specialized services or special adaptations of generic services" includes—

First, services such as employment preparation and training leading to supported employment and ongoing support services; second, follow-along services; third, incentive programs for employers who hire persons with developmental disabilities; fourth, services to assist transition from special education to employment; fifth, services to assist transition from sheltered work settings to supported employment and nonsupported employment in integrated work settings; and sixth, job placement services.

With respect to activities which are within two or more Federal priority areas or activities which are within a State priority area, the term "specialized services or special adaptations of generic services" includes—

First, outreach and identification activities; second, diagnosis, assessment, and periodic reassessment to determine each person's goals, strengths, functional limitations, and needs for specific services and other assistance; third, information and referral services; fourth, treatment; fifth, family support services; sixth, respite care; seventh, foster care; eighth, day care; ninth, assistive technology; 10th, counseling of a person with developmental disabilities and the family of such person; 11th, transportation; 12th, protective and other social and sociological services; 13th, education and training of personnel, persons with developmental disabilities, and family members of such persons; and 14th, services to promote and coordinate activities to prevent developmental disabilities.

FOCUS OF THE LEGISLATION ON THE FAMILY

In recognition of the central role played by the family, the substitute amendment clarifies that priority area activities should not only enhance services for persons with developmental disabilities but should also address the needs of their families. The substitute amendment also includes "supports for the elderly parent" as an example of a "family support service" and includes "family support services" and "nonfinancial supports" as illustrations of "community living activities." The Senate bill had included only "nonfinancial supports." Consistent with these changes, it is our intent that State planning councils should describe family support service activities undertaken by States in their annual reports to the Secretary.

By including express reference in the legislation to family support services, we do not intend to restrict efforts by States to develop programs for involving friends, neighbors, and other members of the community in enhancing opportunities for persons with developmental disabilities nor do we intend to restrict in any way the freedom of adults with developmental disabilities to select their living arrangements. To the contrary, it is our intent that persons with developmental disabilities have the opportunity to select friends, neighbors, and other members of the community to live with or to provide assistance in accessing and obtaining the supports and services necessary to enhance their independence, productivity, and integration into the community.

STATE PRIORITY AREA

The substitute amendment defines a "State priority area" as an area in the State considered essential by the State planning council. This will provide flexibility to the council to include, at its discretion, an additional focus to the basic State grant. Priority area activities in two or more Federal priority areas, which was included in the definition of "State priority area" in the Senate bill, has been deleted. Such activities should be included under the applicable Federal priority areas.

EARLY INTERVENTION SERVICES

The substitute amendment defines the term "early intervention services" to mean services provided to infants, toddlers, young children and their families to identify, assess, and treat developmental disabilities at the earliest possible date to prevent more serious disability, to ensure maximum growth and development, and to assist families in raising a child with a developmental disability.

It is our intent that early intervention services address infants," toddlers," and young children's needs in the areas of physical and cognitive development, language and speech development, psychosocial development, self-help skills, and include the following services: family training, counseling and home visits, special insruction, speech pathology and audiology, occupational therapy, physical therapy, psychological services, medical and health services, nutrition services, and early identification, screening and assessment services.

It is our intent that the State planning councils coordinate their planning and advocacy activities in the area of child development with the early intervention councils authorized under part H of the Education of the Handicapped Act.

REPORT ON FEDERAL POLICIES IMPACTING ON PERSONS WITH DEVELOPMENTAL DISABILITIES.

The substitute amendment directs the Secretary to include in the annual report required by section 107(c) of the act, Federal policies that impact on the ability of States to address the needs of persons with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments.

DESIGNATED STATE AGENCY

The substitute amendment includes the provision in the Senate bill explicitly authorizing a State planning council to be the designated agency if such council may be so designated under the laws of the State.

SUPPLEMENT, NOT SUPPLANT

The substitute bill does not change the provision in current law that basic State grant funds must be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds. It is our intent, however, that the Secretary develop objective standards for determining whether a State is in compliance with this provision and that these standards be included in the regulations.

REVIEW AND REVISION OF THE STATE PLAN

The substitute amendment includes the provision in current law—deleted by the Senate bill—which specifies that the plan must provide for the review and revision of, a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of services for persons with developmental disabilities and their families. The substitute amendment also specifies that this review and revision must occur not less often than once every 3 years and that it must include the reviews

and analyses conducted and report prepared under section 122(f) and contain, at a minimum, the analyses which were set out in section 122(b)(5)(A) of the Senate bill and which are now set out in section 122(b)(5)(B) of the substitute amendment.

DATA COLLECTED UNDER EDUCATION OF THE HANDICAPPED ACT

The substitute amendment reinserts section 122(b)(4)(D) in current law—deleted by the Senate bill—which specified that the plan must be developed after consideration of the data collected by the State educational agency under section 618(b)(3) of the Education of the Handicapped Act, pertaining to the number of children exiting the special education system each year).

SIXTY-FIVE PERCENT OF THE BASIC STATE GRANT TO BE USED FOR FEDERAL AND STATE PRIORITIES

The substitute amendment clarifies congressional intent that the State plan must provide that 65 percent of the basic State grant be expended for priority area activities. However, only activities in the priority area of employment are mandatory. Activities in the other Federal priority areas are adopted at the discretion of the State as is the decision whether or not to pursue a State priority area or use these funds for the analyses specified in sections 122(b)(3), 122(b)(5)(B), and 122(f).

DATES FOR THE COMPLETION OF THE SPECIAL REPORT

The substitute amendment specifies that the special report required by section 122(b)(3) and section 122(f) must be completed by January 1, 1990, instead of April 1, 1990; the report must be submitted by the Governor of each State to the Secretary by January 15, 1990, instead of April 15, 1990; and the Secretary must complete a summary of these reports and submit it to Congress by April 1, 1990, instead of September 30, 1990. These changes will ensure that the data contained in these reports will be available to Congress in a timely fashion as it prepares for the reauthorization of the legislation.

CARRYOVER AND LIQUIDATION

The policy governing the carryover of funds currently set out in section 1914(2) of the Public Health Services Act is made applicable to the basic State grant and grants to support protection and advocacy systems.

With respect to the liquidation of obligations by grantees, it is our intent that all obligations incurred pursuant to a grant made under the act for a specific Federal fiscal year must be liquidated within 2 years of the close of the Federal fiscal year in which the grant was awarded. Further, the Commissioner may waive these requirements when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute. Our expression of intent regarding liquidation also applies to protection and advocacy systems.

WITHHOLDING

The substitute amendment deletes the changes to current law included in the Senate bill and clarifies that the Secretary's responsibility to withhold funds applies particularly to a failure to comply substantially with section 122(b)(3) or 122(f) pertaining to the special analyses and reports to be completed by the State planning council. The intent of this change is to indicate the importance we place in ensuring compliance with these new sections; it is not our intent that the Secretary include a separate standard for ensuring compliance with these sections.

FEASIBILITY STUDY

The substitute amendment includes the provision in the Senate bill authorizing the Secretary to make grants to universities to study the feasibility of establishing new university affiliated programs and satellite centers in those States which currently do not have them. A grant may not exceed $35,000. It is our intent that the authority to fund such studies should not be construed to permit the Secretary to require an applicant for a new university affiliated program or satellite center to complete such a study as a condition to applying for such a program or center.

CONSIDERATION BY UAP OR SATELLITE OF PUBLIC COMMENT BEFORE SUBMISSION OF GRANT APPLICATION

It is our intent that the UAP or satellite center receive and respond to the needs of the State in which the program will be conducted. Requirements concerning public comments and comments from the council may be satisfied by establishing a broad-based advisory council with appropriate representation from the State planning council and interested consumer advocacy organizations and members of the general public or arranging for a systematic program to provide review and comment through the duration of the UAP or satellite center.

Moreover, the phrase "general public" is intended to provide for and encourage comments outside of the formal processes established by the State planning councils as necessary and appropriate. However, the provision requiring comments from the general public shall not be construed as requiring the publication of applications in general circulation newspapers or the convening of public hearings on a statewide basis.

FUNDING FOR TRAINING IN AREAS OF EMERGING NATIONAL SIGNIFICANCE

It is our intent that of the funds appropriated for training in areas of emerging national significance under section 152(b), an equal one-third, share should be allocated to aging, early intervention, and paraprofessional training, respectively. Further, any additional funds made available pursuant to section 154(c) shall be used for training grants authorized under section 152(b) and not for grants under section 152(c). Moreover, grants issued under this new authority must be widely dispersed geographically.

NEW UAP'S AND SATELLITE CENTERS; REVIEW OF EXISTING UAPS AND CENTERS

The substitute amendment makes it clear that the Secretary may not deny an application for a university affiliated program or satellite center solely because of the size of the population proposed to be served if such application proposes to serve the population of an entire State.

Further, the substitute amendment directs the Secretary, by regulation, to require appropriate technical and qualitative peer review of applications for assistance under section 154 of the act; specifies the qualifications of the persons conducting the reviews; and directs the Secretary to approve an application received for fiscal year 1990 and thereafter only if such application has been recommended by the persons conducting the reviews subject to waiver authority included in the legislation.

It is our intent that peer review groups will be composed of individuals with expertise and experience in the fields appropriate to the activities conducted by university affiliated programs and satellite centers. The Secretary shall ensure that it uses procedures to preclude conflicts of interest between grantees and individuals who may serve on the peer review group.

SPECIAL PROJECTS

In addition to funding the specific categories of projects set out in section 162(a)(1), it is our intent that the Secretary fund projects which support and enhance the ability of the State planning councils, the protection and advocacy systems, and the university affiliated programs and satellite centers to implement the amendments made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987. For example, funds could be used to support a project providing technical assistance to State planning councils in planning, conducting, and reporting the policy analyses required by sections 122(b)(4)(B) and 122(f) of the act, as added by the substitute amendment.

Mr. REID. Senator HECHT and I would like to engage in a colloquy with Senator HARKIN, the chairman of the Subcommittee on the Handicapped and the chief sponsor of S. 1417.

Mr. HARKIN. I would be glad to engage in a colloquy.

Mr. REID. In my home State of Nevada, the State planning council is currently using a limited portion of its basic State grant to purchase highly specialized community-based services for particular individuals who are de-

velopmentally disabled when: such individuals need these unique services to maintain or improve their independence; no agency currently funds such services; and the individuals are too poor to afford these services or cannot meet current agency eligibility criteria. These funds are not used for persons in institutions.

Mr. HECHT. Permitting the use of funds under the basic State grant for the purposes described by my distinguished colleague from Nevada is, in my opinion, consistent with the purpose of the act to increase the independence, productivity, and integration into the community of persons with developmental disabilities. Do you agree?

Mr. HARKIN. Section 102(10) of the act, as amended by S. 1417 specifies the activities which may be supported with funds under the basic State grant. For example, the council may pursue activities that are designed to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services or other assistance that respond to the unique needs of persons with developmental disabilities and their families. This activity is included in order to reduce the likelihood that the situation that currently exists in Nevada will occur in the future.

But in the interim, the State may use a limited portion of its basic State grant to pay for the type of services provided and under the circumstances which Mr. REID described. For example, the State planning council may fund an activity which demonstrates a new way to enhance the independence, productivity, and integration into the community of persons with developmental disabilities, including new ways to enhance specialized services or specialized adaptations of generic services for such persons.

In short, while use of basic State grant funds to avoid institutionalization under the circumstances described by my distinguished colleagues from Nevada are permissible, they are not preferred. When Congress reauthorizes this act again in 3 years, we will want to examine how the States have used the basic State grant funds for systemic change, which is the preferred use for these funds.

Mr. HECHT. Thank you for your explanation. I find it to be most reassuring.

Mr. BYRD. Mr. President, on behalf of Mr. HARKIN, I move to concur in the amendment of the House to S. 1417, the developmental disabilities assistance bill, with a further amendment.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WILSON. Mr. President, I move to lay that motion on the table.

EXPRESSING APPRECIATION OF THE CONGRESS TO THE CITY OF PHILADELPHIA, THE NATIONAL PARKS SERVICE, AND WE THE PEOPLE 200, INC.

Mr. BYRD. Mr. President, I send to the desk a Senate concurrent resolution on behalf of myself, Mr. DOLE, Mr. HEINZ, and Mr. SPECTER, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 80) to express the appreciation of the Congress to the City of Philadelphia, the National Park Service, and We the People 200, Inc., for their hospitality during the July 16, 1987, ceremonies commemorating the bicentennial of the Great Compromise.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Are there amendments to the concurrent resolution?

If not, the question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 80) was agreed to, as follows:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby expresses appreciation to the City of Philadelphia, the National Park Service, and We the People 200, Inc., for their hospitality during the July 16, 1987, ceremonies commemorating the bicentennial of the Great Compromise, which determined the basis of representation in the Senate and the House of Representatives.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

SENATE RESOLUTION 352, 99TH CONGRESS, RELATING TO THE COMMEMORATION OF THE BICENTENNIAL OF THE SENATE OF THE UNITED STATES

Mr. BYRD. Mr. President, I send to the desk a Senate resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 293) to amend Senate Resolution 352, 99th Congress, relating to the commemoration of the bicentennial of the Senate of the United States.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Are there amendments to the resolution?

If not, the question is on agreeing to the resolution.

The resolution (S. Res. 293) was agreed to, as follows:

S. RES. 293

Resolved, That section 7(a) of S. Res. 352, 99th Congress (as amended by S. Res. 166, 100th Congress), is further amended to read as follows:

"SEC. 7. (a) The actual and necessary expenses of the Commission, including the employment of staff at an annual rate of pay and the employment of consultants at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the Contingent Fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved by the Chairman of the Commission or his designee; except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of my friend on the other side of the aisle as to whether or not Calendar Order No. 301 and Calendar Order No. 350 on the executive calendar have been cleared for action.

Mr. WILSON. Mr. President, I am pleased to inform my friend that they have been.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session, that the two nominations be considered en bloc, agreed to en bloc, the motion to reconsider en bloc be laid on the table, and that the President be immediately notified of the confirmation of the nominees.

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

The nominations considered en bloc and confirmed en bloc are as follows:

IN THE NAVY

The following-named officer, under the provisions of Title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under Title 10, United States Code, section 601:

To be vice admiral

Rear Adm. William D. Smith, 524-32-0106/1120, U.S. Navy.

DEPARTMENT OF DEFENSE

The following-named officer for reappointment as Chairman of the Joint Chiefs of Staff under Title 10, United States Code, section 152.

To be Chairman of the Joint Chiefs of Staff

Adm. William J. Crowe, Jr., 488-20-0035, United States Navy.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. WILSON. Mr. President, while we are waiting I would simply point out that the actions that we have just taken include the confirmation by the Senate of the President's judgment to reappoint as Chairman of the Joint Chiefs of Staff a very distinguished military officer, Adm. William J. Crowe, Jr., and I think that bespeaks not only the President's confidence, but the concurrence of the Members of the Senate. As a member of the Senate Armed Services Committee along with the other members, I have been privileged to experience not only Admiral Crowe's expertise, but also the kind of personal leadership that he has provided in what are clearly challenging times.

With our confirmation, which I am sure is all that he asks, I think I can safely take the liberty of wishing him well and extending the appreciation of all colleagues on both sides of the aisle.

DOD AUTHORIZATION

"COPING WITH THE CONSEQUENCES OF CLOSING THE N-REACTOR"

Mr. ADAMS. Mr. President, as my colleagues know, both the Senate Armed Services Committee and the Senate Appropriations Committee have recommended that the N-reactor, located in Washington State, be placed in cold standby status. I support that decision. As I have indicated in the past, I simply do not believe that the documented risks of operating this aged reactor are outweighed by the need for additional nuclear materials.

My decision to support a cold standby status for the N-reactor does not, however, give me any pleasure. There is no question that this action will have an effect on the economy of the area which has become heavily dependent on nuclear related activities. And there is also no question about the fact that the economic effect will be both substantial and long-lasting.

Last week the Senate adopted an amendment which Senator EVANS and Senator HATFIELD and I offered to increase funding for defense waste clean up activities at Hanford. That action was motivated by both the pressing need to address the waste issue and by a desire to provide some economic assistance to the people and the area. That was a positive step; but it isn't sufficient. We cannot pretend that we can simply shift every worker from one nuclear related job to another. If the area is to survive, it needs to diversify.

That will not be an easy task. There are no magic solutions, no simple actions which can replace—in 1 day or 1 month or 1 year—the jobs which will be lost when the N-reactor closes. But the fact that the task is not easy does not mean that it ought not be begun.

The people who work and live in the Tri-Cities which surround the Hanford nuclear reservation are, as they should be, proud of the work they have done for the Nation and proud of the community they have built. They have organized a support group, "the Hanford family," which is dedicated to preserving and strengthening their hometowns. I often disagree with their conclusions, but I share their concern and I admire their dedication and determination to keep their community intact. These people have roots in the region and they don't want to see their towns wither and die.

They don't have to.

We can begin the process of helping the Tri-Cities cope with the consequences of nuclear activity at Hanford. The Department of Defense has some resources which can provide some assistance. The Office of Economic Adjustment, within DOD, has a proven track record for helping communites cope with the impact of base closings. I believe that the Department has an obligation to help the people of the Tri-Cities cope with the consequences of placing the N-reactor in cold standby status. That is why I have requested that Secretary Weinberger direct that Office to provide assistance to the Tri-Cities. There are already plans underway to help create the kind of economic diversification program which is needed: the Governor, the State legislature and the Tri-Cities themselves have initiated a number of studies and projects. Those efforts need and deserve Federal support. I believe that the involvement of the Office of Economic Adjustment is a step toward the sort of Federal involvement which is needed.

I appreciate the fact that my colleagues, whose States and people are not directly affected by the our decision about N-reactor, have been willing to join me in requesting that the Secretary of Defense instruct the Office of Economic Adjustment become involved. That involvement is not, by itself, an answer. But it is a beginning and it is a sign that the Federal Government recognizes a continuing obligation to be of assistance to people who have, over the years, been of great assistance to our Nation.

Mr. President, I ask unanimous consent that the text of this letter be inserted in the RECORD.

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

U.S. SENATE,
Washington, DC, September 29, 1987.

Hon. CASPAR WEINBERGER,
Secretary of Defense,
The Pentagon, Washington, DC.

DEAR MR. SECRETARY: As you know, both the Senate Armed Services Committee and the Senate Appropriations Committee have recommended that the N-Reactor, located in Washington state, be placed in a cold standby status. Whether the N-Reactor is closed now, as a result of legislation, or in the near few years, as a result of the plant reaching the end of its productive life, the Tri-Cities which surround the facility will be faced with a serious blow to the local economy. The people of the Tri-Cities deserve more than our thanks for their years of dedicated and skilled work at this facility: they deserve assistance in adapting to the loss of employment which will result and they will need help in their ongoing efforts to diversify the economy of the area.

In that context, Mr. Secretary, we are writing to request that you direct your Department's Office of Economic Adjustment and the Economic Adjustment Committee (which includes representatives of the Department of Energy) to support the process of facilitating studies and technical assistance which will be required to minimize the impact of the facility closing. Both the local communities (through TRIDEC, the Tri-Cities Industrial Development Council) and the state (through action taken in the legislature and the Governor's Office) have already undertaken economic diversification studies to address the needs of the area. But, as you know, the Office of Economic Adjustment has a long-demonstrated ability to bring federal resources and expertise to bear in situations like those facing the Tri-Cities. We believe that the Office of Economic Adjustment could play a catalytic role in bringing together the key players and identifying the needed resources to help the Tri-Cities cope with the consequences of closing the N-Reactor.

Given the magnitude and immediacy of the problems facing the area, we request that you direct the Office of Economic Adjustment to become involved immediately. Should the Office require additional resources to carry out this task, we stand ready to provide whatever assistance we can.

We appreciate your cooperation in this matter.

Sincerely,

BROCK ADAMS.
BENNETT JOHNSTON.
SAM NUNN.
JOHN STENNIS.
JOHN WARNER.
MARK HATFIELD.

THE N REACTOR

Mr. HATFIELD. Mr. President, although I am deeply troubled by a number of provisions as well as the overall spending level in the bill now before us, I am very pleased by the provision which would place the N Reactor at the Hanford Nuclear Reservation in Washington State on cold standby status. The Senate Appropria-

tions Committee has included a similar provision in the energy and water appropriations bill, and it is my hope that this aging and dangerous facility will not be restarted.

While this action will be a relief to those residents of the Pacific Northwest who have been concerned with the constant threat that the N Reactor presents to their health and safety, it could have considerable economic impact on the Hanford area. In particular, there is considerable concern for the facility's employees whose jobs will be eliminated by the implementation of a cold standby mode at the reactor.

Of course I share the concern over the men and women whose jobs will be eliminated if the N Reactor is placed on cold standby, but I am convinced that the problems we may face are not insurmountable. In fact, State and local efforts to help area residents respond to the economic impact are underway already. The challenge now is to get the Federal Government actively involved in such efforts.

As an editorial which recently appeared in the Spokane, WA, Chronicle pointed out, the "jobs" argument for continued operation of Hanford simply does not wash. I ask unanimous consent that the editorial, "Shut Down Hanford? Fears Are Overstated," be printed in the RECORD.

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

[From the Spokane (WA) Chronicle, Sept. 4, 1987]

SHUT DOWN HANFORD? FEARS ARE OVERSTATED

If Congress closes the aging plutonium production plants at the Hanford Nuclear Reservation, Washington state will lose tax revenue and Tri-Cities residents will lose jobs and suffer stress disorders, according to a self-serving U.S. Energy Department study that may receive more attention than it deserves.

Last winter, a study the department now characterizes as preliminary claimed that Hanford plant shutdowns would cost 20,000 jobs statewide and $50 million in lost state tax revenues. The new study, which the department says is more accurate, predicts a loss of 13,800 jobs by 1996 and a loss of $33 million in state tax revenue.

It also warns that in the Tri-Cities, the loss of jobs could raise suicide rates, alcohol and drug abuse, emotional depression and family problems.

Like too many other debates over the continuation of outmoded federal undertakings, discussion of Hanford's nuclear weapons plants is beginning to leave the impression that Hanford somehow mutated, over the decades, into a welfare program for scientists, engineers, technicians and bureaucrats.

In the beginning, the government built and operated Hanford because it needed fuel for nuclear warheads.

Now, however, the United States possesses many more warheads than it needs to destroy conceivable enemies or to deter nuclear attack. It builds more and more warheads in a compulsive numbers game, a contest that no longer has any relevance to military security.

One reason it has proved difficult to reduce production is that the bureaucracies, businesses and, yes, communities that grew up around this endeavor now want to preserve their existence.

So, we hear talk about the loss of jobs, while information on which to base a decision about whether we need more plutonium is concealed by arrogant officials from the public and the democracy that this endeavor originally protected—and now endangers.

Hanford's N Reactor and associated processing plants are growing old and face serious challenges to their safety. Even in the increasingly unlikely event that they are deemed safe to operate, it is inevitable that they will be shut down for good within several years.

What then? About 6,000 Hanford jobs will cease to exist. But that inevitable event will not necessarily send ripples of additional job losses, revenue declines and stress disorders spreading into the Tri-Cities and beyond.

Hanford may find a new mission, and that would create jobs. Cleaning up the radioactive and chemical wastes left by its past operations is one chore that needs doing—although it appeals to an ideological spectrum different from the one that supports the arms race.

Working with environmentalists instead of fighting them belongs on the agenda of forward-thinking Tri-Cities boosters.

It also is suggested that new production facilities be constructed to replace the old. But in view of the oversupply of warheads and the probability that new production facilities will be constructed in South Carolina, Congress is obliged, as a steward of limited public funds, to question the need for duplicate facilities at Hanford.

Those concerned about jobs in the Tri-Cities will show foresight if they strive to wean the community from dependence on the government. In the past few months, Westinghouse's Tri-Cities Investment Management Co. has begun to do so by investing seed capital in promising private businesses.

There—not in political pressure to preserve unneeded jobs and plants of questionable safety—lies hope.

Mr. SARBANES. Mr. President, I strongly support the provisions in S. 1174, the Department of Defense authorization legislation, restricting the Department of the Navy from testing the electromagnetic pulse simulator known as EMPRESS II in the Chesapeake Bay. I want to thank the chairman and ranking minority member, Senators NUNN and WARNER, for their efforts in including these provisions in the bill.

The Department of the Navy has proposed operating an electromagnetic pulse radiation environmental simulator for ships program, EMPRESS II, near Bloodsworth Island in the Chesapeake Bay. This program, designed to simulate the effects of nuclear explosions on naval ships, consists of a barge mounted generator capable of discharging bursts of up to 7 million volts of electricity. During EMPRESS II testing operations, an area of 12.6 square nautical miles around the site would be closed to commercial and recreational vessels for at least 20 days each year. The Navy anticipates continued testing for approximately 20 years, with operations beginning in fiscal 1988.

Since this project was first proposed several years ago, the State of Maryland, our entire congressional delegation, State and local representatives, the Department of the Interior, the Environmental Protection Agency, and numerous public and private organizations have expressed serious concerns about the consequences of testing EMPRESS II in the sensitive Chesapeake Bay ecosystem. In our view, there are still too many unknown factors to guarantee that this program will not have an adverse impact on the bay, our Chesapeake watermen who rely on these waters for their livelihood, and the bay community. We are just beginning to understand and address the problems that have led to the decline of our Nation's largest and most productive estuary. Through an effective partnership of State, regional, and Federal agencies—of which the Department of Defense is an important part—and citizens concerned about the bay, we have embarked on an aggressive program to protect and restore the living resources and water quality of the bay.

In light of this effort and the continuing unanswered questions relating to the EMPRESS II testing program, it is especially inappropriate to locate this project anywhere in the Chesapeake Bay. This view was recently underscored by the EPA, which, after reviewing the supplemental draft environmental impact statement on the project, stated:

> Based upon this review, EPA maintains its original conclusion that the Chesapeake Bay because of its national value as a natural resource is an inappropriate location for a largely experimental process.

In addition, the Maryland Department of Transportation, the Maryland Port Administration and the Association of Maryland Pilots have concluded that the EMPRESS II project will have very serious adverse impacts on the Baltimore channel project and on commercial shipping to the Port of Baltimore. The proposed location of the project intrudes upon the shipping channel through which approximately 80 percent of the bay's commercial traffic currently operates. Testing would effectively close this channel for at least 20 days each year.

Ships sailing to the Port of Baltimore during the testing period would be forced to either delay passage until testing was completed, use the channel at great risk to the sophisticated computer and navigational systems aboard their vessels, or travel outside the channel and risk collision or running aground. The result would mean millions, even tens of millions of dollars,

in lost maritime trade and revenues to the State. In view of the tremendous importance of shipping and the Baltimore channel project to the economic vitality of our State, the proposed testing site is unacceptable.

The State of Maryland has enjoyed an excellent relationship with the U.S. Navy for many years. We are proud of the important bases which the Navy maintains in Maryland. We do not seek to interfere with legitimate testing needed for our country's defense. However, due to the adverse environmental and economic consequences of operating the EMPRESS II in the Chesapeake Bay, we believe the Navy should select an alternative site, outside of the bay, for this project.

I applaud adoption of the provisions in this legislation prohibiting the Department of the Navy from proceeding with testing of EMPRESS II in the bay.

BOB LEDERER

Mr. HATFIELD. Mr. President, I rise today with great sadness to note the passing of my good friend, Bob Lederer. The executive vice president of the American Association of Nurserymen, Bob Lederer was devoted to making our Nation a more beautiful place for all of us. Last Saturday, less than a week after undergoing heart surgery, he quietly passed away. But the spirit of his ideas and the fruits of his labor will endure.

Bob Lederer and I were drawn together, Mr. President, by our enthusiasm for horticulture. Perhaps my best tribute to him is a story of that enthusiasm.

To celebrate Arbor Day several years ago, I wanted to plant one of my favorite trees—Dawn Redwood—on the Capitol Grounds. I was undaunted in my determination for the project, but the logistical problems seemed insurmountable. In stepped Bob, who translated my enthusiasm into action. He found a local nursery with a suitable tree for the location and had it delivered. On the eve on the planting, we discovered that the nursery had mistakenly given us the wrong specimen. The nursery was unable to get another tree here in time for the planting, so we went ahead with the ceremony and planted the tree we had been sent. But Bob was not satisfied. The very morning after we had planted the first tree, he met with the landscape architect to arrange a switch.

What was once a scrawny twig has turned into a strong and healthy tree. Three years later, that tree—the one we really wanted all along—stands as a testament to Bob's dedication.

Of course it is not just on Capitol Hill that Bob's work continues to flourish. Schools and parks all across America proudly display his work, as do the National Arboretum and the White House itself.

Bob devoted himself to a great number of programs—Friends of the U.S. National Arboretum, the National Council for Therapy and Rehabilitation through Horticulture, and the Pageant for Peace Committee, which displays the National Christmas Tree each year. One of the many honors bestowed upon him was the Special Award of the Oregon Association of Nurserymen, given by the nurserymen of my home State. In addition, in 1969 Bob was earned the Key Man Award, the highest honor given by the American Society of Association Executives. But in the end, Mr. President, no résumé of accomplishments could possibly reflect the contributions Bob made to his community, to our community.

I hope all my colleagues will join me in sending condolences and prayers to Bob's wife Ramona and their family. In this time of sorrow, I only hope they can find comfort in the tremendous legacy he left us all.

ELIZABETH HANFORD DOLE, SECRETARY OF TRANSPORTATION

Mr. STAFFORD. Mr. President, a distinguished public official is today completing 4½ years of service as Secretary of Transportation. Elizabeth Hanford Dole has made public service a career and has carried out her duties as Secretary of Transportation with competence and integrity.

It was my pleasure as chairman of the Environment and Public Works Committee to welcome Mrs. Dole to the committee for an informational hearing as Secretary-Designate in January 1983.

During that hearing, it was very evident to the members of the committee that Elizabeth Dole would bring a variety of skills to the job of Secretary of Transportation. Her training and experience were outstanding. The committee found her to be well qualified for the position of Secretary of Transportation.

Since that time I have had many occasions to work with Secretary Dole on transportation issues. It has been a pleasure to work with her, and I want to especially note and commend her commitment to safety issues. During a time of reduced spending and concern over deficits, Secretary Dole continued to press for safer transportation programs and succeeded in initiating and implementing new programs which have made our transportation system safer.

Mrs. Dole's résumé contains many firsts and now she has added to it the distinction of being the first woman to serve as Secretary of Transportation, a well deserved honor.

I want to join with my colleagues today in wishing Elizabeth Hanford Dole well, and in recognizing her and thanking her for a job well done.

TRIBUTE TO SECRETARY ELIZABETH DOLE

Mr. DOMENICI. Mr. President, I would like to take a few moments to express my thanks and admiration for the excellent work of Secretary of Transportation Elizabeth Dole, who leaves her post effective tomorrow.

Serving as Secretary longer than anyone in the Department's history, Elizabeth Dole held this post with great integrity and dedication. She leaves with the highest praise, and a legacy of dedication to safety.

Under her leadership, measures have been taken to enhance the safety of our Nation's highways and roads. These actions affect us daily. And they may be responsible for our good health—even our being alive.

Two policy decisions stand out: increasing the minimum drinking age and increasing dramatically the use of seatbelts.

These two policies have the potential to save thousands of lives annually, and averting large numbers of serious injuries as well. Most States have established a minimum drinking age of 21, and many States have also passed legislation to require mandatory use of seatbelts.

Mrs. Dole has served at a time when we are hearing and reading a lot in the news regarding commercial aviation. Each of my colleagues could recite a personal incident or two about less-than-ideal air service. Secretary Dole has acted to improve this situation dramatically. By hiring additional air traffic controllers, and by requiring additional performance reporting by the airlines, the public will be better served.

In spite of all of the negative accounts in the news regarding the near misses and the like, let us remember that the recent tragedy in Detroit was the first major commercial aviation accident in the United States in 2 years.

Secretary Dole also played a major role in transferring from the Federal Government to the private sector certain responsibilities that can be performed more efficiently by the private sector.

A primary goal of the administration in this regard was to remove itself from the business of owning a railroad. After guiding the Conrail freight railroad into profitability, Secretary Dole led the effort that produced last year's agreement to sell Conrail in a public offering, satisfying both public and private interests.

Similar results were achieved with last year's transfer of control of Washington National and Washington

Dulles Airports to a regional authority. As the only two airports that are federally owned, these airports had suffered neglect for many years. The result, I am convinced, will be improved service.

Mr. President, Elizabeth Dole will be sorely missed by the administration, the Congress, and the American people. I wish her particular good fortune.

MITCHELL THORP, A GOOD FRIEND

Mr. SASSER. Mr. President, it is with great sadness that I rise today to mourn the passing of a great American and a dear friend, Mr. Mitchell Thorp, of Johnson City, TN.

Mitchell passed away last Sunday, after a valiant fight to recover from a stroke and its complications. I want to extend my deepest sympathies to his wife, Hilda, and his three children.

Mitchell devoted his life to his family, his friends, his community, and his country. I am honored to have been one of his friends and the recipient of his always wise counsel.

Although he held a law degree, Mitchell spent his adult life immersed in the business world as owner of a plumbing and electrical supply concern, a land development corporation, and an investment firm.

Always active in his community, Mitchell was the first chairman of the Johnson City area industrial commission and a past president of the Johnson City Cardinals baseball team.

He was a tireless worker for development and industrial growth, but he believed that growth should be orderly. Mitchell was particularly proud of his three terms as treasurer of the Southern Growth Policies Board.

Mitchell's interest in the community was not limited to economic growth in the region. He was also active in the Johnson City Little League and Babe Ruth baseball. He received a national merit award of little league baseball and the Johnson City Park and Recreation Board's Mr. Baseball Award.

So, as you can see, Mr. President, Mitchell Thorp was a man of measure. He was a man who deeply believed in his country and the opportunities this democracy affords those who are willing to work for success.

Mitchell also believed that, just as a man should reap the rewards of his successes, he should also return a portion of himself to his community.

I shall miss Mitchell. But, I think I speak for others who knew him when I say that I am a better and wiser man because of his friendship.

BICENTENNIAL MINUTE

SEPTEMBER 30, 1918: PRESIDENT WILSON SPEAKS OUT FOR WOMEN'S SUFFRAGE

Mr. DOLE. Mr. President, 69 years ago today, on the afternoon of September 30, 1918, President Woodrow Wilson made a surprise visit to Capitol Hill to address the Senate. The subject of the President's speech was votes for women, and, in a dramatic turnabout, he strongly urged the Senators to approve the suffrage amendment then before them.

The President had inadvertently added impetus to the suffrage movement by casting World War I as a crusade for democracy. It was unconscionable, argued suffragists, for America to deny its female citizens the right to participate in government, while at the same time fighting a war to "make the world safe for democracy." Wilson saw the issue differently. He opposed a constitutional amendment granting women the suffrage, and favored State action instead. His opposition sparked stormy demonstration by suffragettes. Hundreds of women protesters, who chained themselves to the White House fence and blocked its entrances, were arrested and jailed, at the direction of the Wilson administration.

In January 1918, the President experienced a change of heart. He endorsed the suffrage amendment, explaining his conversion in terms of the war. The House quickly approved the amendment, but the Senate remained opposed. Its intransigence prompted the President's September 30 visit, on the eve of another vote. In his impassioned plea, Wilson urged adoption of the amendment as "virtually essential to the successful prosecution of the great war of humanity in which we are engaged." Yet, while the Senators had cheered as Wilson entered their Chamber, they voted down the amendment after he left, and again in February 1919. It wasn't until the spring of 1919 when a new Congress convened that the House and Senate finally approved the suffrage amendment. In August 1920 the 19th amendment giving women the right to vote became a part of the Constitution of the United States.

TRIBUTE TO HAMILTON CAROTHERS

Mr. WARNER. Mr. President, I rise to offer a few words of tribute to Hamilton Carothers, a constituent and old and dear friend, who will be retiring tomorrow from the practice of law after nearly 40 years of active and distinguished service to his profession.

Ham Carothers is a graduate of Princeton University and, following a stint in the military during World War II, he attended and graduated from the University of Virginia Law School. At Virginia, I was privileged to be one of his classmates and can say without fear of contradiction that he was uniformly regarded as one of the brightest and most accomplished members of the class. Following our graduation, we both came to Washington to work as associates at law firms here in town. After moving to Washington, Ham and I shared a house in Georgetown, and we have a longstanding pact not to reveal much about our exploits during those days.

Ham joined Covington & Burling in 1949, and became a partner in that firm on January 1, 1961. Although his practice over the past 38 years has spanned a wide variety of areas, Ham is best known for his work in professional sports, and particularly on behalf of his longtime client, the National Football League. Some of the most senior members of both the Senate and the other body will remember Ham Carothers and Commissioner Pete Rozelle patiently working to persuade Congress to enact legislation that has had the effect of allowing pro football to expand and prosper in cities throughout the country. In the past two decades, football has become America's most popular sport, and Ham Carothers has been intimately involved in every aspect of the growth and development of the NFL. So significant was Ham's involvement in NFL affairs that even his adversaries came to refer to him as the great legal eagle of the NFL.

His partners at Covington & Burling have long regarded Ham as a true jewel at the firm. His warm and generous nature, combined with his wonderful sense of humor, have won Ham many friends and admirers over the nearly four decades that he has been at Covington & Burling.

Mr. President, Hamilton Carothers has been a source of inspiration and pride to his classmates, his clients, his colleagues, and his profession. I join his many friends throughout the country in extending my best wishes for the years to come to Ham, his charming wife, Monika, and his three lovely children.

REMARKS OF DONALD R. BEALL

Mr. HEFLIN. Mr. President, earlier this year, Mr. Donald R. Beall, president and chief operating officer of Rockwell International, delivered a speech regarding the importance of U.S. space leadership.

Mr. Beall's remarks, I believe, speak well enough for themselves, and I will not repeat them in detail in this introductory statement. I would, however, very briefly note some of the key points that are made in the speech and which touch upon the issues of interest to us in Congress concerning the U.S. space program. These include:

The space station is a fundamental part of our Nation's efforts to advance

scientific knowledge, stimulate new technologies, and help realize the commercial potential of space.

The essential component of a human presence in space, whereby the ingenuity and creativity of America's men and women in the astronaut corps can be fully realized, is important for ensuring the maximum gain from our space program.

The American public strongly supports a vigorous space program, while recognizing that the adventure of space exploration entails real risks.

The United States must revitalize the space program on an urgent basis with a clear vision of our short-and long-term goals.

The points I have noted are well worth the attention of my colleagues as we look ahead to final action on NASA's budget for fiscal year 1988 and review matters of future policy direction for our space program. Since Mr. Beall's speech was rather lengthy, I have taken an excerpt from the speech and ask unanimous consent that the excerpt be included in the CONGRESSIONAL RECORD at the conclusion of my remarks.

Mr. President, two recent developments bear directly upon this final point raised by Mr. Beall. The first is the release of the Sally Ride report, "Leadership and America's Future in Space," which provides a responsible set of policy options and goals for the U.S. space program. I believe that Ms. Ride should be commended for her fine report that is filled with both "down-to-earth" commonsense advice about what is needed to make the space program succeed and a challenging vision of America's future in space.

A second development, however, is more disturbing in nature, and may seriously hamper our Nation's ability to accomplish the objectives identified in the Ride report. I am speaking of the decision by the Senate Appropriations Committee to allocate to its HUD-Independent Agencies Subcommittee a funding reduction that could result in severe and, in many cases, unsustainable budget cuts for NASA. Most recently, the subcommittee reported its bill to the full Appropriations Committee which reflects these cuts.

I think most of my colleagues would agree that the potential impact of cuts of this magnitude would be devastating in view of the challenges currently facing NASA. A number of critical activities, including shuttle return-to-flight, aeronautical research and development, space science. In addition, the bill includes the total elimination of the space station—an action which I find inconceivable. I am hopeful that my colleagues on the full Appropriations Committee will take such impacts into account and support NASA's fiscal year 1988 budget request when they mark up the HUD-Independent Agencies appropriations bill.

In this regard, Mr. President, I would simply conclude with a quote taken from a recent "Letter to the Nation" signed by six former astronauts which sums up their urgent message concerning the importance of America's civilian space program. They wrote:

America is at a crossroads. The consequence of reducing funding for NASA at this time leaves the Agency with two unacceptable alternatives. The Space Station program could be cut back and, thereby, possibly never be built. Or, NASA could reduce other crucial projects, such as unmanned scientific missions, development of a new heavy-lift rocket and a fourth orbiter. America—the richest nation on Earth—cannot afford either option.

The budget decisions which will be made in the coming months will determine the course of this nation in space for many years to come: whether we will be there as a leader; even whether we will be there at all.

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

REMARKS OF DONALD R. BEALL, PRESIDENT AND CHIEF OPERATING OFFICER, ROCKWELL INTERNATIONAL CORP., APRIL 15, 1987

VISION FOR THE FUTURE: CONTINUED LEADERSHIP IN SPACE

The real key to the long-term leadership of our space program is the Space Station. The station is the next human step into space, and already in just the past few years we have seen that there is not substitute for that human presence. With Solar Mac, with Palapa-B2 and Westar 6, and with the Soviet reactivation of Salyut 7, we had three vivid demonstrations of the value of human hands and brains to augment machines in space. Just a few days ago the Soviets did it again, when two cosmonauts left the space station Mir to assist in docking a research module. There is another, very down-to-earth, reason for moving ahead with the Space Station. There will be very direct and tangible benefits for the majority of us who will never make that high journey.

It must be an open-ended system built for growth, so that means designing today to accommodate the technologies of tomorrow. It must be designed to be assembled and checked out in space, building on experience gained in the shuttle program. It is a major scientific facility, design of which must be driven by user requirements as well as launch and operational needs. For example, as we have progressed in developing the concept and specifications for the Space Station it has become clear that a high level of automation and expert systems will be needed. And such systems will pave the way for major strides forward in industrial automation on Earth. Indeed, it may be said a few years hence that our factories of the future were born in space.

Most importantly, the Space Station will—from both a technical and operational perspective—solidly demonstrate that this country has not lost its leadership in space. And studies show that the American people want to be leaders in space. Opinion polls show that national support for the space program is at an all-time high, even higher than during the years America was putting men on the Moon. One recent poll showed that nine out of every ten Americans think we should resume flying the Shuttle, even at some risk, and eight out of 10 support the Space Station.

But not only do Americans support national space programs, they also perceive the threat to our leadership. They see clearly that if we don't stay in front, others will pass us. That same opinion poll I just cited revealed that seven out of ten Americans believe it is important to stay ahead of the Soviet Union in space technology, and six out of ten are even willing for our government to spend whatever it takes to keep our leadership position.

Further, the investment in a space program to maintain leadership is affordable, perhaps one percent of the federal budget. That level of expenditure is not going to significantly impact either the deficit or social spending. While space is probably more important to our national future today than it was in the days of Apollo, we seem to lack the sense of national urgency we had then. For years it has been our vision of the future that has driven us to greater and greater achievement in space. Now we must extend that vision to the nation as a whole, assuring that future generations are not deprived of the continued benefits of space leadership.

It is an important task, and one to which we can all contribute. To start we need to work together to build on the national consensus. We must do a much better job of articulating the space strategy—where we are going, how, why, what each step contributes to the nation—and how each step serves as a basis for the next one. And we need to do that in a clear and compelling way that the public and Congress can embrace.

Integral to understanding why we must move forward in space is also understanding why that requires a budgetary commitment. A nation committed to space leadership deserves a consistent level of funding from Congress in amounts adequate to continue that leadership. But such a commitment of taxpayers funds brings with it great responsibility. In recent years both NASA and the Department of Defense have demonstrated that operating on the leading edge of technology does not necessarily involve having to have a blank check. Working with contractors the Government/Industry team has developed ways to improve producibility, reliability and maintainability so that the value to the nation is significantly increased.

It's very hard when you are making something no one else has ever made before. But even on the Shuttle, probably one of the all-time record holders for high-value, low-production-run products, we saw excellent learning curve gains over the span of production of Columbia, Challenger, Discovery and Atlantis. We need to continue demonstrating that we are spending effectively to achieve the national goals.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Emery, 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, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 390. An act to provide that a special gold medal be presented to Mary Lasker for her humanitarian contributions in the area of medical research and education, urban beautification, and the fine arts, and for other purposes;

H.R. 1171. An act to establish the National Oceans Policy Commission, and for other purposes;

H.R. 2035. An act to amend the Act establishing the Lowell National Historical Park, and for other purposes;

H.R. 2566. An act to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes;

H.R. 2893. An act to reauthorize the Fishermen's Protective Act;

H.R. 3017. An act to provide for the enhanced understanding and wise use of ocean, coastal and Great Lakes resources by strengthening the national sea grant college program through the establishment of a strategic research program and other means, and for other purposes;

H.R. 3251. An act to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress; and

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway.

At 4:46 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1451) to amend the Older Americans Act of 1965 to authorize appropriations for the fiscal years 1988, 1989, 1990, and 1991; to amend the Native Americans Programs Act of 1974 to authorize appropriations for such fiscal years; and for other purposes; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Education and Labor, for the consideration of the House bill and Senate amendment (except titles III and VI), and modifications committed to conference: Mr. HAWKINS, Mr. KILDEE, Mr. FORD of Michigan, Mr. SAWYER, Mr. SOLARZ, Mr. VISCLOSKY, Mr. JEFFORDS, Mr. TAUKE, Mr. COLEMAN of Missouri, and Mr. GRANDY.

From the Committee on Energy and Commerce, for the consideration of titles III and VI of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. LENT, and Mr. MADIGAN.

The message also announced that the House has passed the following joint resolutions, without amendment:

S.J. Res. 72. Joint resolution to designate the week of October 11, 1987, through October 17, 1987, as "National Job Skills Week";

S.J. Res. 84. Joint resolution to designate October 1987 as "National Down Syndrome Month";

S.J. Res. 110. Joint resolution to designate October 16, 1987, as "World Food Day"; and

S.J. Res. 142. Joint resolution to designate the day of October 1, 1987, as "National Medical Research Day".

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 390. An act to provide that a special gold medal be presented to Mary Lasker for her humanitarian contributions in the area of medical research and education, urban beautification, and the fine arts, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 1171. An act to establish the National Oceans Policy Commission, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 2566. An act to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3251. An act to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress; and to the Committee on Banking, Housing, and Urban Affairs.

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway; to the Committee on Environment and Public Works.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2035. An act to amend the act establishing the Lowell National Historical Park, and for other purposes; and

H.R. 3017. An act to provide for the enhanced understanding and wise use of ocean, coastal, and Great Lakes resources by strengthening the national sea grant college program through the establishment of a strategic research program and other means, and for other purposes.

Pursuant to the order of the Senate of August 3, 1987, the following bill was placed on the calendar:

H.R. 2893. an act to reauthorize the Fishermen's Protective Act.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 1730: a bill entitled the "Federal Onshore Oil and Gas Leasing Act of 1987" (Rept. No. 100-188).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

John K. Meagher, of Virginia, to be a Deputy Under Secretary of the Treasury;

O. Donaldson Capoton, of Texas, to be an Assistant Secretary of the Treasury; and

Alan F. Holmer, of Virginia, to be a Deputy United States Trade Representative, with the rank of ambassador.

(The above nominations 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 and second time by unanimous consent, and referred as indicated:

By Mr. JOHNSTON from the Committee on Energy and Natural Resources:

S. 1730. A bill entitled the "Federal Onshore Oil and Gas Leasing Act of 1987"; placed on the calendar.

By Mr. METZENBAUM (for himself, Mr. SPECTER, Mr. RIEGLE, Mr. BRADLEY, Mr. MATSUNAGA, Mr. GORE, Mr. PELL, Mr. SIMON, Mr. STAFFORD, Mr. MOYNIHAN, Mr. ROCKEFELLER, Mr. LEVIN, Mr. LAUTENBERG, Mr. BIDEN, Mr. ADAMS, Mr. WEICKER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. GLENN, Mr. KENNEDY, and Mr. KERRY):

S. 1731. A bill to amend the Job Training Partnership Act to establish a demonstration program employment opportunities for severely disadvantaged youth, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BENTSEN:

S. 1732. A bill for the relief of Tracey McFarlane; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. SIMON, Mr. HUMPHREY, and Mr. THURMOND):

S. 1733. A bill to amend the Internal Revenue Code to allow for deduction of qualified adoption expenses, and for other purposes; to the Committee on Finance.

By Mr. DURENBERGER:

S. 1734. A bill to improve the method of determining per capita rates of payment made with respect to eligible organizations with risk sharing contracts under section 1876 of the Social Security Act with particular emphasis on ensuring that such organizations receive equitable rates of payment; to the Committee on Finance.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 1735. A bill to clarify the Federal relationship to the Lac Vieux Desert Band of

Lake Superior Chippewa Indians as a distinct Indian tribe, to clarify the status of members of the band, to transfer title to trust lands, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. CHILES:

S. 1736. A bill to designate the Federal Building located at 1801 Gulf Breeze Parkway, Gulf Breeze, Florida, as the "Bob Sikes Visitor Center"; to the Committee on Environment and Public Works.

By Mr. GARN (for himself, Mr. HATCH, Mr. DECONCINI, Mr. MCCAIN, Mr. MCCLURE, Mr. SYMMS, Mr. WALLOP, Mr. DOMENICI, Mr. WIRTH, Mr. ARMSTONG, Mr. HECHT, Mr. SIMPSON, Mr. REID, and Mr. BINGAMAN):

S. 1737. A bill providing for the completion of the Colorado River Storage Project; to the Committee on Energy and Natural Resources.

By Mr. WILSON (for himself, Mr. DOLE, and Mr. DURENBERGER):

S. 1738. A bill to make long-term care insurance available to civilian Federal employees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KERRY:

S.J. Res. 193. Joint resolution to establish a bipartisan commission on Third World debt; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD:

S. Res. 293. Resolution to amend Senate Resolution 352, 99th Congress, relating to the commemoration of the Bicentennial of the Senate of the United States; considered and agreed to.

By Mr. BYRD (for himself, Mr. DOLE, Mr. HEINZ, and Mr. SPECTER):

S. Con. Res. 80. Concurrent resolution to express the appreciation of the Congress to the City of Philadelphia, the National Park Service, and We the People 200, Inc., for their hospitality during the July 16, 1987, ceremonies commemorating the bicentennial of the Great Compromise; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METZENBAUM (for himself, Mr. SPECTER, Mr. RIEGLE, Mr. BRADLEY, Mr. MATSUNAGA, Mr. GORE, Mr. PELL, Mr. SIMON, Mr. STAFFORD, Mr. MOYNIHAN, Mr. ROCKEFELLER, Mr. LEVIN, Mr. LAUTENBERG, Mr. BIDEN, Mr. ADAMS, Mr. WEICKER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. GLENN, and Mr. KENNEDY):

S. 1731. A bill to amend the Job Training Partnership Act to establish a demonstration program for employment opportunities for severely disadvantaged youth, and for other purposes; to the Committee on Labor and Human Resources.

YOUTH EMPLOYMENT SERVICES ACT

Mr. METZENBAUM. Mr. President, I rise to introduce the Youth Employment Services Act of 1987—the "Yes Act." I am pleased that Senators SPECTER, RIEGLE, BRADLEY, MATSUNAGA, GORE, PELL, SIMON, STAFFORD, MOYNIHAN, ROCKEFELLER, LEVIN, LAUTENBERG, BIDEN, ADAMS, WEICKER, DODD, HARKIN, MIKULSKI, GLENN, and KENNEDY join me as original cosponsors of this bill.

Nothing bothers me more than seeing young people walking the streets of America without a job and without the skills necessary to get a job. These young people want to work, but as each day passes, they are losing hope of ever becoming productive members of society. This problem is becoming critical among minority young people who live in the inner city.

Recently, I visited a job training program in Dayton and I was struck by the determination and hope of the young people there. They are learning the fundamentals they need to get and hold a job. They told me they just want an even chance to make it.

That's what this bill does. Our Government has set up many fine programs to help prevent crime and drug and alcohol abuse by asking the public to "just say no." This bill would "just say yes" to a poor young person when he or she asks for a chance to get a job.

We must combat this problem now. As a nation, we cannot afford to write off an entire generation of young workers. The youth population is declining, and there is a developing shortage in the pool of entry-level workers. But the unemployment rate for disadvantaged, unskilled young people is skyrocketing. Entry-level jobs may exist, but these young people, who lack the most basic skills needed to work, are in danger of becoming a permanent, unemployable underclass.

That such an underclass can exist in the United States—the richest Nation in the history of the world—is a disgrace. We must make a national commitment—government, industry, labor, and the community—to help these young people acquire the skills and training necessary to get jobs in our society. The "Yes Act" is part of that national commitment to give poor, unskilled young people a chance at a decent life.

Without jobs and the self-esteem that goes with working, many young men and women will become victims of the street. Many of them already are languishing on the streets of our cities, struggling to survive.

The statistics paint a bleak picture:

In 1985, nearly 43 percent of young black men who were high school dropouts did not work at all—more than triple the 1973 rate.

Every year 700,000 students drop out of school, with the dropout rate exceeding 50 percent in some cities.

A Department of Education study classified 13 percent of all 17-year-olds as functionally illiterate, but 56 percent of black youth and 44 percent of Hispanic youth are functionally illiterate.

Unemployed, disadvantaged youth cost society billions of dollars annually, including lost tax revenues and costs of welfare, unemployment, and crime.

But these cold facts cannot measure the anguish of a young person whose dreams of a decent life are shattered by everyday existence. This was brought home to me several months ago, when I held hearings on this subject before the Labor Subcommittee of the Labor and Human Resources Committee. Five out-of-school, unemployed young people from Ohio testified. They have aspirations like any other young person—one wanted to be a landscaper, another a doctor, a third wanted to be an electronics technician so he could get off welfare, support his infant daughter, and "put something back into the community" instead of taking from it. But there is little hope that these dreams will ever come true. One youngster, Dwayne, a 16-year-old dropout, put it bluntly:

> I can't see 5 years from now, I can't see 2 years. The only thing I live for is tomorrow. I live one day at a time.

Another witness, Steve, a 19-year-old dropout who had spent years on the street selling drugs, finally decided to turn his life around because he felt he was headed either "to the penitentiary or to my grave." But he still cannot find work because he lacks the skills necessary for employment. Without a job opportunity, he could slip back onto the street and back into crime.

This legislation I am introducing today is designed to help the tens of thousands of young people like Dwayne and Steve. We need the "Yes Act" because despite the many efforts to reach this population, severely disadvantaged young people seem to fall through the cracks in the system.

The bill creates a national demonstration program under the Job Training Partnership Act to provide intensive training and support services to severely disadvantaged young people. Under this demonstration program, which will be in existence for 3 years, 75 to 100 partnerships between the public and private sectors will receive grants from the Secretary of Labor. The lessons learned from this demonstration program will help structure our youth training efforts for the remainder of this century.

The legislation calls for $100 million in budget authority for the first year and $150 million for each of the last 2 years of the program. We spend over $150 million annually on military bands and $100 million for just one MX missile. It is not asking too much to commit $100 million to help tens of thousands of poor young Americans,

who only need a chance to turn their lives around.

To ensure that this is money well-spent, the legislation conditions over half the Federal funding on the partnership's ability to obtain matching private funds and to place severely disadvantaged young people in paying jobs or help them successfully complete their high school education. By involving the private sector and by paying for concrete results, this legislation provides the necessary incentives to combat this daunting problem.

I urge all my colleagues to "just say yes" to these young people by joining me in support of the Youth Employment Services Act of 1987. It is needed legislation to attack a critical and growing national concern.

I ask unanimous consent that the bill be printed at this point in the RECORD.

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

S. 1731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Youth Employment Services Act of 1987".

PROGRAM AUTHORIZED

SEC. 2. Title IV of the Job Training Partnership Act is amended by adding at the end thereof the following new part:

"PART H—EMPLOYMENT OPPORTUNITIES FOR SEVERELY DISADVANTAGED YOUTH

"FINDINGS

"SEC. 491. (a) The Congress finds that—

"(1) the nature of work in the economy of the United States will require workers to be both more flexible and more highly skilled in the future;

"(2) the absolute number of young people entering the workforce will decline over the next decade;

"(3) the youth unemployment rate is expected to increase (despite the finding in clause (2)) because a growing percentage of the youth population are disconnected from the mainstream of society in that they are economically disadvantaged and lack the basic skills and training necessary for employment;

"(4) the gap between the skills needed to become a productive member of the changing United States economy and the skills possessed by severely disadvantaged youth is widening dramatically;

"(5) intensive skills training and work opportunities must be provided to the segment of the youth population who are severely disadvantaged;

"(6) the activities currently conducted under this Act have not effectively provided intensive training services or employment opportunities to severely disadvantaged young people; and

"(7) because of the growing need for trained entry level employees, the business community should play a significant role working with public agencies and nonprofit organizations to provide intensive training services and employment opportunities to severely disadvantaged youth.

"(b) The purpose of this part is to demonstrate—

"(1) the feasibility and cost effectiveness, including long-term employment impact, of providing intensive training services and employment opportunities to young people who are severely disadvantaged; and

"(2) the ability and the capacity of the business community to be a significant partner with public agencies or nonprofit organizations in providing intensive training services and employment opportunities to severely disadvantaged youth.

"DEMONSTRATION PROGRAMS AUTHORIZED

"SEC. 492. The Secretary shall, from amounts appropriated pursuant to section 3(a)(4) in each fiscal year, carry out employment opportunity demonstration programs for severely disadvantaged youth in accordance with the provisions of this part.

"ELIGIBLE SEVERELY DISADVANTAGED YOUTH

"SEC. 493. For the purpose of this part, a severely disadvantaged youth is an individual—

"(1) who has attained 16 years of age but not 25 years of age;

"(2) who is economically disadvantaged;

"(3) who has dropped out of elementary or secondary school, or who has received a secondary school degree but whose reading and math skills are both below the eighth grade level;

"(4) who has not participated in an education or training program in the 9 months preceding the month in which the individual is enrolled in the program assisted under this part; and

"(5) who has less than 150 hours work experience in the 9-month period referred to in clause (4).

"ELIGIBLE PARTNERSHIPS

"SEC. 494. (a) In order to qualify for grants under this part, the applicant shall form an eligible partnership in accordance with the provisions of this section.

"(b)(1) Each eligible partnership shall include a public agency or private nonprofit organization and a business concern or a business association.

"(2) For the purpose of paragraph (1), a private nonprofit organization may include a private industry council or community-based organization.

"USES OF FUNDS

"SEC. 495. (a) Each eligible partnership may use funds under this part to—

"(1) provide individual assessment of the skill levels and support service needs of severely disadvantaged youth participating in the program;

"(2) provide intensive basic skills training in combination with vocational training or work experience or both depending on the needs of the severely disadvantaged youth as determined by the assessment made under clause (1);

"(3) provide support services necessary to enable the severely disadvantaged youth to participate in the program, including counseling, meals, transportation, child care services, and referrals for medical and legal services;

"(4) provide job development and placement services for severely disadvantaged youth;

"(5) provide monitoring for each severely disadvantaged youth for 18 months after the completion of the program, including the furnishing of the support services set forth in clause (3) during the monitoring period to assist in retaining employment or advancement toward a degree from an accredited education program; and

"(6) provide any other services the partnership deems appropriate to further initial or extended successful placements, as defined in section 497(c).

"(b) For purposes of this section, the term 'intensive basic skills training' means at least 200 hours of instruction, including computer-assisted instruction, to improve the reading, mathematics, writing, and language skills of severely disadvantaged youth.

"ALLOCATION AND NUMBER OF DEMONSTRATION GRANTS

"SEC. 496. (a) The Secretary shall enter into agreements under this part with not less than 75 nor more than 100 eligible partnerships among service delivery areas in accordance with the provisions of this section.

"(b) In carrying out the provisions of this section, the Secretary shall, to the extent practicable, target the service delivery areas most in need of assistance under this part. In determining which service delivery areas are most in need, the Secretary shall consider—

"(1) the number of severely disadvantaged youth in the service delivery area;

"(2) the presence of special-needs populations, such as teen parents, limited-English proficient individuals, handicapped individuals and juvenile offenders, in the service delivery area;

"(3) the unemployment rate among severely disadvantaged youth in the service delivery area;

"(4) the degree to which severely disadvantaged youth are already being served in the service delivery area; and

"(5) such other factors the Secretary deems appropriate.

"(c)(1) In carrying out subsection (b) of this section, the Secretary shall, to the extent practicable, assure that—

"(A) at least 25 percent of the eligible partnerships with which the Secretary has an agreement under this part include private industry councils as a member of the partnership; and

"(B) at least 25 percent of the eligible partnerships with which the Secretary has an agreement under this part include community-based organizations as a member of the partnership.

"(2)(A) In carrying out the provisions of this section, the Secretary shall assure that to the extent practicable there is an equitable geographic distribution of assistance under this part.

"(B) In carrying out the provisions of this section, the Secretary shall, to the extent practicable, assure that at least 50 percent of the eligible partnerships with which the Secretary has an agreement under this part serve service delivery areas with populations of 500,000 or more.

"AGREEMENTS

"SEC. 497. (a) The Secretary shall enter into an agreement with an eligible partnership, for a 3-year period, to carry out the demonstration program under this subpart. Each such partnership agreement shall—

"(1) describe the private sector participation, including—

"(A) financial or in-kind contributions,

"(B) job commitments to employ graduates of the program,

"(C) the establishment of mentor systems under which individuals from the private sector serve as role models and counselors for the severely disadvantaged youth; and

"(D) other similar activities which the Secretary determines to be eligible for the matching requirement under section 498(a)(3);

"(2) describe the outreach, training, development, placement, and support services and activities for which assistance is sought, including a description of any efforts to utilize existing organizations of demonstrated effectiveness in assisting with outreach and other activities of the partnership;

"(3) provide assurances that—

"(A) the eligible partnership will serve only individuals who meet the requirements of section 493;

"(B) the eligible partnership will pay the non-Federal share of the cost of the program for the 3-year period for which assistance is sought;

"(C) the eligible partnership will inform the private industry council for the service delivery area served by the partnership of the partnership's activities on a regular basis; and

"(4) provide such other assurances and conditions as the Secretary may reasonably require to carry out the provisions of this Act.

"(b) Nothing in this part shall be construed to affect the obligation of the private industry council to serve disadvantaged youth pursuant to title II of this Act.

"PAYMENTS; FEDERAL SHARE

"SEC. 498. (a)(1) The Secretary shall pay for each fiscal year to an eligible partnership having an agreement under section 496 the Federal share of the cost of the activities described in the agreement.

"(2) The Federal share—

"(A) for the first year in which the eligible partnership receives assistance under this Act shall be 20 percent of the 3-year cost of the program;

"(B) for the second such year shall be—

"(i) 5 percent of such costs;

"(ii) 10 percent of such costs if the conditions of subsection (b) are met; and

"(iii) 15 percent of such costs as the conditions of subsection (c) are met;

"(C) for the third such year shall be—

"(i) 5 percent of such costs;

"(ii) 10 percent of such costs if the conditions of subsection (b) are met; and

"(iii) 15 percent of such costs as the conditions of subsection (c) are met.

"(3) The non-Federal share of payments under this Act may be in cash or in kind, fairly evaluated, including planning, equipment, services, including job commitments, or other similar private sector participation, as determined by the Secretary.

"(b)(1) The Federal share payable to an eligible partnership in the second and third year under subsections (a)(2)(B)(ii) and (a)(2)(C)(ii) may be paid only to an eligible partnership in which the private sector contributes the non-Federal share of payments at least equal to 20 percent of the cost of the 3-year period described in the agreement entered into under section 496.

"(2) For the purpose of paragraph (1) the term 'private sector' means any nongovernmental entity that is a part of the eligible partnership.

"(c)(1)(A) The Federal share payable to an eligible partnership under subsections (a)(2)(B)(iii) and (a)(2)(C)(iii) shall be paid in accordance with the provisions of this subsection.

"(B) The Secretary shall require verification from each eligible partnership that the eligible partnership has completed an initial successful placement of a severely disadvantaged youth who participated in the program established under this part or an extended successful placement of a severely disadvantaged youth who participated in the program established under this part. The Secretary shall make success payments in accordance with this subsection for both initial and extended successful placements.

"(2) For the purpose of paragraph (1), the amount of a success payment shall be an amount equal to 15 percent of the cost per participant to an eligible partnership or $1,500 for each placement, whichever is less, but in no event shall the aggregate of such payments to an eligible partnership be more than 30 percent of the 3-year cost of the program.

"(3)(A) For the purpose of paragraph (1), the term 'initial successful placement' means—

"(i) full-time nonsubsidized employment for 6 months after completion of the program conducted by the eligible partnership; or

"(ii) receipt of a high school diploma or high school equivalency degree within 6 months after completion of the program conducted by the eligible partnership.

"(B) For the purpose of paragraph (1), the term 'extended successful placement' means—

"(i) full-time nonsubsidized employment for 12 months after completion of the program conducted by the eligible partnership;

"(ii) for participants who received a high school diploma or high school equivalency degree within 6 months after completion of the program conducted by the eligible partnership, full-time nonsubsidized employment for 6 months thereafter or full-time attendance in a degree program in an accredited higher education program for 6 months thereafter; or

"(iii) receipt of a high school diploma or high school equivalency degree within 12 months after completion of the program conducted by the eligible partnership.

"(d) The Secretary may, from amounts not paid because of subsections (b) and (c) of this section, make incentive grant payments to eligible partnerships for demonstration programs conducted by such eligible partnerships which are the most effective at completing initial and extended successful placements of severely disadvantaged youth or provide technical assistance to eligible partnerships for demonstration programs conducted by such eligible partnerships which are the least effective at completing initial and extended successful placements of severely disadvantaged youth.

"EVALUATION AND REPORT

"SEC. 499. (a)(1) The Secretary shall, for any eligible partnerships funded under this part, conduct or provide for an evaluation of the success of intensive services for severely disadvantaged youth to achieve the objectives of this part. The Secretary shall consider—

"(A) the level of utilization of this part by severely disadvantaged youth;

"(B) the impact of providing intensive services to severely disadvantaged youth, including the cost effectiveness of such efforts and the effect of matching funds and success payments on the overall ability to complete successful placements of severely disadvantaged youth;

"(C) the impact of this part on specific target groups among the severely disadvantaged youth population, such as black and Hispanic males, teen parents, individuals with limited English proficiency, handicapped individuals and juvenile offenders;

"(D) the participation level by the business community in the eligible partnerships;

"(E) the comparative effectiveness of different types of entities involved in the eligible partnerships in helping meet the intensive needs of severely disadvantaged youth; and

"(F) such other factors as the Secretary deems appropriate.

"(2) Each eligible partnership under this part shall furnish all information requested by evaluators to conduct this study.

"(b) The Secretary shall prepare and submit to the Congress a report of the evaluation required by this section not later than the fourth quarter of the third fiscal year for which appropriations are made under this Act, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.".

CONFORMING AMENDMENTS

SEC. 3. (a) Section 3(a) of the Job Training Partnership Act is amended by adding at the end thereof the following new paragraph:

"(4)(A) There are authorized to be appropriated $100,000,000 for fiscal year 1988, $150,000,000 for fiscal year 1989, and $150,000,000 for fiscal year 1990 to carry out the provisions of part H of title IV.

"(B) Of the amounts available in each fiscal year under subparagraph (A), the Secretary shall use not more than 10 percent for administration and evaluation of part H of title IV.".

(b) The table of contents of the Job Training Partnership Act is amended by inserting after item "Sec. 481." the following:

"PART H—EMPLOYMENT OPPORTUNITIES FOR SEVERELY DISADVANTAGED YOUTH

"Sec. 491. Findings.
"Sec. 492. Demonstration programs authorized.
"Sec. 493. Eligible severely disadvantaged youth.
"Sec. 494. Eligible partnerships.
"Sec. 495. Uses of funds.
"Sec. 496. Allocation and number of demonstration grants.
"Sec. 497. Agreements.
"Sec. 498. Payments; Federal share.
"Sec. 499. Evaluation and report.".

Mr. SPECTER. Mr. President, today I join Senator METZEBAUM in introducing the Youth Employment Services Act of 1987.

This legislation will establish a 3-year, nationwide demonstration program to provide intensive training and employment opportunities for unskilled and unemployed youth.

This legislation would amend the Job Training Partnership Act administered by the Department of Labor to assist severely disadvantaged youth—particularly in urban areas, where this problem is most acute. The bill would create public sector/private sector partnerships designed to serve these disadvantaged young people.

Mr. President, there is a desperate need for legislation of this type. Despite the notable success of the Job Training Partnership Act in providing job training, the programs developed under the act primarily have trained and placed those individuals who are the easiest to serve, while those most in need of the act's resources have been underserved. The Government must address more fully the problem of youth unemployment or our Nation

will sacrifice the productive talents of a significant portion of our next generation. The unemployment rate for inner-city youth now exceeds 40 percent and the rate of functional illiteracy is in excess of 50 percent. The message of these frightening statistics is clear: a significant percentage of our Nation's young people are not equipped with the basic educational and interpersonal skills which they must have in order to succeed in today's job market. The hard truth is that many of these young men and women, if struck in chronic unemployment, will turn to drugs and crime, and become even greater burdens on society.

The business community has recognized the need to assist these young people—to help them become productive and employable members of the community. In Philadelphia, for example, there is concern that the current dynamic economic growth will slow because of a shortage of labor. Business leaders have recognized that a better use of labor resources is necessary, and the business community is anxious to work with the public sector to solve this problem.

Such public and private sector partnerships are the backbone of this bill. The bill will authorize 75 to 100 partnerships in which the private sector will provide financial or like-kind contributions, including commitments to hire graduates of the program. Community-based organizations, such as the Opportunities Industrialization Centers of America, the National Urban League, 70,001, National Council of La Raza, Ser-Jobs for Progress, and the United Way of America, will be able to use their unique grassroots resources to provide assistance and training to youths who are economically and educationally disadvantaged.

The bill's modest Federal investment of $400 million dollars over a 3-year period would be money well spent. This up-front cost would be repaid many times over by the increased Federal tax revenues, reductions in welfare and unemployment insurance payments, and the predictable reductions in crime. Moreover, to ensure that the Federal funds will be used effectively, 20 percent of the funds will be available only if the partnerships obtain an equal contribution from the private sector. More importantly, incentive payments are available to a partnership for placing a graduate in a job or if the graduate completes high school.

Mr. President, assisting these young adults will provide more than just a moral victory; this legislation reflects sound fiscal policy as well.

The Youth Employment Act of 1987 is an innovative, narrowly tailored and fiscally sound bill, which we desperately need. I urge my colleagues to join Senator METZENBAUM and me in supporting it.

Mr. LAUTENBERG. Mr. President, I am pleased to join with my colleagues, Senators METZENBAUM, SPECTER, and others, in introducing a bill to provide training, job placement, and support services to disadvantaged young people located predominantly in this Nation's urban areas.

It is a tragedy that too large of a part in a generation of young people are growing up in our inner-cities without the opportunities and skills necessary for them to find employment. We must provide these young people with the necessary tools to make them attractive to employers. They must be able to see the light at the end of the tunnel, that they can achieve and become productive members of society.

This bill will provide intensive training, employment services, job placement assistance, and support services to help alleviate a growing crisis of youth unemployment in our inner-cities. This unemployment rate has risen to the alarming rate of 40 percent. The program to be authorized by this bill will be targeted at the 16- to 24-year-olds most at risk. The targeted group includes high shool dropouts, those who have less than eighth grade reading and math skills levels, and those who are economically disadvantaged.

The 3-year investment called for in this bill, while modest in terms of dollars, is major in terms of its potential payoff in the future. By helping the current generation of youth gain access to the job market, we will be helping to break the cycle of poverty and alienation that affects too many urban youngsters today. Moving toward employing these urban and minority young people should also help to provide them with alternatives to alcohol and drug abuse.

We owe these young people a second chance. If they have not succeeded in school, they should still have an opportunity to gain the skills they need to succeed in the job market.

In my home State of New Jersey, in 1982, blacks comprised only 12.5 percent of the population while they were 24 percent of those unemployed and 49 percent of those on welfare. Bureau of Labor Statistics data for 1985 show that the unemployment rate for black males 16 through 19 years old was almost 2½ times the rate for white males in the same age category—41 percent versus 16.5 percent. Futhermore, according to a 1987 publication by the National Urban League, "The State of Black America," the unemployment rate for black teenagers has averaged 43.6 percent for the last six years, up from 38.9 percent in the previous 6 years. We cannot continue to lose ground in the battle for economic equality.

The requirements of the program include involving the private sector in order to qualify for Federal matching funds, thus developing a relationship between successful, socially conscious employers and a large potential work force. In addition, at least 50 percent of these public-private partnerships should serve urban centers where the basic skills, vocational training, and job placement is most needed.

The amount of funding an individual project receives is closely tied to the amount contributions provide from the private sector and the success of the project. The first year authorization for this program is $100 million, and the second and third years would rise to $150 million. Partnerships between public agencies or nonprofit organizations and businesses are eligible to run these programs. Each partnership will be eligible for additional Federal funds if they provide an equal amount of private funds. An additional Federal Funds bonus will be provided as success payments to partnerships which show results. The results will include job placement that lasts at least 12 months, or receipt of high school diplomas or equivalency certificates.

This bill is appropriately called the "YES Act." Let us say yes to job opportunities for the young people in our cities. Let us say yes to reducing unemployment in our most depressed urban areas. And, let us say yes to help educate and develop our youth, our future.

Mr. RIEGLE. Mr. President, I rise as a cosponsor of the Youth Employment Services Act, and to express my strong support for this important legislation. The Youth Employment Services Act of 1987 establishes a feasible, cost-effective nationwide program that will provide intensive training services and employment opportunities to young people who are severely disadvantaged. This program is an important step in alleviating the growing percentage of the youth population who are not in the mainstream of society because they are economically disadvantaged and lack the basic skills and training necessary for employment. This program joins the business community with public agencies and nonprofit organizations in partnerships to serve these young people.

The problem of youth unemployment is particularly acute among the poor, inner-city youth where the unemployment rate exceeds 40 percent and the rate of functional illiteracy approaches 50 percent. Many of these young people lack the basic skills that are needed to get even an entry-level position that will allow them to be a useful member of the U.S. work force. Therefore, this group does not even have a glimmer of ever becoming productive members of society until the

door of economic opportunity is opened to them.

The bill that we are introducing today attempts to alleviate this growing crisis in youth unemployment by creating a 3-year program in which 75 to 100 partnerships between the public and private sectors are created to receive grants to help these young people. This bill will provide assistance to young people who are economically disadvantaged, have dropped out of high school, have no previous job experience, who have not been trained in any particular field and who otherwise cannot find meaningful employment. These people are not being properly served by current programs.

Additionally, this program only allows partnerships between public agencies or nonprofit organizations and business concerns to receive a grant from the Department of Labor. Each partnership is authorized to design its own programs that will lead these youth to successful placement in jobs or further schooling. The partnerships would individually assess the skills of each individual and provide intensive basic skills training combined with vocational training or actual work experience along with the necessary support services in order to ensure successful job placement.

Most importantly, this bill targets the problem areas that are most affected—the inner cities. The Secretary is directed to assure that 50 percent of the partnerships will serve urban centers with populations of 500,000 or more. This should help to alleviate the chronic unemployment of the youth in these areas and bring back some hope to these young people who currently have no reason for hope.

Additionally, partnerships will have to secure contributions from the private sector to qualify for Federal matching funds. These donations may be in the form of actual funds or in-kind services such as advance commitments to hire graduates of the program or mentor systems where volunteers serve as role models for young people.

Finally, the funding plan, which proposes $100 million for the first year and $150 million in each of the last 2 years, provides incentives for both the private and public sector to combat this problem and provide effective and useful services. This 3-year program will be able to provide help to thousands of disadvantaged young people, giving them the chance they deserve from newly learned skills that will be of use to them long into the future.

By Mr. BENTSEN:

S. 1732. A bill for the relief of Tracey McFarlane; to the Committee on the Judiciary.

RELIEF OF TRACEY MCFARLANE

●Mr. BENTSEN. Mr. President, today I am introducing legislation for the private relief of Tracey McFarlane. Tracey is a member of the championship women's swimming team at the University of Texas, and she is a world-class swimmer in her own right. A number of top swimming coaches from around the Nation have contacted me about Tracey's strong prospects for Olympic medals in 1988. Like me, they would like to see Tracey bring those medals home to the United States of America.

Although she is a Canadian citizen, Tracey has strong ties to the United States. She has resided in this country since she was 12 years old, and she considers herself an American. Tracey obtained permanent resident status here in the United States back in 1984, shortly after being adopted by her step-father, an American citizen.

Because of her strong ties to the United States and a compelling desire to join the teammates with whom she has long trained in international competition, Tracey wanted to compete for the United States in the 1984 Olympics. Prior to that time, she had always intended to obtain U.S. citizenship but simply had not initiated the process. With the prospect of competing for the United States in the Olympics lying ahead, Tracey realized a little too late that there are long delays involved in obtaining U.S. citizenship, delays that made it impossible for her to compete for the United States in Los Angeles without special legislation. Tracey inquired and was informed that a private bill had little chance of passage since she had not yet taken the initial step of becoming a permanent resident. Promptly thereafter, Tracey took that important step and became a permanent resident. But the end result was that this athlete of great potential, an athlete with a strong desire to compete for America, was unable to do so in the 1984 Olympics.

Tracey missed an opportunity to swim for the United States in 1984, and without special legislation she will be unable to compete for the United States next year in Seoul. Under applicable immigration statutes, Tracey is not eligible for citizenship until 5 years have expired from the date that she obtained permanent resident status. For Tracey, this 5-year period does not expire until August 1989—too late for her to participate in the 1988 Olympics. I am informed that there is simply no way to speed this up administratively, and that a private bill is her only hope for competing for the United States in Seoul.

The purpose of this legislation is to expedite the naturalization process so that she will become a U.S. citizen in time to participate in the U.S. Olympic trials and, ultimately, compete for the United States in the 1988 Olympics. There is every reason to believe that Tracey will qualify for citizenship in due course in 1989, but both Tracey and the United States would benefit greatly if the process is expedited. This legislation will do exactly that, and I urge my colleagues to support me in this effort.●

By Mr. HATCH (for himself, Mr. SIMON, Mr. HUMPHREY, and Mr. THURMOND):

S. 1733. A bill to amend the Internal Revenue Code to show for deduction of qualified adoption expenses and for other purposes; referred to the Committee on Finance.

FAIRNESS FOR ADOPTING FAMILIES ACT

Mr. HATCH. Mr. President, I am today introducing the Fairness for Adopting Families Act, a bill that will address, in a comprehensive way, the tax problems of adopting children.

This legislation is desperately needed. As lawmakers, we continue to call for the strengthening of the family unit, yet tax codes inherently favor those who have children biologically. There is no doubt as to the validity of these deduction, but there should also be provisions for those who adopt their children.

This legislation would accomplish a number of objectives. First, it would ensure equality in treatment—whether the family is formed biologically or through adoption—regarding cost assistance through tax breaks. In contrast with the numerous tax benefits given to those couples who have children biologically, there is not one tax deduction associated with adoption. A benefit discrepancy such as this must be corrected.

Second, it recognizes the importance of the family unit and seeks to strengthen that unit through alleviating many of the cost barriers associated with adoption. To many seeking to adopt a child, the costs associated with such a procedure are simply prohibitive. Prospective parents are not only required to pay court and attorney fees, but often maternity home services, hospital and physician's costs, and at times, prenatal care for the natural mother. Data provided by the National Committee for Adoption shows that the actual cost connected with legal adoptions range up to $15,000. Family wealth should not be the determinative factor in adopting a child.

Mr. President today, I am pleased to join several of my colleagues from both sides of the aisle in both Houses introducing this bill. There are many reasons for this bipartisan support. The bill removes unfair discrimination in our Tax Code against those families who form their families through adoption.

This legislation will also save our society money. The National Center for Adoption has shown savings in two ways: first, by moving thousands of children, who might otherwise have

lingered in inappropriate foster care, into loving homes. Second, the tax deduction encourages shifting medical costs to the adoptive family, away from the more expensive AFDC and Medicaid system.

This proposed legislation has three major features. First, it would provide a tax deduction for unreimbursed and legitimate adoption expenses. Second, it would exclude from the employee's income any payments made by an employer for adoption expenses. Third, it would treat any employer contribution to an adoption expense plan as an ordinary and necessary business expense.

This legislation would set a $5,000 cap on all adoptions of children.

As long as an adoption is in accordance with State and local law, the tax deduction for unreimbursed adoption expenses would be available for the costs of an adoption. Each legal adoption is socially useful and beneficial. Each adoptive family, regardless of how the adoptive child came to be in that family, deserves our support. Whether that child is a healthy infant, a child with special needs or a child from another country, the adoption expenses may be deductible, as long as all Federal and State legal requirements are met.

This legislation would exclude, however, those adoptions which are administered through illegal practices, such as procuring the services of a baby broker. Many in my own State of Utah and other States have been defrauded by such schemes. The cost of an illegal adoption is often over $25,000, most of which goes into the pockets of middlemen. Fees for such arrangements would not be deductible.

Two of the provisions deal with the interest in adoption by many of the Nation's employers. Nearly 40 companies now provide some adoption benefits, including such corporations as Dow Chemical, IBM, Digital Equipment, and Honeywell. The actual benefits vary considerably, with some providing both a cash payment and paid leave. Many of these benefits are flat payments. Deseret Mutual Benefit Association, a large employer in my home State of Utah, provides adoption benefits to their employees of up to 80 percent of approved adoption expenses capping the fee at $1,200. These fees include maternity expenses and legal agency fees.

This bill also addresses two problems now associated with employer-provided benefits. The first problem is that payments made to employees are taxable as income. This bill excludes from an employee's income those payments made by an employer.

The second problem is that companies may not treat their adoption payments to employees as a regular business expense. This discouraging factor is eliminated by removing that barrier to more companies providing adoption benefits.

The most important resource America has is its families. We must do everything in our power to ensure their continued growth and success. By making adoption costs tax deductible, this bill benefits not only children and families, but society as a whole.

I urge my colleagues to support this legislation and I ask unanimous consent that the full text of the bill and a summary of the bill be included in the RECORD.

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

S. 1733

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fairness for Adopting Families Act".

SEC. 2. DEDUCTION FOR ADOPTION EXPENSES.

(a) DEDUCTION FOR ADOPTION EXPENSES.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. ADOPTION EXPENSES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year the amount of the qualified adoption expenses paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The amount allowable as a deduction under subsection (a) with respect to the legal adoption of any child by the taxpayer shall not exceed $5,000.

"(2) INCOME LIMITATION.—The amount allowable as a deduction under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's taxable income (determined without regard to this section and section 134) exceeds $60,000, bears to

"(B) $10,000.

"(3) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) GRANTS.—No deduction shall be allowed under subsection (a) for any expenses paid from any funds received under any Federal, State, or local program.

"(c) QUALIFIED ADOPTION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees (including agency fees), court costs, attorney fees, and other expenses which—

"(A) are directly related to the legal adoption of a child by the taxpayer but only if such adoption has been arranged—

"(i) by a State or local agency with responsibility under State or local law for child placement through adoption,

"(ii) by a non-profit, voluntary adoption agency which is authorized by State or local law to place children for adoption, or

"(iii) through a private placement, and

"(B) are not incurred in violation of State or Federal law.

"(2) ADOPTION EXPENSES NOT TO INCLUDE CERTAIN AMOUNTS.—The term 'qualified adoption expenses' shall not include any expenses in connection with—

"(A) the adoption by an individual of a child who is the child of such individual's spouse, or

"(B) travel outside the United States, unless such travel is required—

"(i) as a condition of a legal adoption by the country of the child's origin,

"(ii) to assess the health and status of the child to be adopted, or

"(iii) to escort the child to be adopted to the United States.

"(3) CHILD.—The term 'child' shall include any child determined by the State to be a child described in paragraphs (1) and (2) of section 473(c) of the Social Security Act."

(2) CLERICAL AMENDMENT.—The table of sections for such part VII is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 220. Adoption expenses.

"Sec. 221. Cross reference.

(b) ADOPTION ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of such Code (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. ADOPTION ASSISTANCE PROGRAMS.

"(a) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The amount excludable from gross income under subsection (a) with respect to the legal adoption of any child by the taxpayer shall not exceed the excess (of any) of $5,000 over the amount allowable as a deduction under section 220 with respect to such adoption.

"(2) INCOME LIMITATION.—The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's taxable income (determined without regard to this section and section 220) exceeds $60,000, bears to

"(B) $10,000.

"(c) ADOPTION ASSISTANCE PROGRAM.—For purposes of this section, an adoption assistance program is a plan of an employer—

"(1) under which the employer provides employees with adoption assistance, and

"(2) which meets—

"(A) the requirements of section 89(k), and

"(B) requirements similar to the requirements of paragraphs (2), (3), and (5) of section 127(b).

"(d) QUALIFIED ADOPTION EXPENSES.—For purposes of this section, the term 'qualified

adoption expenses' has the meaning given such term by section 220(c)."

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 89(i) of such Code (defining statutory employee benefit plan) is amended by adding at the end thereof the following new subparagraph:

"(D) An adoption assistance program (within the meaning of section 135(c))."

(3) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 135. Adoption assistance programs.
"Sec. 136. Cross reference to other Acts."

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1986.

COMPONENTS OF ADOPTION TAX DEDUCTION BILL

Title: Fairness for Adopting Families Act.

Sponsors: Senator Orrin G. Hatch (R-Utah) and Congressman William Lehman (D-Florida).

Date of introduction: September 30, 1987.

1. Provides tax deduction for adoption expenses: allowance of a deduction for the costs of an adoption, in accordance with State law, including infant, special needs, or foreign child. The amount allowable is capped at $5,000. Families earning up to $60,000 could deduct 100 percent of expenses, with a gradual phaseout of the benefit from $60,000 to $70,000 annual income. Adoption expenses which are not tax deductible include relative adoptions and foreign travel not associated with requirements of a foreign adoption.

2. Excludes from employee's income adoption expenses paid by an employer up to $5,000.

3. Treats employer contribution to adoption expense plan as an ordinary and necessary business expense.

4. Effective date: applies to expenses incurred or paid for adoptions which become final after December 31, 1986.

Mr. HUMPHREY. Mr. President, today I am pleased to join my colleague from Utah [Mr. HATCH], in introducing the Fairness for Adopting Families Act. This bill amends the Tax Code to provide for the deduction of expenses incurred through adoption.

One of the great accomplishments of the 99th Congress was the tax reform bill. I supported tax reform, but was very disheartened when the tax deduction for special needs adoption was eliminated.

According to the Department of Health and Human Services, an estimated 276,000 children are in foster care, and at least 36,000 of these children are legally free and waiting for adoptive homes. Many of the 36,000 are children with special needs; that is children who are older, in sibling groups, mentally, physically, or emotionally disabled, or members of minority groups.

Financial considerations are a necessary concern for parents who adopt any child. The adoptive parents who will benefit from this deduction are the individuals and couples who give a permanent home to children who need it most. They are people who are willing to take on large responsibilities in order to build a family and bring joy to a child who needs a home.

Because of limitations in available data, we do not know exactly how many adoptive parents utilized the adoption expenses deduction in the past. But we do know the number of special needs adoptions has risen in recent years, and the number of children in foster care has dropped. Undoubtedly, many factors have contributed to this progress in special needs adoptions, but clearly the tax deduction helps reduce one important barrier to adoption, the cost.

As an adoptive parent, I know firsthand the benefits of adoption. Adoption is a wonderful way to build a family. Every child is indeed a wanted child, and we would be remiss as a body if we did not do everything in our power to make sure that barriers like cost do not prevent a child from having the family they desperately need and deserve.

I urge my colleagues to support the Fairness for Adopting Families Act.

By Mr. DURENBERGER:

S. 1734. A bill to improve the method of determining per capita rates of payment made with respect to eligible organizations with risk sharing contracts under section 1876 of the Social Security Act with particular emphasis on ensuring that such organizations receive equitable rates of payment; to the Committee on Finance.

MEDICARE PRIVATE HEALTH PLAN CAPITATION IMPROVEMENT ACT

Mr. DURENBERGER. Mr. President, thank you for giving me the opportunity to bring this important bill to the Senate today. I'll be very brief, knowing the important discussion before us. I hold in my hand some of the scores of letters I've received urging action. I am happy to answer them, in part, with the introduction of this bill today.

Mr. President, this bill, with the unwieldy name "Medicare Private Health Plan Capitation Improvement Act of 1987," goes to the heart of harm caused to senior citizens and care providers by inefficiencies in our Medicare payment system.

It is designed to provide fair payment to rural doctors and health plans, to allow more Medicare beneficiaries—including, and especially, those living in rural areas—access to well-run private health plans.

Mr. President, this bill evolved in the best tradition of the Congress—through the articulated needs of vulnerable people who came to me with requests that their problem be addressed.

One writer said:

Because the Federal Government pays up to one-half less for the same health care in my area as it does for seniors in other parts of the State and country, my senior health plan is operating at an extreme money loss.

A writer from the Steelworkers' HMO in Minnesota's rural iron range, whose health plan has gone into bankruptcy, wrote:

I like this plan because it covers all my health care needs for a reasonable price, and I am not subjected to all of the problems associated with hospital and doctor bills and insurance claim forms.

And a third says:

My husband passed away on May 24th, and I only get $486 a month from Social Security. The problems faced by the plan may mean a substantial increase in my premiums—which I cannot afford—and even threaten the existence of my plan.

Mr. President, these seniors need help now and the need is evident. For example, in the urban counties surrounding Minneapolis and St. Paul, rates are $257.51 and $252.86 for each enrollee, while in the rural counties of Blue Earth and Lake, the rate is $158.27 and $159.09. By contrast, the rate for Dade County in Florida is $385.84. This happens simply because of the way the original payment system was set up. And it makes no sense on either technical or equity grounds.

This bill would correct several of the glaring inadequacies in the present system while setting up a task force to deal with the tough technical issues.

I urge my colleagues to join me in enacting this bill to ensure fairness and real choice. I ask unanimous consent that my complete statement, the text of the bill, and the attached summary of its key features be printed in the RECORD.

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

STATEMENT OF SENATOR DAVE DURENBERGER

Mr. President, I'm pleased to come to the Senate today with a bill that has evolved in the best tradition of the Congress—through the articulated needs of vulnerable people who came to me with requests that their problem be addressed.

Mr. President, this bill didn't come about because a bunch of federal officials sat around and dreamed it up. In fact, it so urgently came from a grassroots demand, that before I could even introduce it before this body, scores of letters have arrived in support of it.

This bill is about fairness. It's about access to good medical care for thousands of elderly, often living in rural areas already subject to other disadvantages. It's about consumer choice, about reasonableness, and about incentives for quality.

The name of this bill is the "Medicare Private Health Plan Capitation Improvement Act of 1987." It's designed to provide fair payment to doctors and prepaid health providers such as health maintenance organizations (HMOs) and other competitive health plans. It will allow more Medicare beneficiaries to enroll in private health plans and shore up some existing plans that are endangered because of existing inequities in the Medicare payment.

People who've written to me from Minnesota—Medicare beneficiaries enrolled in a rural health plan near Duluth—tell of the need better than I can.

"Because the federal government pays up to one-half less for the same health care in my area as it does for seniors in other parts of the state and country," says one writer, "my senior health plan is operating at an extreme money loss."

Another writer, asking for help for her health plan, says, "I like this plan because it covers all my health care needs for a reasonable price, and I am not subjected to all of the problems associated with hospital and doctor bills and insurance claim forms."

And from still another, I hear, "My husband passed away on May 24th, and I only get $486 a month from Social Security. The problems faced by the plan may mean a substantial increase in my premiums—which I cannot afford—and even threaten the existence of my plan."

Mr. President, these seniors need help, and they need it now. In Minnesota, the wide range of payments which exist between urban and rural areas is clearly evident. The urban counties of Hennepin—home of Minneapolis—and Ramsey—which is St. Paul—receive rates of $257.51 and $252.86 respectively for each enrollee while the rural counties of Blue Earth and Lake receive $158.27 and $158.09. Chippewa County receives only $128.52!

As a result of such rates, "More-HMO", a steelworkers' HMO on the rural "Iron Range" in Northern Minnesota, has gone into bankruptcy and another rural HMO in Itasca County might have to discontinue its services for over 1900 elderly citizens within six months due to a continuing twenty-five-dollar-a-month deficit per patient. The low rates make it impossible to provide the level of care which residents in these areas deserve.

Nationally, the geographic disparity in payment rates is also apparent. For example, the rate for Dade County in Florida is $385.84 while the rate for Bell County, Texas, is $182.24 for the same people. Naturally, these rates influence the decisions of potential contract organizations to offer services in these areas. Frankly, I don't believe this is fair. This happens simply because of the way the original payment system was set up. It's the only payment system in Medicare that pays by county—and it makes no sense on either technical or equity grounds.

Payment rates just announced for 1988 do represent an increase over 1987 as the Health Care Financing Administration will claim, but the total 13.5 percent increase for the nation as a whole doesn't even approach the costs of care to the elderly in some of these underpaid counties, nor approach increases that other providers are getting under Part B—a significant part of the payment. And, of course, the increases do absolutely nothing about the equity problem which is very serious and is substantially undermining choice in the Medicare program.

For more than a decade, private health plans have been able to contract with the federal government for the provision of services to Medicare beneficiaries. Growth in Medicare enrollment was slow until 1982, when the Tax Equity and Fiscal Responsibility Act (TEFRA) was authorized. With TEFRA, Congress allowed private health plans to enroll Medicare beneficiaries on a risk basis with no retroactive adjustment for real costs incurred. Medicare enrollment in such plans has soared. As of June 1, 1987, there were 154 HMOs with TEFRA risk contracts enrolling nearly 1,000,000 Medicare beneficiaries. Thirty-five more applications for risk contracts are pending. But growth has been selective because payments are inadequate.

Today, the risk contract program is reaching a crucial juncture. Despite the dramatic growth in participation and enrollment, many problems exist which may discourage more private health plans from joining the program and may force plans with current contracts to opt out. In fact, a number of plans already have not renewed their contracts claiming, in particular, that payments have been inadequate.

A recent national survey of the risk contracting experiences of larger, more established HMOs, conducted by the widely-respected Interstudy, of Excelsior, Minnesota, noted increasing discontent among such organizations. Over half of responding HMOs reported that their contracting experiences were somewhat or very unfavorable, and only 56 percent felt confident that they would renew their contracts in 1988.

The primary reason for dissatisfaction was the Adjusted Average Per Capita Cost (AAPCC). Payments to risk contract organizations are based on the AAPCC, an estimate of how much Medicare would reimburse for services obtained by enrollees in the fee-for-service sector. The AAPCC is determined by calculating the per capita cost for all Medicare beneficiaries in an area and then adjusting for age, sex, institutional and welfare status. Risk contract organizations receive only 95 percent of the AAPCC. The survey confirmed that the AAPCC is perceived to be an inadequate payment, particularly in rural areas where the AAPCC is consistently very low.

Since rates vary by county of residence, there can be great discrepancy in payments for two enrollees that live in adjoining counties, even though the health plan's cost of caring for those enrollees are the same. This problem is exacerbated in rural counties and is particularly distressing since, historically, these areas have had poorer access to comprehensive services and have greater unmet health care needs.

The variability in rates does not reflect adequately real costs or patient utilization. For example, the AAPCC does not compensate for costs of comprehensive care in areas where populations have not had access to and have not used such services previously. In these areas the AAPCC is insufficient to allow private health plans to offer care at 95 percent of the already low base.

Yet, it is in the best interest of the enrollee, the private health plan, and the government that capitation rates better reflect expected costs: enrollees must be protected from inadequate rates that threaten quality of care; the enrollee and the plan need to be protected against underpayment on behalf of the beneficiary which occurs when there is strong adverse selection (which results when plan enrollees are less healthy than not-enrolled Medicare beneficiaries); government must be assured that it is not overpaying for the care of healthier-than-average beneficiaries. Using the county level also underprotects contracting organizations from being able to pool risk and to pool risks over time.

Certainly, rates should not be set to discourage the enrollment of the frailest elderly. It is these individuals who may most benefit from HMO enrollment since the need for services is great and the managed care concept is essential for maintaining high quality care. Unfortunately, the present AAPCC system rewards HMOs for enrolling healthy Medicare beneficiaries.

The current system of providing payment to risk contract organizations is fraught with many problems of a theoretical, technical or procedural nature. For example:

Risk contract competitive health plans do not receive extra payments for high cost, catastrophic (outlier) cases. Such high cost cases can jeopardize the financial viability of a risk contract, particularly if the plan is new or has a relatively small enrollment.

Although disabled individuals generally incur higher costs, the AAPCC currently does not increase payment to risk contractors which enroll disabled Medicare beneficiaries who are age 65 or older.

There is little flexibility permitted in the setting of premiums by risk contract organizations. This lack of flexibility serves as a barrier to expansion into new areas where the AAPCC is low.

Risk contract organizations are barred from having more than 50 percent Medicare or Medicaid enrollment. Increased ability to waive this "50 percent rule", particularly for high quality, financially secure, and long-standing organizations would encourage development of risk contracts in rural areas.

Current and prospective risk contracting organizations find that calculation of the AAPCC is confusing, predictions about future rates are unreliable, frequent changes in methodology of computation are unwarranted or inexplicable, and disclosure about the entire process of rate calculation is desperately needed.

Mr. President, the bill which I am introducting begins the process of resolving the complex issues surrounding risk contract payments. In order to promote the long-term stability and growth of the risk contracting model, and to deal with the tough technical issues, the bill calls for the creation of a Task Force on Medicare Capitation. This Task Force will bring together: experts on capitation from private health plans including health professionals; health services researchers including researchers with expertise in financing and underwriting prepaid care; Medicare beneficiaries, and individuals representing employers and labor.

Over the next three years, these Task Force members will study the payment methods, assess alternatives and develop a report to the Congress on ways of improving risk contract payments. The Task Force will build on the excellent work of the commissioner and staffs of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

For the short-term, while the Task Force deliberates, a strategy must be put into place which will maintain access for beneficiaries where payments are the lowest in the nation and prevent the devastating effects that additional contract terminations might have on Medicare beneficiaries and private health plans.

The termination of the contract of even one plan, particularly if that plan is well respected, sends a message of instability and unreliability which can discourage other plans from continuing or developing risk contracts and prevent Medicare beneficiaries from enrolling. I'm convinced from talking about this to hundreds of rural Minnesotans in the last 6-8 months that we must move quickly. This bill's provisions immediately would correct several of the glaring inadequacies in the present system.

A key provision guarantees that HMOs and competitive health plans, during the next four years, would receive a minimum AAPCC payment which would be no less than 80 percent of the median of AAPCCs in Metropolitan Statistical Areas. This provision would strengthen the ability of prepaid plans to serve beneficiaries in areas with excessively low payments. Most of these underpaid counties are in rural areas, but not all. This is a problem caused by methodologies applied to the problem, so, for a short-term correction, a simple adjustment is adequate. But more extensive work—based on research—is needed to completely solve the problem. This slight correction buys us time to salvage the program and protect beneficiaries in undercompensated areas.

A second provision adjusts the AAPCC to better account for risk contract Medicare beneficiaries who are also disabled. Other key features of the bill would:

Require full disclosure of the methodology and assumptions for the calculation of the AAPCC;

Eliminate the Adjusted Community Rate (ACR) for premium setting and allow plans to charge different premiums for different geographic areas;

Provide for notification and comment on proposed changes in the method of computing the AAPCC (or the United States per capita cost);

Adjust the base period for calculation of the AAPCC; and

Enable a waiver, if specific criteria are met, of the "50 percent rule".

Mr. President, the expansion and development of the risk contracting program has not been without controversy. I, as well as other proponents, believe that such growth holds great promise for increased options, improved quality and cost-effective health care for our growing elderly population. HMOs with risk contracts are well suited to older people and the disabled because, generally, they provide expanded benefits such as preventive care, prescription drugs and vision and hearing examinations with few or no extra payments. High quality of care and increased services are made possible by the elimination of unnecessary, duplicative, and inappropriate services through management of care by a primary care physician. And access to care is improved by the reduction or elimination of co-payments and deductibles.

Cost containment derives from the same principle of managed care, but is enhanced by the very nature of the risk contract. Since risk contract health plans only receive 95 percent of the AAPCC, the government potentially saves 5 percent for each enrolled Medicare beneficiary.

Critics of risk contracts have raised concerns about the quality and scope of care being provided and have suggested that risk contractors may be overpaid for their services if they are enrolling beneficiaries who are healthier-than-average. The recent publicity surrounding the failure of IMC, a risk contract organization in Florida, casts a shadow over the entire program. It's particularly unfortunate that some people generalize that incident to the vast majority of quality private health plans now serving the elderly.

To protect the program, payments must be changed if the risk contract program is to demonstrate its full potential for providing quality care at a lower price. Mr. President, it would be a great mistake to allow inertia to prevail, to reduce or eliminate real choice for Medicare beneficiaries, or to fail to take this opportunity to make sure that the risk contracting program is continuing in the right direction. We must make sure that we are providing real incentives for more quality, managed care plans to sign risk contracts. I urge my colleagues to join me in enacting this bill to ensure fairness and real choice.

S. 1734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Private Health Plan Capitation Improvement Act of 1987".

SEC. 2. STATEMENT OF PURPOSE.

It is the purpose of this Act—

(1) to promote the provision of high-quality and cost-effective health care to all individuals receiving benefits under title XVIII of the Social Security Act,

(2) to manage the total amount of expenditures made for such benefits during the lifetime of an individual while maintaining adequate access to quality care,

(3) to ensure access to such benefits without regard to the health and disability status of an individual, the geographic area in which the individual lives, or the health plan that the individual chooses,

(4) to increase the options of individuals who choose to receive such benefits through an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act, and

(5) to provide an equitable capitation rate that adequately allows for the provision of high-quality health care to individuals who receive benefits through such an organization.

SEC. 3. TASK FORCE ON MEDICARE CAPITATION.

(a) ESTABLISHMENT OF TASK FORCE.—There is hereby established a Task Force to be known as the Task Force on Medicare Capitation (in this section referred to as the "Task Force") to be composed of 15 members appointed in accordance with subsection (b)(1).

(b) APPOINTMENT AND TERM OF MEMBERS; VACANCIES; TRANSACTION OF BUSINESS.—

(1)(A) Members of the Task Force shall be appointed jointly by the Prospective Payment Assessment Commission and the Physician Payment Review Commission after consultation with private and prepaid health plan organizations.

(B) Of the 15 members composing the Task Force—

(i) five members shall be chosen from among representatives of private health plan and prepaid health plan organizations (which representatives may include physicians and other health professionals who serve Medicare beneficiaries),

(ii) five members shall be chosen from among researchers in health care delivery and finance and individuals with an expertise in the financing and underwriting of prepaid health care, and

(iii) five members shall be chosen from among Medicare beneficiaries and representatives of employers and labor.

(2) Members of the Task Force shall serve for the life of the Task Force. A vacancy on the Task Force shall be filled in the same manner in which the original appointment was made, shall be consistent with the requirements of paragraph (1)(B), and shall not affect the powers or duties of the Task Force.

(3) A majority of the members of the Task Force shall constitute a quorum for the transaction of business. Decisions of the Task Force shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(4) The first meeting of the Task Force shall be jointly called by the Prospective Payment Assessment Commission and the Physician Payment Review Commission and shall be held not later than January 1, 1988. At such meeting, the members of the Task Force shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members (which in no event shall be less than once every three months).

(c) BASIC PAY.—

(1) Members of the Task Force shall serve without pay.

(2) Members of the Task Force shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(d) DUTIES OF THE TASK FORCE.—

(1) It shall be the duty of the Task Force—

(A) to review periodically the calculations and methodology employed by the Secretary in determining the capitation rate with respect to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(B) to document and report on the discrepancies between the actual and projected United States per capita incurred cost used for purposes of determining such capitation rate (and, in particular, to identify such discrepancies with respect to calendar years 1985, 1986, and 1987), and

(C) to assess alternative methodologies for determining such capitation rate.

(2) Not later than January 1 of 1989 and 1990, the Secretary shall submit interim reports to the Congress describing the activities of the Task Force during the preceding year and containing such assessment, analysis, evaluation, and recommendations (as described in paragraph (3)(A)) as can reasonably be formulated at the time such reports are prepared and submitted.

(3)(A) Not later than January 1, 1991, the Task Force shall submit a report to the Congress that contains—

(i) an assessment of the extent to which the long-term cost of providing benefits under title XVIII of the Social Security Act would be reduced by providing such benefits through prepaid health plans;

(ii) an analysis of the use, cost, and quality of benefits provided under prepaid plans as compared to fee-for-service systems;

(iii) an evaluation of—

(I) the use of various geographic areas in calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(II) the use of fee-for-service reimbursement and utilization rates in calculating such rate, and

(III) the effects on such rate of substantial market area penetration by capitated health plans; and

(iv) recommendations for revising the method for calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section

1876 of the Social Security Act that specifically address the need for—

(I) adjusting the rate to account for the case mix (including such factors as age, disability, and functional status) of individuals entitled to benefits under title XVIII of the Social Security Act who are enrolled with the organization, geographic differences in the cost of furnishing services, and the effect of outlier cases,

(II) controlling and reimbursing for catastrophic illness by using alternative methodologies to calculate the rate,

(III) developing methods for ensuring that individuals residing in rural or medically underserved areas have access to quality health care (as provided through such organizations), and

(IV) setting a more equitable rate with respect to contracting organizations that serve rural or medically underserved areas (or any geographic area in which the medical practice is more conservative).

(B)(i) The report submitted to the Congress under subparagraph (A) shall be prepared in consultation with the Health Care Financing Administration and shall be based, in part, upon the findings of various research projects that shall be jointly conducted by the Task Force and such Administration.

(ii) Prior to submitting the report to the Congress under subparagraph (A), the Task Force shall make the report available to representatives of private and prepaid health plan organizations and shall provide to such representatives an opportunity for commenting upon the report. The comments of such representatives shall accompany the report when submitted to the Congress.

(e) POWERS OF THE TASK FORCE.—

(1)(A) Subject to subparagraph (B), the Task Force may award grants or contracts to individuals or entities to conduct research that the Task Force determines would be of assistance in the performance of any of the duties of the Task Force (as described in subsection (d)).

(B) No contract or grant may be awarded under subparagraph (A) unless the Task Force demonstrates to the satisfaction of the Prospective Payment Assessment Commission and the Physician Payment Review Commission that information otherwise available to the Task Force is inadequate to allow the Task Force to perform such duties.

(2)(A) The Task Force may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates (which personnel shall be allowed travel expenses, including a per diem in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code).

(B) The Task Force may use on a reimbursable basis, with the prior consent of the commission concerned, the services of the personnel of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

(3) The Task Force may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

(4) The Task Force may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

(5) The Task Force may procure supplies, services, and property, and make contracts.

(6) For purposes of carrying out its duties under subsection (d), the Task Force may adopt such rules for its organization and procedures as it deems appropriate, including procedures that allow any interested party the opportunity to submit information to the Task Force.

(f) TERMINATION OF THE TASK FORCE.—

(1) The Task Force shall terminate on January 2, 1991.

(2) Any funds held by the Task Force on the date of termination of the Task Force shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Task Force on such date shall be disposed of as excess or surplus property.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 1988 through 1991 such sums as may be necessary to carry out the provisions of this section.

SEC. 4. GUARANTEED MINIMUM AAPCC FOR ELIGIBLE ORGANIZATIONS WITH RISK-SHARING CONTRACTS.

(a) IN GENERAL.—Section 1876(a)(1)(C) of such Act (42 U.S.C. 1395mm(a)(1)(C)) is amended—

(1) by inserting "(i)" after "(C)";

(2) by striking "The" and inserting in lieu thereof "Except as provided in clause (ii), the"; and

(3) by adding at the end thereof the following new clause:

"(ii) For each of the calendar years 1988, 1989, 1990, and 1991, the annual per capita rate of payment for each such class shall be equal to the greater of—

"(I) 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class, or

"(II) 80 percent of the median of all adjusted average per capita costs in Metropolitan Statistical Areas as adjusted by class.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 5. DISCLOSURE REQUIREMENTS WITH RESPECT TO CALCULATION OF USPCC AND AAPCC.

(a) IN GENERAL.—Section 1876(a) of the Social Security Act (42 U.S.C. 1395mm(a)) is amended by adding at the end thereof the following new paragraphs—

"(7)(A) Not later than September 30 of each calendar year, the Secretary shall provide to each eligible organization with a risk-sharing contract, a summary of the calculations made by the Secretary in computing (for purposes of determining a per capita rate of payment under this subsection with respect to the succeeding calendar year) the United States per capita incurred cost and each adjusted average per capita cost applicable with respect to a class of individuals enrolled with such organization.

"(B)(i) The summary provided under subparagraph (A) shall contain a narrative description of all assumptions made by the Secretary in computing the United States per capita incurred cost and each applicable adjusted average per capita cost and shall specifically explain how the Secretary treated the factors described in clause (ii) in making the computations.

"(ii) The factors described in this clause are—

"(I) benefits under this title becoming available after the period used by the Secretary to compute the United States per capita incurred cost and each adjusted average per capita cost;

"(II) the impact of the amendments to this title made by section 9201 of the Consolidated Omnibus Budget Reconciliation Act of 1985;

"(III) the proportion of individuals who are entitled to medical assistance under title XIX, the proportion of individuals who receive aid under title IV, and the proportion of individuals who receive such aid who reside in institutions;

"(IV) the economic indices, wages, and case-mix changes used to project utilization and payments under parts A and B of this title with respect to a geographic area;

"(V) adjustments made for the time period between when expenses are incurred and when payments are received; and

"(VI) changes in population estimates with respect to individuals entitled to benefits under this title and with respect to various demographic groups.

"(8) The Secretary shall annually issue to every eligible organization with a risk-sharing contract—

"(A) not later than July 1, a preliminary estimate of the United States per capita incurred cost used to determine a per capita rate of payment with respect to the succeeding calendar year;

"(B) not later than August 1, a preliminary estimate of each adjusted average per capita cost applicable with respect to a class of individuals enrolled with such organization used to determine any such rate of payment with respect to such year; and

"(C) not later than April 1, a narrative explanation of the difference between the preliminary estimate of the United States per capita incurred cost made with respect to a per capita rate of payment required to be issued before the previous September 7 and—

"(i) the projection for the United States per capita incurred cost required to be issued before the following September 7 (as contained in the Report of the Board of Trustees under section 1817(b)(2) or 1841(b)(2)); and

"(ii) the actual United States per capita incurred cost made with respect to a per capita rate of payment required to be issued before such date.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to a per capita rate of payment determined for calendar year 1989 and each succeeding calendar year.

SEC. 6. PROCEDURES FOR CHANGING METHODOLOGY USED TO COMPUTE USPCC AND AAPCC.

(a) IN GENERAL.—Section 1876(a) of the Social Security Act, as amended by section 5 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(9) Prior to making any change with respect to the methodology used by the Secretary to compute (for purposes of determining a per capita rate of payment under this subsection with respect to a calendar year) the United States per capita incurred cost and each adjusted average per capita cost applicable with respect to a class of individuals enrolled with an eligible organization with a risk-sharing contract, the Secretary shall provide notice to such organization of the proposed change and shall afford each such organization not less than 30 days to comment on the change.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 7. USE OF MORE RECENT BASE PERIOD IN COMPUTING AAPCC.

(a) IN GENERAL.—Section 1876(a)(4) of the Social Security Act (42 U.S.C. 1395mm(a)(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) For purposes of subparagraph (A), the Secretary shall estimate the amount that would be payable in any contract year for such services covered or expenses otherwise reimbursable on the basis of services actually provided or expenses actually incurred during a period of time that ends no earlier than February 1 of the calendar year preceding the year with respect to which an adjusted average per capita cost is determined.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to a per capita rate of payment determined for calendar year 1989 and each succeeding calendar year.

SEC. 8. CLASSIFICATION OF DISAELED INDIVIDUAL FOR PURPOSE OF DETERMINING PER CAPITA RATE OF PAYMENT.

(a) IN GENERAL.—Section 1876(a)(1)(B) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(B)) is amended—

(1) by inserting "(i)" after "(B)"; and

(2) by adding at the end thereof the following new clause:

"(ii) The Secretary shall establish a class of members based on age and disability status that includes individuals who attain the age of 65 during calendar year 1988, 1989, 1990, or 1991, are entitled to benefits under this title, and (prior to attaining such age) received disability insurance benefits under section 223.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 9. ELIMINATING ADJUSTED COMMUNITY RATE AS RESTRICTION ON AMOUNT OF PREMIUM; INCREASED FLEXIBILITY IN SETTING PREMIUM.

(a) IN GENERAL.—Section 1876(e)(2) of the Social Security Act (42 U.S.C. 1395mm(e)(2)) is amended by striking "In" and all that follows through the period and inserting in lieu thereof the following: "Such organization may not increase any premium or other charge established (or maintained) for a year of a contract with respect to such additional services more than once during any such contract year and may provide for different premiums or charges for such services with respect to each Metropolitan Statistical Area (including any county contiguous to such Area) in which members reside or with respect to each group of two or more counties in which members reside that is not located contiguous to a Metropolitan Statistical Area.".

(b) CONFORMING CHANGES.—

(1)(A) Section 1876 of such Act (42 U.S.C. 1395mm) is amended—

(i) by redesignating paragraph (3) of subsection (e) as paragraph (7) and by transferring and inserting such paragraph in subsection (g) at the end thereof; and

(ii) by striking "section" the first place it appears in such paragraph and inserting in lieu thereof "subsection".

(B) Section 1876(g)(2)(A) of such Act (42 U.S.C. 1395mm(g)(2)(A)) is amended by striking "subsection (e)(3)" and inserting in lieu thereof "paragraph (7)".

(2) Section 1876(e) of such Act (42 U.S.C. 1395mm(e)) is amended by redesignating paragraph (4) as paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on the date of enactment of this Act.

SEC. 10. MODIFICATION OR WAIVER OF 50-PERCENT RULE FOR CERTAIN ORGANIZATIONS; APPLICATION OF THE RULE TO AFFILIATED ORGANIZATIONS.

(a) MODIFICATION OR WAIVER OF RULE.—Section 1876(f)(2) of the Social Security Act (42 U.S.C. 1395mm(f)(2)) is amended—

(1) by striking "only" in the matter preceding subparagraph (A);

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) The Secretary shall waive or modify the requirement imposed by paragraph (1) if—

"(A) there is a determination by a utilization and quality control peer review organization or a private accreditation body that the care furnished by the organization meets appropriate quality standards;

"(B) the organization demonstrates fiscal soundness exceeding the requirements under title XIII of the Public Health Service Act and this title (or such fiscal soundness is guaranteed by the parent organization of such organization); and

"(C) the organization (or its parent organization) demonstrates successful operational experience as a prepaid health plan for a period of at least five years.".

(b) APPLICATION OF RULE TO AFFILIATED ORGANIZATIONS.—Section 1876(f)(1) of such Act (42 U.S.C. 1395mm(f)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "Each" and inserting in lieu thereof "Subject to subparagraph (B), each"; and

(3) by adding at the end thereof the following new subparagraph:

"(B) No eligible organization that is an affiliate of a multistate or multicontract entity shall be treated as failing to meet the requirement of subparagraph (A) if such requirement would be met if applied to the enrolled membership of all organizations affiliated with such entity.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on the date of enactment of this Act.

SEC. 11. GAO AUDIT AND REPORT.

(a) GAO AUDIT.—The General Accounting Office shall—

(1) conduct an audit of the claims under parts A and B of title XVIII of the Social Security Act to determine the extent to which claims in a geographic area are attributed to beneficiaries who are legally domiciled in such area at the time services are provided rather than the area in which services are received; and

(2) review the extent to which the claims under such parts are attributed to retroactive adjustments to claims from prior years.

(b) GAO REPORT.—Not later than January 1, 1989, the General Accounting Office shall submit a report to Congress that contains the results of the audit and review conducted under subsection (a) and makes recommendations for improving data collection and exchange within the Department of Health and Human Services for processing claims under parts A and B of title XVIII of the Social Security Act.

SUMMARY OF KEY PROVISIONS—THE MEDICARE PRIVATE HEALTH PLAN CAPITATION IMPROVEMENT ACT OF 1987

1. Task Force on Medicare Capitation:

To ensure that long term payment reform is undertaken as soon as possible, the bill creates a fifteen-member Task Force on Medicare Capitation appointed jointly by the Prospective Payment Assessment Commission and the Physician Payment Review Commission. Task Force members will be representatives of Medicare beneficiaries, private health plans, health services researchers including researchers with expertise in prepaid health care, employers and labor.

The Task Force will function for three years and will review and assess a wide range of issues that impact on payment rates to Medicare risk contract organizations. The Task Force will report to Congress on its findings and will provide recommendations on alternative methodologies or revisions to present methods for calculating capitation rates for risk sharing contracts.

2. Guaranteed Minimum Payment:

To temporarily correct an immediate payment problem for some localities, a payment floor is created. This simple correction will be replaced by more permanent changes enacted by Congress after the Task Force has weighed alternatives, analyzed data and reported to Congress. For calendar years 1988, 1989, 1990, and 1991, organizations with Medicare risk contracts will receive payments for their Medicare enrollees which will not be less than 80 percent of the median adjusted average per capita cost (AAPCC) received for similar Medicare beneficiaries residing in Metropolitan Statistical Areas (MSA).

3. Disclosure Requirements:

Annually, all contracting organizations will receive a summary of the calculations and a description of the assumptions made by the Secretary in computing the United States per capita cost (USPCC) and the Adjusted Average Per Capita Cost (AAPCC). Also, at specified intervals which allow for timely calculation of the AAPCC, the Secretary will provide risk contract organizations with preliminary estimates of the USPCC and the AAPCC for the next year, and will provide a narrative explanation of differences between preliminary projections, projections of the Board of Trustees and the actual AAPCC.

4. Changes in Payment Computation Method:

Risk contract organizations will receive notification of and will have 30 days to comment on any proposed changes in the method of computing the USPCC or the AAPCC.

5. Use of More Recent Base Period:

As the basis for determining the AAPCC, The Secretary will use actual data from the period which occurred six months prior to the date that the AAPCC is established.

6. Payment for Disabled Individuals:

Individuals who are classified as disabled for the purposes of qualifying for Medicare will continue to be classified as disabled after they attain the age of 65 (and a separate class of disabled-aged individuals will be established) for the purposes of determining the per capita rate of payment. This is intended to be a temporary adjustment until better methods of classifying individuals according to functional, disability, or other health status measures are instituted.

7. Eliminating the Adjusted Community Rate as a Restriction on the Amount of Pre-

miums and Increased Flexibility in Setting Premiums:

The Adjusted Community Rate shall be eliminated for premium calculation purposes. Premiums for services in addition to those covered under Parts A and B may be increased no more than once in any contract year. Contracting organizations shall be allowed to have different premiums or charges for each MSA, or group of two or more counties not contiguous to MSAs, in which members reside.

8. Modification or Waiver of 50-Percent Rule:

The Secretary shall waive the rule that at least 50-percent of risk contract enrollees must *not* be entitled to Medicare or Medicaid if quality standards are met, fiscal soundness requirements are exceeded, and the plan has operated successfully for at least five years.

9. GAO Audit:

The General Accounting Office (GAO) will conduct an audit of Parts A and B to assess the impact of beneficiary location and retroactive adjustments on attribution of claims.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 1735. A bill to clarify the Federal relationship to the Lac Vieux Desert Band of Lake Superior Chippewa Indians as a distinct Indian tribe, to clarify the status of members of the band, to transfer title to trust lands, and for other purposes; to the Select Committee on Indian Affairs.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS ACT

Mr. RIEGLE. Mr. President, I rise today to introduce legislation to clarify the Federal relationship to the Lac Vieux Desert [LVD] Band of Lake Superior Chippewa Indians.

Although currently recognized as part of the Keweenaw Bay Indian community, the LVD Band has historically existed as a separate and distinct Indian tribe. The band consists of approximately 250 members and is located over 75 miles from the Keweenaw Bay Indian community. The LVD Band exercises all of its inherent rights as a sovereign Indian tribe. It has its own constitution, elects its own tribal council, determines its own membership, and represents itself in every respect as a legal tribal entity.

However, because the LVD Band is recognized as part of the Keweenaw Bay Indian community, it has no direct or legal government-to-government relationship with the Federal Government. Although the Department of Interior recognizes the LVD Band through the Keweenaw Bay Indian community, the band receives no services or programs, nor does it possess a direct trust relationship with the Federal Government.

Without Federal acknowledgement as a distinct and separate tribe, the LVD Band is unable to exercise full and official legal jurisdiction over the affairs of the tribe, its people, and its resources.

There is a question as to whether or not LVD is already a federally recognized tribe. I have tried to resolve this question with the Bureau of Indian Affairs during the past 4 months, but as of yet, they have been unable or unwilling to make a determination in this matter.

After reviewing the merits of LVD's circumstances, I believe there is a strong basis for granting the band Federal recognition separate and distinct from the Keweenaw Bay Indian community.

Mr. President, I intend to request hearings on this legislation before the Select Committee on Indian Affairs at the earliest possible date. The question LVD's status has lingered too long, and I urge my colleagues in the Senate to support this bill.

Mr. President, 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. 1735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lac Vieux Desert Band of Lake Superior Chippewa Indians Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Lake Vieux Desert Band of Lake Superior Chippewa Indians, although currently recognized by the Federal Government as part of the Keweenaw Bay Indian Community, has historically existed, and continues to exist, as a separate and distinct Indian tribe that is located over 75 miles from the Keweenaw Bay Indian Community;

(2) the Lake Vieux Desert Band consists of approximately 250 members who continue to reside close to their ancestral homeland near the town of Watersmeet, Michigan;

(3) the Lac Vieux Desert Band entered into two treaties with the United States as a distinct tribal entity (7 Stat. 591, 10 Stat. 1109); and

"(4) members of the Lac Vieux Desert Band currently reside on or otherwise occupy lands within the Township of Watersmeet, Michigan, which are held by the United States in trust for the Keweenaw Bay Indian Community, and currently receives limited Federal benefits through the Keweenaw Bay Indian Community.

"(5) because of its distance from Keweenaw Bay and the failure of the United States to recognize the independent status of the tribe, the Lac Vieux Desert Band and its members receive only limited benefits to which the tribe and its members are entitled."

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Band" means the Lake Vieux Desert Band of Lake Superior Chippewa Indians;

(2) the term "member" means those individuals eligible for enrollment under section 5 in the Band; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 4. FEDERAL RECOGNITION.

(a) The Band is hereby recognized as an independent tribe, separate and apart from the Keweenaw Bay Indian Community or any other federally recognized tribe or Indian community, and all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of the Act shall be applicable to the Band and its members.

(b) FEDERAL SERVICES AND BENEFITS.—The Band and its members shall be eligible, on and after the date of enactment of this Act, for all Federal services and benefits furnished to federally recognized Indian tribes or their members without regard to the existence of a reservation for the Band.

(c) APPLICABILITY OF INDIAN REORGANIZATION ACT.—The Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), is hereby made applicable to the Band.

SEC. 5. ESTABLISHMENT OF BAND ROLL.

Within six months after the date of enactment of this Act, the Band shall submit to the Secretary its membership roll which shall consist of all individuals eligible for membership in the Band. An individual is eligible for membership if that individual is—

(1) at least one-quarter Chippewa Indian blood quantum who was born in the Lac Vieux Desert or Watersmeet area and still resides in that area;

(2) at least one-quarter Indian blood quantum and is descended from the historical Lac Vieux Desert Band with one or more lineal ancestors whose names appear on any of the censuses for Lac Vieux Desert prepared by the Superintendent of the Mackinaw Agency prior to 1928;

(3) at least one-quarter Lake Superior Chippewa Indian blood quantum, resides in Gogebic or Iron County, Michigan, or any other counties traditionally inhabited by the Lac Vieux Desert Band, and is closely and primarily affiliated with the Lac Vieux Desert Band; or

"(4) Is a child, who is at least one-quarter Indian blood quantum, and whose parent(s) is a duly enrolled member pursuant to paragraph (1), (2), or (3)."

Upon completion of such roll, the Secretary shall immediately publish notice in the Federal Register stating that the roll has been completed. The Band shall ensure that the roll, once completed, is maintained and that it is current.

SEC. 6. RESERVATION.

Subject to valid existing rights, the Secretary shall transfer the land which, on the date of enactment of this Act, is held in trust by the United States for the benefit of the Keweenaw Bay Indian Community to the United States to be held in trust for the benefit of the Band. The Secretary may place such other land into trust for the benefit of the Band as the Secretary deems necessary or desirable pursuant to the provisions of the Indian Reorganization Act.

By Mr. CHILES:

S. 1736. A bill to designate the Federal Building located at 1801 Gulf Breeze Parkway, Gulf Breeze, FL, as the "Bob Sikes Visitor Center"; referred to the Committee on Environment and Public Works.

BOB SIKES VISITOR CENTER

● Mr. CHILES. Mr. President, construction will soon be completed on the new headquarters for the Gulf Islands National Seashore. I am introducing legislation today to name this facility in honor of former Florida Congressman Robert L.F. Sikes.

During his tenure in the House of Representatives, Congressman Sikes served his district in an exemplary manner. While the Pensacola region grew in size and in economic stature, Congressman Sikes oversaw a development strategy which balanced economic goals with protection of the area's sensitive natural resources and historic landmarks.

Toward this goal, Congressman Sikes worked long for establishment of a national seashore along the northwest Florida and Mississippi gulf coast. The mainland area of the park features spectacular bayous, beaches, and historic military forts.

Mr. President, Gulf Islands National Seashore now attracts about 5 million visitors a year, offering a host of recreational opportunities. It is one of only two specially designated seashores along the Gulf of Mexico.

I understand that the new facility will serve as the administrative headquarters for the entire park and will house a visitor information center and theater. In view of Congressman Sikes' contributions in bringing national attention to this unique region, I believe it is most appropriate that the headquarters bear his name.●

By Mr. GARN (for himself, Mr. HATCH, Mr. DECONCINI, Mr. MCCAIN, Mr. MCCLURE, Mr. SYMMS, Mr. WALLOP, Mr. DOMENICI, Mr. WIRTH, Mr. ARMSTRONG, Mr. HECHT, Mr. SIMPSON, Mr. REID, and Mr. BINGAMAN):

S. 1737. A bill providing for the completion of the Colorado River storage project; to the Committee on Energy and Natural Resources.

COMPLETION OF COLORADO RIVER STORAGE PROJECT

● Mr. GARN. Mr. President, along with my colleague Senator HATCH and Senators from other Colorado River Basin States, I am today introducing legislation which will increase the appropriations ceiling for the Colorado River storage project which provides water and power to the States of Arizona, Colorado, New Mexico, Utah, and Wyoming.

The Colorado River storage project was authorized by Public Law 84-485 in 1956, and reauthorized for increased appropriations ceiling by Public Law 92-370 in 1972. The project as currently authorized provides for the construction of 4 major water storage and/or power producing units, and 10 participating projects which provide water for municipal and industrial uses, irrigation water supplies, and smaller amounts of power production. The total amount currently authorized to be appropriated for CRSP, at current price levels, is $2,171,308,000. The current estimated total appropriations required for the project are now $2,925,744,000. Therefore, additional appropriations ceiling of $754,436,000 will be required to complete this project. While the bulk of the increased appropriations ceiling will be needed to complete the Bonneville unit of the central Utah project, all of the units in participating projects of the Colorado River storage project will be benefited by this increased authorization ceiling.

The Bureau of Reclamation has known for some time of the eventual need to seek additional ceiling for CRSP. In fact, in January 1983 the chairmen of both the House and Senate Appropriations Committees were informed by the Bureau that increased ceiling would eventually be needed. Frankly, we had hoped that congressional action would not be required for several more years, but due to a variety of factors it now appears that the ceiling will need to be increased prior to fiscal year 1990. For that reason, it is important that Congress pursue this matter with some dispatch so that these badly needed projects will not be delayed due to congressional inaction.

As we proceed to consider this increase in the ceiling for CRSP, there are several things that I hope my colleagues will keep in mind. First, there should not be a debate over the need for these projects—particularly the central Utah project. On at least two prior occasions, in 1956 and again in 1972, the Congress has given the go ahead to the Colorado River storage project and its component parts. Year in and year out the Congress has continued to appropriate money for these badly needed projects, albeit not as much as some of us would have like. With respect to the central Utah project in particular, it is important to remember that the voters of the State of Utah have approved major financial contributions to this project and recently approved a $335 million supplemental repayment contract by an overwhelming margin.

Since this project was originally authorized in 1956, it has had a history of construction delays and inadequate funding. However, for the past several years the project has taken some dramatic leaps forward as appropriations have increased, the Congress has acted to halt fund transfers, and perhaps most importantly, we have reigned in excessive overhead in the project's construction. Now is not the time to rethink the need for or the benefits from this important water development project. Rather, it is time for us to move forward and complete it.

Mr. President, I urge my colleagues on the Senate Energy Committee to act promptly to consider this important piece of legislation and I look forward to working with them personally to ensure that the necessary ceiling increases are achieved in the near future.●

● Mr. HATCH. Mr. President, it is a pleasure to join my colleague, the distinguished senior Senator from Utah, in introducing legislation to increase the appropriations ceiling for the Colorado River storage project. I join my colleague in urging prompt and favorable consideration of this legislation.

As my colleagues are well aware, I have long been a strong proponent of the development of economically sound and environmentally prudent water projects throughout our country. As President Reagan so eloquently pointed out only recently:

> Providing enough high quality water promptly to those who need it is a task that has confronted Americans since the earliest days of our national experience. In the first summer at Plymouth, the Pilgrims experienced a summer drought that nearly ruined their crops. More than 350 years later, Americans had to contend with flooding on the Mississippi and the Colorado, and drought throughout most of the rest of the nation. The lesson of these events is clear. Providing enough high quality water where and when it is needed is a never ending process.

As Senator GARN has stated, the appropriations ceiling increase which is needed for the Colorado River storage project will benefit water development, and water projects in Arizona, Colorado, New Mexico, Utah, and Wyoming. However, it is no secret that the vast bulk of the funds which we are asking Congress to authorize today will be applied directly to the Bonneville unit of the central Utah project. For that reason, Mr. President, I would like to take just a few moments to remind my colleagues of the importance of the central Utah project to my State and to the Nation.

The central Utah project is a water resource development project that will provide critically needed water supplies to the central Utah area. Conceptually, the central Utah project will include a transbasin diversion of water from the Uinta basin, a portion of the Colorado River Basin, to the Bonneville basin in central Utah. Developments of related local water sources will be made in both basins. The project will develop water for municipal and industrial use, irrigation, hydroelectric power production, recreation, and fish and wildlife. It will also provide benefits toward flood control, water quality control, and area redevelopment.

The CUP has been considered by local groups and government agencies since the turn of the century. Continuous investigations have been conduct-

ed by the Bureau of Reclamation since 1945.

The Bonneville unit of the central Utah project, now under construction, is the largest and most complex of the authorized units of the CUP. Greater utilization of Bonneville basin water made possible by the unit and a transbasin diversion of water will serve the needs of a growing population in the Bonneville basin. This complex unit includes 10 new reservoirs and the enlargement of one existing reservoir; more than 200 miles of aqueducts, tunnels, canals; six powerplants; 10 pumping plants; and 300 miles of drains.

As my colleague Senator GARN has pointed out, Congress has on two prior occasions thoroughly reviewed the need for the entire Colorado River storage project as well as for the central Utah project. But let me just take but a minute to review for my colleagues the vast benefits of the Bonneville unit in particular. The justification of the Bonneville unit can be expressed in several ways: First, in physical terms—acre-feet of water for municipal and industrial uses, acre-feet of water for irrigation, acres of land to receive irrigation water, hydroelectric power produced, flood damages prevented, facilities for recreation and fish and wildlife, and improvement in the quality of irrigation and industrial water; second, in terms of social and economic impacts—increases in farm and industrial income, providing the economic base for continued population expansion, providing greater tax revenues from increased assessed valuation.

The demand for agricultural, municipal, and industrial water is expected to increase steadily in the 12 county area to be served by the Bonneville unit. Although the rate of population and economic development has varied over time and by region, the Bonneville unit area, taken as a whole, has experienced continuous growth over the years. The delivery of additional water will be necessary to accomodate projected overall infrastructure development.

Salt Lake and Utah Counties, the most populous counties in the project area, are expected to increase their population by about 390,000 people by the end of the century, raising their total population to about 1.2 million. Slightly higher growth rates are projected for most of the remaining counties to be served by the Bonneville unit.

One of the major elements of the Bonneville unit for which increased appropriations ceiling is being sought is for greater deliveries of irrigation water. The major irrigation water need in the State of Utah is for supplemental service to presently irrigated lands to stabilize existing agricultural production. By maintaining the existing agricultural base, adequate greenbelt areas can be preserved. Stabilizing the farm economy also reduces an outmigration tend from rural to urban areas.

The agricultural growth of the project area is severely limited by the shortages of dependable water supply. About 216,250 acres of supplemental service land now experience average shortages of about 19 percent of diversion demand, while 27,340 acres of full service land receive no water supply other than from infrequent precipitation. This points out the dramatic need for the full development of the irrigation facilities of the central Utah project.

Mr. President, in conclusion, I urge my colleagues to approve the appropriations ceiling increase for the Colorado River storage project. This project provides vast benefits to citizens in five States and is in keeping with our national policy of assisting in the development of badly needed water development projects. With this ceiling increase, the central Utah project can finally be completed after years of delays. For these reasons, Mr. President, I look forward to prompt approval of this legislation.●

By Mr. WILSON (for himself, Mr. DOLE, and Mr. DURENBERGER):

S. 1738. A bill to make long-term care insurance available to civilian Federal employees, and for other purposes; to the Committee on Governmental Affairs.

LONG-TERM HEALTH CARE INSURANCE FOR CIVILIAN FEDERAL EMPLOYEES

Mr. WILSON. Mr. President, it is time for the Congress and the administation to address the long-term health care needs of older Americans.

Very shortly those of us on this floor will consider a catastrophic illness bill. We are all familiar with the tragic phenomenon of older Americans being inflicted with the kind of illness that can literally in a matter of days wipe out the life savings of a family. That obviously is the situation that deserves and demands our immediate attention.

But earlier, Mr. President, in the course of moving legislation that had to do with the problem of gaps in Medicare coverage, I made the same interesting discovery as have so many others; and, that is, when so many older Americans very prudently seek to supplement their Medicare coverage hoping to find some way to provide themselves and their loved ones with nursing home care on an extended basis they found that not only are they uncovered by Medicare but that it is virtually impossible for many of them to obtain or to pay for the kind of long-term care which increasingly is a necessity for older Americans.

The good news is that our medicine and our general health care have expanded the life expectancy of many, many Americans, but with the increase in life expectancy we face the onset of troubling infirmities of the kind that more and more make an expectation for older Americans to spend some considerable time in a nursing home or requiring the visits in their own homes of health care professionals.

Mr. President, this we have discovered is the source of even greater anxiety among most older Americans than the fearful specter of catastrophic illness. Increasingly older Americans are troubled by the fact that they simply do not find a way to obtain or to afford the kind of long-term care which they feel they must have.

It is true that there are health insurance policies now on the market, that some 70 companies write this insurance but it is prohibitively expensive because, Mr. President, it is based on individual rather than group experience. And as a result, a typical policy of that kind can cost $4,000 in premiums per year—beyond the reach of most older Americans, and indeed beyond the reach of most Americans of any age.

It simply should not be that as we grow old, we are faced with the unacceptable choice between uncomfortable premiums and, the worst prospect, of being without the kind of coverage that can lead to decent long-term care.

So I repeat, Mr. President: It is time for Congress and for the administration to focus upon this need and address it. It is not simply the problem of older Americans. It is the problem of all of us who care about older Americans and their quality of life. There can be no decent quality of life, no golden years, for those who are stricken with the kind of anxiety that necessarily attends the present situation.

It is my hope and purpose that the bill I introduce today, with Senator DOLE and Senator DURENBERGER, will provide a very significant way to address if not the totality of this need, a very large part of it. What we are seeking to do is to offer to Federal employees who are enrolled in a group life insurance plan the opportunity to convert a portion of the equity they have built up under that policy to pay for long-term care, either nursing home care or home health care visits by health care professionals.

Mr. President, in the view of most older Americans, this is clearly the single greatest omission that we have found to exist in the 20 years of Medicare. Even with the more heartening developments of private and public health care initiatives, with corporate-sponsored health plans, with all the new approaches to long-term care, with all the emphasis on preventive

medicine, still we find that too many older Americans are indeed growing older without adequate health care coverage. In order for them to avoid the debilitating doubt and anxiety that inevitably accompany growing older, without any idea of how they will be able to obtain this care and pay for it, I think this not only will provide peace of mind for those who are Federal employees eligible to participate, but also, I think that by this legislation we will offer a model that can induce participation by a number of private sector health care carriers to enter the market and provide this insurance.

There is a very clear need for it. If we are correct in that, we will produce the competition in the private sector that is available to any number of different groups, not just Federal employees, but also employees of General Motors, employees of the University of California. In short, Mr. President, I think we have an opportunity to do something not only for our own employees, but also to provide a means whereby a number of Americans, during their working years, can prudently plan for their own health care.

Obviously, a great benefit of this program would be that it would not—I emphasize would not—impose any crushing new expenditures on Federal taxpayers.

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. 1738

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Chapter 87 of title 5, United States Code, is amended—

(1) in section 8704, by adding a new subsection (e) to read:

"(e)(1) The Office shall provide optional group long-term insurance coverage for civilian employees in accordance with the following terms and conditions:

"(A) Consistent with the conditions, directives, and terms specified in section 8709 and 8712 of this title, the Office shall arrange for each qualified employee, as defined in paragraph (4) of this subsection, to have an opportunity to irrevocably convert a portion of the employee's basic insurance amount and associated accured projected claims reserve funds, as determined by OPM, for purposes of group life insurance and accidental death and dismemberment insurance under this section to group long-term care insurance.

"(B) The long-term care insurance shall provide specified dollar reimbursements for a period of at least 1 year's duration to offset expenses related to nursing home and home health services required by the employee and may include additional benefits which the Office determines to be appropriate. The long-term care insurance shall, as the Office deems appropriate, offer employees more than one reimbursement plan from more than one insurer.

"(C) The Office shall determine appropriate employee contributrions which will be payable for all periods during which long-term care insurance continues and will be withheld from any salary, compensation, or retirement annuity due an insured individual. Each employee's contribution rate under this subsection shall be determined by the employee's age at the time an election is made for purposes of this subsection, relative to such age and rate categories as the Office determines will, with adjustments provided for by paragraph (3) below, fully cover estimated long-term care insurance policy costs in excess of the actuarial value of the life insurance conversion amount.

"(D) The Office shall establish appropriate age and rate categories for qualified employees who wish to avoid the basic insurance conversion requirement and pay the full cost of group long-term care coverage.

"(E) The Office shall also arrange for qualified employees who elect group long-term care insurance on themselves under this subsection to have, simultaneous with their election or upon subsequent marriage, the option of purchasing supplementary long-term care insurance coverage on a spouse, without evidence of such spouse's insurability and at appropriate group rates added to the affected employee's individual contribution rate.

"(F) An active or retired employee may cease contributions under this subsection at any time, in which case the long-term care insurance shall terminate, with no restoration of converted group life insurance coverage.

"(2) Any employee who elects to convert basic life insurance to long-term care insurance as provided by paragraph (1) of this subsection shall retain a residual amount of the group life insurance and accidental death and dismemberment insurance authorized under this section which shall equal the greater of—

"(A) $2,000, or

"(B) an amount representing the basic insurance amount generally available based on the employee's current annual rate of basic pay decreased by the life insurance conversion requirement established pursuant to paragraph (3) of this subsection on the date the employee elected long-term care insurance.

"(3) For purposes of this subsection, the Office shall specify the initial dollar amounts for the life insurance conversion requirement and, in consultation with insurers, determine the reimbursement rates for benefits under each long-term care insurance plan (including reasonable waiting periods for benefit commencement) and periodic employee contributions for self and for spouse coverage based on age categories of qualified employees as the Office considers appropriate. All amounts determined in accordance with this paragraph shall be subsequently adjusted on the effective date, and in accordance with the average percent, of any change in pay rates for the General Schedule authorized under section 5305 of this title. Other adjustments of amounts under this paragraph may be made at such other times and in such amounts as the Office deems necessary and prescribes by regulation. The Office may, through negotiations with insurers, provide options that, by using other indexes, allow increases that exceed those of the General Schedule.

"(4) A qualified employee for purposes of this subsection is any employee who is subject to this chapter and who—

"(A) is in active service;

"(B) attains an age specified by regulations of the Office, which shall be no less than age 50;

"(C) is currently insured under this chapter and has been insured for a total of 10 years, or elects to make contributions for long-term care insurance without the benefit of the basic insurance conversion authorized by paragraph (1) of this subsection; and

"(D) has not transferred ownership of life insurance to another person under subsection 8706(e) of this chapter.

"(5) Unless otherwise provided by regulations of the Office, all elections involving employee insurance under this subsection must be made within a period which the Office shall specify that begins when each employee first becomes a qualified employee as described in paragraph (4) of this subsection."

(2) in subsection 8706(a)—

(A) by inserting "life insurance" immediately before "policy purchased"; and

(B) by inserting the following sentences immediately after the first sentence. "An election of long-term care insurance under subsection 8704(e) shall be disregarded for purposes of determining an employee's basic insurance amount under this subsection. A long-term care insurance policy under this chapter may provide for conversion to an individual or group policy upon separation from service."

(3) by amending subsection 8707(c) to read:

"(c)(1) Except as otherwise provided by this subsection, the amount withheld from the pay, annuity, or compensation of each employee subject to insurance deductions under this section shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

"(2) No employee withholding is required under this section, however, for any part of the basic insurance amount that is converted to long-term care insurance under subsection 8704(e) of this title.";

(4) by amending subsection 8708(a) to read:

"(a) Except as otherwise provided by this section, for each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title and is subject to withholding under section 8707 of this title, a sum equal to one-half of the general employee withholding specified under subsection 8707(c)(1) of this title shall be contributed from the appropriation or fund used to pay the employee. Contributions under this section shall be apportioned between basic life insurance and long-term care insurance accounts in the Employees' Life Insurance Fund if an employee has elected the basic insurance conversion permitted under subsection 8704(e) of this title.";

(5) in section 8708, by adding a new subsection (d) to read:

"(d) The sum required by subsection (a) of this section in the case of each employee who retires on immediate annuity or commences receiving compensation under subchapter I of Chapter 81 of this title after December 31, 1989, and who elects to retain insurance in accordance with 8706(b)(3)(A) of this chapter, shall be paid by the Office from annual appropriations which are hereby authorized to be made for that purpose and which may be made available until expended.";

(6) by amending subsection 8709(a) to read:

"(a) The Office of Personnel Management may, in its sole discretion and without regard to section 5 of title 41, United States Code, purchase from one or more duly licensed insurers a policy or policies to provide benefits specified by this chapter, including group life insurance, accidental death and dismemberment insurance, and long-term care insurance. For long-term care insurance, purchase will be through a competitive process among insurers who agree to accept liability for the benefits offered. To be eligible for consideration as an insurer under this chapter, an entity must meet the following requirements:

"(1) For purposes of group life and accidental death and dismemberment insurance, it must—

"(A) be licensed to transact such insurance in all the States, and

"(B) have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

"(2) For purposes of group long-term care insurance, it must—

"(A) be licensed to transact group life or health insurance in each State in which the company proposes to offer long-term care benefits provided by this chapter, and

"(B) have, in the judgment of the Office, long-term care expertise, substantial experience with insuring very large groups, and financial soundness."

(7) in subsection 8710(a)—

(A) by inserting "life and accidental death and dismemberment" immediately after "total amount of"; and

(B) by adding at the end thereof the following new sentence: "This section shall not apply to long-term care insurance authorized under subsection 8704(e) of this chapter."

(8) by amending the fourth sentence of section 8712 to delete the word "life"; and

(9) in the first sentence of subsection 8714(a) by inserting "8704(e) or" before "8707".

SEC. 2. This Act shall take effect on January 1 of the first year which begins at least 120 days after enactment.

Mr. DOLE. Mr. President, Senator WILSON is to be commended as this is a first step in helping to sort out answers with respect to the financing of long-term care. In many respects it is an experiment with a public/private sector solution to a very pressing need.

There is no additional cost to the Government, as the payments currently made to the life insurance policy would instead be applied to a long-term care policy. Therefore, there would not be an additional burden on the taxpayer. It would also be of benefit to the employee, as insurance needs change as an individual ages. Most importantly, the conversion would be optional and several plans will be offered, thus it would allow the employee a choice.

I have long been a proponent of public/private sector activity, and in fact I think that is the only way we will be able to develop a solution to the difficult and complex issue of the financing of chronic care. This plan will allow us to observe what options the public wants and needs, and it also allows the private sector to participate in the process.

This is a significant model for us to follow. Again, I am pleased to support this bill.

By Mr. KERRY:

S.J. Res. 193. Joint resolution to establish a bipartisan commission on Third World debt; referred to the Committee on Foreign Relations.

ESTABLISHMENT OF A BIPARTISAN COMMISSION ON THIRD WORLD DEBT

Mr. KERRY. Mr. President, today I am introducing a joint resolution that would establish a bipartisan commission on Third World debt. A companion resolution is being introduced in the House by Representatives FAUNTROY and GARCIA.

A bipartisan commission on Third World debt is needed to forge a consensus on an issue that for the last 5 years has cast a cloud over international financial relations, has stymied economic growth and development in Third World countries, and has threatened the political stability of emerging democracies.

Let me hasten to add that since the crisis first arose in 1982 after Mexico announced its inability to service its debt, that many creative and useful solutions have been formulated to solve the debt crisis. A bipartisan commission would be complementary to these solutions. Proposals for a debt management facility contained in both the Senate and House versions of the omnibus trade bill and the so-called options plan in the House version of the trade bill potentially represent part of the solution to the debt crisis.

Similarly, the initiative of Secretary Baker, first announced 2 years ago, meets part of the challenge by concentrating on the debt of the so-called Baker dozen. In the Congress, Senators BRADLEY, PROXMIRE, and SARBANES, and Representatives FAUNTROY, GARCIA, LAFALCE, MORRISON, and SCHUMER, among others have all made valuable contributions to the dialog on the Third World debt.

My own involvement stretches back several years and includes preparation of a staff study, introduction of a resolution in the 99th congress based on the study, and the convening of hearings on the decline of the dollar by a subcommittee of the Foreign Relations Committee. Hearings on the dollar invariably center on international financial problems including the Third World debt crisis.

My involvement in this issue has convinced me that now is the time to bring all of this work to fruition. While progress has been made the crisis lingers, and as long as it does, the potential for serious economic and political upheavals in Third World countries remains.

As long as the crisis lingers the damage to the U.S. economy will continue. It is difficult to measure the cost of the debt crisis, but financial instability and imbalance in the international trading system, by-products of the debt crisis, cannot be tolerated indefinitely.

As indicated in discussions of the omnibus trade bill and the findings of the resolution I have introduced, the United States has a major stake in Third World recovery. It is important that economic growth resume in Latin America, Asia, and Africa not only for the developing countries but also for the health of the United States economy. It has been estimated, for example, that debt related austerity in the top five developing country debtors, Brazil, Mexico, Argentina, Venezuela, and the Phillipines, reduced United States exports to these countries by $5 billion and increased imports from them by almost $9 billion, thereby reducing employment in the United States by more than 200,000 full-time jobs in nonservice industries.

Whether you are a textile manufacture hurt by imports from Third World countries that must increase their exports in order to pay interest on their debt, or a hi-tech manufacturer that cannot sell in the Third World because the debt crisis has slowed economic growth and development, you and your employees are directly affected by the debt crisis.

The debt crisis means less growth, less sales, and less jobs. It also means instability in credit markets thereby making it more difficult for businesses to obtain credit for plant expansions, farmers to obtain needed credit, and consumers to finance purchases of homes and automobiles.

Despite the progress to date and rhetoric to the contrary, the debt crisis will not go away and it is not amenable to piecemeal solutions. The Commission I have proposed can provide the required coherent approach to the debt crisis. It can pull together the vast array of data and material on the debt crisis. More importantly a bipartisan commission can provide an independent evaluation of the many solutions—including those contained in the omnibus trade bills—that have been proposed. A set of recommendations from an independent blue-ribbon commission would bring the required focus to this issue.

DEBT CRISIS: A HEADLINE A DAY

The importance and complexity of the Third World debt crisis cannot be overemphasized. The debt crisis continues to generate, almost on a daily basis, newspaper accounts in the financial press which describe threats of suspension of payments by debtor nations and/or announcements by major

money-center banks that they have established reserves against expected losses from loans to Third World countries. The Wall Street Journal, for example, recently reported that major money-center banks added a total of $15 billion in the summer of 1987 to their loan loss reserves.

International financial organizations, financial ministers from the G-7 and academic organizations regularly hold conferences in which the Third World debt is often a major topic on the agenda.

The World Bank and the International Monetary Fund [IMF] are holding their annual joint meetings here in Washington this week, and these organizations are expected to consider proposals for increasing the flow of funds to hard-pressed debtor nations, both those in Latin America and those in the poorer sub-Saharan area.

At preliminary meetings, Treasury Secretary Baker cited "impressive progress" made by a number of individual countries including Mexico and the Philippines. But West German Finance Minister Gerhard Stoltenberg expressed a more pessimistic view when he told reporters outside the preliminary meetings that "There are no real breakthroughs in the debt situation so far."

The National Bureau of Economic Research [NBER] held a conference last week in Washington on "Developing Country Debt." Papers were presented on the case histories of eight debtor countries and the role of the IMF, World Bank, and private capital flows.

If a solution to the Third World debt problems were at hand, or if we had made substantial progress in the past 5 years, than I believe we would not still have such a flurring of activity. It seems to me that these activities suggest that we are a long way away from a permanent over-all solution to the many facets of the problem.

Jeffrey Sachs, director of a NBER debt project, summed up the issues at the debt conference held in Washington last week. Sachs observed:

> The urgency of the NBER study should be self evident. For dozens of developing countries, the financial upheavals of the 1980's have set back economic development by a decade or more. Poverty has intensified in much of the developing world as countries have struggled under an enormous external debt burden. Moreover, the world financial system has been disrupted by the prospect of widespread defaults on the foreign debts of the developing world. More than 5 years after the onset of the crisis, almost all of the debtor countries are still unable to borrow in the international capital markets on normal market terms.

Mr. President, I believe Professor Sachs has cogently called our attention to the urgency of the Third World debt problem and I will insert a copy of his full summary statement in the RECORD at the conclusion of my statement.

THE RECORD

Given the daily newspaper reports and the proceedings of major international financial and research organizations, it is difficult to argue that the Third World debt crisis is near resolution. A review of the historical record will give an indication of the magnitude of the problem, the amount of progress to date, the impact of the crisis on debtor and creditor nations, and the scope of what remains to be accomplished.

The World Bank projects total external Third World debt at over $1 trillion—$1,080 billion; up from and estimated $1,035 billion in 1986. While Third World debt more than doubled ever 5 years in the inflationary environment of the 1970's, growth in external debt averaged about 5 percent per year after the 1982 crisis.

Slow growth in debt was consistent with the desire to reduce the exposure of major money center banks, and to prevent debt from growing faster than the ability of Third World countries to service the debt. While the exposure of nine U.S. money center banks, from loans to the 15 "Baker countries," decreased from 193 percent of capital in 1982 to about 124 percent of capital in 1986, the burden on these countries continued to increase. Between 1982 and 1986 the ratio of debt to exports—a measure of ability to service debt—increased for the 15 "Baker countries" from 270 to 338. The combination of rising real interest rates, and falling commodity prices, made the terms of trade less favorable to the less developed countries [LDC] thereby making it more difficult to generate the trade surpluses needed to service the external debt.

Despite the adoption of structural fiscal, monetary, and exchange rate policies urged upon the debtor nations by the IMF, there has been little permanent improvement in their ability to service their debts. While belts were tightened, the quid-pro-quo commitment of new loans did not materialize. Net loans to 109 nations in the World Bank debt reporting system [DRS] in 1986 were estimated to be about $21 billion—down from $28 billion in 1985—compared to about $50 billion in net interest paid by the debtor nations. Thus there was a net outflow of funds of approximately $30 billion from debtor to creditor nations.

The legacy of austerity and lack of required capital inflows was a 4-year—1981-84—decline in per capita output in the 15 "Baker countries" with per capita output remaining about 10 percent below its 1980 level.

EVALUATION OF PROGRESS TO DATE

There appears to be two schools of thought on progress to date. This past August the opposing views were aired in the financial pages of the New York Times. Jeffrey Sachs, a professor of economics at Harvard University—and director of the NBER debt project discussed earlier—argued that—

> It is time for a new direction in United States leadership in the Latin American debt crisis. Against all odds, the Reagan administration has been supporting the banks in holding out for full payments of interest on the bank debt owed by Latin America, a strategy that has left Latin America in financial and economic stagnation.

William B. Cline, a senior fellow at the Institute of International Economics, has an opposing view. He argues that—

> The search for a quick fix for the Latin American debt problem has generated numerous proposals for concessional debt relief. But a close analysis suggests that, except for some extreme cases (Bolivia, for example) such relief is not needed and would be counterproductive.

Mr. President, I will insert both of these excellent articles in the RECORD at the end of my statement.

Sach's basic evaluation is supported by Pedro-Pablo Kuczynski, cochairman of First Boston International and former Minister of Energy and Mines in Peru. Writing in the fall 1987 issue of Foreign Affairs, he argues that—

> No single scheme will "solve" the debt problem; there is no alternative, however, to some mix of reform of debtor economies and fresh capital. Unfortunately the clock is ticking and the progress on new action has been limited.

Martin Feldstein, professor of economics at Harvard University and former chairman of President Reagan's Council of Economic Advisers, supports the Cline position and observes in the Economist that—

> The world has been muddling through the Latin American debt problem with reasonable success for nearly 5 years now. The frequently predicted crisis, in which debtor countries repudiate their debts and big banks are no longer able to attract deposits has not occurred.

It is interesting, however, to note that although Cline and Feldstein both believe that reasonable progress has been made, they agree with Kuczynski and Sachs that additional capital inflows to the debtor nations are needed. In reality the disagreement is on how best to generate the required capital. It also important to note that most of the focus of these commentaries has been on Latin America. Tackling the problems of the poorer countries of sub-Sahara Africa will require a totally different approach.

BIPARTISAN COMMISSION

Mr. President, the bipartisan Commission I have proposed is consistent with both perspectives summarized above. A commission can reach a consensus on how far we have come and on what remains to be done. It can deal with the debtor nations of Latin American and the poorer nations of sub-Sahara Africa.

Specifically the Commission would:

First, document and analyze the consequences of the debt crisis on the Third World;

Second, document and analyze the consequences of Third World debt for the United States;

Third, review existing proposals and proposals contained in or recommended pursuant to the Omnibus Trade and Competitiveness Act of 1987 for addressing Third World debt problems, identifying particularly promising approaches, and analyzing their strengths and weaknesses; and

Fourth, develop concrete recommendations for resolving the debt crisis, addressed primarily to the U.S. Government but including guidance to other industrial country governments, debtor country governments, and international financial organizations.

The Commission would consist of 17 members selected as follows: First, seven members selected by the President; second, five members selected by the Speaker of the House; and third, five members selected by the majority leader of the Senate.

The President shall designate a chairman from among the members of the Commission.

The Commission will issue a final report 1 year after all its members are appointed.

Mr. President, the Greenspan Commission on Social Security—a bipartisan commission created by Executive order of the President—issued its report in early 1983. Its recommendations quickly formed the basis of bipartisan legislation enacted in April 1983. No analogy is perfect but it is my belief that there as some important similarities—principally the need to solve a complex set of financial obligations in order to preserve vital institutions—Social Security in 1983; the international banking system and democracy in the Third World in 1987.

In 1983 the financial obligations of the Social Security System were equitably apportioned among current and future workers and current and future beneficiaries to the advantage of the entire Nation. Today, we must allocate the financial obligations of the Third World debt equitably among debtor and creditor nations, and between the private and public sector within these nations.

The task is made more difficult by the need to not only reach a consensus in this country, but also by the need to reach an international consensus. But as Professor Sach's argues this is a time, Mr. President, for new directions in American leadership. The bipartisan Commission can provide that leadership.

The Washington Post asserted in editorials in both March and more recently last week that the subject of the Third World debt crisis "is not one in which American legislation is likely to be useful * * *" Rather the Post argues that "the patient work of holding things together" is the way to achieve progress on the Third World debt.

A bipartisan commission is consistent with this approach. But a commission will also assure—as the Post acknowledges is important—that the slow steady progress is preserving the political and economic stability of emerging democracies as well as the annual profits of financial institutions.

I submit for the RECORD an overview of the NBER Conference on Third World Debt prepared by Professor Sachs. I also submit for the RECORD two articles from the New York Times written by Mr. Cline and Mr. Sachs. I ask unanimous consent that the material be inserted in the RECORD at the end of my statement.

Finally, Mr. President, I also ask unanimous consent that the text of this resolution be printed in the RECORD.

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

S.J. RES. 193

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress hereby finds the following:

(1) The international debt crisis threatens the safety and soundness of the international financial system, the international trading system, and the economic development of the debtor countries.

(2) Over the past 5 years, the debt service requirements and the virtual cessation of new voluntary commercial bank lending to heavily indebted developing countries have resulted in massive net transfers of capital from such countries to creditor banks.

(3) While heavily indebted developing countries have enacted austerity programs, substantially reducing their consumption, these programs have contributed to negative economic growth, declining standards of living, and increased political instability in many emerging democracies.

(4) The United States has a major stake in Third World recovery. Renewed economic growth in Africa, Asia, and Latin America would mean expanded markets for United States products and new employment opportunities for United States workers. It would bring higher demand for United States agricultural exports. A revived Third World market would help reduce the United States trade deficit, would provide new investment opportunities for United States corporations, and would greatly strengthen the financial situation of United States Banks.

(5) The austerity policies enacted by the debtor countries have resulted in commodity gluts and price deflation within the international trading system, thus increasing instability within the international financial system.

(6) In order for the United States trade deficit to decline, substantial growth must occur on an international scale, particularly in the developing countries.

(7) Current policies and existing mechanisms for resolving the debt crisis have failed to produce adequate new capital flow in part because of the constraints imposed by the old debt. The heavily indebted countries of Latin America, Africa, and Asia are not recovering economically and the prospects are small for improvements in coming years.

(8) Negotiations between debtor nations and banks have become protracted and almost every day brings new announcements of threats of default by debtor nations or establishment of loss reserves by banks.

(9) A resolution of the current international debt problem will require—

(A) an increase in the flow of private capital in both debt and equity form, to the developing countries; and

(B) an increase in the role played by the public sector and the commercial financial institutions in providing assistance to the developing countries in managing the international debt situation.

(10) The longer the debt crisis lingers on the greater the danger to the economic and political stability of the developing nations and to the financial stability of international financial markets. Debt is not merely a financial or technical problem; it is at the heart of politics in much of Latin America, Asia, and Africa.

(11) It is now time to develop a sound program of international cooperation that can effectively bring the debt crisis to an end, restore economic growth and vitality to Third World nations, and alleviate current threats to international financial and trading arrangements.

SEC. 2. PURPOSE.

It is the purpose of this joint resolution to establish a National Bipartisan Commission on International Debt to develop recommendations for resolving the Third World debt crisis.

SEC. 3. ESTABLISHMENT.

There is established a national Bipartisan Commission on International Debt (hereinafter referred to as the "Commission"). The Commission shall consist of 17 members, selected as follows:

(1) 7 members selected by the President, not more than 4 from the same political party;

(2) 5 members selected by the Speaker of the House, not more than 3 from the same political party; and

(3) 5 members selected by the Majority Leader of the Senate, not more than 3 from the same political party.

The President shall designate a Chairman from among the members of the Commission.

SEC. 4. FUNCTIONS.

The Commission shall—

(1) document and analyze the consequences of the debt crisis on the Third World, and examine the full economic, social, and political costs resulting from the international debt burden, giving particular attention to the implications for democratic rule, for long-term social development, and for security;

(2) document and analyze the costs and consequences of Third World debt for the United States, report on all of the economic costs (such as lost trade and jobs, weakened banking system, and foregone investment), discuss who is having to pay these costs, and examine the broader implications of the debt crisis—for United States relations worldwide, for the building of democracy in this hemisphere, for migration and drug trafficking, and for inter-American and world security;

(3) review existing proposals and proposals contained in or recommended pursuant to the Omnibus Trade and Competitiveness Act of 1987 for addressing Third World debt problems, identifying particularly promising approaches, and analyzing their strengths and weaknesses; and

(4) develop concrete recommendations for resolving the debt crisis, addressed primarily to the United States Government but including guidance to other industrial country governments, debtor country governments, and international financial organizations, and specify for each recommendation, the costs, who will pay the cost, and the expected improvements in debtor country growth prospects, in United States trade and employment prospects, and in the stability of United States and international financial institutions.

SEC. 5. ADMINISTRATIVE PROVISIONS.

(a) The heads of executive agencies shall provide the Commission information to carry out its functions.

(b) Members of the Commission shall serve without any compensation. Members may be allowed travel and per diem expenses.

(c) The Commission shall have a staff headed by an Executive Director. Expenses of the Commission shall be paid from such funds as may be available to the Secretary of the Treasury.

(d) The Commission shall terminate 30 days after submitting its final report.

SEC. 6. REPORT.

The Commission shall make its final report on its findings and recommendations under section 4 to the President and the Congress not later than one year after all members of the Commission have been appointed.

SEC. 7. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this joint resolution.

INTRODUCTION TO THE NBER DEVELOPING COUNTRY DEBT PROJECT

(Overview Presented by Jeffrey Sachs at NBER Conference in Washington, DC, Sept. 21-23, 1987)

The Project on Developing Country Debt undertaken by the National Bureau of Economic Research in the past two years seeks to provide a detailed analysis of the ongoing developing country debt crisis. The focus is on the middle-income developing countries, particularly those in Latin America and East Asia, though many lessons of the study should apply as well to the poorer debtor countries in Sub-Saharan Africa.

The urgency of the NBER study should be self evident. For dozens of developing countries, the financial upheavals of the 1980s have set back economic development by a decade or more. Poverty has intensified in much of the developing world as countries have struggled under an enormous external debt burden. Moreover, the world financial system has been disrupted by the prospect of widespread defaults on the foreign debts of the developing world. More than five years after the onset of the crisis, almost all of the debtor countries are still unable to borrow in the international capital markets on normal market terms.

Table 1 shows several aspects of the economic crisis of the major debtor countries in recent years. Since the dramatic outbreak of the crisis in 1982, economic grown has slowed sharply or has been negative. Per capital incomes in the most indebted countries are still generally well below the levels of 1980. And ominously, debt-export ratios are higher today than at the beginning of the crisis.

Future growth prospects are clouded by a sharp drop in the share of capital formation in GNP. At the same time, inflation has risen to remarkable levels throughout Latin America. The mechanism behind the epidemic of high inflations is basically the same that caused the hyperinflations in Central Europe after World War I, with foreign debts now playing the role that reparations payments played in the post-World War I crisis.

The NBER Project analyzes the crisis from two perspectives, the individual debtor country, and the international financial system as a whole. A major goal of the country studies is to understand why some countries, such as Argentina or Mexico, succumbed to a serious crisis, while others, such as Indonesia or Korea, did not. Another important goal is to understand why most of the debtor countries have been unable to overcome the crisis despite many years of harsh economic adjustment.

To analyze such questions, the NBER commissioned eight detailed country monographs, covering four countries in Latin America (Argentina, Bolivia, Brazil, and Mexico) and four countries in the Middle East and East Asia (Indonesia, the Philippines, South Korea, and Turkey). Each study was prepared by a team of two authors: a U.S.-based researcher and an economist from the country under study.

The choice of countries was dictated by several considerations. First, the project aimed to include the countries with the largest external debt, since their behavior is most important from a global economic point of view. Second, the project was designed to investigate both successes and failures in external debt management. Thus, we have countries that succumbed to serious crisis, and have so far not recovered (Argentina, Bolivia, Brazil, Mexico, and the Philippines); a country which succumbed to crisis but has recovered in substantial part (Turkey); and two countries that did not succumb to an external debt crisis (Indonesia and South Korea). Third, the countries vary widely according to their trade structure, with economies heavily dependent on primary commodity exports (Argentina, Bolivia, Indonesia); countries with a mix of commodity and manufactured exports (Brazil, Mexico, the Philippines, and Turkey); and a country almost wholly dependent on manufactured exports (South Korea).

The economic performance of the eight NBER countries is summarized in Table 2. The table shows the very broad range of experiences. Economic growth is strong, and inflation relatively low, in South Korea, Indonesia, and Turkey. The Latin American economies all have low growth (negative in per capita terms), and very high inflations. The Philippines has low growth and also low inflation. The external debt burden, measured by the debt-export ratio, is heaviest in Latin America and the Philippines, and relatively light in Indonesia and South Korea. Turkey is ranked in the middle. As shown in the final column of the table, two countries (Indonesia and South Korea), escaped a debt crisis altogether. Turkey's came in the late 1970s, before the onset of the global crisis. The Latin American economies and the Philippines have all been engaged in repeated reschedulings since 1982-83.

The individual country studies can answer only some of the questions about the crisis, since global factors have undoubtedly been key to many of the developments in the past few years. Indeed, as Lindert and Morton stress, international debt crises have been a recurrent part of the international financial landscape for at least 175 years, in the 1820s, 1870s, 1890s, and 1930s. It is important to understand the fundamental properties of the international macroeconomy and global financial markets which have contributed to this repeated instability.

The NBER studies that take a global or "systemic" perspective cover several important topics, including: the history of international sovereign lending (Eichengreen, and Lindert and Morton); the nature of negotiations between the commercial banks and the debtor countries (Krugman); the role of the International Monetary Fund (Sachs); the global linkages between debt and macroeconomic policies in the industrial countries (Dornbusch); the appropriate role for long-term structural adjustment policies in the debtor countries (Edwards); the political factors within the developing countries that contribute to economic crisis versus stabilization and growth (Haggard and Kaufman); and possible new approaches to the global management of the crisis (Fischer).

LESSONS FROM THE INTERNATIONAL DEBT CRISIS

The international debt crisis has given rise to many oversimplified interpretations, most of which can be dismissed on the basis of the studies in the NBER project. Simple ideas abound on this topic often because they serve particular vested interests. Creditors want to blame the crisis on the policy mistakes of the debtor governments. Debtors want to blame the crisis on the macroeconomic and trade policies of the creditor governments. Both sides are keen to neglect the more nuanced historical record.

THE CREDITOR AND DEBTOR POSITIONS

The mainstream creditor position (as expressed variously by the United States government, the international institutions, and the commercial banks) can be summarized as follows. The debt crisis emerged largely because of the policy mistakes of the debtor governments. Loans were wasted by inefficent state enterprises, or were squandered in capital flight. "Successful" governments were those like South Korea, which pursued free-market economic policies, while unsuccessful governments smothered economic growth with government regulations. With sufficient economic reforms, including trade liberalization and an encouragement of foreign direct investment, the debtor countries will be able to grow out of the current crisis.

Creditors also maintain that the only proper way to manage the current crisis is to insist that the debtor governments honor their debts in full, since to do otherwise would threaten the international financial system. To grant debt relief to the debtors, they also suggest, would hurt the debtors more than it would help them, because it would cut the debtors off from future borrowing from the world financial markets, and thereby hinder their economic growth.

The debtor perspective of course differs at key points. Debtor governments hold that the crisis erupted because of the rise in world interest rates, the fall in commodity prices, and the collapse of world trade at the beginning of the 1980s. They blame the macroeconomic policies of the creditor governments, particularly the U.S. fiscal poli-

cies, for many of the global shocks. Debtor governments typically downplay the role of debtor country policies in the crisis, and often state that advocates of "free market policies" in response to the crisis are simply serving foreign interests (e.g. multinational firms) at the expense of the domestic interests. Many debtor governments argue that successful adjustment will require some debt relief. Attempts to honor the debt burden through increased exports will, they maintain, simply promote offsetting protectionist pressures in the creditor economies.

FINDINGS OF THE NBER STUDIES

There is no single NBER position to emerge from the country studies and systemic analyses, but the historical record belies many of the points commonly made by both the creditors and the debtors. At the risk of some oversimplification, the studies in this project suggest the following major points.

The debt crisis arose from a combination of policy actions in the debtor countries and macroeconomic shocks in the world economy. The "unsuccessful" adjusters (all but Indonesia and South Korea among the countries in the NBER study) fell prey to a common pattern of policy actions: chronically large budget deficits; overvalued exchange rates; and a trade regime biased against exports in general, and agriculture in particular. These policies would have hindered economic performance in most circumstances, but they provoked a deep crisis when confronted with severe shocks to world interest rates, exchange rates, and commodity prices, in the early 1980s.

Importantly, however, the policy actions in the debtor countries typically were not "mistakes" or technical misjudgments, but the result of a deeper political instability. The economies in Latin America, in particular, are deeply riven by great inequalities of income, which in turn prompts intense political conflict over income distribution. The chronic large budget deficits in these countries do not reflect political irresponsibility so much as political vulnerability. Governments can not resist the demands for spending from various highly mobilized social groups, and at the same time can not (or choose not to) raise taxes on the economic elites. Political institutions repeatedly proved too weak to keep the demands for government spending in line with the government's limited tax collections.

In some pathological cases, the political battle can degenerate into a battle of "ins" versus "outs", with the ins using the apparatus of the government for narrow personal gain. The worst exesses of this sort are seen in the Philippines under Marcos, and in many of the Bolivian regimes in the late 1970s and early 1980s.

The experience of South Korea belies the position often taken by the United States and the IMF and World Bank, that "small" government (as opposed to effective government) is a key to good economic performance. As the study by Collins and Park makes clear, the government of South Korea played a leading role in organizing economic development. The government was sufficiently powerful, however, to be able to generate significant budget surpluses to finance domestic investment, and to pursue a long-term policy of export-led growth. Also, given Korea's relatively equal distribution of income (the result in large part of extensive land reform in the late 1940s and early 1950s), the government was able to devote its attention to matters of efficiency rather than equity.

The historical record also belies the creditors' optimism with respect to rapid adjustment in the face of the debt crisis, but also the debtor's pessimism about the long-run results of adjustment policy. The historical record is rather clear on the long-run benefits of outward-oriented trade policies (though the studies by Edwards and Sachs make clear that outward orientation is not the same as trade liberalization). But the country experiences also suggest that outward-orientation requires a sustained period of heavy investment in the export sector, at rates that are difficult to achieve under conditions of financial crisis.

FISCAL ASPECTS OF THE DEBT CRISIS

A foreign debt crisis sets in motion various adverse feedbacks that hinder economic recovery and reduce the possibility of a dramatic improvement in a country's export performance. The debt crisis has had three major external components: (1) a rise in world interest rates, which is generally translated into higher domestic interest rates; (2) a fall in export commodity prices; and (3) a reduction or reversal of net capital inflows.

All of these shocks tend to worsen the fiscal balance, which in most debtor countries was already seriously in deficit before the debt crisis hit (indeed, most of the foreign borrowing was used to finance public sector deficits). The combination of (1) and (3) directly caused a worsening of budget deficits (because of higher interest servicing charges on both home and foreign government debt), together with a reduced capacity to finance those deficits with foreign borrowing. The result in many cases has been that governments have resorted to inflationary finance (i.e. money printing) in lieu of foreign borrowing. This is the experience in Argentina, Bolivia, Brazil, and Mexico. The inflation in turn undermines the tax system, leading to a potentially explosive growth of the budget deficits.

More directly, the collapse of export prices reduces the government's tax revenues from exports and from imports financed by the exports. The reduction in trade tax collections has contributed to the budget crisis in most of the high-inflation economies.

The adverse income effects of (1), (2), and (3), have usually resulted in a real exchange rate depreciation in the debtor economies. While the real depreciation may be salutary for exports in the longer run, it may create several problems in the short run. The government budget deficit tends to widen because the domestic resource costs of the foreign debt are increased by the real depreciation.

At the same time, many private firms (particularly those in the nontraded goods sector and those with heavy foreign debt) may be subject to financial distress, because of the combination of high interest rates and real depreciation. The budgetary burden is then increased to the extent that the government is compelled to bail out the private firms (e.g. to give expensive interest rate subsidies), or more often, to bail out the private banks that are threatened when the private firms go bankrupt.

Once a government's fiscal situation has seriously deteriorated, a fiscal crisis can become self-fulfilling, as argued recently by Guillermo Calvo (1987). The fear of high future inflation, for example, can raise nominal interest rates, and thereby raise the interest costs for the government. Higher interest costs in turn widen the fiscal deficit and make inevitable the high future inflation. This kind of adverse feedback has apparently contributed to the sustained high interest rates in many of the debtor countries in recent years.

In general, major new export sectors require heavy investment. A devaluation can sometimes produce a rapid increase in exports (as happened in South Korea and Turkey after 1980, and Brazil after 1983), but only if there is substantial excess capacity resulting from earlier investments (or if there is a sharp domestic recession, which may free up domestic capacity for export if the country produces tradeables that are consumed domestically). Also, increasing the capacity of export industries often requires both public and private investment. New export sectors generally require new infrastructure in transport, communications, and perhaps port facilities, that usually are in the domain of public investment. Unfortunately, public sector investment has been among the hardest hit areas of government expenditure in the crisis countries of Argentina, Bolivia, Brazil, Mexico, and the Philippines.

Despite the centrality of the public-sector budget in the origin and development of the crisis, there are profound difficulties in measuring and forecasting the fiscal position. Even the IMF auditing of the fiscal accounts, as recorded in the IMF's Government Finance Statistics, are inadequate to the task.

There are several kinds of measurement problems, many with economic, significance. First, actions with fiscal consequences (e.g. actions that increase the public debt or the money supply) are made not only by the central government, but also by regional governments, parastatal enterprises, development banks, and the central bank. Often, the finance minister has little ability to measure, much less control, the consolidated public sector accounts. In most of the countries under study, the various governmental entities outside of central government can gain direct access to the central bank, or can get government guarantees for foreign borrowing, without the authorization of the finance minister.

Another problem is that private sector obligations often quickly become public sector obligations when a financial crisis hits. Domestic firms cry for bailouts, and foreign creditors often insist as well that the central government make good on the private sector debts. The government takeover of the debt can be partially disguised (or at least hard to measure) if the takeover comes in the form of special exchange rates for debt repayments, subsidized credits, or other off-budget means of bailing out private debtors.

The net result of this fiscal complexity is that many countries are forced to rely heavily on inflationary finance even when the measured central government budget seems close to balance. Cardoso and Fishlow discuss, for example, the data problems in Brazil, where several years of triple digit inflation were accompanied measured deficits near zero. The small measured deficits led some to conclude that the inflation was purely an "inertial" phenomenon. This view was tested in the ill-fated Cruzado plan, which attempted to use a wage-price-exchange rate freeze to break the inertia. After the collapse of the Cruzado Plan, most observers now conceded that large fiscal deficits are the driving force of the high Brazilian inflation.

RENEGOTIATING THE EXTERNAL DEBT

The creditor community has long argued that debt forgiveness (i.e. a partial cancellation of debt service payments) is unnecessary and counterproductive. Here we have the historical record as an important guide. Lindert and Morton, and Eichengreen, both demonstrate that previous debt crises have usually ended in some forgiveness. A compromise is typically reached in which the debtors service some, but not all, of the debt that is due. A partial writedown of the debt is the norm, not the exception.

In the past, the compromise was typically reached as the result of bilateral negotiations between debtors and creditors. Lindert and Morton suggest that the involvement in the 1980s of third parties (mainly the creditor governments and the international institutions) has hindered the effective (though often messy) process for arriving at a solution to excessive debt.

The creditor view that debt relief would be harmful even for the recipient debtor countries, because these countries would be closed out of capital markets for many years in the future, is not supported by the historical experience. Both Lindert and Morton, and Eichengreen, find that countries that have achieved partial debt relief have not lost access to the markets to any greater extent than countries that continue to pay their debts. In the aftermath of global debt crises, neither "good" debtors nor "bad" debtors have been able to borrow.

History offers an ironic example why. Argentina was the only country in South America to service the federal debt in the 1930s, under terms laid down by onerous treaties with Great Britain. The nationalist backlash against foreign influence helped to sweep Peron into power. Peron's populist policies more than undid any beneficial reputational effects that Argentina might have garnered from its debt repayments in the 1930s.

It remains to ask, then, why the debtor countries have by and large continued to service their debts fully in the 1980s, despite the historical experience. In part, the question may be simply one of time. In the first years of the crisis, most countries accepted the creditors' arguments that the crisis could be quickly resolved. As that has not come to pass, more and more countries are taking unilateral actions with respect to debt servicing. By mid-1987, several Latin American countries had unilaterally suspended at least part of the interest servicing of the debt, including: Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Honduras, Nicaragua, and Peru.

Another aspect of the debt servicing policies involves the balance of power between debtors and creditors. Debtor governments fear the retaliation of the commercial banks, especially in the form of a cutoff in trade credits. Ironically, those countries that have suspended interest payments in recent years (e.g. Brazil, Ecuador, and Peru), have been able to maintain their trade credit lines, though at the cost of a higher risk premium on the short-term borrowing.

Another kind of retaliation that is feared is a reaction by the creditor governments, either within the financial sphere or more generally in other areas of foreign relations. Countries fear that if they suspend interest servicing, they may lose access to support from the IMF, the World Bank, the Paris Club (for a rescheduling of debts with official bilateral lenders), foreign aid agencies, and export credit agencies. Moreover, debtor governments fear that the leading creditor governments might withdraw other forms of foreign policy support (e.g. involving trade policy, security assistance, etc.), and might even back political opponents of the regime.

A final, and often overlooked reason that countries do not default involves the domestic political economy of the debtor country. In the case of a unilateral suspension of debt payments, some sectors and classes of the economy will tend to gain and others will tend to lose. Gainers from tough bargaining will usually include the nontradeables sectors, urban workers, and landless peasants producing for the domestic market. Losers will include the tradeables sectors (both because of repercussions on the exchange rate, and because of possible retaliation), and the domestic financial community, which has a stake in harmonious financial relations with the foreign banks. Left-wing governments, such as Alan Garcia's in Peru, are therefore more likely to please their working class constituency by taking a hard line on the debt than are governments oriented to exporters and the banking community.

TOWARDS A POLITICAL ECONOMY OF CRISIS, STABILIZATION, AND ADJUSTMENT

We have noted that policy "mistakes" are often not mistakes (in the sense that the government misunderstands the implications of its actions). Rather they are often symptoms of deeper political or economic problems in the debtor countries. The diagnosis that a budget deficit is too large, and therefore should be reduced, is not a complete diagnosis. In the abstract, most finance ministers understand that excessive inflation, or excessive foreign borrowing, result from excessively large budget deficits. At the same time, however, they are often unable or unwilling to do much to reduce the deficits. We must therefore try to understand why the political process produces the excessive deficit. Similarly, we should better understand the ways in which the political process leads to a debtor country's debt negotiating strategy. The papers by Haggard and Kaufman, Sachs, and Edwards, as well as the country monographs, all emphasize the political context in which various economic policies are pursued.

The basic ideas in most stabilization programs supported by the IMF and World Bank are quite straightforward, and aim to reduce budget deficits, achieve a real exchange rate depreciation, and open the economy to international trade. The sobering point is that programs of this sort have been implemented repeatedly, and have failed repeatedly, in the countries under investigation during the past 30 years. A major goal must be to understand why such programs typically fail.

Consider the cases of Mexico and Argentina, for example. As the Mexican case study by Buffie and Sangines makes clear, the "standard" package has been attempted in 1971, 1977, and 1983. In the first two cases, at least, major parts of the package were abandoned early on. Similarly, in Argentina, the "orthodox" package has been tried under Peron, in 1951; Ongania, in 1967 (the so-called Krieger-Vasena program); Viola, in 1977-81 (with Martinez de Hoz as Finance Minister); and to some extent, Alfonsin, since 1985. Again, the staying power of the orthodox program has been very weak in Argentina. (Very recently, this weakness was again underscored, by the electoral losses of Alfonsin's Radical party, and the electoral resurgence of the Peronists.)

More generally, the review by Sachs of IMF programs supports the general point that the most basic weakness of Fund programs is not in design, but in implementation. The common charge by leftist critics that Fund programs do great economic damage is belied by the different, but also damaging conclusion that Fund programs rarely get implemented.

The NBER studies raise some hypotheses as to why the "standard" programs repeatedly fail. Part of the answer seems to lie in the nature of IMF relations with the debtor countries. The style of IMF bargaining seems almost designed to undercut the legitimacy of Fund programs, by relying on secret negotiations, and short-run actions that involve the executive branch but avoid the legislature.

More significantly, most of the countries under study suffer from deep class and political cleavages, combined with weak political institutions and fragmented political parties that fail to keep pace with rapid increases in political and social mobilization. The result, as pointed out by Huntington (1968, p.262) is that "cliques, blocs, and mass movements struggle directly with each other, each with its own weapons. Violence is democratized, politics demoralized, society at odds with itself." In the end, governments alternate rapidly between civilian and military regimes, and budgets and exploited for short-term political advantage rather than long-term economic strategy.

Interestingly, Huntington argued that political stability in modernizing societies can best be achieved through an alliance of an urban ruling elite with the rural masses. Ideally, according to Huntington, that alliance is cemented through agrarian reform and the organization of party support in the countryside. Among the countries under study in the NBER project, Indonesia and South Korea most closely fit Huntington's ideal type. (In the case of Indonesia, however, Suharto's stress on his rural constituency was combined, early in his rule, with violent repression of his rural opposition.) In none of the Latin American countries have governments recently looked to the rural sector as the principle locus of political support.

Haggard and Kaufman identify several other features of the political landscape which affect a government's capacity to carry out necessary economic adjustments, including: the administrative capacity of the governments; the pattern of trade union organization; and the susceptibility of the political institutions to electoral business cycles.

With regard to the substantive design of adjustment programs, Edwards disputes the notion that dramatic liberalization is helpful in the context of a debt or stabilization crisis, suggesting that dramatic liberalization has little basis in either theory or history. Edwards argues that rapid trade liberalization is likely to generate adverse employment effects in the short term, as occurred in the liberalization programs in Argentina, Chile, and Uruguay in the 1970s. Similarly, abrupt devaluations are likely to result in output losses and unemployment in the short run.

NEW APPROACHES TO MANAGING THE DEBT CRISIS

The unsatisfactory economic performance of most of the debtor countries in the past five years has led to continued suggestions for new approaches to international debt management. The NBER studies by Fischer,

Krugman, and Sachs consider several alternatives that have been widely discussed, as well as some new proposals.

All of the authors stress that a workable solution to the debt crisis will differ across countries. Some countries, such as Bolivia, Sudan, or Zaire, clearly can service only a small fraction of their debts on market terms. When Bolivia tried to meet its debt servicing obligations during 1982-84, the result was a hyperinflation (the links of debt servicing and hyperinflation are explained by Morales and Sachs). Other countries can service some, but perhaps not all of their debts at normal market terms. Thus, a real case-by-case approach would recognize the need for substantial debt relief for some of poorest and weakest economies, and perhaps some lesser degree of relief for the other debtor countries.

Krugman and Sachs both illustrate the efficiency case for debt relief. A heavy debt burden acts like a high marginal tax rate on economic adjustment. If the economy successfully imposes austerity, much of the benefit accrues to the foreign creditors. Partial debt relief can therefore be pareto improving (i.e. to the benefit of both creditors and debtors), by improving the incentives for the debtor country to take needed adjustment actions. In political terms, partial debt relief can strengthen the hand of moderates, who would pay some but not all of the debt, against the hand of extremists, who would like to service little or none of the debt.

Fischer offers an analysis of a broad range of proposals, dividing his analysis between those alternatives that would merely restructure the debt, and those that would effectively cancel part of the debt. In the first group, he considers debt-equity swaps, and echoes the conclusions of Krugman that debt-equity swaps are unlikely to be a major vehicle for resolving the crisis (indeed Krugman shows how such swaps can be detrimental to the debtor country).

Among proposals that would offer partial forgiveness to the debtor countries (i.e. an explicit writedown of part of the present value of the debt), Fischer focuses heavily on the idea of creating an International Debt Discount Corporation (IDDC). The IDDC would buy developing country debt from the banks in exchange for claims on the institution, and in turn collect from the debtor countries. The basic idea is that the IDDC buy the debt at a discount, and then cancel some of the debt due from the debtor country. Calculations in Sachs (1987) show that the IDDC, far from hurting the commercial banks, could actually raise their market value, so deeply are their stock prices currently discounted because of their LDC debt exposure.

Fischer stresses, however, that the most likely scenario is that partial relief will result from bilateral negotiations between creditors and debtors (as in the historical examples described by Eichengreen, and by Lindert and Morton) rather than through a single international relief operation.

TABLE 1.—THE ECONOMIC CRISIS IN THE HEAVILY INDEBTED COUNTRIES

	Average, 1969–78	1979	1980	1981	1982	1983	1984	1985	1986
Per capital GDP (annual change)	3.6	3.6	2.6	−1.6	−2.7	−5.5	−0.1	0.9	1.4
Inflation (annual rate)	28.5	40.8	47.4	53.2	57.7	90.8	116.4	126.9	76.2
Gross capital formation (percent of GDP)	NA	24.9	24.7	24.5	22.3	18.2	17.4	16.5	16.8
Debt-export ratio	NA	182.3	167.1	201.4	269.8	289.7	272.1	284.2	337.9

Source: All data refer to the 15 heavily indebted countries: Argentina, Bolivia, Brazil, Chile, Colombia, Côte d'Ivoire, Ecuador, Mexico, Morocco, Nigeria, Peru, Philippines, Uruguay, Venezuela, Yugoslavia. Data are from the IMF "World Economic Outlook," April 1987. Inflation refers to the consumer price index.

TABLE 2.—ECONOMIC PERFORMANCE IN THE EIGHT NBER COUNTRIES

	GDP 1980–85	Inflation, 1980–85	Primary share of commodities in exports, 1985	Debt-export ratio, 1985	Debt rescheduling, 1975–86
Argentina	−1.4	342.8	82	576	Yes.
Bolivia	−4.5	569.1	94	601	Yes.
Brazil	1.3	147.7	59	417	Yes.
Indonesia	3.5	10.7	89	191	No.
Mexico	.8	62.2	73	445	Yes.
Philippines	−.5	19.3	49	563	Yes.
South Korea	7.9	6.0	9	156	No.
Turkey	4.5	37.1	46	315	Yes.

Source: World Bank, "World Development Report, 1987." GDP and inflation measures are annual rates of change.

[From the New York Times, Aug. 9, 1987]

SHOULD SOME LATIN DEBT BE FORGIVEN?

IT'S THE RIGHT TIME TO OFFER REAL RELIEF

(By Jeffrey D. Sachs)

It is time for a new direction in United States leadership in the Latin American debt crisis. Against all odds, the Reagan Administration has been supporting the banks in holding out for full payments of interest on the bank debt owed by Latin America, a strategy that has left Latin America in financial and economic stagnation.

The continued insistence on full debt payments could threaten the new democracies in Argentina, Brazil, Peru and elsewhere that are saddled with the financial overhang of the preceding military regimes. A change in policy could ease the way for a compromise in the critically important debt talks now going on between Brazil and the banks.

Washington seems to be alone in its optimism that the Latin debts can be fully serviced. To a degree, even the banks have recognized realities this year by announcing large losses in the form of increased loan-loss reserves for their Latin American exposure. And when Citicorp and others announced the losses, bank share prices actually rose.

The markets had long anticipated what the banks finally decided to admit, that the loans to many developing countries were worth considerably less, perhaps 40 percent less, than their face value. The same market readings are also present in the secondary market for Latin paper, where a $100 claim on Brazil now sells for $55, and where a true connoisseur of junk notes can buy a $100 claim on Bolivia for $10.

It is not hard to see the reasons for these markets assessments. Five years after the outbreak of the debt crisis, Latin America remains a financial basket case, even with some decline in world interest rates. The ratio of debt to exports is higher today than 1982, despite years of austerity. Poverty has risen sharply, and public services have deteriorated. The production and trafficking of illicit drugs have increased in step with the collapse of the legitimate economy.

Most Latin American governments are broke, and are forced to print money to cover their internal expenses, since so much of their tax earnings go toward servicing the foreign debt. The money printing fuels domestic inflation at rates unimaginable in the United States. Brazilian inflation has topped 500 percent at annual rates in recent months, while the rates in Argentina, Peru and Mexico are all well above 100 percent and appear to be heading higher. Bolivian inflation topped 50,000 percent in the spring of 1985 before the Government finally quit bank debt payments and applied Draconian fiscal measures to restore price stability.

The startling inflation rates throughout Latin America contribute to economic stagnation, capital flight and political despair. In response to the deepening crisis, a growing number of democracies in Latin America, including Bolivia, Brazil, Costa Rica, the Dominican Republic, Ecuador, Honduras and Peru, have recently said "Enough!" and have unilaterally suspended part or all of the debt servicing to the commercial banks.

From the Latin American perspective, the United States Government has seemed to be holding out for the last buck on the Latin debt. By promoting a progrm of relief for Latin America, the United States could instead become an ally of the new democracies rather than a financial adversary. Real debt relief would give the new democracies the will, the incentive and the political standing to go forward with true reform programs. For the first time, the Latin American governments could tell their people that the reforms and economic sacrifices are truly for their own benefit, and not for the foreign banks.

The key is to turn the banks' existing declines in the stock market into real relief for the debtor countries, while at the same time protecting the banks from any further declines. Many observers, such as Senators Bill Bradley and Paul S. Sarbanes, have discussed one of the ways this can be accomplished.

Given the current market value of the bank claims on the developing countries, bank shareholders should be happy to trade their Latin debt for about $60 per $100 of debt (the precise price would vary by country).

For debtor countries willing to pursue rigorous adjustment programs under International Monetary Fund and World Bank supervision, an international agency such as the World Bank should purchase the bank debt at the 60 percent price. The purchase could, of course, be made with maketable bonds rather than cash. Then the World Bank would reduce the debt burden to 60 percent of the current amount.

In this way, the debt burden would be reduced to a level that the country could reasonably be expected to service.

In the proposed plan, the relief would come from the banks, rather than from the taxpayers. Could the banks afford it? The answer is obviously yes, since the losses have already been incurred in their stock market valuations and loan-loss reserves. Risks to taxpayers in the creditor countries would arise only to the extent that the debtor countries could not service even the greatly reduced burden and the World Bank would require new funding to make up the difference.

These risks could be lessened in many ways. The World Bank could, for example, charge a spread between the purchase price from the banks and the relief price to the debtor. Or the debtor might pledge gold reserves as partial collateral.

The proposal would take the banks out of the long-term financing of Latin American governments, a business that the banks are now eager to abandon and one that is unnecessary for Latin America's present development needs.

A QUICK FIX THAT WOULD BE HARMFUL

(By William R. Cline)

The search for a quick fix for the Latin American debt problem has generated numerous proposals for concessional debt relief. But a close analysis suggests that, except for some extreme cases (Bolivia, for example), such relief is not needed and would be counterproductive.

The best single measure of the debt burden is the ratio of interest payments to exports. In part because of the decline of world interest rates, this ratio has fallen from 47 percent to 34 percent since 1982 for non-oil exporting countries in the region. After a setback from lower oil prices last year, the oil exporters should resume their improvement this year. Since 1982, debtor countries have sharply cut their external deficits, reduced their budget deficits and devalued their exchange rates to spur exports. After a severe recession in 1983, the countries re-established positive economic growth, and last year growth in non-oil Latin countries averaged 6.5 percent.

None of the four key debtor countries—Mexico, Brazil, Argentina or Venezuela—can be described as insolvent and in need of bankruptcy treatment. Brazil's current suspension of bank payments results not from external shock but from internal mismanagement last year. Exports are now recovering and new economic measures taken in June will reduce the budget deficit. Mexico has shown a dramatic external-sector recovery after last year's collapse of oil prices. The banks have just completed a new lending package for Argentina, and Venezuela has large foreign reserves.

Smaller countries such as Chile that have adopted proper policies have achieved impressive results in growth and exports. Most of the countries in the region can manage their debt and still achieve politically acceptable domestic growth of some 4 to 5 percent annually or higher.

International economic conditions must of course be adequate for continued progress. A threshold of perhaps 2½ percent annual growth in industrial countries is required for sufficient expansion of debtor-country exports. In addition, a new explosion of interest rates and new trade restrictions in industrial countries must be avoided. Commodity prices have been an area of disappointment, although there are emerging signs that they are recovering, particularly in the metals. The partial recovery of oil from its 1986 low is helping to stabilize conditions for Mexico and other oil exporters.

Not only is there no immediate need for widespread debt relief, but its long term benefits are also doubtful. Debt forgiveness is incompatible with improving the debtor country's creditworthiness and returning the country to normal access to international capital markets. Any improved capacity to service reduced debt would tend to be more than offset by the deterioration in creditors' perception of the country's willingness to pay—especially if they thought the country was capable of meeting its obligations while achieving satisfactory growth. Credit reputation is crucial in sovereign borrowing, where physical collateral is absent.

Forced forgiveness would tend to isolate the country not only from capital markets but also from export markets. Peru illustrates the point. Its exports and foreign reserves have fallen as foreign banks cut off trade credit in response to President Alan Garcia's unilateral ceiling on payments, and its favorable growth of last year is unlikely to be sustained.

Senator Bill Bradley has proposed that banks forgive three percentage points annually on both interest and principal—over three years—with agreed policy reform. For Mexico, this program would raise national income by at most one-half percentage point annually during the period. This benefit would seem too small to risk the potentially large long-run costs associated with impairment of creditworthiness.

Another proposal in Congress would create a new debt entity to buy bank debt at the secondary market price and convey the discount to the countries. If such a program is voluntary, few banks would enlist. If forced on the banks, such mechanisms would severely damage the long-term credit relationship between the banks and the countries.

It is true that the risk to the international banking system from developing country debt is much lower today than in 1982 because of increased bank capital and the sizable loan-loss reserves set aside after Brazil suspended bank payments in February. The central point, however, is that even judged solely by the debtor country's own interests (especially longer term), arrangements for new borrowing usually will be superior to forced forgiveness of debt.

The proper policy on debt remains a strengthened Baker Plan, which envisions coordinated resumption of capital flows to the debtor countries in return for policy reform. Renewed capital inflows will be necessary for investment revival and sustained growth, especially as export expansion begins to exhaust idle capacity.

The banks must fulfill their part of the Baker Plan, and will come closer to doing so this year with large new lending to Mexico, Argentina and possibly Brazil. The Export-Import Bank should expand lending more rapidly. And lending through the World Bank and the regional banks should rise faster than under Treasury Secretary James A. Baker 3d's original formulation.

But the fundamental premise of the Baker Plan remains sound: It is far better for the debtor countries themselves—and for the international financial system—to keep debt management on a track that points back to re-establishment of normal access to capital markets Forced debt forgiveness would jettison the hard-won progress in that direction that has already been achieved.

ADDITIONAL COSPONSORS

S. 368

At the request of Mr. MATSUNAGA, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 368, a bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes.

S. 444

At the request of Mr. BOSCHWITZ, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 444, a bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes.

S. 533

At the request of Mr. THURMOND, the name of the Senator from Florida [Mr. CHILES] was added as a cosponsor of S. 533, a bill to establish the Veterans' Administration as an executive department.

S. 858

At the request of Mr. BRADLEY, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 858, a bill to establish the title of States in certain abandoned shipwrecks, and for other purposes.

S. 889

At the request of Mr. GORE, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 889, a bill to amend the Communications Act of 1934 to provide for fair marketing practices for certain encrypted satellite communications.

S. 1162

At the request of Ms. MIKULSKI, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 1162, a bill to amend chapter 89 of title 5, United States Code, to provide authority for the direct payment or reimbursement to certain health care professionals; to clarify certain provisions of such chapter with respect to coordination with State and local law; and for other purposes.

S. 1304

At the request of Mr. SIMON, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 1304, a bill to enhance the energy security of the United States, improve the environment, and expand markets for agricultural commodities by providing for the increased use of motor fuel blended with ethanol.

S. 1346

At the request of Mr. MATSUNAGA, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 1346, a bill to amend the National Labor Relations Act to give employers and performers in the per-

forming arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, to give employers and performers in the performing arts the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 1440

At the request of Mr. EVANS, the names of the Senator from Missouri [Mr. DANFORTH], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 1440, a bill to provide consistency in the treatment of quality control review procedures and standards in the Aid to Families With Dependent Children, Medicaid, and Food Stamp programs; to impose a temporary moratorium for the collection of penalties under such programs, and for other purposes.

S. 1469

At the request of Mr. BOSCHWITZ, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1469, a bill to amend title VII of the Social Security Act to restrict the use of "Social Security" or "Social Security Administration" on goods not connected with such Administration.

S. 1522

At the request of Mr. RIEGLE, the names of the Senator from Michigan [Mr. LEVIN], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 1522, a bill to amend the Internal Revenue Code of 1986 to extend through 1992 the period during which qualified mortgage bonds and mortgage certificates may be issued.

S. 1561

At the request of Mr. BOND, the names of the Senator from North Carolina [Mr. HELMS], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 1561, a bill to provide for a research program for the development and implementation of new technologies in food safety and animal health, and for other purposes.

S. 1616

At the request of Mr. SIMON, the name of the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Connecticut [Mr. WEICKER] were added as cosponsors of S. 1616, a bill to amend title XVIII of the Social Security Act and the Internal Revenue Code of 1986 to provide long-term home care benefits under the Medicare Program for chronically ill individuals and children, to provide quality assurance for home care services, and for other purposes.

SENATE JOINT RESOLUTION 105

At the request of Mr. LAUTENBERG, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Nebraska [Mr. EXON], the Senator from North Dakota [Mr. BURDICK], the Senator from Massachusetts [Mr. KERRY], the Senator from Illinois [Mr. DIXON], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Michigan [Mr. RIEGLE], the Senator from Mississippi [Mr. COCHRAN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from South Dakota [Mr. PRESSLER], the Senator from North Carolina [Mr. HELMS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from South Carolina [Mr. THURMOND], and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of Senate Joint Resolution 105, a joint resolution to designate December 7, 1987, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

SENATE JOINT RESOLUTION 172

At the request of Mr. BRADLEY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE JOINT RESOLUTION 184

At the request of Mr. RIEGLE, the names of the Senator from Georgia [Mr. FOWLER], the Senator from New York [Mr. MOYNIHAN], the Senator from Tennessee [Mr. SASSER], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 184, a joint resolution designating October 15, 1987, as "National Safety Belt Use Day."

SENATE JOINT RESOLUTION 192

At the request of Mr. HATCH, the names of the Senator from Maine [Mr. MITCHELL], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Joint Resolution 192, a joint resolution to designate the month of October 1987, as "National AIDS Awareness and Prevention Month."

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. STEVENS, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Concurrent Resolution 43, a concurrent resolution to encourage State and local governments and local educational agencies to provide quality daily physical education programs for all children from kindergarten through grade 12.

SENATE RESOLUTION 246

At the request of Mr. MOYNIHAN, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Resolution 246, a resolution to honor Irving Berlin for the pleasure he has given to the American people through almost a century of his music.

SENATE CONCURRENT RESOLUTION 80—TO EXPRESS THE APPRECIATION OF THE CONGRESS TO THE CITY OF PHILADELPHIA, THE NATIONAL PARK SERVICE, AND WE THE PEOPLE 200, INC.

Mr. BYRD (for himself, Mr. DOLE, Mr. HEINZ, and Mr. SPECTER) submitted the following concurrent resolution; which was considered and agreed to.

S. CON. RES. 80

Resoved by the Senate (the House of Representatives concurring), That the Congress hereby expresses appreciation to the City of Philadelphia, the National Park Service, and We the People 200, Inc., for their hospitality during the July 16, 1987, ceremonies commemorating the bicentennial of the Great Compromise, which determined the basis of representation in the Senate and the House of Representatives.

SENATE RESOLUTION 293—TO AMEND SENATE RESOLUTION 352 RELATING TO THE COMMEMORATION OF THE BICENTENNIAL OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 293

Resolved, That section 7(a) of S. Res. 352, 99th Congress (as amended by S. Res. 166, 100th Congress), is further amended to read as follows:

"SEC. 7. (a) The actual and necessary expenses of the Commission, including the employment of staff at an annual rate of pay and the employment of consultants at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the Contingent Fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved by the Chairman of the Commission or his designee; except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.".

AMENDMENTS SUBMITTED

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1988

NICKLES AMENDMENT NO. 809

Mr. NICKLES proposed an amendment to the bill (H.R. 2713) 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, 1988, and for other purposes; as follows:

At page 2 on line 6 strike "$444,500,000" and insert in lieu thereof "$434,500,000", and

At page 13 on line 24 strike "$11,032,000" and insert in lieu thereof "$1,032,000".

TRIBLE AMENDMENT NO. 810

Mr. NICKLES (for Mr. TRIBLE) proposed an amendment to the bill H.R. 2713, supra; as follows:

H.R. 2713 is amended by adding at the appropriate place:

Provided further, That not to exceed $100,000 of this appropriation shall be used to reimburse Fairfax County and Prince William County, Virginia, for expenses incurred by the counties during fiscal year 1988 in relation to the Lorton prison complex. Such reimbursements shall be paid in all instances in which the District requests the counties to provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison. The District shall make quarterly reports to the House and Senate Subcommittees on District of Columbia Appropriations regarding the amount and purpose of such reimbursements made to the counties, and the amount of the authorization remaining for such reimbursements.

NICKLES AMENDMENT NO. 811

Mr. NICKLES proposed an amendment to the bill H.R. 2713, supra; as follows:

On page 24, strike all after "SEC." beginning at line 15 through line 24 of the bill and insert in lieu thereof the following:

117. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

HARKIN AMENDMENT NO. 812

Mr. HARKIN proposed an amendment to the bill H.R. 2713, supra; as follows:

At page 1 beginning on line 1 strike down through line 2, and at page 2 after line 2 insert:

TITLE I

FISCAL YEAR 1988 APPROPRIATIONS

HELMS AMENDMENT NO. 813

Mr. HELMS proposed an amendment to the bill H.R. 2713, supra; as follows:

At the appropriate place in the bill, add the following:

"None of the funds appropriated by this Act for payment to the District of Columbia as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, shall be obligated or expended after December 31, 1987, if on that date the city council of the District of Columbia has not repealed D.C. Law 6-170, the Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170).".

DEPARTMENT OF DEFENSE AUTHORIZATION, FISCAL YEARS 1988 AND 1989

WARNER AMENDMENT NO. 814

(Ordered to lie on the table.)

Mr. WARNER submitted an amendment intended to be proposed by him to the bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes; as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. . AMENDMENT OF THE WAR POWERS RESOLUTION.

(a) Strike out section 2(c) of the War Powers Resolution (50 U.S.C. 1541(c)).

(b) Section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)) is amended to read as follows: "If, within twenty-one calendar days after (1) a report is submitted or is required to be submitted under subsection (a) of this section (whichever is earlier), or (2) Congress is convened pursuant to subsection (a) of this section, whichever is later, an enrolled joint resolution or bill, as described in the first sentence of section 6(a), is presented to the President and is subsequently enacted into law, funds may not be obligated or expended to support the continued use of the Armed Forces in the hostilities or situations described in the report submitted, or required to be submitted, pursuant to section 4(a)(1), as provided in such joint resolution or bill.".

(c) Strike out section 5(c) of the War Powers Resolution (50 U.S.C. 1544(c)).

(d) Section 6 of the War Powers Resolution (50 U.S.C. 1545) is amended—

(1) In subsection (a)—

(A) by adding immediately before the first sentence the following new sentence: "For purposes of this section and section 5, the term 'joint resolution or bill' means only a joint resolution or bill which prohibits the obligation and expenditure of funds to support the continued use of the Armed Forces in hostilities or situations described in a report submitted, or required to be submitted, pursuant to section 4(a)(1) that becomes effective thirty or more days after the date of enactment of such joint resolution or bill.";

(B) by striking out "thirty" and inserting in lieu thereof "sixteen";

(C) by striking out "sixty" both places it appears and inserting in lieu thereof "twenty-one"; and

(D) by striking out "twenty-four" and inserting in lieu thereof "fourteen";

(2) In subsection (c)—

(A) by striking out "fourteen" and inserting in lieu thereof "nine"; and

(B) by striking out "sixty" and inserting in lieu thereof "twenty-one"; and

(3) In subsection (b)—

(A) by striking out "four" and inserting in lieu thereof "three";

(B) by striking out "sixty" both places it appears and inserting in lieu thereof "twenty-one"; and

(C) by striking out "48" and inserting in lieu thereof "24".

(e) Strike out section 7 of the War Powers Resolution (50 U.S.C. 1546).

(f) The amendments made by this section shall apply to the introduction of the United States Armed Forces into situations described by section 4(a) of the War Powers Resolution which occurred on or after August 1, 1987.

LEGISLATIVE BRANCH APPROPRIATIONS, FISCAL YEAR 1988

BUMPERS AMENDMENTS NOS. 815 THROUGH 822

Mr. BUMPERS proposed eight amendments to the bill (H.R. 2714) making appropriations for the legislative branch for the fiscal year ending September 30, 1988, and for other purposes; as follows:

AMENDMENT No. 815

At page 11 after line 5 insert the following:

"SEC. 6. Subsection (i) of Section 814 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93), as amended by Public Law 99-151, is amended by striking out '1987' and inserting '1988'.

AMENDMENT No. 816

On page 4, line 22, immediately before the period insert a colon and the following: "*Provided,* That the amounts appropriated to the Office of the Legislative Counsel of the Senate for Fiscal Year 1987 shall remain available until September 30, 1988".

AMENDMENT No. 817

On page 11, between lines 5 and 6, insert the following new section:

SEC. . Effective in the case of fiscal years beginning after September 30, 1986, the first sentence of section 107(a) of the Supplemental Appropriations Act, 1979 (Public Law 96-38; 2 U.S.C. 69a), is amended by striking out "$2,000" and inserting in lieu thereof "$4,000".

AMENDMENT No. 818

On page 3, line 20, immediately before the period insert a colon and the following: "*Provided,* That, from funds appropriated to the Conference of the Majority and from funds appropriated to the Conference of the Minority for any fiscal year, such Conference may utilize such amounts as it deems appropriate for the specialized training of professional staff, subject to such limitations, insofar as they are applicable, as are imposed by the Committee on Rules and Administration with respect to such training when provided to professional staff of standing committees of the Senate".

AMENDMENT No. 819

On page 11, between lines 5 and 6, insert the following new section:

SEC. 6. The Chairman of the Majority or Minority Conference Committee of the Senate may, during the fiscal year ending September 30, 1988, at his election, transfer not more than $50,000 from the appropriation account for salaries for the Conference of the Majority and the Conference of the Minority of the Senate, to the account, within the contingent fund of the Senate, from which expenses are payable under section 120 of Public Law 97-51 (2 U.S.C. 61g-6). Any transfer of funds under authority of the preceding sentence shall be made at such time or times as such chairman shall specify in writing to the Senate Disbursing Office. Any funds so transferred by the chairman of the Majority or Minority Conference Committee shall be available for expenditure by such committee in like manner and for the same purposes as are other

moneys which are available for expenditure by such committee from the account, within the contingent fund of the Senate, from which expenses are payable under section 120 of Public Law 97-51 (2 U.S.C. 61g-6).

AMENDMENT No. 820

On page 43, line 9, insert "(a)" before "Paragraph".

On page 43, insert between lines 19 and 20 the following new subsection:

(b) Paragraph (2) of section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended by striking out "end of the 30-day period" and inserting in lieu thereof "date of enactment of such joint resolution".

AMENDMENT No. 821

At page 40 beginning on line 18 strike all down through line 2 on page 41

AMENDMENT No. 822

On page 6 at line 6 strike "$66,174,000" and insert in lieu thereof "$68,021,000"

DEPARTMENT OF DEFENSE AUTHORIZATION, FISCAL YEARS 1988 AND 1989

MELCHER AMENDMENT NO. 823

(Ordered to lie on the table.)

Mr. MELCHER submitted an amendment intended to be proposed by him to the bill, S. 1174, supra; as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. —. PLAN FOR SHARING COSTS INVOLVED IN THE USE OF UNITED STATES ARMED FORCES.

(a) IN GENERAL.—Section 5 of the War Powers Resolution (Public Law 93-148) is amended by adding at the end thereof the following new subsection:

"(d)(1) Whenever the United States Armed Forces are introduced into any situation described in section 4(a)(1), the President should enter into negotiations with the government of any country benefiting from the introduction of those forces in order to establish a pro rata sharing of costs involved in such introduction and use of forces.

"(2) Within 30 calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall prepare and transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing—

"(A) his assessment of the costs involved in the use of United States Armed Forces pursuant to section 4(a)(1);

"(B) a plan for the pro rata sharing of such costs among those countries which benefit from that use of United States Armed Forces; and

"(C) a discussion of the status of negotiations entered into for the purpose of implementing the plan.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any sixty-day period described in section 5(b) of the War Powers Resolution which is in progress on the date of enactment of this Act or which begins on or after such date.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT AMENDMENTS

HARKIN AMENDMENT NO. 824

Mr. BYRD (for Mr. HARKIN) proposed an amendment to the amendment of the House to the bill (S. 1417) to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act; as follows:

In lieu of the matter proposed by the amendment of the House of Representatives, insert the following:

SHORT TITLE

SECTION. 1. This Act may be cited as the "Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987".

REFERENCE

SEC. 2. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Developmental Disabilities Assistance and Bill of Rights Act.

TITLE I—GENERAL PROVISIONS

FINDINGS AND PURPOSES

SEC. 101. Section 101 is amended to read as follows:

"FINDINGS AND PURPOSES

"SEC. 101. (a) The Congress finds that—

"(1) there are more than two million persons with developmental disabilities in the United States;

"(2) persons whose disabilities occur during their developmental period frequently have severe disabilities which are likely to continue indefinitely;

"(3) notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences;

"(4) family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with necessary support services;

"(5) persons with developmental disabilities and their families often require specialized lifelong assistance to be provided in a coordinated manner by many agencies and others in order to eliminate barriers for such persons and to meet the needs of such persons;

"(6) generic service agencies and agencies providing specialized services to persons with disabilities sometimes overlook, inappropriately address the needs of, or exclude persons with developmental disabilities in their planning and delivery of services;

"(7) public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and

"(8) it is in the national interest to offer persons with developmental disabilities the opportunity, to the maximum extent feasible, to make decisions for themselves and to live in typical homes and communities where they can exercise their full rights and responsibilities as citizens.

"(b) The purposes of this title are—

"(1) to provide assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community;

"(2) to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential; and

"(3) to make grants to support a system in each State to protect the legal and human rights of persons with developmental disabilities.".

DEFINITIONS

SEC. 102. Section 102 is amended—

(1) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) The term 'nonprofit' means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private share holder or individual.";

(2) by redesignating paragraph (4) as paragraph (3);

(3) by striking out paragraph (5);

(4) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (4), (5), (6), and (7), respectively;

(5) by redesignating paragraph (10) as paragraph (8), and in such paragraph, by striking out "nonhandicapped" each place it appears and inserting in lieu thereof "nondisabled";

(6) by striking out paragraph (11);

(7) by redesignating paragraphs (12), (13), (14), and (15) as paragraphs (17), (18), (19), and (20), respectively;

(8) by inserting after paragraph (8) (as redesignated by paragraph (5) of this section) the following new paragraphs:

"(9) The term 'priority area activities' includes, with respect to Federal priority areas or a State priority area—

"(A) activities to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services or other assistance which responds to the needs and capabilities of persons with developmental disabilities and their families and to enhance coordination among entities;

"(B) the—

"(i) conduct of studies and analyses;

"(ii) gathering of information;

"(iii) development of model policies, and procedures; and

"(iv) presentation of information, models, findings, conclusions, and recommendations to policymakers,

in order to enhance opportunities for persons with developmental disabilities, including the enhancement of a system for providing or making available specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(C) the demonstration of new ways to enhance the independence, productivity, and integration into the community of persons with developmental disabilities, such as model demonstrations which, if successful, will be made generally applicable through sources of funding other than funding under this title, including new ways to enhance specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(D) outreach activities for persons with developmental disabilities to enable such persons to obtain assistance in Federal priority areas or a State priority area, includ-

ing access to specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(E) the training of persons with developmental disabilities, family members of such persons, and personnel, including professionals, paraprofessionals, students, and volunteers, to obtain access to, or to provide, services and other assistance in the area, including specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons; and

"(F) similar activities designed to prevent developmental disabilities from occurring or to expand and enhance the independence, productivity and integration into the community of persons with developmental disabilities through the State on a comprehensive basis.

"(10) The term 'Federal priority areas' means community living activities, employment activities, child development activities, and case management activities.

"(11) The term 'State priority area' means priority area activities in an area considered essential by the State Planning Council.

"(12) The term 'community living activities' means such priority area activities as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements and supports in the community (including nonfinancial supports and family support services).

"(13) The term 'employment activities' means such priority area activities as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings.

"(14) The term 'supported employment' means competitive work in integrated work settings—

"(A) for persons with developmental disabilities for whom competitive employment has not traditionally occurred; or

"(B) for persons for whom competitive employment has been interrupted or intermittent as a result of a developmental disability, and who because of their disability need on-going support services to perform such work.

"(15) The term 'child development activities' means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

"(16) The term 'case management activities' means priority area activities to establish a potentially life-long, goal-oriented process for coordinating the range of assistance needed by persons with developmental disabilities and their families, which is designed to ensure accessibility, continuity of supports and services, and accountability and to ensure that the maximum potential of persons with developmental disabilities for independence, productivity, and integration into the community is attained.";

(9) by striking out "facility or facilities" in subparagraph (A)(ii) of paragraph (17) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "program or programs";

(10) by striking out "facilities" each place it appears in paragraph (17) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "programs";

(11) by striking out "paragraph (13)" in subparagraph (A)(iii) of paragraph (17) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "paragraph (18)";

(12) by striking out "facility" the first place it appears in paragraph (18) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "program";

(13) by striking out "public or nonprofit facility" in paragraph (18) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "program operated by a public or nonprofit private entity";

(14) by inserting ", including parents of persons with developmental disabilities, professionals, paraprofessionals, students, and volunteers," before "which is" in subparagraph (A) of paragraph (18) (as redesignated by paragraph (7) of this section);

(15) by striking out "the facility" in paragraph (18) (as redesignated by paragraph (7) of this section) and inserting in lieu thereof "a facility"; and

(16) by adding at the end thereof the following new paragraphs:

"(21) The term 'family support services' means services designed to—

"(A) strengthen the family's role as primary caregivers;

"(B) prevent inappropriate out-of-the-home placement and maintain family unity; and

"(C) reunite families with members who have been placed out of the home.

Such term includes respite care, personal care, parent training and counseling, support for elderly parents, and other individualized services.

"(22) The term 'assistive technology' means the systematic application of technology, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, persons with developmental disabilities in areas including education, employment, supported employment, transportation, and independent living and other community living arrangements.

"(23) The term 'early intervention services' means services provided to infants, toddlers, young children, and the families of such to—

"(A) identify, assess, and treat developmental disabilities at the earliest possible time to prevent more serious disability;

"(B) ensure the maximum growth and development of a person within the above classes who has a developmental disability; and

"(C) assist families in raising a child with a developmental disability.".

REPORTS

SEC. 103. (a) Section 107(a) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(4) a description of the State Planning Council's response to significant actions taken by the State with respect to each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State; and

"(5) a description of the progress made in the State in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities which are attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 122(b)(3) and 122(f).".

(b) Section 107(c)(1) is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(C) the progress made by States in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 122(b)(3) and 122(f);

"(D) the significant Federal policies that impact on the ability of States to address the needs of persons with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments; and

"(E) the number of meetings held by the interagency committee established under section 108(b) during the period for which the report is made, which agencies were represented at each such meeting, and the accomplishments of the interagency committee in comparison to the goals and objectives of such committee.".

TITLE II—STATE ASSISTANCE PROGRAM

PURPOSE

SEC. 201. (a) Section 121 is amended to read as follows:

"PURPOSE

"SEC. 121. The purpose of this part is to provide payments to States to assist in the development of a comprehensive system and a coordinated array of services and other assistance for persons with developmental disabilities through the conduct of, and appropriate planning and coordination of, administrative activities, Federal priority activities, and a State priority activity, in order to support persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community.".

(b) The heading for part B is amended by striking out "AND SERVICE" and inserting in lieu thereof "PRIORITY AREA".

STATE PLAN REQUIREMENTS

SEC. 202. (a) Section 122(b) is amended by striking out "for the provision of services for persons with developmental disabilities" in the matter preceding paragraph (1).

(b)(1)(A) Section 122(b)(1) is amended—

(i) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) The plan must provide for the establishment of a State Planning Council in accordance with section 124.";

(ii) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) The plan must designate the State agency which shall administer or supervise the administration of the State plan (hereafter in this part referred to as the 'designated State agency'). Except as provided in subsection (e), the designated State agency may be—

"(i) the State Planning Council required under subparagraph (A) if such Council may be the designated State agency under the laws of the State;

"(ii) a State agency that does not provide or pay for services made available to persons with developmental disabilities; or

"(iii) a State office, including the immediate office of the Governor of the State or a State planning office."; and

(iii) by striking out "each" in subparagraph (C) and inserting in lieu thereof "the".

(B) Section 122 is amended by adding at the end thereof the following new subsection:

"(e)(1) If a State agency that provides or pays for services for persons with developmental disabilities was a designated State agency for purposes of this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 and the Governor of the State determines, before June 30, 1988, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

"(2) The determination of the Governor of a State under paragraph (1) shall be at the discretion of the Governor and shall be made by the Governor after the Governor has considered the comments of the general public and the non-State agency members of the State Planning Council with respect to the designation of such State agency, and after the Governor has made an independent assessment of the impact that the designation of such agency has on the ability of the State Planning Council to serve as an advocate for persons with developmental disabilities.

"(3) If the Governor of a State determines not to retain the designation of a State agency in effect on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Governor shall, by October 1, 1990, designate another agency as the State agency in accordance with the requirements of subsection (b)(1)(B).

"(4) After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, any designation of a State agency shall be made in accordance with the requirements of subsection (b)(1)(B)."

(2) Section 122(b)(2) is amended—

(A) by inserting a comma and "activities," after "programs" in subparagraph (A);

(B) by striking out clause (i) of subparagraph (C) and inserting in lieu thereof "(i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans or federally assisted State programs that the State conducts and in which persons with developmental disabilities are eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, aging, programs for children with special health care needs, housing, comprehensive health and mental health, and such other plans as the Secretary may specify, and"; and

(C) by striking out "priority services being or to be provided" in subparagraph (D) and inserting in lieu thereof "Federal and State priority areas which are addressed or which will be addressed".

(3) Section 122 (as amended by paragraph (1)(B) of this subsection) is further amended—

(A) by redesignating paragraphs (3) through (7) of subsection (b) as paragraphs (4) through (8), respectively;

(B) by inserting after paragraph (2) of such subsection the following new paragraph:

"(3) The plan must describe a process and timetable for the completion, by January 1, 1990, by the State Planning Council in the State, of the reviews, analyses, and final report described in subsection (f)."; and

(C) by adding at the end thereof the following new subsection:

"(f)(1) Each State Planning Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies which provide public assistance) which affect or which potentially affect the ability of persons with developmental disabilities to achieve the goals of independence, productivity, and integration into the community, including persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

"(2) Each State Planning Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by each of the State agencies (including agencies providing public assistance) responsible for performing functions for, and providing services to, all persons with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of persons with developmental disabilities receiving services from each such agency, and if appropriate, shall include their families.

"(3) Each State Planning Council shall convene public forums, after the provision of notice within the State, in order to—

"(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

"(B) obtain comments from all interested persons in the State regarding the unserved and underserved populations of persons with developmental disabilities which result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

"(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for persons with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

"(4) By January 1, 1990, each State Planning Council shall prepare and transmit to the Governor of the State and the legislature of the State a final written report concerning the review and analyses conducted under paragraphs (1) and (2). The report shall contain recommendations by the State Planning Council concerning—

"(A) the most appropriate agency or agencies of the State to be designated as responsible for the provision and coordination of services for persons with developmental disabilities who are traditionally underserved, such as persons with developmental disabilities attributable to physical impairment, persons with developmental disabilities attributable to dual mental impairments, and persons with developmental disabilities attributable to a combination of physical and mental impairments, and such other subpopulations of persons with developmental disabilities (including minorities) as the State Planning Council may identify; and

"(B) the steps to be taken to include the data and recommendations obtained through the conduct of the reviews and analyses under paragraphs (1) and (2) in the State Planning Council's ongoing advocacy, public policy, and model service demonstration activities.

"(5) By January 15, 1990, the Governor of each State shall submit to the Secretary a copy of the report required by paragraph (4). By April 1, 1990, the Secretary shall transmit a summary of such reports to the appropriate committees of the Congress.".

(4) Section 122(b)(4) (as redesignated by paragraph (3)(A) of this subsection) is amended—

(A) by striking out "strengthening services for" in subparagraph (A) and inserting in lieu thereof "enhancing the independence, productivity, and integration into the community of"; and

(B) by striking out "or agencies" each place it appears in subparagraph (C).

(5) Section 122(b)(5) (as redesignated by paragraph (3)(A) of this subsection) is amended—

(A) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) The plan must provide for the examination, not less often than once every three years, of the provision, and the need for the provision, in the State of the four Federal priority areas and the State priority area. Such examination shall be made consistent with subparagraph (B).";

(B) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) The plan must provide for the review and revision, not less often than once every three years, of the comprehensive Statewide plan to ensure the existence of appropriate planning, financial support and coordination, and to otherwise appropriately address, on a Statewide and comprehensive basis, urgent needs in the State for the provision of services for persons with developmental disabilities and the families of such persons. Such review and revision, and examination under subparagraph (A), shall take into account the reviews and analyses conducted, and the report prepared, under subsection (f), and shall, at a minimum, include—

"(i) an analysis of such priority areas in relation to limited support or lack of support for persons with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

"(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may be causing persons with developmental disabilities to be excluded from receiving such services;

"(iii) an analysis of services, assistive technology, or knowledge which may be unavailable to assist persons with developmental disabilities;

"(iv) an analysis of existing and projected fiscal resources;

"(v) an analysis of any other issues identified by the State Planning Council; and

"(vi) the formulation of objectives in both policy reform and service demonstration to address the issues described in clauses (i) through (v) for all subpopulations of persons with developmental disabilities which

may be identified by the State Planning Council.";

(C) by striking out subparagraph (C);

(D) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively;

(E) by striking out "service activities in the priority services" in clause (i) of subparagraph (D) (as redesignated by subparagraph (D) of this paragraph) and inserting in lieu thereof "activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and a State priority area, the conduct of the analyses specified in clauses (i) through (v) of subparagraph (B), and the implementation of paragraph (3) and subsection (f)";

(F) by striking out "service activities for persons with developmental disabilities, and" in clause (ii) of such subparagraph;

(G) by inserting "priority area activities for" after "administration of" in such clause; and

(H) by striking out "the provision of such services" in such clause and inserting in lieu thereof "persons with developmental disabilities".

(6) Section 122(b)(6) (as redesignated by paragraph (3)(A) of this subsection) is amended—

(A) by striking out "services furnished" in clause (i) of subparagraph (A) and inserting in lieu thereof "programs";

(B) by striking out "furnished" in such clause and inserting in lieu thereof "operated"; and

(C) by striking out "delivery of services" in clause (ii) of such subparagraph and inserting in lieu thereof "programs".

(7) Section 122(b)(7)(B) (as redesignated by paragraph (3)(A) of this subsection) is amended by striking out "alternative community living arrangement services" and inserting in lieu thereof "community living activities".

HABILITATION PLANS

SEC. 203. Section 123(b) is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The plan shall be developed jointly by (A) the person for whom the plan is established, (B) where appropriate, such person's parent or guardian or other representative, and (C) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established."; and

(2) by striking out "program coordinator who will be responsible for" in paragraph (3)(C) and inserting in lieu thereof "case manager who will be responsible for coordinating".

STATE PLANNING COUNCILS

SEC. 204. Section 124 is amended—

(1) by redesignating subsection (b) as subsection (d) and, in paragraph (1) of such subsection—

(A) by striking out "or agencies"; and

(B) by striking out ", including the specification of services under section 122(b)(4)(B)" and inserting in lieu thereof the following: "including the specifications of Federal and State priority area activities under section 122(b)(5)(D)(i)"; and

(2) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for all persons with developmental disabilities.

"(b)(1) The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State.

"(2) The Governor of each State shall make appropriate provisions for the rotation of membership on the State Planning Council.

"(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act, the State agency that administers funds provided under the Older Americans Act of 1965, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.

"(4) At least one-half of the membership of each State Planning Council shall consist of persons who—

"(A) are persons with developmental disabilities;

"(B) are parents or guardians of such persons; or

"(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

and who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.

"(5) Of the members of the State Planning Council described in paragraph (4)—

"(A) at least one-third shall be persons with developmental disabilities; and

"(B)(i) at least one-third shall be individuals described in subparagraph (C) of paragraph (4), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

"(c)(1) Each State Planning Council may prepare and approve a budget using amounts paid to the State under this part to hire such staff and obtain the services of such professional, technical, and clerical personnel consistent with State law as the State Planning Council determines to be necessary to carry out its functions under this part.

"(2) The staff and other personnel of a State Planning Council, while working for the State Planning Council, shall be responsible solely for assisting the State Planning Council in carrying out its duties under this part and shall not be assigned duties by the designated State agency or any other agency or office of the State.".

STATE ALLOTMENTS

SEC. 205. (a) Section 125(a) is amended—

(1) by striking out "$100,000" in clause (i) of paragraph (3)(A) and inserting in lieu thereof "$160,000";

(2) by striking out "$250,000" in clause (ii) of such paragraph and inserting in lieu thereof "$300,000";

(3) by striking out "$47,000,000" in paragraph (4) and inserting in lieu thereof "$60,000,000";

(4) by striking out "$160,000" in subparagraph (A) of such paragraph and inserting in lieu thereof "$200,000";

(5) by striking out "$300,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "$350,000"; and

(6) by adding at the end thereof the following new paragraph:

"(6) In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

"(B) the total amount appropriated under section 130 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 130 for such preceding fiscal year.".

(b) Section 125(b) is amended to read as follows:

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.".

WITHHOLDING

SEC. 207. Section 127(1) is amended by inserting ", particularly sections 122(b)(3) or 122(f)" after "State plan".

AUTHORIZATION OF APPROPRIATIONS

SEC. 208. Section 130 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 130. For allotments under section 125, there are authorized to be appropriated $62,200,000 for fiscal year 1988, $69,900,000 for fiscal year 1989, and $77,400,000 for fiscal year 1990.".

TITLE III—PROTECTION AND ADVOCACY

REQUIREMENTS FOR SYSTEM

SEC. 301. (a) Section 142(a)(2) is amended—

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (E), (F), and (G), respectively;

(2) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) have the authority to—

"(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

"(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

"(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

"(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;

"(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;"; and

(3) by striking out subparagraph (G) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof the following:

"(G) have access to all records of—

"(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

"(ii) any person with developmental disabilities—

"(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

"(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

"(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;".

(b) Section 142(c) is amended—

(1) by striking out "$11,000,000" in subparagraph (A) of paragraph (1) and inserting in lieu thereof "$20,000,000";

(2) by striking out "$80,000" in clause (i) of such subparagraph and inserting in lieu thereof "$107,000";

(3) by striking out "$150,000" in clause (ii) of such subparagraph and inserting in lieu thereof "$200,000";

(4) by striking out "$11,000,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "$20,000,000";

(5) by striking out "$50,000" in such subparagraph and inserting in lieu thereof "$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000";

(6) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(7) by inserting after paragraph (1) the following new paragraph:

"(2) In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

"(B) the total amount appropriated under section 143 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 143 for such preceding fiscal year.".

(c) Section 142 is further amended—

(1) by striking out subsection (b);

(2) by redesignating subsection (c) (as amended by subsection (b) of this section) as subsection (b); and

(3) by adding at the end thereof the following new subsection:

"(c) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 302. Section 143 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 143. For allotments under section 142, there are authorized to be appropriated $20,000,000 for fiscal year 1988, $22,000,000 for fiscal year 1989, and $24,200,000 for fiscal year 1990.".

TITLE IV—UNIVERSITY AFFILIATED PROGRAMS

PURPOSE

SEC. 401. (a) Section 151 is amended—

(1) by striking out "facilities" and inserting in lieu thereof "programs"; and

(2) by striking out "the conduct of service demonstration programs" and inserting in lieu thereof "the demonstration of exemplary services and technical assistance".

(b) The heading for part D is amended by striking out "FACILITIES" and inserting in lieu thereof "PROGRAMS".

GRANT AUTHORITY

SEC. 402. (a) Section 152(a) is amended—

(1) by striking out "section 154" and inserting in lieu thereof "section 154(a)";

(2) by striking out "facilities" and inserting in lieu thereof "programs"; and

(3) by striking out "section 102(13)" and inserting in lieu thereof "section 102(18)".

(b) Section 152 is further amended—

(1) by striking out subsections (b) and (d);

(2) by redesignating subsection (c) as subsection (d) and (in such subsection)—

(A) by striking out "The" and inserting in lieu thereof "From amounts appropriated under section 154(a), the"

(B) by inserting "and may compete for grants under subsections (b) and (c)" before the period at the end of the second sentence; and

(C) by striking out "section 102(13)" and inserting in lieu thereof "section 102(18)";

(3) by inserting after subsection (a) the following new subsections:

"(b)(1)(A) From amounts appropriated under section 154(b), the Secretary shall make grants of sufficient size and scope to university affiliated programs receiving grants under subsection (a) to support training projects to train personnel to address the needs of persons with developmental disabilities in areas of emerging national significance, particularly projects to train personnel in the areas of early intervention programs (as described in paragraph (2)), programs for elderly persons with developmental disabilities (as described in paragraph (3)), and community-based service programs (as described in paragraph (4)).

"(B) The Secretary shall make determinations with respect to grants under this subsection based on information relating to present and projected needs for the training of personnel based on identified State, regional, or national shortages of personnel, the capacity of the university affiliated programs to train personnel, and such other information as may be determined necessary and appropriate by the Secretary.

"(C) Grants under this subsection may be used by university affiliated programs to (i) assist in paying the costs of courses of training or study for personnel to provide services for persons with developmental disabilities and (ii) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

"(2) Grants under this subsection for training projects with respect to early intervention programs shall be for the purpose of assisting university affiliated programs in providing training to allied health personnel and other personnel who provide, or who will provide, interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall include instruction on methods of working and collaborating with professionals and families of persons with developmental disabilities.

"(3) Grants under this subsection for training projects with respect to programs for elderly persons with developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for elderly persons with developmental disabilities.

"(4) Grants under this subsection for training projects with respect to community-based programs shall be for the purpose of providing interdisciplinary training to personnel who will provide direct supports and services for persons with developmental disabilities, including paraprofessionals who are employed or are preparing to be employed in community-based day programs or residential programs for persons with developmental disabilities. The Secretary shall ensure that all grants under this paragraph are made only to university affiliated programs that involve local community-level direct care programs and paraprofessional training programs in the preparation of the application for such grant and shall assure that any training under the university affiliated program will be coordinated with local programs.

"(c) From amounts appropriated under section 154(b), the Secretary may make grants to university affiliated programs receiving grants under subsection (a) to support one or more of the following activities:

"(1) The provision of service-related training to persons with developmental disabilities, family members of such persons, professionals, volunteers, or other personnel to enable such persons, family members, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

"(2) The conduct of an applied research program designed to produce more efficient and effective methods for (A) the delivery

of services to persons with developmental disabilities, and (B) the training of professionals, paraprofessionals, and parents who provide such services."; and

(4) by adding at the end thereof the following new subsection:

"(e) From amounts appropriated under section 154(a), the Secretary may make a grant to a university or a public or nonprofit entity which is associated with, or is an integral part of, a college or university, to study the feasibility of establishing a university affiliated program or a satellite center. Such study shall include an assessment of the needs of the area in which the university is located for such a program or center. The amount of a grant under this subsection may not exceed $35,000 for any fiscal year. A grant under this subsection may only be made in a State in which there is no university affiliated program or satellite center.".

APPLICATIONS

SEC. 403. (a) Section 153(a) is amended—

(1) by striking out "facilities" in the first sentence and inserting in lieu thereof "programs";

(2) by inserting "all" before "persons with developmental disabilities" in the second sentence; and

(3) by striking out "section 102(13)" in the second sentence and inserting in lieu thereof "section 102(18)".

(b) Section 153(b) is amended—

(1) by striking out "section 152" in the matter preceding paragraph (1) and inserting in lieu thereof "section 152(a)";

(2) by striking out "facility" each place it appears in paragraph (2) and inserting in lieu thereof "program";

(3) by striking out "is making" in clause (i) of subparagraph (B) of such paragraph and inserting in lieu thereof "will make";

(4) by striking out "and" at the end of such subparagraph;

(5) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(6) by adding at the end thereof the following new paragraphs:

"(4) the activities conducted under this part are consistent with, and to the extent feasible, complement and further, the objectives contained in the State plan required under section 122; and

"(5) before the submission of such application, an opportunity for comment has been provided to the general public and the State Planning Council of the State in which the program will be conducted or the satellite center is or will be located.".

(c) Section 153(c) is amended—

(1) by striking out "facility" and inserting in lieu thereof "program"; and

(2) by striking out "section 152" and inserting in lieu thereof "section 152(a)".

(d) Section 153(d) is amended—

(1) by striking out "facility" each place it appears and inserting in lieu thereof "program";

(2) by striking out "section 154" each place it appears and inserting in lieu thereof "section 154(a)";

(3) by striking out "$175,000" in paragraph (1) and inserting in lieu thereof "$200,000";

(4) by striking out "$75,000" in paragraph (1) and inserting in lieu thereof "$150,000"; and

(5) by adding at the end thereof the following new paragraph:

"(3)(A) For purposes of making grants under section 152(a), the Secretary shall consider applications for grants for four university affiliated programs or satellite centers for each of the fiscal years 1988, 1989, and 1990 which are in addition to the total number of university affiliated programs and satellite centers receiving grants under such section for the preceding fiscal year.

"(B) Such programs and centers shall, to the extent feasible, be geographically distributed for the purpose of serving States that are unserved by university affiliated programs and satellite centers under this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987.

"(C) The Secretary may not deny an application for a university affiliated program or satellite center solely because of the size of the population proposed to be served by the program or center, if such application proposes to serve the population of an entire State.".

(e) Section 153 (as amended in this section) is further amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall by regulation require appropriate technical and qualitative peer review of applications for assistance under this part by peer review groups established under paragraph (4).

"(2) Regulations promulgated under paragraph (1) shall provide that the review of the application required by such paragraph shall be conducted by groups established under paragraph (4) that are composed of non-Federal individuals who, by experience or training, are highly qualified to assess the comparative quality of applications for assistance.

"(3)(A) The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).

"(B) This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.

"(4) The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—

"(A) the provisions of title 5, United States Code, concerning appointments to the competitive service;

"(B) the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, concerning classification and General Schedule pay rates;

establish such peer review groups as are necessary to carry out this subsection, and appoint and set the rates of pay for members of such groups.

"(5) The Secretary may waive the provisions of paragraph (3) concerning approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. Section 154 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 154. (a) For the purpose of grants under subsections (a), (d), and (e) of section 152, there are authorized to be appropriated $9,400,000 for fiscal year 1988, $10,200,000 for fiscal year 1989, and $11,000,000 for fiscal year 1990. Amounts appropriated under this section for a fiscal year shall remain available for obligation and expenditure until the end of the succeeding fiscal year.

"(b) For the purpose of grants under sections 152(b) and 152(c), there are authorized to be appropriated $4,500,000 for fiscal year 1988, $5,000,000 for fiscal year 1989, and $5,500,000 for fiscal year 1990.

"(c) The Secretary may use funds appropriated under subsection (a) for the purposes described in subsection (b).

"(d) Of the amounts appropriated under subsection (b), at least 75 percent shall be used for grants under section 152(b) and the remainder shall be used for grants under section 152(c).".

TITLE V—PROJECTS OF NATIONAL SIGNIFICANCE

PURPOSE

SEC. 501. (a) Section 161 is amended by striking out "for demonstration projects" and inserting in lieu thereof "and contracts for projects of national significance".

(b) The heading for part E is amended to read as follows:

"PART E—PROJECTS OF NATIONAL SIGNIFICANCE".

GRANT AUTHORITY

SEC. 502. (a) Section 162(a) is amended—

(1) by inserting "and enter into contracts with" after "make grants to" in the matter preceding paragraph (1);

(2) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) projects of national significance relating to persons with developmental disabilities, including projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives, and other projects of sufficient size and scope and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups); and"; and

(3) by inserting "the advocacy functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under part D, and" after "otherwise improving" in paragraph (2).

(b) The last sentence of section 162(b) is amended—

(1) by striking out "for each" and inserting in lieu thereof "in such"; and

(2) by striking out "in which an applicant's project will be conducted".

(c) Section 162 is further amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Not later than January 1 of each year, the Secretary shall publish in the Federal Register proposed priorities for grants and contracts under this part and shall allow a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and considering such comments, the Secretary shall publish final priorities for such grants and contracts in the Federal Register.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. Section 163 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 163. (a) To carry out this part, there are authorized to be appropriated $3,650,000 for fiscal year 1988, $3,650,000 for fiscal year 1989, and $3,650,000 for fiscal year 1990.

"(b) Of the amounts appropriated under subsection (a) for any fiscal year, $600,000 shall be available for grants and contracts under section 162(a)(1) for not more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. The Secretary shall award grants and contracts under section 162(a)(1) for such projects within 6 months after the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987.".

TITLE VI—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 601. This Act, and the amendments made by this Act, shall become effective on October 1, 1987.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President. I would like to announce for the information of the Senate that the closed hearing originally scheduled on October 20, 1987 at 9:30 p.m. in room S-407 on the status of the Department of Energy's efforts to address questions on environmental and safety issues concerning the defense materials production reactors located in the United States has been rescheduled.

The closed hearing will now take place on October 27, 1987 at 10 a.m. in room S-407 in the Capitol Building in Washington, DC.

For further information, please contact Mary Louise Wagner at (202) 224-7569.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place October 20, 1987, 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measures currently pending before the subcommittee.

H.R. 2629, a bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native corporations and the State of Alaska;

S. 1335, a bill to establish the city of Rocks National Reserve in the State of Idaho, and for other purposes; and

S. 1675, a bill to provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes.

Those wishing information about testifying at the hearing or submitting written statements should write to the Subcommittee on Public Lands, National Parks and Forests, U.S. Senate, room SD-364, Dirksen Senate Office Building, Washington, DC 20510. For further information, please contact Tom Williams at 224-7145 or Beth Norcross at 224-7933.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AVIATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Aviation, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on September 30, 1987, to hold oversight hearings on the safety of military charter flights.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 30, 1987, at 2 p.m. to hold a hearing on Ambassadorial nominations.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, September 30, 1987, to resume hearings on oversight of Federal procurement decisions on Wedtech.

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

SUBCOMMITTEE ON AGRICULTURAL CREDIT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Credit, of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Wednesday, September 30, 1987, and to markup farm credit legislation.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 30, 1987, to Pending Business; S. 1084 and amendment No. 176, U.S. Uranium Enrichment Act; and S. 1100 and amendment No. 177, Uranium Revitalization and Tailings Reclamation Act of 1987.

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

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a hearing during the session of the Senate on September 30, 1987, on the nomination of Robert H. Bork to be Associate Supreme Court Justice.

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

COMMITTEE ON FINANCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 30, 1987, to hold hearings on the nominations of Alan F. Holmer to be a Deputy U.S. Trade Representative, with the rank of Ambassador, and O. Donaldson Chapoton to be an Assistant Secretary of the Treasury.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Wednesday, September 30, 1987, to mark up S. 1323, the Tender Offer Disclosure and Fairness Act of 1987; H.R. 2741, the 1988 Olympic Commemorative Coin Act; and the nomination of William Sullivan to be a member of the Board of Directors of the National Corporation for Housing Partnerships.

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

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on October 6, 1987, at 2 p.m. on the nomination of Robert H. Bork to be Associate Supreme Court Justice.

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

ADDITIONAL STATEMENTS

PENNSYLVANIA AVENUE REDEVELOPMENT

● Mr. MOYNIHAN. Mr. President, recently Chairman Hank A. Berliner, Jr., and the other members of the board of the Pennsylvania Avenue Development Corp., honored my work on the redevelopment of Pennsylvania Avenue, and on the new International Cultural and Trade Center to be built on the Federal Triangle site. I appreciate their recognition—indeed the PADC Board and staff were instrumental in developing the legislation which passed the Senate and House unanimously in August, and which the President signed into law on August 22, 1987. I ask that Mr. Berliner's remarks and a copy of the board's resolution be placed in the RECORD.

The material follows:

REMARKS, HENRY A. BERLINER, JR., CHAIRMAN, TO PADC BOARD OF DIRECTOR, SEPTEMBER 16, 1987, REGARDING FEDERAL TRIANGLE DEVELOPMENT ACT

Over many years, many PADC Board Members had inquired why the massive parking lot at Pennsylvania Avenue and 14th Street had never been developed.

In 1985, I asked Executive Director Jay Brodie to investigate this matter and, at the same time, to analyze which major Federal agencies were in scattered locations in the Washington area and could benefit from a consolidation of their space at this location. The answers were:

. . . there had been many plans, initially for a "Great Plaza," later for for various Federal Office developments; none had come close to being realized.

. . . there were, indeed, Federal Departments notably Justice and Treasury, that could utilize this site to develop much more efficient operations.

We followed up to ascertain if the Attorney General and the Secretary of the Treasury would be interested. They were.

Meanwhile—

Terry Golden was appointed as the Administrator of General Services; we met with him and benefitted from his enthusiasm for the consolidation principle and for his idea of incorporating the concept of an International Cultural and Trade Center (previously proposed by the Federal City Council for a site near L'Enfant Plaza) into the development. A variety of architectural and economic studies were made by a working group including PADC, GSA, Federal City Council and State Department staff. And, Senator Daniel Patrick Moynihan came forward as a strong advocate for this concept, seeing in it the culmination of the revitalization of Pennsylvania Avenue between the Capitol and the White House.

An impressive team had emerged!

Drafts of a Bill were prepared and shared with Congressional staff. As the drafts were reviewed and as hearings were held by Senator Moynihan (in May) and by Representative Sunia (in July), several parties suggested PADC's active participation to move the project forward expeditiously through a design-developer competition. Finally, through Senator Moynihan's consummate legislative skills, and the cooperation of Representatives Howard and Vento, the Bill was unanimously approved on August 5 and 7 by the Senate and the House . . . and signed by President Reagan on August 22. In recognition of the significant contributions that Senator Moynihan has made, over a quarter century, to the rebirth of Pennsylvania Avenue, we have prepared a Resolution expressing our appreciation. I ask for your approval by unanimous consent.

The following resolution was passed with the unanimous consent of the PADC Board of Directors.

RESOLUTION OF THE BOARD OF DIRECTORS, OF THE PENNSYLVANIA AVENUE DEVELOPMENT CORP.

Whereas, Daniel Patrick Moynihan has made significant and enduring contributions to the planning and design of Pennsylvania Avenue during its period of revitalization from 1961 to the present; and

Whereas, as Secretary of President John F. Kennedy's Ad Hoc Committee on Federal Office Space, as Vice Chairman of President Lyndon B. Johnson's Temporary Commission on Pennsylvania Avenue and as Counselor to President Richard M. Nixon for Urban Affairs, Daniel Patrick Moynihan was in a unique position to assist and maintain the momentum of the Avenue's progress, including the retention of the Willard Hotel; and

Whereas, Daniel Patrick Moynihan's continuing interest in the quality of Federal architecture was expressed particularly in "The Guiding Principles for Federal Architecture—1962" contained in the Report to the President by the Ad Hoc Committee on Federal Office space, positively influencing the standard for government buildings throughout the nation; and

Whereas, Daniel Patrick Moynihan's efforts were instrumental in the passage by the unanimous consent of the Congress of the Federal Triangle Development Act, calling for PADC to lead the design and development of a major Federal building containing government offices and an International Cultural and Trade Center on the parking lot at 14th Street and Pennsylvania Avenue, N.W.; and

Whereas, this most recent achievement culminates over a quarter century of dedication of Daniel Patrick Moynihan's energy, imagination and leadership to the improvement of America's "Main Street;"

Now, therefore, it is unanimously resolved by the board of directors of the Pennsylvania Avenue Development Corporation that Daniel Patrick Moynihan be hereby recognized for his exceptional work on behalf of the redevelopment of Pennsylvania Avenue and its environs between the Capitol and the White House.●

TRUCKING DEREGULATION

● Mr. PACKWOOD. Mr. President, last week I introduced by request the Reagan administration's legislation to totally deregulate the interstate trucking industry, the "Trucking Productivity Improvement Act of 1987" (S. 1710).

I would like to bring to the attention of my colleagues an excellent editorial on trucking deregulation which appeared last week in the Journal of Commerce. This editorial points out the successes of partial deregulation to date and urges that we now finish deregulating the trucking industry.

I ask that this editorial be printed in the RECORD.

[From the Journal of Commerce, Sept. 25, 1987]

FINISH TRUCK DEREGULATION

The grass roots backlash that is hammering the nation's airlines no doubt emboldens critics of economic reforms in transportation. But the trucking industry, which was deregulated based on the airline model, has had far fewer problems.

Shippers, the ultimate judge of trucking service, aren't complaining of missed schedules, uneven service and rapidly rising rates. To the contrary, most truckers seem better organized than ever, delivering freight faster and with fewer hitches than at any time in memory.

Consider this: Congress is now mulling legislation to force airlines to disclose on-time performance. Most large truckers, on the other hand, readily supply detailed performance reports to customers on a regular basis.

Instead of debating the merits of reregulation, as some railroad and airline customers are doing, most truck shippers can't wait for Congress to abolish the industry's remaining economic controls.

The industry-wide trucking oligopoly long predicted by deregulation's critics has failed to materialize. To be sure, a handful of large fleets dominate the long-haul markets. But competition there is vigorous and rates are reasonable. Witness the first half of 1987, when a rate war among the country's three largest carriers drove their collective operating profits down 40%. Rates eventually will stabilize, but the buyer's market isn't likely to disappear any time soon.

Meanwhile, unpretentious mid-sized carriers continue to prosper. Over the past 10 years, medium-sized companies have consistently posted higher profit margins than any of the industry giants. As in banking, the big get bigger, but size has little to do with profitability.

Safety remains the trucking industry's biggest problem, but deregulation doesn't seem to have made it any worse. Data from the Department of Transportation's Fatal Accident Reporting System show the number of trucks involved in fatal crashes, measured against miles traveled, fell 25% from 1976 to 1985.

Fortunately, the government already has taken the first positive steps to reduce big rig disasters. The number of roadside truck and bus inspections, for example, rose from 36,000 in 1983 to 545,000 in 1986, according to government figures. The increase is the result of federal safety grant programs that helped states hire and train thousands of new inspectors.

Despite the good news, bills in Congress to complete trucking deregulation languish, victims of the general fear that transportation reforms may have gone too far.

The Reagan administration has authored a proposal that would end collectively set freight rates and abandon the regulations that forced carriers to file 1.2 million tariffs with the Interstate Commerce Commission last year. The measure also would prevent states from imposing their own restrictive in-state controls on carriers that also operate interstate. Such legislation is before the House of Representatives, and a similar version was introduced in the Senate last Tuesday.

This legislation merits support. Trucking service is better than ever, rates are competitive and the industry's safety problem is being addressed. But there are still inefficiencies that push up transportation costs needlessly. It's time to complete the job of deregulation.●

SINKING OF THE "TUSCANIA"

● Mr. DECONCINI. Mr. President, I rise today to comment on an intriguing parallel between events in the Persian Gulf today and those in the Irish Sea nearly 70 years ago. Recently, a 91-year-old constituent wrote me about his experience as a young, nervous, and ill-clad American recruit sent to Europe to fight for democracy in World War I.

He traveled across the Atlantic in a troop ship called the *Tuscania*. Few people today have heard of the *Tuscania* and fewer still actually remember her, but in February 1918, she was a household word. As much of a household word as the U.S.S. *Stark* is today. After a long and uneventful

crossing, the transport group of which the *Tuscania* was a part, steamed into the seemingly safe waters of the North Channel to the Irish Sea between Ireland and Scotland. It was there, in friendly waters, that the *Tuscania* was torpedoed by German U-boat 77.

As the *Tuscania* slowly sank into the icy waters on that February night in 1918, confusion reigned onboard in the dark. The lifeboats were awkwardly lowered into the water; some of them became stuck while others crashed on top of boats loaded with American soldiers and the English, Irish, and Scottish crew. A few men jumped overboard in an attempt to save themselves, only to perish from hypothermia in the freezing winter waters. Of those who were not rescued by other ships which sailed in the group, many lifeboats were washed toward the coastal islands of Scotland. Some boats found safe harbor there, but others were dashed to pieces by the harsh waves and jagged rocks along the craggy, cliff-dotted coastline. Those men who did survive those cold hours on the open sea found warm homes and inviting hearts in the Scottish people. The same undaunted families who opened up their homes to weary and freezing American recruits that night, however, also buried the many dozens of bodies which were washed upon the shore in the following days.

Because of the scattered information available on the rescue missions in the aftermath of the disaster, it was nearly 24 hours before General Pershing's cable from his headquarter's in France to Secretary of War Newton Baker arrived in Washington. After it was received, Secretary Baker delayed announcing the news of the attack until additional information could be obtained. President Wilson was not informed of the torpedoing until after he returned from the theater, nearly 36 hours after the event had taken place.

Just as this Nation answered the call for assistance from our allies in Europe 70 years ago, so has the United States come to the assistance of friendly nations in the Persian Gulf. While the decision of this administration to escort Kuwaiti tankers has been hotly debated in this body, the fact remains that we again have American servicemen and women placing their lives on the line to protect American interests abroad.

As has already been proven, Iraqi missiles and Iranian mines are as deadly as German U-boat torpedoes. This country lost 209 brave men on the night of February 5, 1918. We have already lost 39 American lives in the gulf this year. It is my fervent hope and prayer that the number will not rise and that cooler heads will prevail in that troubled region.

In the meantime, let us reflect upon what—in our role as a superpower—we are called upon to do. Our entry into World War I, following years of debate and isolation, made us a decisive player in the world arena. Our efforts in later wars and incidents have cast upon our shoulders the mantle of keeper of the peace and flagship of democracy for the world. It is not an easy role, as the events of the last few years have proven. Also, events today appear at times to be too closely related to events we view as history.

The survivor of the bombing of the *Tuscania* went on to fight in France and Germany and later returned home to work in Wisconsin and ultimately retire to Sun City in my State of Arizona. I am hopeful that the men who survived the bombing of the *Stark* will live equally long and productive lives; lives that will experience years of peace.●

INFORMED CONSENT: NEW HAMPSHIRE

● Mr. HUMPHREY. Mr. President, it is a statement of the obvious to say that every Member of this body has special concerns about the residents of his or her home State. Our constituents elect us for just that purpose—to keep their well-being in mind as we help set the course of this Nation.

Today, I bring to your attention several letters from the great State of New Hampshire regarding my informed consent bills, S. 272 and S. 273. Written by some of my constituents, the letters tell sad stories of traumatic postabortion experiences, trauma the women were never informed might occur. I am indeed sorry that such injustice to women goes on in New Hampshire, but the fact is, it happens in every State in the Union. I have hundreds of letters from all over America testifying to that reality.

Therefore, I ask my colleagues end this travesty against women that's occurring in our country, and support S. 272 and S. 273. The bills will help make sure that women considering abortion know full well the effects and potential consequences of their decision before they make it. I also ask unanimous consent that letters from three women in New Hampshire be entered into the RECORD.

The letters follow:

JUNE 25, 1986.

DEAR SENATOR HUMPHREY: When I had an abortion, no one discussed the risk, the procedure, the development of the unborn, or the alternatives. No one believed in me or offered positive help thus after the abortion, I experienced many years of regret alone.

I had suicidal thoughts due to an even lower self esteem because the reality of what had happened was devastating!!

I know if one person had said "I'll help you" and told me the truth about abortion I would not have had my baby killed.

Please continue to speak up for the innocent unborn babies!!

God Bless You!

JO ANN FRASER,
New Hampshire.

DEAR SENATOR HUMPHREY: When I told my folks of my condition, they were shocked; hurt. My dad was literally speechless. I didn't think I could hurt them more by having a baby now. I didn't think I could manage on my own for the next 18 to 20 years. I would not go on Welfare. Life seemed impossible. I didn't know that with God all things are possible. Planned parenthood, whom I'd always trusted for help, pills, information, etc., calmly informed me of my "options". I could have my baby and raise it myself—impossible I thought or I could give it up for adoption. The third choice they said was abortion. I was told how safe and easy it would be for me. The one counseling session I had consisted of me doing all the talking while the counselor just sat there silently. It was a total waste of time. As time ran out and after much agonized deliberation, I made the appointment. While the procedure was no more painful than menstrual cramps and the bleeding lasted only a week, I felt an empty spot that was to last for years.

I went on with my life but soon felt it was passing me by. I told Phil that if we didn't get married that I would start dating others. He proposed and we got married in November. We had many ups and downs much stemming from my basic insecurity. I didn't see how any could love me. In the beginning I had a lot of jealousy and mistrust. Four years later we had a beautiful daughter and started going to church. I was still searching for what had lacking all my life.

I start coming to terms with my past. I kept hearing people talking about abortion, all the babies being killed even in our town. I began going to Right to life meetings and was surprised to find myself crying daily for my lost baby. I shared my pain with my Pastor and a Christian sister who helped me see that the grieving I was going through was a normal process necessary for full healing—even if it had been put off for twelve years. They showed me that I had to forgive myself and all other people involved, and most importantly, to accept Christ's forgiveness; that no sin is too great for him to forgive, and once God has forgiven a sin he forgets it. Only true healing comes from Christ.

Sincerely,

PAT RECK,
New Hampshire.

DEAR SENATOR HUMPHREY: At the age of eleven I gave up on my family and started looking for approval amongst peers. Needless to say, I ended up with a crowd of druggies until they started using needles and I got scared. In college, I worked hard and partied hard on weekends. I met a young man in a bar one night who was very impressed with what a very special person I was! I ate that right up, all the way to his bedroom. I was not impressed with him. He was collecting welfare, drank constantly, had a nasty temper—but he kept telling me how wonderful I was. So, I stayed with him. After about four months I knew that I was pregnant. I went to Planned Parenthood. The test was negative. After six weeks of severe symptoms, I went back—still negative I went back four weeks later and my fears were confirmed. They told me "It" was no big deal; that I was to go to the address on

the piece of paper they gave me at 11 A.M. the following day and they would take care of my dilemma, nothing to worry about. I made the appointment, was sedated heavily and given a D&C.

I stopped seeing "my boyfriend", didn't tell him about the abortion and he never even pursued me! I stayed sedated for three years. Somehow I graduated from college with honors. The last year and a half I was drunk or stoned. I continued to bury any consciousness with drugs for another 1½ years after graduation. Five years later the Lord brought Mary Pat into my life. She, ever so gently, helped me to realize that I have a child in heaven that I murdered! I went to God with all of the emotions that I never even knew I had concerning what I'd done to my child. What a release! For the first time I cried over the slaughter of my child and I cried tears of gratefulness that Jesus loves him and is raising him for me!

Sincerely,

PAULA F. RIVIZZO,
New Hampshire.●

U.S. REFUGEE PROGRAM—1988

● Mr. KENNEDY. Mr. President, in fulfillment of the statutory requirements of The Refugee Act, members of the Judiciary Committee have consulted with Secretary of State George Shultz and other representatives of the President on the admission of refugees to the United States for the coming year.

Following mid-year hearings that our Judiciary Subcommittee on Immigration and Refugee Affairs held last June 30, we have carefully followed recent developments in our worldwide refugee program. We sent a special staff mission to Southeast Asia last month to review the continuing problems of Indochinese refugees and the need to strengthen programs to protect and assist them.

The admission of Indochinese refugees remains the single largest component of our annual admission of refugees—40,200 this year and 38,000 proposed for next year—out of a total of 68,500 worldwide for the coming year. These levels of resettlement suggest both the continuing needs of the refugees, but also the need for the international community to find other solutions to the continued movement of refugees and migrants in Southeast Asia.

During our consultations this year we raised a number of these issues and will pursue them further during public hearings that we have had to schedule later next month because of the Judiciary Committee's consideration of the nomination of Judge Robert Bork.

But I did want to share with my colleagues, Mr. President, the Judiciary Committee's letter concluding this year's refugee consultations, as well as the President's proposal for admitting additional refugees during the coming fiscal year—a proposal which we have supported with some modifications.

I ask that the text of the letter that the Judiciary Committee has sent to the President, as well as his refugee program request, be printed in the RECORD.

The material follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC., September 29, 1987.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Members of the Committee on the Judiciary have now consulted with your representatives on the proposed refugee admissions for fiscal year 1988, as required by Section 207 of The Refugee Act of 1980. We hereby concur in your recommendation, with the following recommendations and requirements.

As you know, this Committee has over the years shared your commitment, and that of our Nation, in our efforts to assist refugees around the world—especially those needing emergency protection and resettlement opportunities. Our country can be proud of its leadership in support of international programs for refugees, which demonstrates far better than words our Nation's commitment to basic human rights.

We accept your assessment that conditions in the field justify maintaining refugee admissions at about the same level as last year. However, as you know, the Committee's view last year—both the majority and minority—was that there were strong reservations over these levels of admissions.

Yet the proposed numbers for this year have been increased, even as concerns over the policy directions of our refugee program have deepened—particularly in Southeast Asia. Regrettably, we believe that if some of the Committee's policy recommendations of past years—especially the need to pursue options other than just third country resettlement for Indochinese refugees—had seriously been approached, there might not be the need today for high levels of refugee admissions. For the sake of the refugees we seek to assist, we must give more than lip service to the often quoted admonition that third country resettlement is the least preferred durable solution, compared to repatriation and local settlement.

As was noted during the Committee's consultations last year, we had hoped that, in addition to appropriate resettlement, "new initiatives will be developed to deal with the continuing flow of Southeastern Asian refugees—especially voluntary repatriation and local settlement . . ." Yet, to date, no such "new initiatives" have seriously been undertaken, much less realized in Southeast Asia. For example, there has not even been an official response by your Administration to the very modest initiatives in these areas made by the U.N. High Commissioner for Refugees in his "Informal Paper to the Indochinese Consultation Group" last March 31st.

As the Committee has urged previously, there is need for new policy initiatives on many different fronts in Southeast Asia. Otherwise we are likely to foreclose permanently those options which would permit Indochinese refugees to remain humanely within their native Southeast Asian countries.

As a result, we take this opportunity to make the following recommendations, as well as to stipulate some additional consultation requirements during the coming year:

1. While our commitment to work in partnership with Southeast Asian governments continues, we are nonetheless at a critical juncture in our programs in the region; we therefore request that only half of the 29,500 numbers proposed for the regional ceiling on "first asylum refugees" in Southeast Asia—that is, 14,750—shall be allocated before further mid-year consultations with the Committee. We make this stipulation for the following reasons:

(A) We commend you and your Administration for helping to break the diplomatic logjam that has threatened the continuation of the Orderly Departure Program for Vietnam. This program is clearly the option we must pursue in shifting a refugee flow into a family reunification program—while providing for the safe departure of political prisoners, Amerasian children, and others from Vietnam. The new procedures now agreed upon by the United States and Vietnam for processing ODP cases will certainly increase the numbers needed for the program—numbers that are clearly for those persons of "special humanitarian concern" to the United States. It is our view that some of the "first asylum" numbers in the current allocation proposal should be shifted to the ODP program.

(B) The Committee is also doubtful, based upon our latest field reports, that the 29,500 "ceiling" requested for "first asylum" cases in Southeast Asia is justified without it becoming a "quota," for which pressures then build to fill.

(C) Of particular concern is that the proposed ceiling cannot be reached without an extremely large increase in the resettlement of H'mong Highland Lao refugees. The Committee believes that before such a large-scale resettlement program is instituted for the H'mong that the full implications of such a policy be reviewed by the Congress—including its humanitarian implications, increased state and local program costs and, most importantly, whether this option is in the best interests of the H'mong themselves. If it is determined to be in the best interests of the H'mong to be resettled in third countries, then the programs at our refugee processing centers should be reviewed to ensure that the English language and cultural orientation curricula are suitable for the special needs of this ethnic group. The Committee requests that it be notified before more than 1,000 H'mong refugees are processed during the coming year, other than those with immediate family reunification or other special ties.

(D) Finally, based upon this year's requirements, additional numbers will likely be needed for Eastern Europe and the Soviet Union, as well as for the Near East and South Asia. Numbers not needed for Southeast Asia may need to be programmed to meet additional needs in these areas by mid-year.

2. The Committee remains concerned over refugee assistance and protection needs among the Khmer along the Thai-Cambodian border. Recommendations have been made over the past years for improving conditions and providing better protection for these refugees by members of this Committee, by your Administration and officers in the field, and by the United Nations Border Relief Operation. But, to date, they have largely been ignored by the responsible authorities of the Royal Thai Government. We urge strong diplomatic intervention in support of the recent recommendations of UNBRO regarding conditions at Site 2. We further recommend:

(A) That no resettlement of refugees from Thailand be undertaken this year until the Royal Thai Government fulfills its pledge to facilitate the departure of relatives of

United States citizens now mixed with refugees in several Khmer refugee camps. It is impossible to justify to the American people the movement of refugees from Thailand, at the Thai's request, when we cannot secure the departure of the immediate relatives of U.S. citizens and other current and approved immigration visa cases.

(B) Additional U.S. resources should be earmarked for UNBRO's proposals to upgrade and move part of the camp at Site 2 and for assistance to Thailand in providing regular, well-trained and disciplined troops to protect the refugees along the border.

3. The Committee welcomes your Administration's initiative regarding the processing of non-Cuban refugees from Latin America. While recognizing that local settlement or repatriation are the preferred options, there remain resettlement needs among refugees from several nations, particularly in Central America.

4. We support the numbers allocated for refugees from Africa, and commend efforts to assure that those refugees with close ties to the United States are afforded the opportunity to resettle here. There are urgent and growing refugee assistance needs in Southern Africa, and the Committee strongly encourages efforts to address them in the days ahead.

In conclusion, we appreciate this opportunity to raise these issues with you, which we have done in some detail, since the regularly scheduled oversight hearings of the Committee have necessarily been postponed because of the hearings on the nomination of Judge Robert Bork.

Obviously, there are other refugee programming and policy issues which members of the Committee will like to raise with your representatives during the public hearings we will schedule later next month. However, we did want to conclude the formal consultations, as statutorily required by The Refugee Act, before October 1st.

Again, we concur in the refugee admissions ceiling you have proposed, provided the Committee has an opportunity to review, mid-year, the allocation of those numbers in light of changing refugee needs in the field and the requirements we have outlined for new policy initiatives, particularly in Southeast Asia.

Many thanks for your consideration, and best wishes.

Sincerely,

STROM THURMOND,
Ranking Member.
JOSEPH R. BIDEN, Jr.
Chairman.
ALAN K. SIMPSON,
Ranking Member.
EDWARD M. KENNEDY,
Chairman, Subcommittee on Immigration and Refugee Affairs.

U.S. COORDINATOR FOR REFUGEE AFFAIRS,
Washington, DC, September 9, 1987.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: In accordance with the Refugee Act of 1980, I am pleased to transmit the President's recommendation for the fiscal year 1988 refugee admissions ceiling in preparation for our annual consultations with the Congress.

I have written to the Chairman of the Committee on the Judiciary indicating that the Administration is prepared to begin the consultation process to arrive at a refugee admissions level for fiscal year 1988.

Sincerely,

JONATHAN MOORE.

THE WHITE HOUSE,
Washington, September 5, 1987.

Memorandum for the Honorable George P. Shultz, The Secretary of State. The Honorable Johathan Moore, United States Coordinator for Refugee Affairs.

Subject: Fiscal year 1988 Refugee Admissions consultations.

In accordance with the Refugee Act of 1980, you are authorized to consult with the appropriate committees of the congress on the following points:

The admission of up to 72,500 refugees to the United States during fiscal year 1988. Of this ceiling, 68,500 would be allocated by specific region as follows: 3,000 for Africa, 29,500 for East Asia/First Asylum, 8,500 for East Asia/Orderly Departure Program, 15,000 for Eastern Europe and the Soviet Union, 3,500 for Latin America and the Caribbean, and 9,000 for Near East and South Asia. The remaining 4,000 admissions numbers would be held as an unallocated reserve for refugee admissions needs contingent upon the availability of private sector funding.

An additional 5,000 refugee admissions numbers which shall be made available for the adjustment to permanent resident status of aliens who have been granted asylum in the United States, as this is justified by humanitarian concerns or is otherwise in the national interest.

Further, I propose to specify that special circumstances exist such that, for the purpose of admission under the limits established above, the following persons, if they otherwise qualify for admission, may be considered refugees of special humanitarian concern to the United States even though they are still within their countries of nationality or habitual residence:

Persons in Vietnam and Laos with past or present ties to the United States, persons who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and Amerasian children in Vietnam, and their accompanying family members; and

Present and former political prisoners, and persons in imminent danger of loss of life, and their accompanying family members, in countries of Latin America and the Caribbean.

RONALD REAGAN.

Proposed U.S. refugee admissions for fiscal year 1988

Area of origin	*Proposed admissions*
Africa	3,000
East Asia:	
First Asylum	29,500
Orderly Departure Program	8,500
Eastern Europe and the Soviet Union	15,000
Latin America and the Caribbean	3,500
Near East and South Asia	9,000
Subtotal	68,500
Unallocated reserve	4,000
Total	72,500

U.S. REFUGEE ADMISSIONS IN FISCAL YEAR 1987

	Consultation levels	Reallocated levels	Estimated arrivals in the United States
Africa	3,500	2,000	2,000
East Asia:			
First Asylum	32,000	32,000	30,800
ODP	8,500	8,500	8,500
Eastern Europe and the Soviet Union	10,000	12,300	12,300
Latin America and the Caribbean	4,000	1,000	400
Near East/South Asia	8,000	10,200	10,000
Subtotal	66,000	66,000	64,000
Unallocated reserve	4,000	4,000	0
Total	70,000	70,000	64,000

DUFFY DAUGHERTY

● Mr. RIEGLE. Mr. President, with the recent passing of Hugh "Duffy" Daugherty, the State of Michigan and football fans everywhere lost a man who was a friend to many and a wonderful human being. I ask that an editorial that appeared in the September 29 issue of the Detroit News be printed in the RECORD.

The editorial follows:

DUFFY DAUGHERTY

Sometimes, it seems as if college football is just an extension of pro ball—with college football programs serving merely as farm teams for the NFL.

Marketing, gate receipts and television income have become as important to some college programs as they are in professional sports. But that's not really what college football is all about. The best coaches are the ones who remember that college football is supposed to be fun—not just for the students, alumni and other fans, but fun for the players.

Hugh "Duffy" Daugherty, who died Friday, is one of the coaches who remembered that. He also remembered that a coach is, first of all, a teacher. A number of his former players at Michigan State have recalled his warmth, his humanity and his willingness to help his boys work out their problems—whether those problems were on or off the field.

Along the way, though, he recruited such great players as Earl Morrall, Gene Washington and Bubba Smith, and put together teams that made the name Michigan State University feared in places like Columbus, South Bend and Ann Arbor.

Indeed, there is a whole generation of pre-Schembechler Wolverine fans who had to console themselves with remarks like "Here's to Michigan, where the football team has to live up to the university rather than vice versa." But if they'd been honest, they would have admitted that they would just as soon the Wolverines had a better record against the Spartans.

Not everything was perfect in East Lansing when Duffy was there. His relationship with MSU Athletic Director Biggie Munn was tense. He had a rocky starting season and a disappointing closing season, with plenty of rough spots in between. But for a

time, there was a glow on the banks of the Red Cedar when football season arrived.

From 1954 to 1972, Duffy Daugherty was Michigan State football. His success on the gridiron coincided with former President John Hannah's drive to make Michigan State a worthy rival to Michigan in academics as well as athletics. In his own way, Duffy contributed to that effort by making MSU a well-known name.

Duffy Daugherty clearly enjoyed himself as a coach. His jokes and stories are legend. His remark about MSU's 1966 10-10 tie with Notre Dame—"Ties are like kissing your sister"—would become immortal. Because he had fun, everybody had fun.

That's quite a gift, and quite a legacy. At the time of his death, Duffy Daugherty had been long retired. But he was never forgotten, and he never will be.●

NATIONAL PASTORAL CARE WEEK

● Mr. SIMON. Mr. President, I would like to call the attention of my colleagues to a significant upcoming event, National Pastoral Care Week, to be observed from October 25 to 31, 1987. This is a week being planned by a number of organizations active in providing pastoral care—the National Association of Catholic Chaplains; the College of Chaplains, American Protestant Health Association; the Association for Clinical Pastoral Education; and the Council on Ministry in Specialized Settings.

Mr. President, we hear a great deal about the importance of health care provided in hospitals. But we spend very little time focusing on the nature of the healing process. The chaplains of our Nation devote their lives to healing, and as they could so vividly provide witness, healing does not result just from the provision of medicine, nor does it result in other situations just from providing for material needs. Healing is profoundly spiritual in nature, as is living, day-to-day, for each and every one of us.

The chaplains of our Nation, the volunteer care givers, and persons in local congregations who provide pastoral care dedicate themselves to ministering to the needs of fellow human beings, helping individuals come to an understanding of themselves and our common human situation. Through their own selflessness and their dedication to the well-being of others, the chaplain and care givers of this Nation provide living witness to the power of goodness, mercy, and love in this world, and reflect the ultimate source of all goodness, mercy, and love. They administer to our needs, but more than that, they call us to reflect back the goodness and love that they provide.

So it is fitting that the week of October 25-31 be set aside to call attention to the role of pastoral care in our Nation. The theme for this year's national pastoral care week is "Excellence in Pastoral Care." I urge my colleagues and all the people of the United States to take note of this week and to participate with appropriate activities.

I submit for the RECORD a description of National Pastoral Care Week submitted to me by my good friend, the Reverend Arne K. Jessen, Ph.D., executive vice president of the College of Chaplains, headquartered in Schaumburg, IL.

The material follows:

NATIONAL PASTORAL CARE WEEK

"Excellence in Pastoral Care" is the theme for National Pastoral Care Week to be observed from October 25-31, 1987. The observance of National Pastoral Care Week has emerged in less than three years as a major emphasis among pastoral care organizations in the United States. Begun in 1984 by the National Association of Catholic Chaplains (NACC), the concept has received endorsement from the College of Chaplains and the Association for Clinical Pastoral Education (ACPE) as well as formal recognition by the Council on Ministry in specialized settings (COMISS), a coordinating agency of religious endorsing bodies and pastoral care organizations.

"Excellence in Pastoral Care" provides an important opportunity for pastoral care givers in specialized settings to highlight their contributions in the care of patients, clients, inmates, their familes and staff. In addition, pastoral caregivers can reflect upon their specific contributions to people in various settings and receive in turn information and feedback about their ministries.

The theme for 1987 compliments the objectives established for the observance by COMISS:

1. To celebrate the growing professional development of pastoral care and to affirm its mission and purpose within specialized settings.

2. To interpret and promote pastoral care within specialized settings and in the wider society.

3. To recognize professional chaplains, volunteer caregivers, and persons in local congregations who provide pastoral care.

4. To express appreciation to appropriate institutions and their staff for their support of pastoral care ministries.

5. To publicize the work and certification procedures of pastoral care organizations affiliated with COMISS.

6. To provide continuing education for clergy, laity, and institutional employees.

A primary focus on Pastoral Care Week, in light of the theme for 1987, is the identification among pastoral caregivers of what constitutes excellence in their ministries, including a consideration of criteria of excellence, measurement of performance and competence, standards for certification, accountability, and continuing education.

For some, especially those who have been certified by a pastoral care organization and endorsed by a religious body, highlighting excellence may mean telling the story about how they perform their day-to-day responsibilities. For others, Pastoral Care Week may also serve as a vehicle for informing their communities about how pastoral caregivers regularly symbolize the best (the heart and soul) of the institution's mission and simultaneously provide hands and feet for the mission of The Church in the world.

The pastoral caregiver crosses institutional, economic, cultural and ecclesiastical boundaries to represent a God who has demonstrated a desire for wholeness in human life. Because they have access to the entire community, pastoral caregivers are in a unique position to take an assertive role in minimizing fragmentation by calling together individuals and groups to create a more harmonious environment for those serving and those being served. Among other things, excellence in pastoral care demonstrates a dedication to human dignity, and appreciation for individual differences, a balance of acceptance and accountability, a dedication to justice and mercy and an incarnation of love and hope.

Nothing will distinguish institutions as much as the quality of their caring. Now is the time for pastoral care to celebrate its gifts and affirm the difference "Excellence in Pastoral Care" can make.

To assist participating organizations, institutions, and individuals, COMISS will provide a listing of resources and other suggesting that can be appropriately adapted to various specialized settings. For more information about National Pastoral Care Week, contact, Rev. Arne K. Jessen, Ph.D, Executive Vice President, College of Chaplains, American Protestant Health Association, 1701 Woodfield Rd, Suite 311, Schaumburg, IL 60173 (312)240-1014.●

AMBASSADOR ALBERTO MARTINEZ PIEDRA

● Mr. KERRY. Mr. President, during this past April recess, I traveled to Guatemala and Costa Rica. While in Guatemala, I had the privilege of spending a considerable amount of time with our then-Ambassador, Alberto Martinez Piedra.

I found Ambassador Piedra to be one of the most gracious and astute individuals I had ever met. He arrived in Guatemala at a very critical period in that nation's history—that of a transition from a military dictatorship to a democratically elected civilian government. He handled our relations with Guatemala at this critical juncture with great skill and dignity. It was quite evident, during my brief stay in Guatemala, that Ambassador Piedra has won the respect and admiration of Guatemalans from all strata of that society—and rightly so.

Upon his departure from Guatemala as our Ambassador this past July, the Government of President Vinicio Cerezo Arevalo, chose to honor Alberto with that nation's highest honor—The Order of the Quetzal. In making this award, the Guatemalan Foreign Minister noted:

> Mr. and Mrs. Martinez Piedra will leave a profound void upon their departure. We all know this, and that is the reason for the expression of love and thanks of our people. This testimony of official recognition adds itself to that proof of affection, when Ambassador Martinez Piedra is awarded the Great Cross of the highest Guatemalan decoration, the Order of the Quetzal.

Mr. President, Ambassador Piedra is more than a worthy recipient of this award. He has left a solid foundation for his successor, Jim Michel, to build upon in the pursuit of the common

goal of both our nations—to see democracy take firm root in the Guatemalan soil. He worked quietly and persistently in support of this goal. And I for one want to express my personal appreciation for the service he rendered our Nation, as our Ambassador to Guatemala. He is a distinguished diplomat, who deserves our gratitude as well.

I ask that the Foreign Minister's remarks, delivered during the awards ceremony, be printed in the RECORD.

The remarks follow:

MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF GUATEMALA, C.A.

The president of the republic, licenciado Marco Vinicio Cerezo Arevalo, Supreme Commander of the Order of the Quetzal, awarded the Great Cross of the Order to His Excellency Doctor Alberto Martinez Piedra in Council of Ministers, both for his personal merits and in recognition of the brilliant and effective activity carried out by him as ambassador extraordinary and plenipotentiary of the United States of America in Guatemala, where his efforts helped to strengthen relations between both countries.

Dr. Martinez Piedra arrived in Guatemala three years ago, when we were going through a drastic and uncertain period, debating in the search for a better way to affirm and realize our destiny. He understood reality, thanks to his proven intellect and solid education, his qualities and experience.

In Havana, his birthplace, he became a doctor at law and years later also became a doctor of political economy at the University of Madrid. He added to these degrees that of doctor in economic sciences at Georgetown University, Washington, D.C. His academic background led him to teach at several United States universities. In 1969 he became a citizen of the United States and in 1982 he began to serve the Government of the United States as political advisor of the country's mission to the Organization of American States and subsequently as United States representative to the Inter-American Economic and Social Council. His first position vis-a-vis another government is the one he held among us since 1984 as ambassador, which he has fulfilled in an outstanding manner and so appropriately that he has been called "a first-rate ambassador".

He has proven that his prestige was well-earned and has clearly shown his ability through successful actions. He has maintained exemplary balance and has consolidated an efficient relationship of friendship and mutual appreciation between the United States and Guatemala. He witnessed the political aperture and the process which has led us to institutional re-establishment, as a first step toward consolidation of a genuine democratic system. Ambassador Martinez Piedra approvingly observed and supported this process at all times, not only vis-a-vis his own government, but also at international fora, in his friendly and official relationship with other countries and within organizations and entities before which he has always readily praised the Guatemalan political process, which culminated, as he said, "in 1985 with some of the freest and most honest elections of its history". He has also borne witness at all times that in the field of human rights "Guatemala has made substantial improvements".

He acquired a deep insight into our reality and has fully understood the transformation taking place in our country, which he proves when he says that "Guatemala has left behind the system of repression in which political freedoms and other rights were drastically limited and has committed itself to following the democratic system", as he said when he addressed the rotary club of Houston, Texas, in May of last year.

The support given by Ambassador Martinez Piedra to the democratic transformation process taking place in our country has also resulted in productive initiatives to obtain assistance for Guatemala, be it economic, financial, technical or scientific, not only in the official circles of his country but also at financial and international cooperation agencies and institutions. Thus, United States financial assistance to Guatemala rose from 15 million dollars in 1984 to 100 million in 1985. The same amount was assigned to Guatemala for 1986 and this amount may increase to 185 million. This assistance has helped to adjust the balance of payments and to launch programs promoting the country' development. Military assistance, which had been suspended in 1977, arguing non-respect of human rights in our country, was re-established with 300,000 dollars in 1985 and has increased to five million during the next two years.

In our midst he has constantly shown his appreciation for Guatemala and the extent to which he has identified with us, bringing donations and assistance to the different strata of our society in an uninterrupted effort which has taken him to the farthest corners of our land, where he has earned the affection and admiration of the natives.

Both he and his wife Edita are well-known and appreciated in the city and in the country. They know our landscape and our people thanks to their long and frequent leisure trips, or those during which they carried out humanitarian assistance and channeled projects through official agencies such as AID and others.

They have made lasting friendships and many are the groups and agencies where they will always be remembered gratefully. That is why they have been the object of so many and so significant and expressive farewells, not only in the upper circles of our society but also in middle-level and popular sectors.

Mr. and Mrs. Martinez Piedra will leave a profound void upon their departure. We all know this, and that is the reason for the expression of love and thanks of our people. This testimony of official recognition adds itself to that proof of affection, when Ambassador Martinez Piedra is awarded the great cross of the highest Guatemalan decoration, the Order of the Quetzal.

I should add that in addition to the official seal, this decoration also conveys the personal appreciation of the President of the Republic, Licenciado Vinicio Cerezo.

As Chancellor of the Order of the Quetzal, I am especially pleased to award the Order of the Quetzal to Ambassador Alberto M. Piedra. In addition to my friendship and admiration for him, I wish to convey the esteem of Guatemalan society, which knows how to distinguish true friends from fair-weather friends.

Alberto, receive this decoration with the affection of Guatemalans, in whose hearts there will always be room for Edita and you, true friends who helped us in difficult times, with our best wishes that life may bring you the happiness and joy with which God rewards those who serve him well.

Guatemala, August 10, 1987.●

KINGS RIVER

● Mr. JOHNSTON. Mr. President, on September 25, 1987, the Committee on Energy and Natural Resources filed the report to accompany H.R. 799, an act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes.

At the time the report was filed, the committee had not received an estimate of cost from the Congressional Budget Office. The committee has now received that report, and I ask that it be included in the RECORD at this time for the use and information of the public and my colleagues of the Senate.

The report follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, September 29, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 799, an act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE
September 29, 1987.

1. Bill Number: H.R. 799.

2. Bill Title: An act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes.

3. Bill Status: As ordered reported by the Senate Committee on Energy and Natural Resources on September 16, 1987.

4. Bill Purpose: Section 1 of H.R. 799 would designate certain segments of Kings River as a wild and scenic river and would authorize the appropriation of no more than $250,000 for the Development of Agriculture to establish boundaries and classifications, develop management plans, and acquire land.

Section 2 would establish the Kings River Special Management Area in the Sierra and Sequoia National Forests to be administered by the Department of Agriculture. Provisions in Section 2 would place certain additional restrictions on land use within the area. The Secretary of Agriculture would be required to develop a separate management plan for the special management area and provide for a trail within three years of enactment.

5. Estimated Cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization level:					
Specified	0.25				
Estimated	1.50				
Total	1.75				

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Estimated outlays	.75	0.50	0.50		

If the Forest Service constructs a trail in the special management area designated by the bill, federal costs would increase by an additional $4 million over fiscal years 1991 and 1992. Designation of the special management area would result in the removal of approximately 30 million board feet of commercial timber from the Forest Service timber base. However, because no timber is currently being harvested or being planned for future harvesting in these areas, no timber receipts will be lost in the foreseeable future.

The costs of this bill fall within budget function 300.

Basis of Estimate: In addition to the amounts specifically authorized in the bill, CBO estimates that provisions in Section 2 of the bill relating to the establishment of the special management area, including planning and designing the trail from Garlic Creek to Tehipite Valley, will result in costs to the federal government totaling approximately $1.5 million over the next three years. This amount is based on information from the Forest Service.

This estimate assumes that H.R. 799 will be enacted early in fiscal year 1988 and that the full amounts authorized and estimated will be appropriated. The outlay estimates are based on typical spending patterns for similar Forest Service and Bureau of Land Management activities.

6. Estimated Cost to State and Local Governments: None.

7. Estimate Comparison: None.

8. Previous CBO Estimate: On April 9, 1987, CBO prepared a cost estimate for H.R. 799, as ordered reported by the House Committee on Interior and Insular Affairs, April 1, 1987. The differences between the two estimates reflect the amendments of the Senate Committee on Energy and Natural Resources—including a specific authorization of appropriations, which was not in the House bill.

9. Estimate prepared by: Theresa Gullo (226-2860).

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).●

MRS. ARTHUR BEERMAN OF DAYTON, OH

● Mr. GLENN. Mr. President, I rise today to pay tribute to a distinguished citizen of Dayton, OH, Jessie Beerman. Mrs. Beerman is the widow of Arthur Beerman, who forged the Elder-Beerman Stores Corp. into one of Ohio's most successful enterprises. Elder-Beerman Stores now retails clothing, shoes, and furniture in over 20 locations in Ohio, and manages subsidiaries in 9 other States.

Mrs. Beerman has an outstanding record as a civic leader and philanthrophist. In 1967, with her husband, she initiated a Thanksgiving Day dinner for the lonely, the needy, and the disadvantaged of the Miami Valley. That dinner is now an annual event of the Beerman Foundation.

In keeping with her civic spirit, Mrs. Beerman is honorary chairman of a gala benefit on October 4 for the Dayton Performing Arts Fund. This support for enriching Dayton's cultural life is characteristic of her commitment to the overall quality of life in her community. Mrs. Beerman has also been active on behalf of the Dayton Art Institute, and has made special contributions to the Air Force Museum at Wright-Patterson Air Force Base.

In addition to her interest in cultural affairs, Mrs. Beerman continues her husband's concern for community affairs in her support of the Children's Medical Center, the Good Samaritan Hospital in Dayton, the University of Dayton, Wright State University, and many other civic organizations.

In a city with a long tradition of community service, Mrs. Arthur Beerman is a shining example of compassion and leadership. It is with great pride that I recognize her for her accomplishments.●

ROSH HASHANA AND NAUM MEIMAN

● Mr. SIMON. Mr. President, last Thursday was Rosh Hashana, the Jewish New Year. On this day of worldwide celebration, it saddened me to think once again of the plight of my friend, Naum Meiman.

Naum is forced against his will to remain in the Soviet Union. His applications to leave for the West have been rejected for more than 12 years. Naum's burden increased recently with the death of his wife, Inna. This loss is harder to bear in the knowledge that Inna might have lived had she only been allowed to receive proper medical treatment. Unfortunately, this treatment was only obtainable in the West and Inna was not given permission to leave until it was too late.

There is no excuse for Naum's continued captivity. I urge the Soviet Union to release Naum so that he may celebrate the next new year in freedom.●

THE CONSTITUTION AND NAUM MEIMAN

● Mr. SIMON. Mr. President, September 17, we celebrated the 200th anniversary of our Constitution. It seems appropriate, while we reflect on the privileges of our citizenship, to recall once again the plight of my friend, Naum Meiman.

Our Constitution has successfully guaranteed our basic rights and freedoms for over 200 years; among these freedoms is our freedom of movement. Not all are so lucky. For over 11 years, Naum Meiman, a Soviet citizen, has had his freedom of movement severely curtailed. He is old and ill, yet, he has been refused permission to leave the Soviet Union again and again. This burden was increased with the tragic death of his wife, Inna, after she was refused permission to travel to the West for life-saving surgery until it was too late.

Naum's situation, and those of people like him, gives a special poignancy to our celebration of the Constitution that has preserved our freedoms. I strongly urge the Soviet authorities to give Naum his freedom.●

KERN RIVER

● Mr. JOHNSTON. Mr. President, on September 25, 1987, the Committee on Energy and Natural Resources filed the report to accompany S. 247, a bill to designate the Kern River as a national wild and scenic river.

At the time the report was filed, the committee had not received an estimate of cost from the Congressional Budget Office. The committee has now received that report, and I ask that it be printed in the RECORD at this time for the use and information of the public and my colleagues of the Senate.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., September 29, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 247, a bill to designate the Kern River as a national wild and scenic river.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 247.

2. Bill title: A bill to designate the Kern River as a national wild and scenic river.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 16, 1987.

4. Bill purpose: The bill would designate two specific segments of the Kern River in California as wild and scenic rivers and would authorize the appropriation of no more than $100,000 for the purposes of development and land acquisition.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization level	0.1	—	—	—	—
Estimated outlays	0.1	—	—	—	—

The costs of this bill fall within budget function 300.

Basis of estimate: This estimate assumes that the full amounts authorized will be appropriated in fiscal year 1988. Outlays are

estimated based on information from the Forest Service.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa Gullo.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).●

A REAL "DOERR" PRIZE

● Mr. RIEGLE. Mr. President, on June 12, 1987, Julie Domenick Doerr and Karl Doerr became the proud parents of a baby girl.

Katherine Elizabeth Doerr was born at Columbia Hospital for Women at 12:37 a.m. She weighed 7 pounds, 2 ounces and measured 21 inches at birth.

I understand that Kate is a real determined young lady and despite her tender age, likes to express herself day and night. Her folks also say, that anyone who loves to eat and talk as much as Kate has a head start on a career in Washington.

As my colleagues know, Julie directs the legislative affairs of the Investment Company Institute—the trade association for the mutual fund industry.

Karl is vice president, Federal and Commercial Marketing for National Computer Systems, a Minneapolis-based company that manufacturers and develops computer systems.

I know my colleagues join me in wishing Karl and Julie all the best and a lifetime of happiness and pleasure with their new "Doerr" prize, Kate.●

COSMOPOLITAN CLUB DEDICATION

● Mr. LAUTENBERG. Mr. President, I rise to note the dedication October 4 of the newly renovated health care facility, known as the Cosmopolitan Club of Seashore Gardens in Atlantic City.

The Cosmopolitan Club provides care for older Jewish adults. The club has a dual role. The facility serves those in need of long-term health care who require daily nursing care. In addition, the club provides long-term residential care. Private dining rooms, recreational activities and a hotel-like atmosphere all contribute to the secure residential environment that these men and women are seeking.

The year 1906 marked the beginning of the shelter in Atlantic City. In 1934 it was expanded to provide lodging and meals. Finally in 1952, permanent residency was established and the Seashore Gardens evolved from a transient community shelter to a long-term facility. Today they have expanded to a 300-bed facility. The Cosmopolitan Club primarily serves residents to the north, south, and west of Atlantic County. As an active member of the Vineland community they are dedicated in assisting those residents when called upon.

I congratulate the staff and residents of the Cosmopolitan Club of Seashore Gardens. October 4 will be a memorable day for all those who will celebrate this dedication.●

CLAYTON CELEBRATES CENTENNIAL

● Mr. LAUTENBERG. Mr. President, October 3 marks a very special day in my State. The borough of Clayton is celebrating the 100th anniversary of its incorporation.

The town was originally named Fislerville but by an act of the legislature in 1867, the name was changed to Clayton and in 1887, Clayton was made a borough. Clayton, like many towns in the area, was home to the glass business. There were two major firms, Moore Brothers Glass Works and the Fisler and Morgan Co. Often, the two companies worked together in mold making and in production. As the glass industry grew, so did Clayton. Today, Clayton is a town of over 6,500 people.

Clayton is primarily a residential community. It is the smallest town in New Jersey to house its own high school, Clayton High School. Hungerford-Terry, a water treatment facility and the Safety Clean Corp., are just a couple of the major firms which employ many of its residents.

I applaud Mr. Gene Costill, chairman of the Clayton Centennial Committee, and the other members for their work in making the boroughs' 100th anniversary a joyous celebration. I would like to congratulate and honor the borough on its centennial occasion and the citizens who are to be apart of this celebration. October 3 will be an historic day for all those who live in the Borough of Clayton.●

PROGRAM

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate concludes its business today it stand in recess until the hour of 8:10 a.m. instead of 8:15 in the morning.

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

RECOGNITION OF MR. BENTSEN

Mr. BYRD. Mr. President, I will state the program for now. I ask unanimous consent that following the completion of the orders that have been heretofore entered on tomorrow for special speeches, Mr. BENTSEN be recognized for not to exceed 15 minutes.

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

Mr. BYRD. Mr. President, the Senate will come in at 8:10 a.m. tomorrow. After the prayer of the Chaplain, Mr. PROXMIRE will be recognized for 5 minutes, Mr. PRYOR for 10 minutes, Mr. SIMPSON for 15 minutes, and Mr. BENTSEN for 15 minutes.

Thereafter the Senate will resume consideration of the unfinished business. That would be at circa 9 o'clock, and there will be a rollcall vote on a motion to instruct the Sergeant at Arms. That rollcall vote will be a 30-minute vote.

RESUMPTION OF THE DOD AUTHORIZATION BILL

Mr. BYRD. Upon the conclusion of that vote the Senate will resume consideration of the DOD authorization bill. The pending question before the Senate at that time is the Byrd-Nunn amendment to the Weicker-Hatfield amendment. We have no agreements at the moment. We have no agreement on that amendment or the underlying amendment.

We have no agreement on the SALT II amendment. I anticipate rollcall votes tomorrow on amendments to the DOD authorization bill on matters in relation thereto or other matters that may be cleared for action.

I should alert Senators to the fact that the regular order will be called for at the end of the 30 minutes tomorrow morning. So they might try to get an early start so as to avoid any traffic jams or unforeseen problems and not miss the vote.

Mr. President, it is the hope of the majority leader and the manager on this side of the aisle, and I am sure that other Senators concur therein, that the Senate complete action on the DOD authorization bill no later than tomorrow night or Friday. We would suggest to Senators in a very serious vein that they not plan on early airline reservations for Friday—yet.

RECESS UNTIL TOMORROW AT 8:10 A.M.

Mr. BYRD. Mr. President, I inquire of the able acting Republican leader if he has any further business that he wishes to transact.

Mr. WILSON. I thank the majority leader. I have nothing further.

Mr. BYRD. I thank the acting Republican leader.

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 8:10 tomorrow morning.

The motion was agreed to and the Senate, at 7:44 p.m., recessed until Thursday, October 1, 1987, at 8:10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 30, 1987:

THE JUDICIARY

ROBERT S. GAWTHROP III, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA VICE J. WILLIAM DITTER, JR., RETIRED.

ROBERT P. RUWE, OF VIRGINIA, TO BE A JUDGE OF THE U.S. TAX COURT FOR A TERM EXPIRING 15

YEARS AFTER HE TAKES OFFICE, VICE CHARLES R. SIMPSON, RETIRED.

IN THE COAST GUARD

THE FOLLOWING-REGULAR OFFICERS OF THE U.S. COAST GUARD FOR PROMOTION TO THE GRADE OF CAPTAIN:

EDWARD A. HEMSTREET
BENJAMIN M. CHISWELL III
DENNIS R. FREEZER
DOUGLAS W. CROWELL
JON J. MCNUTT
ARTHUR A. WHITING III
VERNON O. ESCHENBURG
WILLIAM H. BOLAND, JR.
CLINTON W. CARTER
STEPHEN E. GOLDHAMMER
MICHAEL F. COOK
JAMES T. CUSHMAN
ROBERT C. HOULE
THOMAS D. MCLAUGHLIN
RUDOLPH L. CARPENTER, JR.
ROBERT J. REINING
ROBERT T. RITCHIE
ROBERT E. WILLIAMS
THOMAS J. SCHAEFFER
RONALD R. DIGENNARO
JAMES W. CALHOUN
HERBERT D. ROBINSON, JR.
MICHAEL P. LOVETT
JOHN H. DISTIN
CARMOND C. FITZGERALD
MICHAEL F. COWAN
RICHARD S. TWEEDIE
JAMES R. WHITE
GEORGE P. WHITE, JR.
RUSSELL J. COLLINS
RICHARD B. COOK
THOMAS W. SNOOK
RICHARD M. LARRABEE III
PAUL J. PLUTA
JAMES F. VERPLANCK
KENNETH L. ERVIN
CHAD B. DOHERTY
THOMAS C. GREENE
JAMES R. TOWNLEY, JR.
GARY J. THORNTON
DAVID E. PROSSER
STEPHEN W. CLARK
JACK A. LANG
WINSTON G. CHURCHILL
ROBERT W. SITTON
JAMES J. SHAW, JR.
LEO B. TYO
CHARLES G. BOYER
MONT J. SMITH, JR.
ERIC J. WILLIAMS III
WILLIAM S. SHAFFER
DONALD E. BODRON
DAVID J. KANTOR
JOHN F. WESEMAN
MICHAEL G. CAVETT
RICHARD F. MATTINGLY, JR.
ROBERT J. PARSONS
DOUGLAS D. LUNDBERG
PAUL M. REGAN
CRAIG M. NICHOLSON
JAMES B. MORRIS
MICHAEL F. MCCORMACK
DOUGLAS A. SMITH
QUINTIN K. QUINN
JOHN K. COLVIN
JAMES M. SHERMAN
PETER A. POERSCHKE
STEVEN J. DELANEY
ROGER A. BRUNELL
FRANCIS R. TARDIFF
DUANE R. JEFTS
PAUL D. BRIDGES, JR.
DAVID A. POTTER
WILLIAM R. HODGES, JR.
NORMAN V. SCURRIA, JR.
JAMES T. INGHAM
LARRY J. OLSON
NORMAN C. EDWARDS, JR.
JOHN T. TOZZI
THOMAS S. JOHNSON III
THOMAS H. COLLINS
ERNEST R. RIUTTA

THE FOLLOWING-RETIRED RECALLED OFFICER OF THE U.S. COAST GUARD FOR PROMOTION TO THE GRADE OF CAPTAIN:

JOHN R. HEARN, JR.

THE FOLLOWING-RESERVE OFFICERS OF THE U.S. COAST GUARD TO BE PERMANENT COMMISSIONED OFFICERS IN THE REGULAR COAST GUARD IN THE GRADES INDICATED:

To be lieutenant

STEVEN E. VANDERPLAS

To be lieutenant (junior grade)

AGOSTINO CATALANO
JOHN W. KOSTER
NEAL B. THAYER

THE FOLLOWING REGULAR OFFICERS OF THE U.S. COAST GUARD FOR PROMOTION TO THE GRADE OF COMMANDER:

THOMAS W. PURTELL
TIMOTHY G. BALUNIS
GARY L. GREGORY
HAROLD B. MORTON
CHARLES T. WINFREY
ALBERT C. MUCCILLI, JR.
JOHN L. GLEN
KENNETH M. COFFLAND
BRUCE K. KLIMEK
STEVE S. SHEEK
LAWRENCE G. BRUDNICKI
JAMES M. ALDERSON
FREDRIC R. GILL
JIMMY NG
DANNY D. BENEFIELD
RICHARD T. BUCKINGHAM
WALTER G. JOHNSON
CHARLES F. KLINGLER
THOMAS D. YEAROUT
CHARLES B. WILLIAMS
CLAY A. FUST
JAMES F. MCCARTHY III
JAMES F. MCENTIRE, JR.
HENRY F. BALEY IV
ERROLL M. BROWN
JOHN W. WHITEHOUSE
PHILLIP C. SMITH
ALAN D. SUMMY
CARL R. SMITH
FRANCIS J. KISHMAN, JR.
JAN E. TERVEEN
JAMES M. COOPER
JOSEPH H. JONES, JR.
MARK D. NOLL, JR.
MICHAEL D. HATHAWAY
TIM B. DOHERTY
WAYNE H. OGLE
EDWIN E. ROLLISON, JR.
HUGH T. GRANT
JAMES L. ROHN
EDWARD E. PAGE
BRADLEY J. NIESEN
ROBERT D. INNES, JR.
DEAN L. HARDER
MILTON S. DILLON III
WILLIAM M. BANNISTER
ROBERT W. VAIL
MICHEAL W. RAGSDALE
WILLIAM H. FELS
ROBERT F. DUNCAN
JOHN M. GRAY III
JOHN M. CRYE
JOHN G. CALHOUN
KEVIN J. SCHEID
CRAIG A. LEISY
WILLIAM P. FOREMAN
THOMAS C. PAAR
JAMES H. MORTON, JR.
JEFFREY A. HILL
HAROLD E. BLANEY, JR.
MICHAEL P. DECESARE
THOMAS D. WALTERS
MERRITT H. AURICH IV
DAVID L. WALTS
PAUL J. HOWARD
DENNIS A. SANDE
JOHN D. KOSKI
TERRY L. RICE
JOHN C. LUTHER
JOSEPH A. WALKER, JR.
WILLIAM J. THRALL
FRANKLIN T. FOWLER
WILLIAM F. WALKER
DOUGLAS W. LOSKOT
ROBERT B. HURWITT
NICHOLAS E. CARCIA
DONALD S. GILBERT
DOUGLAS A. LENTSCH
SCOTT P. COOPER
WAYNE E. LUGINBUHL
RICHARD E. BENNIS
CHARLES J. MATHIS
MARK R. MAYNE
RANDALL P. PARMENTIER
MARTIN C. EGER
STEPHEN R. CAMPBELL
TERRENCE L. STAGG
ROGER G. EVANS
WILLIAM J. MORANI, JR.
GERALD W. VONANTZ
GERALD O. ROBICHAUD
RONALD V. LARSEN
JOHN S. CALHOUN
CHRISTIAN T. BOHNER
WAYNE K. GIBSON
DOUGLAS K. MCFADDEN
THOMAS A. TROSVIG
RICHARD E. FRYE II
ARTHUR E. ADKINS
WOODY L. LOVELAND
CLIFFORD I. PEARSON
MARC W. WOLFSON
DAVID B. PETERMAN
SCOT W. TIERNAN
ROBERT A. JONES
WILLIAM R. ASHFORTH
DAVID W. KUNKEL
ADOLPH E. ZIMMER II
MICHAEL L. BEATTY
RONALD L. NELSON
DAVID A. RIIKONEN
FRANCIS G. BARNETT
GARY A. REITER
ELMO J. PETERS, JR.
WILLIAM M. HAYES
FREDERICK V. NEWMAN
LARRY L. MIZELL
JOHNNY F. BURELL
WAYNE R. HAMILTON
LEWIS J. BEACH
HUGH M. O'DOHERTY
JACK D. CAMPBELL
DALE E. GOODREAU
JONATHAN S. GLANTZ
RICHARD K. SOFTYE
WILLIAM W. SPITLER
KENNETH T. VENUTO
GARY K. SOOY
JOHN J. ANTHONY
JAMES A. RAUCH
BRUCE J. GOOD
WILLIAM D. KLINE
DENNIS G. BOHLAYER
PHILIP P. WIECZYNSKI
DANIEL J. FARRELL
DANIEL W. STUHLMANN
STEVEN E. FROEHLICH
KEVIN J. ELDRIDGE

THE FOLLOWING-REGULAR OFFICERS OF THE U.S. COAST GUARD OF THE PERMANENT COMMISSIONED TEACHING STAFF OF THE COAST GUARD ACADEMY FOR PROMOTION TO THE GRADES INDICATED:

To be commander

JOSEPH B. EGAN

To be lieutenant commander

ROBERT J. FULLER

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. DONALD J. KUTYNA, [redacted] FR, U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN GRADE INDICATED UNDER THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JOHNNY J. JOHNSTON, [redacted] U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER THE PROVISONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. ORREN R. WHIDDON, [redacted] U.S. ARMY.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. WILLIAM F. MCCAULEY, [redacted]/1110, U.S. NAVY.

IN THE AIR FORCE

THE FOLLOWING-NAMED AIR FORCE CADET TO BE PERMANENT ENSIGN IN THE LINE OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

RODOLFO LLOBET

THE FOLLOWING-NAMED NAVAL RESERVE OFFICERS TRAINING CORPS PROGRAM CANDIDATES TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

JEFFREY T. BARR
BRENT R. BEABOUT
DAVID J. CASTAGNETTA, JR.
FRANCISCO CHAPA
MICHAEL A. FERRARA
GERALD J. IWANEJKO, JR.
RUSSELL C. JONES
MICHAEL J. MASINO
STANLEY A. MULLEN
BRAD T. SWANSON
RICHARD E. YOST

THE FOLLOWING-NAMED NAVY ENLISTED COMMISSIONING PROGRAM CANDIDATES TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

JAMES K. LOGUE
MIGUEL A. ZAYAS

THE FOLLOWING-NAMED NAVY ENLISTED CANDIDATES TO BE APPOINTED PERMANENT LIEUTENANT (J.G.) IN THE MEDICAL SERVICE CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

GERMAN S. ARCIBAL
VALMORI M. CASTILLO
ROBERT B. TAYLOR
ROBERT A. WELCH III

THE FOLLOWING-NAMED NAVAL RESERVE OFFICERS TO BE APPOINTED PRMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

FREDERICK S. GIFFIN
CARLOS D. GODINEZ
WILLIAM D. MICHAEL
PAUL A. ONORATO
DAVID A. PREVOST
DAVID A. WARNE

THE FOLLOWING-EX-U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

GARY W. WATSON

THE FOLLOWING-NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT CAPTAIN IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

ARTHUR E. PELLEGRINI
CHERYL D.C. ROSENBLATT

THE FOLLOWING-NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

BRUCE E. CARLSON
PAUL W. ESPOSITO
RICHARD S. HERDENER
HARI C. PURI

THE FOLLOWING-NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE DENTAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

DARREL A. BAKER
ROBERT L. DUELL

CONFIRMATIONS

Executive nominations confirmed by the Senate September 30, 1987:

IN THE NAVY

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. WILLIAM D. SMITH, [redacted]/1120, U.S. NAVY.

DEPARTMENT OF DEFENSE

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF UNDER TITLE 10, UNITED STATES CODE, SECTION 152:

ADM. WILLIAM J. CROWE, JR., [redacted], U.S. NAVY.