SENATE—*Thursday, September 7, 1989*

(Legislative day of Wednesday, September 6, 1989)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN F. KERRY, a Senator from the State of Massachusetts.

PRAYER

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

Let us pray:

* * * *Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets.*—Matthew 22:37-40.

Eternal God, perfect in wisdom, knowledge, power and love, thank Thee for these penetrating words of Jesus which comprehend all law. Grant to each of us the will to heed these two great commandments which, if obeyed, would transform the social order. Forgive us for diminishing love as mere sentiment when, in actuality, it is the most powerful force in life. Infuse us with Your love—for God, neighbor, and self.

In Jesus' name, who demonstrated preeminently selfless, sacrificial love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 7, 1989.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN F. KERRY, a Senator from the State of Massachusetts, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished majority leader, the Senator from Maine.

THE JOURNAL

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

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

SCHEDULE

Mr. MITCHELL. Mr. President, following the time reserved for the two leaders, there will be a period for morning business until 10 o'clock a.m., with Senators permitted to speak therein for up to 5 minutes each. At 10 a.m., the Senate will begin consideration of S. 933, the Americans With Disabilities Act.

Between the hours of 10 and 12 noon today, there will be opening statements and general debate on the subject of S. 933. Under the previous order, the Senate will resume consideration of the legislative branch appropriations bill, H.R. 3014, at noon today with the Wilson amendment No. 698 on the matter of congressional mailings as the only remaining amendment to the bill. Upon disposition of that appropriations bill, the Senate will return to S. 933.

As I indicated yesterday, rollcall votes are expected today, both in relation to the legislative appropriations bill and the Americans With Disabilities Act. Senators should be alerted to the likely possibility of votes occurring into the evening beyond 7 p.m. and should arrange their schedules accordingly.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time, and I reserve the time for the Republican leader.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to extend beyond 5 minutes.

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

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

The legislative clerk proceeded to call the roll.

Mr. DOLE. 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.

POLAND AT THE CROSSROADS

Mr. DOLE. Mr. President, during the August recess, I had the opportunity to visit Morocco, Soviet Armenia, The Netherlands, and Poland. Unofficially, it was a joint congressional-executive delegation—I was accompanied by a distinguished member of the President's Cabinet, the Secretary of Labor.

REPORT TO THE PRESIDENT

The President wrote me, prior to our departure, asking that Elizabeth and I report back to him on our return, in particular on our observations in Armenia and Poland.

Mr. President, I ask unanimous consent to print the text of the President's letter in the RECORD.

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

THE WHITE HOUSE,
Washington, August 16, 1989.

DEAR BOB: I understand that you and Elizabeth are departing later this week on a trip which will take you to Morocco, Soviet Armenia and Poland. I would like to take advantage of your travels to ask that you convey my best wishes to King Hassan, His Holiness Catholocos Vazgen, President Jaruzelski, Lech Walesa and other Polish leaders with whom I met last month. I am delighted that the two of you are undertaking such an important journey at this time, and I look forward to a firsthand report of your impressions as soon as you return.

Sincerely,

GEORGE BUSH.

Mr. DOLE. Mr. President, as it turned out, we did have the chance to stop in Kennebunkport last week, en route back to Washington—so we were able to give the President an immediate, in-person account of our visit. Over the next several days, I want to share some of those same observations and thoughts with the Senate—starting today with Poland.

HISTORYMAKERS IN POLAND

We arrived in Warsaw on a historic and exciting day—the day that great nation elected its first democratically chosen leader in more than a half century. Prime Minister Mazowiecki was extraordinarily gracious in taking time from his first full day in office to meet

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

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with Elizabeth and I—the first foreign officials he received after his election.

During our stay in Warsaw, we also met with many of the other top leaders of Solidarity, including the head of its parliamentary bloc, Mr. Geremek; and Solidarity's articulate and well-known media spokesman, Mr. Onyszkiewicz.

Later, in Gdansk, we met, too, with Lech Walesa—truly a hero, not only to Poles but to freedom loving people around the world. Let me tell you: It takes about 2 minutes to realize this hero is not the creation of a bunch of media handlers. He is the real article: dynamic, charismatic, and articulate.

SOLIDARITY CAUCUS

As stimulating and informative as were all those meetings, though, the emotional highlight of our stop turned out to be our attendance at a Solidarity parliamentary caucus—where Polish leaders openly debated the future of the people and country they had been democratically elected to represent.

Everyone in our delegation had the same visceral reaction: We were observing something akin to what happened in our country—in the halls of Philadelphia, and Boston, and Williamsburg—more than two centuries ago.

Consider this simple fact—only three in that gathering of several hundred Solidarity parliamentarians had ever served in Parliament before; but countless numbers among them had served long sentences in jail, as political prisoners of the Communist regime. It gives you an idea of both the promise, and the problems, that Solidarity and Poland will face in the days ahead.

MEETING WITH JARUZELSKI

Let me underscore one part of what I just said: The future is not just Solidarity's but Poland's. Solidarity is now the leading player—but there are other powerful forces still very much on the scene.

So we met, too, with President Jaruzelski, Poland's Communist Chief of State, for a frank and far-reaching discussion. And we came away convinced that President Jaruzelski, dedicated Communist that he may well be, is even more a patriotic Pole. I believe he is trying to do what is best for Poland; that he understands Solidarity's success is now intertwined with Poland's success; and that he is sincerely committed to helping the Solidarity-led Government succeed.

DAUNTING CHALLENGES

One thing is certain: The challenges faced by the Mazowiecki government will be enormous. Poland's economy is in shambles, with runaway inflation, growing unemployment, an oppressive debt burden, and a touch-and-go food situation. Its population, though basking now in a kind of political euphoria, remains deeply restive. The environment has been ravaged by decades of massive industrial pollution and Government neglect.

"HONEYMOON" WILL BE SHORT

Every Polish leader we met made the same point: The new Government's "honeymoon" will be short. Unless it can show some quick results, it could lose the almost universal popular goodwill and strong political momentum it now enjoys.

In those circumstances, it will just not have the political clout to implement critically needed economic reforms, or to sell more belt-tightening and sacrifice to an already long-suffering public.

That unhappy evolution of events is not inevitable. But every Pole we talked to believes that the first weeks and months of the new Government will be critical, to its medium-term strength and long-term success. They know it is basically their responsibility. The wisdom, the courage, the leadership to get through these critical days—Poles know all those things must be "made in Poland."

SUPPORT FROM ABROAD

But all of them also believe that one key to the Polish Government's ability to meet the challenge of these next weeks is the support it receives from abroad—especially from the democracies of the Western alliance.

We in the United States, and our allies in Western Europe and Japan, have a big security, political, and economic stake in what happens in Poland.

If Solidarity remains in power and succeeds in governing, the threat of war in Central Europe will go down; democratization in Hungary, elsewhere in Eastern Europe and even in the Soviet Union will get a big boost; and the prospects for expanded private investment in and trade with Poland will grow.

So we not only want Solidarity to succeed. It is in our own self-interest to do everything we reasonably can to help it succeed.

BUSH INITIATIVE

That is why the President has already announced an important aid initiative for Poland—encompassing about $119 million in private sector, environmental, and labor training assistance; and $59 million in food aid. I understand that part of that package may be available for introduction today. Every Polish leader we met asked that we express their real appreciation to President Bush for those initiatives, which have already sent an important signal of American support for Poland at a critical time.

REQUEST FOR ANOTHER SIGNAL

Each of those leaders also asked us to take another message to the President: That a further signal of American support, beyond that which had already been pledged when Poland still faced the prospect of continued Communist rule, could be extremely important in helping the Mazowiecki government through these first critical weeks and months.

I have reported this to the President during our meeting in Kennebunkport, and on that occasion delivered to him a letter from Lech Walesa, urging one particular American initiative. I discussed the matter further with the President at the White House this week—in fact, as recently as yesterday.

The President understands as well as anyone the high stakes in Poland. He made clear to me that he attaches an extremely high priority to responding to Poland's real needs—both for the psychological and political boost which Western aid can provide, and for the concrete impact our aid can have on hard economic and social problems.

I know that he and his senior advisers are working around the clock on this matter. So there is no question the points made by Poland's leaders to me have been "taken on board" very seriously by the President. Hopefully, sometime soon, we may have an announcement from the White House.

URGING FURTHER JAPANESE ACTION

I might add that I took the opportunity the end of last week, during a meeting the majority leader and I had with Japan's new Prime Minister Kaifu, to give him a letter on Poland. I urged that Japan, too, take another look at providing some additional aid, and encouraging expanded Japanese private investment, in Poland. I ask unanimous consent that the text of my letter to Prime Minister Kaifu be printed in the RECORD.

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

OFFICE OF THE REPUBLICAN LEADER,
Washington, DC, September 1, 1989.

His Excellency TOSHIKI KAIFU,
Prime Minister,
Government of Japan.

DEAR MR. PRIME MINISTER: I want to extend a warm welcome to you upon your first visit to the United States as Prime Minister. I know that I reflect the sentiments of all of us in the Congress in expressing appreciation for the vital importance of U.S.-Japanese relations, and a determination to see those relations remain strong.

I also wanted to take this occasion to raise with you one particular issue which is very much on my mind—the future of Poland. I have just returned from a visit to Poland, and I am convinced that country is truly at an historic crossroads. The next weeks and months can be decisive, in determining whether Poland remains on the path toward democracy and a free market economy. I can think of no more important contribution that we in the Free World can make to the global quest for democracy, nor to the peace and stability in Europe which is essential to our own security, than signaling clear support for the new Mazowiecki government at this vital moment.

Earlier this week, I reported to President Bush on my observations in Poland, and urged that our government give absolute top priority to providing some additional timely signal of our own support. I would ask that you, too, consider some additional action by your government, to send the same kind of signal

In addition, in the longer term, I would hope that both of our governments would attempt to encourage our own private sectors to look seriously at the possibility of new private investment in Poland. Every Polish leader with whom I spoke, including President Jaruzelski, Prime Minister Mazowiecki, and Lech Walesa, indicated Poland very much needed and wanted major new infusions of foreign investment. We will be sending an American team, led by Commerce Secretary Mosbacher, to explore investment opportunities. I hope that your government, too, will be supportive of Japanese private sector interest in investment opportunities in Poland.

I can assure you that actions such as these would be seen by the Congress and the American people as a significant Japanese contribution to our common burden of supporting freedom around the world.

In closing, Mr. Prime Minister, let me offer my personal congratulations upon your election, and my best wishes in the days ahead.

Sincerely yours,

BOB DOLE,
U.S. Senate.

Mr. DOLE. I also note in this week's press that Walesa has been in West Germany, urging a further aid initiative on the Bonn government.

My own view is that all of us in the Western alliance ought to seriously consider sending further signals of support for the Mazowiecki government—whether in the form of speeded up and visible delivery of aid we have already pledged; the allocation and announcement of new aid; or some other political signal.

LONG-TERM PROBLEMS

Let me be clear: such quick action is not intended to be the answer to Poland's long-term, structural economic and social problems. Addressing those problems requires a wholly different approach—with three essential elements: debt relief, structural reform, and infusions of new capital and technology.

Poland desperately needs debt relief. The Paris club is the vehicle through which such relief can be provided, in a way that meets the needs of both Poland and its creditors. I hope that our administration will be urging others to take quick action.

I join the administration in urging that the Paris club meet now and not wait until the IMF undertakes its mission to Poland. The very fact that the Paris club is working on the debt problem in a sympathetic and constructive way can be an important "shot in the arm" for Poland's economy and for Mazowiecki's government.

Clearly, too, massive structural adjustments will be necessary for Poland's economy. The IMF rightly will have the lead role. But we may have some bilateral input we can make, too.

I would note in that connection our distinguished colleague from New Mexico, Senator DOMENICI, has written to the President, urging that we explore the possibility of forming an advisory team of economic and technical experts, to help Poland's new government grapple with its problems.

In fact, some of the Polish leaders I met asked about the possibility of just such American help. I think it is a good idea, and I commend Senator DOMENICI for taking this initiative; I certainly will be supportive of his effort in any way that I can.

Above all, Poland needs new, major, long-term infusions of Western capital and technology. Every Polish leader understands that any real economic future the country has will be built on free market forces and resources. Every Polish leader understands that such a prescription for economic development can only be filled in the United States, Western Europe and Japan.

Polish's leaders, including its Communist leaders, are wide open to new American investment. Lech Walesa told me that, more than anything, he would like to see American banks open branches in Poland, offering capital for the development of Poland private sector.

GETTING THROUGH THE SHORT TERM

So all of these things—structural adjustments, debt relief, expanded investment and new technology—all of them are vitally needed to address Poland's fundamental, long-term problems. But the immediate point I would stress again is that there cannot be a long-term approach—unless Poland's new government makes it through the short term. That is where an immediate American signal of support can be critical.

AN HISTORIC CROSSROADS

In my view, Poland stands at an historic crossroads. It has taken a bold step in the direction of democracy and free market economics. The whole world is watching to see whether that bold step succeeds, or fails.

People in Hungary, in the Baltics, around the Black Sea—people throughout the Communist world—are waiting to see what happens in Poland; some in hope, some in fear.

People throughout the free world are watching, in the certain knowledge that what happens in Poland will affect our own security, and will shape the future of the global struggle between freedom and tyranny.

Poland today is making the most fundamental choices a nation can make: Communism versus freedom, a statist economy versus a free economy. Americans do not want our country, America, to stand on the sidelines and just watch as those choices are made. I know the President is determined that America meets its responsibility and serves its own best interests. I am, too.

I believe it is in our interest, America's interest, to take some additional step now on behalf of freedom in Poland. I believe we should send some additional, immediate signal of American support for the Mazowiecki government—perhaps food aid, perhaps some other signal.

TIME TO ACT, NOW

Some have raised the question of the Soviet reaction to further American involvement in Poland. I am convinced that America can take some further action now on aid or through a political signal of support for the Mazowiecki government without alarming Moscow in the slightest. No Polish leader I met said or even hinted that this might be a problem.

Some rightly might raise the question of our budget deficit. It is severe and urgent, and it must condition all of our spending decisions. But I am convinced we can take some additional steps at no cost, and perhaps also find some additional resources within existing budgets and programs. I know that is one matter being examined carefully as I speak within the executive branch, and I know they had a meeting as recently as yesterday afternoon.

Mr. President, we should help Poland—now, and in the longer run. We should do so because we believe in freedom. We should do so because it is America's interest. We should do so because it is the right thing to do.

Mr. DOMENICI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me first congratulate my good friend, the Republican leader, Senator DOLE, for his involvement in this issue, his foresight, and for the comments that he will make today with reference to the historic events that are taking place in Poland.

Frankly, Mr. President, I do not think any of us, my good friend, Senator DOLE, or even Senators who came here before he and I did, would have believed 16 years ago that we would be standing on the floor of the Senate today talking about an opening for democracy in Poland. The events that are occurring around the world, in particular in the Eastern bloc countries that have been part of the Communist bloc for so long, are simply amazing.

All Americans hoped that there would be a triumph of our principles and our ideas, basically democracy, capitalism, and free enterprise. We achieved that outcome in almost a miraculous way in the free industrial nations, many of which were in shambles after the Second World War. Two of which were our enemies. And we watched them adopt many of our concepts and ideas—ideas of governance

and ideas of economics. By now, the free industrial nations form the most significant source of economic wealth and prosperity that the world has ever seen.

Little did we think back then that the other economic and political system, one that was the antithesis of our own, would begin to unravel. For so long we were worried about the system that existed in that other part of the world because of its ideas—collectivism instead of individualism—and its own people decided it didn't work.

Individual opportunity was absent. Ownership was by the Government instead of the people, and yet we are now seeing a revolution. The revolution is occurring because better ideas are natural to human beings, and they can produce a kind of freedom that produces achievement. And achievement produces good things—produces capabilities beyond any other system.

So I stand here today congratulating the Republican leader and our President for what they have been saying, and what they have have been doing, in an effort to help this movement along.

I would like today to further amplify on the remarks my good friend, Senator DOLE, to discuss an idea that I shared with the President some days ago. I hope to hear from him and others in the administration soon.

It seems to me that aid and assistance to a country like Poland—or any country that has had a Communist, a nonenterprise-type system—is a very delicate matter. We should not just willy-nilly decide that we will grant Poland aid.

First, we need the conclusions of a team of American experts. It could be headed by a distinguished business leader, the dean of one of our business schools, one of our distinguished economists, or some labor leaders of real repute.

Such a team of experts would do both Poland and America a great service if they were asked to analyze quickly the status of any Communist economy that desires to change, and then in a very simple but profound way make a kind of an inventory of basic principles and concepts without which economic prosperity and economic growth will not occur. They would enlighten both donors and those who seek our aid. Their report would list the basic notions without which a system cannot move from communism toward democratic capitalism, or toward some aspect of democracy and economic prosperity.

I believe this could be done. It would be historic, although the findings would not necessarily be accurate in every respect because this type of effort has never before occurred.

We would have to be looking at the Polish economy indepth, and there would have to be a priority list of reforms. These are the kinds of changes that must occur for the new Polish Government to succeed. Perhaps it starts with a banking or monetary system. Perhaps it starts with some way to raise capital. Perhaps it starts with some way to make sure that mortgages and financing is avilable. We are just, in my opinion, shooting in the dark if we try to help without an excellent analysis by our best experts so are the Poles as they seek our help.

I would like to put in the RECORD the letter that I sent to the President, the Secretary of State and others in the administration, and summarize the two or three points that I made.

First of all, I congratulated the President because my communication with him occurred after he made a historic speech at the Karl Marx University in Budapest indicating this country supports the political and economic change under way in Eastern Europe under peaceful and orderly circumstances.

I indicated that it might be presumptive of me to discuss this subject because obviously there are many in the executive branch and elsewhere that are more involved than I. But I suggested the following:

The creation of a team of American experts from academia, business, and labor to examine thoroughly an existing Communist economy that is now in transition toward a more open and market-related system.

Second, that team should include a variety of experts including financial, monetary, human development and management personnel.

Finally, after evaluating this economy they should make recommendations as to the appropriate sequencing of transition activities.

Since these transitions are historic, and unique, we should work with our free industrial partners to aid Communist regimes in taking steps toward more free and entrepreneurial economies. All of our Governments should address the most propitious sequencing of this change.

I ask unanimous consent that my letter be made a part of the RECORD.

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

COMMITTEE ON THE BUDGET,
Washington, DC, July 17, 1989.

Hon. GEORGE BUSH,
President, The White House, Washington, DC.

DEAR MR. PRESIDENT: Welcome home, Mr. President, and congratulations on your most successful trip.

There can be no clearer evidence of the triumph of the American principles of democracy and free enterprise than your reception in Poland and Hungary. As you indicated in your speech at Karl Marx University, the world has never before experienced the extent of political and economic change underway in Eastern Europe under peaceful and orderly circumstances.

Your trip has intensified the general optimism both here and abroad that free and democratic economic systems can work in countries that have never experienced free and open development. Nonetheless, it would be tragic if we, and the other Western nations, raised expectations of economic well-being that the economic institutions in those countries were ill-prepared to fulfill. The result could well be renewed political unrest and a return to totalitarian government.

It may be presumptive of me to discuss the following because you may already have such an evaluative process in place. Nevertheless, permit me to suggest the following:

1. The creation of a team of American experts from academia, business, and labor to examine thoroughly an existing Communist economy, hopefully with the full cooperation of one or more of the Communist countries that are now in transition.

2. The team should include a variety of experts, including financial, monetary, human development, and management personnel. After evaluating a Communist economy, they should make recommendations as to the most appropriate sequencing of transition activities.

Since these transitions are an historic first, it seems to me that, if we, and our free industrial partners are going to aid the Communist regimes in taking steps toward more free-entrepreneurial economies, our involvement should at least address the most propitious sequencing of this change.

I am sure that there are many American experts who, if asked, would respond to this unprecedented challenge. Their analysis and recommendations might be very revealing. Certainly the Communist regimes in Eastern Europe and the Soviet Bloc are embarking on a major new experience for them. Such a group might end up being as beneficial to us as to them, in at least pinpointing significant shortcomings in any bona fide attempt to achieve the economic change we all desire.

Let me conclude, Mr. President, by commending your historic efforts. America has the initiative in foreign policy as never before, and I am enormously enthusiastic at the thought of what we might accomplish.

Sincerely,

PETE V. DOMENICI,
U.S. Senator.

Mr. DOMENICI. Mr. President, it has occurred to me within the last 2 or 3 weeks that perhaps even the concept in that letter is a little narrow. Let me just take a minute and amplify. Obviously, the free industrial nations, from Japan to the European countries, and Korea should all be part of helping any Communist regime that wants to make a bona fide transition. No one thinks it is just an American responsibility. After all, we helped many of these countries achieve the economic prosperity that is now theirs. If they want a growing world economy, if they want second and third world countries to develop and help create a much larger world economy, then they ought to be partners.

Today I would say to my good friend, Senator DOLE, that I have concluded that the notion of a team of American experts to analyze the basic essentials is too narrow. Perhaps we

should invite some of our free industrial partners to join that team of experts.

It ought to be more than just an American effort. The recommendations would not be America telling anybody what to do, but the free world concluding that these are essential reforms for Poland to consider.

With a sound economic strategy, we can get started a solid program of assistance. Working together we can tell the Poles, "we will help you achieve both freedom and the kind of economic growth you desire. Without a sound economy freedom has little or no chance."

I yield the floor.

ADDRESS OF THE U.S.S.R. CONGRESS OF PEOPLES' DEPUTIES

Mr. MITCHELL. Mr. President, on behalf of the distinguished minority leader and myself, I ask unanimous consent that the full text of the "Address of the U.S.S.R. Congress of People's Deputies to the Peoples of the World" be placed in the RECORD. Ambassador Dubinin was kind enough to relay this message from the new Soviet Congress to the United States Congress.

The message is one of hope. Based on realism, the address outlines the ideals toward which the Soviet Congress plans to strive both internally and internationally.

The People's Deputies describe their task as laying the legal foundation for the democratic renewal of their socialist society. They frankly state that the problems facing the nation leave no alternative but to radically restructure all areas of Soviet life.

In the Deputies' view, perestroika is part of the democratization of the world order, the Soviet contribution to solving the global problems facing humanity. This ackowledgment of the crucial relationship between internal and international reform is an important and encouraging development.

The People's Deputies regard their role as assuming responsibility for Soviet behavior in accordance with the "principles of peaceful coexistence." The very concept of legislative responsibility for actions of the Soviet Government is a positive one.

Those principles—that nations should strive to ensure their security by political rather than military means, that they should work toward disarmament and that their defensive forces should reflect "reasonable sufficiency"—clearly correspond with many of President Gorbachev's stated goals and with the hopes of people across the globe.

One can hardly take issue with the Deputies' stated belief that no state can consolidate its own security while neglecting the interests of others, or the assertion that we all share a common destiny. There is little doubt that if all nations were to respect these principles, the world would be very much improved.

The Address of the People's Deputies reflects the expanded interest and role of the Soviet Congress in both internal and international developments. I warmly welcome these comments, and I believe that we in the U.S. Congress share many of these goals. We look forward to expanding our dialogue with the Soviet Congress of People's Deputies as we work together to advance common interests and improve relations between our two countries.

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

ADDRESS OF THE U.S.S.R. CONGRESS OF PEOPLES' DEPUTIES TO THE PEOPLES OF THE WORLD

We, U.S.S.R. People's Deputies, gathered for our first Congress in an atmosphere of glasnost and openness in order to lay the legal foundation for the all-round democratic renewal of our socialist society. As full-fledged representatives of the multimillion Soviet people we are fully aware of the historic responsibility resting upon us. We realize that the problems facing our motherland today are huge, and we proceed from the view that there is no alternative to radical restructuring in all areas of our life. We have chosen this road firmly after thorough consideration, and we shall not abandon it.

Man with his joys and sorrows, hopes and cares, is at the center of our attention. We are convinced that socialist society does not have, nor can it have, any other moral orientation than the interests of the people, the aspirations and rights of free men.

Perestroika is an internal matter for the peoples of the Soviet Union. It was prompted by vital needs of the country. But we do not separate ourselves from the world community, from the processes that determine the contemporary civilization, and we regard freedom of the individual, democracy and social justice as fundamental values on which the life of our society must be based.

We view perestroika as part of the progressing democratization of the world order, as the Soviet Union's contribution to solving the global problems facing humanity. These problems are all inter-related and form a dangerously tight knot. It can and must be united, but in order to do so, it is necessary for the world community to pool its efforts for the sake of its survival.

Perestroika radically alters our attitude toward the world today. We are now open to the world and are prepared to cooperate with everyone for whom human life and dignity are supreme values, and we count on mutual understanding.

One cannot live by old rules and standards in the rapidly changing world. One cannot hope to consolidate one's security and ensure well-being, while neglecting the interests of others. It is pointless to turn international relations into an arena of ideological wars. It is criminal to deplete the world economy by the arms race and to neglect to care for the preservation of the environment. No matter what barriers might divide us, we are all children of Mother Earth, and we have a common destiny.

Therefore, we call for an end to animosity and strife among peoples. A new peaceful period in the history of humanity is possible, and this possibility must be translated into reality.

The Congress solemnly assures the peoples of the world that it assumes the responsibility for strict observance by the Soviet state of the principles of peaceful coexistence in respect to all states and peoples of the world.

On the basis of the new political thinking, the USSR Congress of People's Deputies established the principles by which our state must be guided in international affairs. They are, essentially, that:

The security of our country must be ensured, above all, by political means as part of universal and equal security in the process of demilitarization, democratization and humanization of international relations with the reliance on the prestige and potentials of the United Nations;

Nuclear arms must be eliminated as a result of talks aimed at disarmament and reduction of defense potentials of the states to limits of reasonable sufficiency;

The threat of or the use of force to achieve some political, economic or other purposes are impermissible. Respect for sovereignty, independence and territorial integrity are indispensable in relations with other countries;

Dialogue and talks aimed at the balance of interests—and not confrontation—must be the sole way of solving international problems, settling conflicts;

The Soviet economy must be included organically in the world economy on a basis of equality and mutual advantage, and must actively participate in the shaping and observance of the rules of contemporary international division of labor, scientific and technical exchange, and trade.

Our Congress as the supreme body of state authority declares that the Soviet Union intends to adhere strictly to these principles in its foreign policy. Such is the strategy of our foreign policy from now on. Such is the open and honest policy of the Soviet Union and perestroika in the international arena. Such is the Soviet people's choice.

We call on the peoples of the world, on world public opinion, to develop to the utmost the exchange of ideas and people, cultural and spiritual values, contacts and dialogue at every level and in every area; to look jointly and to find mutually acceptable compromise to safeguard peace on earth for the sake of well-being and progress of all of humanity.

MOSCOW, KREMLIN, *June 9.*

COMMAND PERFORMANCE IN BEIJING

Mr. HELMS. Mr. President, a little over 3 weeks from now, October 1, will mark the 40th anniversary of the establishment of the People's Republic of China. The bloody history of Communist China does not constitute an occasion for celebration. Indeed, according to the testimony of a distinguished economist before the Senate Foreign Relations Committee, more people died in one insane political campaign by the Communists—the great leap forward—than on all sides in World War II.

Just 3 months ago, at Tiananmen Square, the Chinese Communists dem-

onstrated again that they are prepared to kill in order to maintain their tyranny over the Chinese people. Since June 4, the cycle of repression, arrest, torture and death has expanded far out into mainland China's countryside. No one in communist China can feel safe today.

Mr. President, since the June 4 massacre in Beijing, the free world, led by President Bush, has maintained a restriction on contacts with high level Chinese Communist officials. It has not been business-as-usual with those who would murder their own unarmed citizens.

Frustrated at their treatment as international outcasts and their inability to perpetrate the big lie beyond their borders, the Chinese Communists have now decided to attempt to strong-arm the international business community. That is why I am on my feet today. I am reliably informed that late this month, and carrying over into early October, the Chinese Communist Government-owned China International Trust and Investment Corporation, known as CITIC, has scheduled a seminar in Beijing. Invitations, if we want to call them that, have been sent to the chief executive officers of all the major international firms with investments in Communist China. In reality, it is a command performance. No other face can be put on it. Several American and European businessmen may be planning to attend.

That, I say again, Mr. President, is why I am on my feet at this moment in this Senate Chamber, because I cannot believe that the businessmen have any desire to attend this meeting. They are bound to know that the Communists want to use them to spread their big lie and their propaganda. The businessmen will be put on display, and the Communists will try to tell the world that all is back to normal.

If this happens, the businesmen will be submitting to Communist manipulation. There is another choice. The international business community can simply say no. They can decline to attend this farce in Beijing.

First, it is morally repugnant to contribute to the system that is so blatantly oppressing the Chinese people.

Second, the Communists' days are numbered; freedom and justice will eventually triumph in China. When that day happens, the Chinese people will remember who was with them in their hour of need and who was not.

Last, free and democratic China is a far better place to do business. If you want a comparison, try Taiwan with mainland China. Now, there is safety in numbers, I say to the international business community. If no one goes to Beijing, no one can be singled out for reprisal by the Communist Chinese. It is far better to back a winner, democratic China, than a loser, the Communist government of mainland China.

Mr. President, I ask unanimous consent that a letter to the President of the Chamber of Commerce of the United States on this subject be printed in the RECORD at the conclusion of my remarks.

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

Mr. HELMS. I thank the distinguished managers of the bill for yielding this time to me.

I yield the floor.

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

COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, September 7, 1989.

Dr. RICHARD L. LESHER,
President, Chamber of Commerce of the USA, Washington, DC.

DEAR DICK: Since the massacre at Tiananmen Square on June 4, the Free World, led by President Bush, has refused contact with high-ranking Chinese communist officials. Frustrated in their drive for international respectability, and unable to sell the Big Lie propaganda, the communists are trying to extort support from the international business community.

Beginning late this month and extending into early October the Chinese communist government-owned China International Trust and Investment Corporation is holding a command performance seminar in Beijing. Invitations have gone out to a large number of firms doing business in China. Some of your members may be among the recipients.

The 40th Anniversary of the founding of the People's Republic of China will be held October 1, during the seminar. Undoubtedly the communists intend to put the international businessmen on display trying to show that all is normal in mainland China.

I cannot believe that your members want to participate in any activity which furthers the system of repression being imposed on the Chinese people. However, intimidation and manipulation have long been prime tools of the communists and your members may become victims of this.

Nonetheless, the invited firms can choose not to attend. First, it is morally repugnant to further the communists' campaign of repression. The Chinese people have long memories: They will remember who was with them and who was with their enemies. Second, it makes good business sense to back a winner. The communists' days are running out. A free and democratic China is a far better place to do business.

There is safety in numbers: If no one goes, no one can be singled out for reprisal.

I hope that you will bring this issue to the attention of any of your members who are trying to make a decision.

Sincerely,

JESSE HELMS.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today is the 1,636th day that Terry Anderson has been held captive in Beirut.

I ask unanimous consent that a related New York Times article of August 20, 1988, be printed in the RECORD.

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

OUR HOSTAGES AREN'T PERSIAN RUGS

(By Bruce Laingen)

WASHINGTON.—Hojatolislam Hashemi Rafsanjani, Speaker of the Parliament in Iran, has given us a classic example of Persian rug merchant bargaining—whatever the clerical wrappings.

Release Iran's assets, he tells us, and we will intercede in Beirut to solve the hostage problem.

America should be equally direct and resourceful. We should take care to keep the channel open but should remind him of fundamentals that matter to us and, indeed, to the hostages themselves.

For starters, he should be reminded that those held so cruelly and for so long in Beirut are totally innocent of any wrongdoing and should never have been taken hostage.

They should be released now, and Hojatolislam Rafsanjani has made it crystal clear that Iran can make that possible.

Their detention is an offense to the human condition everywhere, and—not least—a glaring abuse of the humanitarian traditions of Islam.

Second, there is no linkage between these hostages and Iranian assets held in this country. In the case of myself and the other embassy hostages taken by Iran in 1979 in Teheran, part of President Jimmy Carter's response was to freeze Iranian assets here. There was not only a linkage, but that linkage rightly (and honorably) formed part of the resolution of the hostage crisis in 1981.

In the case of the Beirut hostages, however, their captors have asserted a variety of grievances that they say caused them to seize innocent victims, but Iranian assets in the United States have not been among them.

Third, Hojatolislam Rafsanjani should be told that we have no intention of diminishing the dignity of our citizens held in Beirut by making them bargaining chips in the larger context of United States-Iranian relations.

The Administration made it clear in the aftermath of the arms-for-hostages affair that it has returned to what is vital in countering terrorism: no deals. We now have an important test case, we should be true to our word.

There is also the honor of the hostages themselves. No one can know how Associated Press correspondent Terry Anderson and the others feel after years of imprisonment. Freedom and reunion with loved ones are surely uppermost in their minds, but I suspect that they want their release to be an honorable one.

Hojatolislam Rafsanjani should be told—and told again—that this country is always open to dialogue. There is a great deal to talk about between two countries that have shared interests in larger strategic terms. That agenda indeed includes certain Iranian assets held in this country. It also includes financial claims of our own against Iran, as well as a clear insistence that Teheran demonstrate by action and rhetoric, that it has abandoned support of terrorism as an instrument of policy.

If, in the course of the probes and contacts that have begun, the Iranians choose to act independent of any assurances from

us—as they should—to achieve a release of the hostages, they will make a signal contribution to a more positive atmosphere.

No one should assume that getting such a process moving will be easy. But neither should anyone underestimate the significance of what appears to be happening in Teheran. The Reagan Administration is right in making it clear that we are open to dialogue with those who can speak for that regime. For the moment pragmatists—and Hojatolislam Rafsanjani is . . . one—have the upper hand, and that is a plus.

America's larger interests in the region and the fate of those held in Beirut have for two long been held hostage to the absence of a direct and frank dialogue.

EBDC—A HEALTH RISK TO THE CONSUMER

Mr. LIEBERMAN. Mr. President, there is news today that manufacturers of a fungicide called EBDC has voluntarily withdrawn the chemical from the market for use on certain foods, and I commend the manufacturers for doing that.

The fact is that we know that concentrations of EBDC in tomatoes and other fruits and vegetables pose an unacceptable risk to the American consumer and especially to American children. The industry announcement about a cutback in EBDC production does not go far enough to adequately protect public health.

EBDC is the most widely used fungicide in the world. Approximately one-third of all our fruits and vegetables are treated with the chemical. The threat of EBDC first came to light as far back as 1970. Despite recommendations from EPA staff in 1971 that EBDC be banned, the Government delayed taking any action on the pesticide.

Like Rip Van Winkle, our Government has slept for two decades, taking no action on EBDC. The EPA received the latest data demonstrating the health risk of EBDC from the National Toxicology Program in late August of this year. I know from personal knowledge that EPA has data showing a significantly higher risk associated with EBDC than previously estimated by the agency. EPA should go beyond the industry's voluntary actions and take stronger steps to insure that our food supply is safe.

EPA's data shows that EBDC is more dangerous, in fact, than Alar. And, like Alar, EBDC should be off the market if it is harmful to our health. EBDC fungicides concentrate in processed foods as ETU, which can cause cancer.

The industry suspension does not apply to EBDC use on such important crops as: bananas, cranberries, grapes, onions, almonds, asparagus, peanuts, potatoes, corn, wheat, and tomatoes.

A number of these crops pose a significant threat to human health when EBDC is used on them. But the worst risk comes from tomatoes. Fresh tomatoes pose a substantial risk, and the danger of processed tomatoes is even higher. This risk is particularly troubling because of the large numbers of tomatoes consumed by Americans every year. Children face greater risks from pesticides because they eat more fruits and vegetables per pound of body weight, and with their bodies still developing therefore, the effect of the chemicals is more toxic on them.

The Natural Resources Defense Council estimates that half the risk from EBDC's harmful agent to preschoolers comes from processed tomatoes. The pizza, ravioli, and spaghetti are part of the regular menu items in school cafeterias across this country. According to a 1987 National Academy of Sciences study, "under EPA's worst-case assumptions the estimated dietary oncogenic—cancer—risk from tomato products may be 15 percent of the total dietary oncogenic risk from pesticide residues."

One study showed there was a risk of 7 in 10,000; that is to say, 7 of 10,000 people consuming a normal diet of fruits and vegetables would get cancer as a result of the use of this fungicide.

The amount of this chemical that remains on the market represents twenty times the level that the EPA considers as safe. Therefore, I believe strongly that EPA should promptly step in where industry fears to tread.

Mr. President, I urge my colleagues to join with me in seeking effective and speedy action by the Environmental Protection Agency to eliminate the health risk of this fungicide, EBDC, on the foods most Americans love to eat.

TWO OF NEVADA'S MOST EXEMPLARY YOUTHS

Mr. REID. Mr. President, I rise today to salute two of Nevada's most exemplary youths, Chris O'Brien and Eddie Brooks. Their selfless compassion and extraordinary bravery helped save the lives of two California accident victims.

O'Brien and Brooks, both students at Gorman, were participating in a baseball tournament in Union City, CA, over the July Fourth weekend. On their return from a nearby 7-Eleven, the boys heard loud noises, initially dismissed as fireworks. Upon closer inspection, they found the wreckage of a 1987 Corvette, which plummeted over 40 feet into a ravine. The boys quickly descended the steep hill, hoping to find the victims alive.

"When we got to the bottom of the hill and saw what happened, I thought to myself, 'here we go—this is what we've got to do,'" Brooks said.

While Brooks applied medical procedures he learned from his father, O'Brien spoke to the other victim, seeking to soothe her nerves. Once the victim regained composure, O'Brien sought help, bringing rescue workers to the remote area.

Chris O'Brien and Eddie Brooks are modern heroes in every sense of the word. Thanks to their quick thinking and grace under pressure, the victims escaped an otherwise life-threatening situation. I am proud of their heroic rescue, and applaud their exemplary behavior. They are truly an asset to their State and to the entire country.

Izzy Marion, the boys' coach, heartily applauds their efforts. "It was like fate that they came along and knew enough to take care of the people. That shows a lot of good upbringing in their families. We're very proud."

We are all proud of Chris and Eddie and the example of courage they showed at a moment's notice.

I close by urging my colleagues to join me in acknowledging two real-life heroes, Chris O'Brien and Eddie Brooks.

DR. TIRSO DEL JUNCO

Mr. REID. Mr. President, I rise today to pay tribute to an outstanding individual, Dr. Tirso del Junco. On October 20, the Hispanic Business and Professional Women's Club of Las Vegas will honor Dr. del Junco as the "1989 Hispanic Man of the Year."

Dr. del Junco's outstanding accomplishments document a long history of service and dedication. Dr. del Junco came to the United States from Cuba in 1949, already armed with his medical degree. Thanks to his compassion and professionalism, he soon became a respected member of the medical community and established a very successful practice. Del Junco also enjoys continued success as an entrepreneur, making great contributions to the business community.

Dr. del Junco is involved in numerous civic organizations, including Hollywood Park Charities, Inc., where he currently serves as president. The Salesian Boys Club is also honored to have del Junco serve on the board of directors. All of these accomplishments are testament to Dr. del Junco's selfless compassion.

Despite his accomplishments in the United States, Dr. del Junco has not forgotten his Cuban roots. In 1961, del Junco joined the Cuban Army of Liberation as a medical officer in the ill-fated Bay of Pigs. Undeterred by the mission's failure, del Junco continues to fight communism at every turn. He was, in fact, one of the guiding forces behind the creation of Radio Marti. His invaluable service is a benefit to us all.

Dr. Tirso del Junco is an outstanding choice for the "1989 Hispanic Man of the Year." It is my honor to pay tribute to this exemplary individual, a man very worthy of this high award.

I'm sure my distinguished colleagues join me in heartfelt thanks.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

AMERICANS WITH DISABILITIES ACT

The ACTING PRESIDENT pro tempore. The hour of 10 a.m. having arrived, the Senate will now proceed to the consideration of S. 933 under the previous order. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

The Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Posting notices.
Sec. 105. Regulations.
Sec. 106. Enforcement.
Sec. 107. Effective date.

TITLE II—PUBLIC SERVICES

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
Sec. 204. Regulations.
Sec. 205. Enforcement.
Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and potential places of employment.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemption for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the architectural and transportation barriers compliance board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in

schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) DETERMINATION.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE INQUIRIES.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) DRUG ADDICTS AND ALCOHOLICS.—

(1) IN GENERAL.—A covered entity—

(A) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(B) may require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(C) may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(D) may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

(d) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) QUALIFICATION STANDARD.—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management

committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 105. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 106. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 105, concerning employment.

SEC. 107. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITION.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. DISCRIMINATION.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—

(1) IN GENERAL.—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

(2) UNDUE FINANCIAL BURDEN.—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

(3) REGULATIONS.—

(A) FORMULA.—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) ADDITIONAL PARATRANSIT SERVICES.—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(f) CONSTRUCTION.—

(1) IN GENERAL.—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) FRAUDULENT APPLICATION.—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—

(A) IN GENERAL.—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL SYSTEMS.—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) INTERCITY RAIL SYSTEMS.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 205. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

SEC. 206. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) POTENTIAL PLACES OF EMPLOYMENT.—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) PUBLIC ACCOMMODATION.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(4) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) READILY ACHIEVABLE.—

(A) IN GENERAL.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) DETERMINATION.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of budget;

(ii) the type of operation of the covered entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals,

unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(B) INTEGRATED SETTINGS.—Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General), the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) EQUIVALENT SERVICE.—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) potential place of employment;

the term "discrimination" as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be

readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 6 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 5 years for other providers, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 305. STUDY.

(a) PURPOSE.—The Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) CONTENT.—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;

(2) the degree to which over-the road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Architectural and Transportation Barriers Compliance Board shall establish an advisory committee, of which—

(1) 50 percent of the members shall be selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers; and

(2) 50 percent of the members shall be individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses.

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Board, shall be submitted to the President and the Congress within 36 months from the date of enactment of this Act.

SEC. 306. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) INJUNCTIVE RELIEF.—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

SEC. 309. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 2 years after the date of enactment of this section.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, or observing the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

Provided, that paragraphs (1) and (2) shall not be used as a subterfuge to evade the purposes of titles I, II, and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 106, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—The Attorney General, in consultation with the Secretary of Transportation, the Chair...an of the Federal Communications Commission, and the Secretary of Commerce shall, within 180 days of the enactment of this Act, develop and implement a plan to assist entities covered under this Act in understanding the responsibilities of such entities under this Act.

(b) AGENCY ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out the responsibilities as described in subsection (a).

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. If the Senator from Iowa has no objection, I would like to make a 2-minute statement on a very important disabled person who is in our midst today.

WELCOMING REMARKS—ILYA ZASLAVSKI

Mr. DOLE. I want to welcome to the United States Senate and to the United States this morning a distinguished member of the Soviet National Legislature—a man who carries an extraordinary message of hope to his fellow Soviet citizens and the rest of the world as well.

Ilya Zaslavski was elected to the Soviet National Legislature last March. He defeated a cool and smooth television commentator who had the backing of the Communist Party in an election that occurred in Mikhail Gorbachev's own Moscow voting district.

His message was so powerful that none other than Andrei Sakharov bowed out of the race and backed him.

This would be an amazing accomplishment for any person. But for a 29-year-old textile research scientist from Moscow there were even more obstacles to overcome. Because Ilya Zaslavski is disabled—and has been since childhood.

Now he has taken up the cause of the disabled in a country where wheelchair ramps are practically nonexistent and public policy toward the disabled has amounted mostly to shunting them off to special homes in faraway places.

Ilya Zaslavski is the man who stands before the Kremlin powerful and quietly, passionately, asks the questions:

> Why not defend the weak? How long shall we forget about the sick, the old, the abandoned children? How long will hospital patients have to go without food and medicine?

He is a man of courage and perseverance. Those around the country who will hear his words in the coming weeks should consider themselves privileged.

To Ilya Zaslavski I can only say welcome to America—we are glad you are here.

Your message—your life story—will serve as an inspiration to each and every American you will meet.

We are also privileged this morning to have with us a man with a long record of accomplishment in the area of disability rights. A man I have had the pleasure to work with on occasion—recognized around the country for his work in this important public policy area. The president of the National Organization on Disability—Alan Reich.

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

The PRESIDING OFFICER (Mr. BREAUX). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMERICANS WITH DISABILITIES ACT

The Senate continued with the consideration of the bill.

Mr. HARKIN. Mr. President, I rise in support of the bill now before the Senate, the substitute amendment, S. 933, the Americans with Disabilities Act of 1989, which I was proud to introduce in this session of Congress.

Mr. President, today in a very real sense, 43 million Americans with disabilities say with one voice that "Our time has come." To my 63 colleagues, Republican and Democrat, who have cosponsored this legislation, I want to take this opportunity to say thank you for your help in making history. To my colleagues who have not yet cosponsored—and I want to again extend the invitation to join us in order to ensure rapid and successful passage of the Americans With Disabilities Act—I want to thank particularly three individuals; first, the chairman of the full Committee on Labor and Human Resources, Senator KENNEDY, for his very strong and courageous leadership through the long hours, days, weeks, and months—that it has taken to get us to this point. His leadership was crucial in bringing the various groups interested in this legislation, disability from groups to business groups and one Administration, together to make sure we had a reasonable compromise that could be agreed upon by all sides in the best interests of our disabled community.

I also want to thank the ranking member on the Labor and Human Resources Committee, Senator HATCH, for all of his work on this bill. When we first started meeting on this last year, we worked together closely, he and I personally, and our staffs. Finally, I want to thank Senator DURENBERGER, the ranking minority member of the Handicapped, for his unfailing efforts on behalf of disabled Americans and his strong support of this historic legislation.

I want to take this opportunity to thank Senator HATCH for all of his work and his staff's work on this bill. This has been very much a good-faith effort on all sides, because I believe that all of us, Republican, Democrat, conservative, liberal, whatever stripes we may have or people tend to give us to wear, we all believe very deeply.

The time has come to extend broad civil rights coverage to people with disabilities in our society.

So I want to thank Senator HATCH for all of his work and his effort to again pull us together, to reach this point where we have a compromise that has so many cosponsors and the backing of the Administration.

To the 180 national organizations, including disability organization in the country, along with a host of religious organizations and the Leadership Conference on Civil Rights, who have spent countless hours building support for the ADA, I can only say we could not have done it without you.

Mr. President, I ask unanimous consent to print in the RECORD at this point the list of the major disability groups in this country that have worked on this bill and supported it and also the list of the various religious organizations that have supported this legislation.

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

SEPTEMBER 6, 1989.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: This week you will likely be voting on the Americans With Disabilities Act of 1989 (S. 933). We, the undersigned, leaders of denominational and religious-based agencies, call upon you to support fully the passage of ADA as reported out of the Committee on Labor and Human Resources on August 2, 1989 and to vote against any amendments that will weaken the protections the current version provides.

The time for full civil rights protection for our fellow disabled Americans is long overdue. The passage of ADA in its present form will mean that all Americans will be able to enjoy the opportunities this nation provides its citizens by empowering people living with disabilities to move from lives of dependency to lives of self-fulfillment and productivity.

Months of negotiations between the Administration and Senate leadership produced a bipartisan bill which was unanimously reported out of committee. President Bush has announced his full support for ADA in its current form and opposes any amendments during consideration by the full Senate. In addition, the bill already has 57 cosponsores in the Senate as well as 223 cosponsors in the House.

We are grateful for the resolution of problems in the bill during the committee markup process that concerned issues of separation of church and state.

The religious community is committed to the passage of this landmark legislation which would ensure the civil liberties for disabled Americans. We testify to this unity by our signatures below.

Robert W. Tiller, Director, Office of Governmental Relations, American Baptist Churches, USA; Herbert Blinder, Director, Washington Ethical Action Office, American Ethical Union; Asia A. Bennett, Executive Secretary, American Friends Services Committee; Sally Timmel, Director, Washington Office, Church Women United; Kay S. Dowhower, Director, Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America; Father Robert J. Brooks, Presiding Bishop's Staff Officer, Washington Office of the Episcopal Church; Joseph R. Hacala, S.J., Director, Jesuit Social Ministries, National Office; Mary Anderson Cooper, Acting

Director, Washington Office, National Council of Churches.

Mary Anderson Cooper, Acting Director, Washington Office, National Council of Churches; Mary Jane Patterson, Director, Washington Office, Presbyterian Church (USA); Rabbi Irwin M. Blank, Washington Representative, Synagogue Council of America; Rabbi Lynne Landsberg, Associate Director, Religious Action Center of Reform Judaism, Union of American Hebrew Congregations; Robert Z. Alpern, Director, Washington Office, Unitarian Universalist Association of Congregations in North America; Rev. Jay Lintner, Director, Washington Office, Office for Church in Society, United Church of Christ; Joyce V. Hamlin, Director, Washington Office, Women's Division, The United Methodist Church; Jane Hull-Harvey, Director, Department of Human Welfare, General Board of Church and Society, The United Methodist Church.

NATIONAL ORGANIZATIONS ENDORSING THE AMERICANS WITH DISABILITIES ACT OF 1989

(Updated 9/7/89 Total Count: 180)

ACLD, An Association for Children and Adults with Learning Disabilities.
Affiliated Leadership League.
AIDS Action Council.
AIDS National Interfaith Network.
Alcohol and Drug Problems Association of North America.
Alexander Graham Bell Association for the Deaf.
American Academy of Child and Adolescent Psychiatry.
American Academy of Otolaryngology Head and Neck Surgery.
American Academy of Pediatrics.
American Academy of Physical Medicine and Rehabilitation.
American Association for Counseling and Development.
American Association for Marriage and Family Therapy.
American Association of the Deaf-Blind.
American Association on Mental Retardation.
American Association of University Affiliated Programs.
American Baptist Churches, USA.
American Bar Association.
American Civil Liberties Union.
American College Health Association.
American Congress of Rehabilitation Medicine.
American Council for Drug Education.
American Council of the Blind.
American Deafness and Rehabilitation Association.
American Diabetes Association, Inc.
American Ethical Union.
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).
American Federation of State, County, and Municipal Employees, AFL-CIO.
American Foundation for AIDS Research (AmFAR)
American Foundation for the Blind.
American Friends Service Committee.
American Hospital Association.
American Medical Society on Alcoholism and Other Drug Dependencies, Inc.
American Nurses' Association.
American Occupational Therapy Association.
American Orthotic and Prosthetic Association.
American Psychiatric Association.
American Public Health Association.
American Social Health Association.
American Society for Deaf Children.
American Speech-Language-Hearing Association.
American Youth Work Center.
Americans for Democratic Action.
Americans for Substance Abuse Prevention and Treatment.
Association for Education and Rehabilitation of the Blind and Visually Impaired.
Association for the Education of Rehabilitation Facility Personnel.
Association for Retarded Citizens of the United States.
Association of Labor-Management Administrators and Consultants on Alcoholism.
Austism Society of America.
Blinded Veterans Association.
Center for Population Options.
Center for Science in the Public Interest.
Child Welfare League of America.
Children of Alcoholics Foundation, Inc.
Christian Church (Disciples of Christ).
Chronic Fatique Syndrome Information Institute, Inc.
Church of the Brethren.
Church Women United.
Committee for Children.
Committee on Problems of Drug Dependence.
Common Cause.
Conference of Educational Administrators Serving the Deaf.
Consortium for Citizens with Disabilities.
Convention of American Instructors of the Deaf.
Council for Exceptional Children.
Deafness Research Foundation.
Disabled But Able to Vote.
Disability Focus, Inc.
Disability Rights Education and Defense Fund.
Epilepsy Foundation of America.
Episcopal Awareness Center on Handicapped.
Evangelical Lutheran Church in America.
The Lutheran Office for Governmental Affairs.
Families in Action Drug Information Center.
Friends Committee on National Legislation.
Gallaudet University Alumni Association.
Gazette International Networking Institute.
Goodwill Industries of America, Inc.
Health and Medicine Council of Washington.
Human Rights Campaign Fund.
International Association of Parents of the Deaf.
International Polio Network.
International Ventilator Users Network.
Iowa Civil Rights Commission.
Jesuit Social Ministries.
Juvenile Diabetes Foundation.
Lamda Legal Defense and Education Fund.
Leadership Conference on Civil Rights.
Learning How, Inc.
Legal Action Center.
Mental Health Law Project.
National AIDS Network.
National Alliance for the Mentally Ill.
National Association of Alcohol and Drug Abuse Counselors.
National Association of Addiction Treatment Providers.
National Association of Attorneys General.
National Association of Black Substance Abuse Workers, Inc.
National Association of Community Health Centers.
National Association of Counties.
National Association for Music Therapy.
National Association of the Deaf.
National Association of Developmental Disabilities Councils.
National Association of People With AIDS.
National Association of Private Residential Resources.
National Association of Protection and Advocacy Systems.
National Association of Rehabilitation Facilities.
National Association of Rehabilitation Professionals in the Private Sector.
National Association of Social Workers.
National Association of State Alcohol and Drug Abuse Directors.
National Association of State Mental Retardation Program Directors.
National Black Alcoholism Council.
National Center for Law and the Deaf.
National Coalition for Cancer Survivorship.
National Council of Churches.
National Council of Community Mental Health Centers.
National Council of Jewish Women.
National Council on Alcoholism.
National Council on Alcoholism-Michiana.
National Council on Disability.
National Council on Independent Living.
National Council on La Raza.
National Council on Problem Gambling.
National Council on Rehabilitation Education.
National Council on the Handicapped.
National Down Syndrome Congress.
National Easter Seal Society.
National Education Association.
National Family Planning and Reproductive Health Association.
National Federation of the Blind.
National Fraternal Society of the Deaf.
National Gay and Lesbian Task Force.
National Handicapped Sports and Recreation Association.
National Head Injury Foundation.
National Hospice Organization.
National Industries for the Severely Handicapped, Inc.
National Mental Health Association.
National Mental Health Consumers' Association.
National Minority AIDS Council.
National Multiple Sclerosis Society.
National Network of Learning Disabled Adults.
National Network of Runaway and Youth Services.
National Organization for Rare Disorders.
National Organization on Disability.
National Ostomy Association, Inc.
National P.T.A.
National Prevention Network.
National Puerto Rican Coalition.
National Recreation and Park Association.
National Rehabilitation Association.
National Spinal Cord Injury Association.
Northeast Regional Methadone Treatment Coalition.
Paralyzed Veterans of America.
People First International.
Presbyterian Church (U.S.A.).
Rainbow Lobby.
Self Help for Hard of Hearing People, Inc.
Southern California Rapid Transit District.
Spina Bifida Association of America.
Synagogue Council of America.
Telecommunications for the Deaf, Inc.
The Association for Persons with Severe Handicaps (TASH).
The Episcopal Church.

Washington Office of the Episcopal Church.
The Gray Panthers.
The United Methodist Church.
Therapeutic Communities of America.
Tourette Syndrome Association.
Union of American Hebrew Congregations.
Unitarian Universalist Association of Congregations.
United Cerebral Palsy Associations, Inc.
United Church of Christ.
Office for Church in Society.
United Church Board for Homeland Ministries.
United Methodist Church.
Women's Division.
General Board of Church and Society.
Issue Developmental and Advocacy Unit.
United States Student Association.
Women's Equity Action League.
Women's Legal Defense Fund.
World Institute on Disability.

Mr. HARKIN. Let me just read from a letter that we received just yesterday from the office of General Secretary of the U.S. Catholic Conference. It says:

DEAR SENATOR: The U.S. Catholic Conference, the public policy agency of the nation's Roman Catholic bishops, offers its general support for S. 933, the Americans with Disabilities Act, as it was reported by the Committee on Labor and Human Resources. More than ten years ago in their Pastoral Statement on Handicapped Persons, the bishops called on Americans to protect the rights of persons with handicaps:

"Defense of the right to life, then, implies the defense of other rights which enable the handicapped individual to achieve the fullest measure of personal development of which he or she is capable. These include the right of equal opportunity in education, in employment, in housing, as well as the right to free access to public accommodations, facilities, and services."

S. 933 puts the weight of the federal government in support of these rights of persons with handicapped conditions. Passage of the bill will mean that discrimination solely on the basis of handicaps will be not only immoral, but illegal. The Conference of Bishops urges you to support the bill in the hopes that new federal protection will result in fuller participation of handicapped persons in our society. In the words of the bishops' pastoral statement:

"It is not enough merely to affirm the rights of handicapped people. We must actively work to realize these rights in the fabric of modern society."

I ask unanimous consent that this letter be printed at this point in the RECORD.

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

U.S. CATHOLIC CONFERENCE,
Washington, DC, September 6, 1989.

DEAR SENATOR: The U.S. Catholic Conference, the public policy agency of the nation's Roman Catholic bishops, offers its general support for S. 933, the Americans with Disabilities Act, as it was reported by the Committee on Labor and Human Resources. More than ten years ago in their Pastoral Statement on Handicapped Persons, the bishops called on Americans to protect the rights of persons with handicaps:

"Defense of the right to life, then, implies the defense of other rights which enable the handicapped individual to achieve the fullest measure of personal development of which he or she is capable. These include the right to equal opportunity in education, in employment, in housing, as well as the right to free access to public accommodations, facilities, and services."

S. 933 puts the weight of the federal government in support of these rights of persons with handicapping conditions. Passage of the bill will mean that discrimination solely on the basis of handicaps will be not only immoral, but illegal. The Conference of Bishops urges you to support the bill in the hopes that new federal protection will result in fuller participation of handicapped persons in our society. In the words of the bishops' pastoral statement:

"It is not enough merely to affirm the rights of handicapped people. We must actively work to realize these rights in the fabric of modern society."

Sincerely,

REV. ROBERT N. LYNCH,
General Secretary, NCCB/USCC.

Mr. HARKIN. Since we introduced the legislation last May, the months have dragged by and there has been a comprehensive and exhausting set of hearings, meetings and negotiations with the administration and many interested parties.

Compromise, carefully crafted and painstakingly wrought, has resulted in a bill that takes into account the very real concerns of the business community while advancing the cause of equal justice and equal opportunity for our citizens with disabilities.

In other instances, business concerns were sparked by inaccurate information. With the facts in hand, I believe our business proprietors are just as committed, often more committed, to wiping out discrimination against people with disabilities.

The American dream is the dream of opportunity for all. And when any American is denied the opportunity to contribute, we all lose. When we free the talents and the abilities of millions of Americans with disabilities, we all win.

Who are these 43 million Americans with disabilities, one out of every six of our citizenry?

First of all, they are not strangers to us.

It could be an elderly grandmother with arthritis, but determined to fend for herself and live her retirement years in dignity.

A proud American veteran, who risked life but lost limb defending our freedoms. He only seeks an opportunity to contribute to the country he fought for.

It could be a young boy, born with Down syndrome, but thanks to loving parents and enlightened school officials, will graduate from high school, now wants to work—but fears the door will be barred in his face.

A woman with cerebral palsy who wants to see a local movie but is rudely refused by an owner who says, "I don't want her in here, and I don't have to let her in."

It could be my brother, deaf from birth, who has spent a lifetime of work and service proving that the only thing deaf persons cannot do in the words of Dr. I. King Jordan, president of Galluadet University, is hear.

My brother and millions like him are Americans with disabilities, but they are not disabled.

Indeed, by extension, it follows that the only thing a person who uses a wheelchair cannot do is walk.

The only thing a blind person cannot do is see.

There are things that all of us cannot do. Who among us can play basketball as well as Larry Bird? Who can pitch a baseball as fast as Orel Hershier? Who can tell a joke like Jay Leno?

Does the lack of any one of these abilities constitute a disability? Of course not.

It is just as silly to focus on the disability of a person who cannot hear, when there is so much that that person can do.

Who are these 43 million Americans with disabilities? They are our brothers and sisters, our parents and grandparents, our friends and neighbors, our proud veterans, our older citizens who carry themselves with dignity, our youth who look to the future with hope.

Those who are nondisabled by the conventional definition today could be disabled tomorrow by fate or accident—or years from now from the natural process of aging.

Indeed, disability is a part of life in every community across America, in virtually every family in our country.

Yes, disability poses limitation.

But ask any person with a disability: Most often, it is not his or her own disability that is limiting; it is the obstacles placed in the way by an indifferent society.

As Senator Lowell Weicker, a great champion of Americans with disabilities and my predecessor as chairman of the Subcommittee on the Handicapped, the first sponsor of this legislation in the last Congress, so aptly put it, people with disabilities spend a lifetime "overcoming not what God wrought but what man imposed by custom and law."

And what man and woman have created, we can also change.

Initiative stifled, dreams dampened, opportunity denied—this is not the stuff of which America is made.

From our founding, Americans have seen not insurmountable obstacles—but challenges to be met.

In seeking passage of the ADA, we are not asking for an uncertain venture into uncharted waters. We are demanding a return to the tried and

tested values that have guided our Nation for two centuries.

We do not seek a change in the American political and economic contract, only an extension to bring more Americans under the protections of rights that should be afforded to all.

As Sandy Parrino, chairperson of the National Council on Disability, testified, "Martin Luther King had a dream." We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities.

And so, to my colleagues I say, the ADA is about abilities, not disabilities.

It is about unleashing the talents, skills, enthusiasms and commitment of 43 million Americans who want to contribute but are denied basic access that will enable them to contribute to our society.

With the passage of this historic legislation, this 20th century emancipation proclamation for people with disabilities, we will deny them that opportunity no longer.

The ADA extends civil rights protections for people with disabilities to cover employment in the private sector, public accommodations, activities of State and local governments, public and private transportation, and telecommunications for persons with hearing impairments and communication disorders.

The ADA is, without exaggeration, the most critical legislation affecting persons with disabilities ever considered by Congress.

For too long, individuals with disabilities have been excluded, segregated, and otherwise denied equal, effective, and meaningful opportunity to participate in the economic and social mainstream of American life. It is time we eliminate these injustices.

The history of the United States has been a constant evolution of opening more doors, breaking down more barriers, and extending basic human rights to more and more people. In the Declaration of Independence and our Bill of Rights, we said that all Americans were created equal.

Yet, it took almost a century for black Americans to break the yoke of slavery. It took another 60 years for women to earn the right to vote, it took another 45 years to pass the historic Civil Rights Act of 1964. But, today, because of this law, an employer can no longer say to a prospective employee: "I will not hire you because of the color of your skin, or because you're a woman or Irish or Jewish or Catholic."

Because, if that employer did, that applicant has a right under Federal law to stop the discrimination and secure a remedy.

Yet, today, 25 years after the passage of the Civil Rights Act of 1964, there is still one group of Americans who do not enjoy this basic right. To this day, no Federal law prevents an employer in the private sector or an owner of a hotel or restaurant or transportation or communications company from excluding, segregating, or otherwise discriminating against 43 million Americans with disabilities.

Some may ask whether discrimination against persons with disabilities is a problem in contemporary American society of significant magnitude to warrant the enactment of Federal legislation. The unfortunate answer to this question is yes.

Testimony presented to the Committee on Labor and Human Resources chaired by Senator KENNEDY and the Subcommittee on the Handicapped, which I chair, two recent reports by the National Council on Disability, a report by the Civil Rights Commission, polls taken by Louis Harris and Associates, a report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, and the report by the Task Force on the Rights and Empowerment of Americans with Disabilities all reach the same fundamental conclusions:

First, historically, people with disabilities have been isolated and subjected to discrimination and such isolation and discrimination is still pervasive in our society;

Second, discrimination still persists in such critical areas as employment in the private sector, public accommodations, public services, transportation, and telecommunications;

Third, current Federal and State laws are inadequate to address the discrimination faced by people with disabilities in these critical areas;

Fourth, people with disabilities as a group occupy an inferior status socially, economically vocationally, and educationally; and

Fifth, discrimination denies people with disabilities the opportunity to compete on an equal basis and costs the Federal, State and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Let us look at the different areas that are covered by the bill now before us. First, let us look at the employment area.

Individuals with disabilities experience staggering levels of unemployment and poverty. According to a recent Lou Harris poll not working is perhaps the truest definition of what it means to be disabled in America. Two-thirds of all disabled Americans between the age of 16 and 64 are not working at all; yet 66 percent of those not working say they want to work. This means that about 8.2 million people with disabilities want to work but cannot find a job.

The Lou Harris' poll also found that large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people.

All Americans, not just our citizens with disabilities, bear the cost of this discrimination. According to the Lou Harris poll, the majority of those individuals with disabilities not working and out of the labor force, must depend on insurance payments of Government benefits for support. Eighty-two percent of people with disabilities said they would give up their government benefits in favor of a full-time job.

Let me repeat that. Eighty-two percent of the people polled with disabilities who are getting Government benefits said they would voluntarily give up those Government benefits if they could get a full time job.

Without corrective action, discrimination against Americans with disabilities will only worsen. The trend of the eighties has not been positive. According to a report released just a few weeks ago by the U.S. Bureau of the Census entitled "Labor Force Status and Other Characteristics of persons with a Work Disability: 1981 to 1988," the percentage of persons with disabilities with full-time jobs decreased during the 1980's. The report also found that earnings of persons with disabilities have fallen significantly in the 1980's compared with workers who did not have disabilities.

Second, let us look at the accessibility of public accommodations and what that means for people with disabilities.

Based on testimony presented at the hearings and recent national surveys and reports, it is clear that an overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation.

The National Council on Disability summarized the findings of a recent Lou Harris poll:

> The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue.* * * The extent of nonparticipation of individuals with disabilities in social and recreational activities is alarming.

In answer to the question "Why don't people with disabilities frequent places of public accommodations and stores as often as other Americans?" three major reasons were given by Senate witnesses. First, people with disabilities do not feel they are welcome and can participate safely in such places. Second, many persons with disabilities are fearful or self-conscious stemming from degrading experiences they or their friends with disabilities have had.

And I can tell you from firsthand experience what that means when a person with a disability once, twice, three times has had some demeaning or degrading experience in some place of public accommodation, what that does to dampen their enthusiasm to ever return to a place like that. It only takes one time when a disabled person, who may be young, when his concept of society is forming, to have one, just one thing happen to him which degrades him as an individual. That builds a shell around that person for the rest of his life.

The third reason that was given for not frequenting these places was the existence of architectural, communication, and transportation barriers that keep people with disabilities out.

Witnesses also testified about the need to define places of public accommodations to include all places open to the public, not simply restaurants, hotels, and places of entertainment which, I might add, are the types of establishments covered by title II of the Civil Rights Act of 1964. We extend it beyond that because discrimination against people with disabilities is not limited to specific categories of public accommodations.

When you are in a wheelchair and you want to go someplace and you cannot get over the curb or you cannot get in the door or if you are a person perhaps with another disability and there is no means of assistance, no means of handrails or other kinds of assistance to help you, well, then, pretty soon you get pretty discouraged about going out. So people with disabilities tend to stay at home, cooped up, isolated from the rest of society.

As Robert Burgdorf, Jr., vice president of the Easter Seal Society of America, testified:

> It makes no sense for a law to say that people with disabilities cannot be discriminated against if they want to buy a pastrami sandwich at the local deli but that they can be discriminated against next door at the pharmacy where they need to fill a prescription. There is no sense to that distinction.

Third, let us look at the public services aspect.

Currently, Federal law prohibits recipients of Federal assistance from discriminating against individuals with disabilities. Witnesses testified about the inequity of limiting protection based on the receipt of Federal funding, while exempting State and locally funded government institutions.

Dr. Mary Lynn Fletcher, the director of disability services in a rural area of Tennessee testified that access to all public services is particularly critical in rural areas, because State and local government funded-entities are frequently the major employers and service providers in small towns. Fairness dictates that all publicly funded entities, whether their funding source be Federal, State or local, should be accessible to people with disabilities.

Fourth, let us look at the area of transportation.

Transportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society. Timothy Cook, director of the National Disability Action Center, testified that,

> Access to transportation is the key to opening up education, employment, recreation; and other provisions of the [ADA] are meaningless unless we put together an accessible public transportation system in this country.

Witnesses also testified about the need to pursue a multimodal approach to ensuring access for people with disabilities providing that all new buses used for fixed routes are accessible and paratransit is made available for those who cannot use the fixed route accessible buses.

With respect to intercity transportation, the committee learned about the deplorable isolation of people with disabilities residing in rural areas, the lack of accessible private transportation serving these rural areas, and at the same time the existence of reasonably priced lifts that can be installed on buses which will enable people using wheelchairs to have access to these buses. This is particularly critical in rural areas where these buses are often the only mode of transportation that is available.

Again, I reemphasize that transportation is really the linchpin. If we open up public accommodations and break down barriers in employment, what does it really mean to disabled people if they cannot get from their homes to their jobs, from their jobs to a restaurant, from the restaurant to a place of entertainment and from that place back home again just like people without disabilities? This, really, is the key to making sure that society is opened up to people with disabilities.

TELECOMMUNICATIONS

Dr. I. King Jordan, president of Gallaudet University, noted to the committee that more than 100 years ago Alexander Graham Bell invented the telephone in the hope that he could close the communication gap between deaf and hearing people. According to Dr. Jordan:

> Not only did the telephone not help close that gap, but in many ways it widened it and has become one more barrier in the lives of deaf people.

Several witnesses testified about the critical need to establish relay systems. Relay systems will enable hearing impaired and communication-impaired persons who use telecommunication devices for the deaf, or TDD's, to make calls to and receive calls from individuals using voice telephones.

Dr. Jordan summed up the need for a national relay system:

> The phone is a necessity, and it is a necessity for all of us, not just people who can hear. * * * By requiring nationwide telephone relay service for everyone, it will help deaf people achieve a level of independence in employment and public accommodations that is sought by other parts of the ADA.

Again, I will just give a recent example, when I was home over the break period. I have a TDD in my office, I have one at home, by which I communicate with my brother who is deaf. I happened to be driving around in a car and I needed to get in touch with him to make a appointment with him to get him to go someplace but obviously I didn't have the TDD in the car. That is a little bit difficult.

But, in Iowa we have a relay system. So I was able to pick up the phone, call the relay operator, give her my brother's number, ask her to call him, get him on the phone and relay a message.

Well, this operator, who happened to be a woman, took my call, called my brother. She took my vocal instructions, typed them on a TDD to my brother, he typed them on the TDD back to her and she relayed it to me vocally. That way we had communications. That is what we are talking about on a national basis so that people with hearing difficulties can have the same kind of access to communications that all of us have.

I would like to talk just a little bit about the effects of discrimination on our society.

THE EFFECTS OF DISCRIMINATION ON SOCIETY

Discrimination not only has adverse consequences for people with disabilities; it also has significant adverse consequences for our economy. As I noted earlier, the committee heard testimony and reviewed reports concluding that discrimination results in dependency on social welfare programs costing taxpayers unnecessary billions of dollars each year.

President Bush has said:

> On the cost side, the National Council on the Handicapped states that current spending on disability benefits and programs exceeds $60 billion annually. Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues.

Attorney General Thornburgh added that:

> We must recognize that passing comprehensive civil rights legislation protecting

persons with disabilities will have direct and tangible benefits for our country. * * * Certainly, the elimination of employment discrimination and the mainstreaming of persons with disabilities will result in more persons with disabilities working, in increased earnings, in less dependence on the Social Security system for financial support, in increased spending on consumer goods, and increased tax revenues.

Thus, enactment of the ADA will save billions of dollars per year that are currently being expended on social welfare programs. The ADA will allow people with disabilities to become taxpayers and consumers.

Discrimination also negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities. Sylvia Piper, a parent of a child with developmental disabilities from Ankeny, IA, testified that:

We have invested in our son Dan's future. The Ankeny Public School District has made an investment in Dan's future. * * * Are we going to allow this investment of time, energy, and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21?

In sum, there is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabilities into the economic and social mainstream of American life.

Mr. President, we are going to hear a lot of talk, I am sure, as we debate this bill on the floor about how much it is going to cost. What is it going to cost our businesses to comply? What is it going to cost our transportation sector and our communications sector? What is it going to cost State and local governments to comply?

Well, we know what it is costing society right now, upward of maybe $60 billion a year that we are spending in welfare payments, not to mention the unemployment these people face and the fact that they are not even paying income taxes.

So again, I believe, in sum, the passage of this bill will turn out to save us all, businesses, transportation, communication—everyone—it will save us money and it will be in the best economic interests of America.

Today, we are considering the substitute amendment to S. 933, the Americans With Disabilities Act, reported out of the Labor Committee by unanimous vote.

The substitute amendment is the product of extensive and intense negotiations between myself, Senators KENNEDY, DOLE, HATCH, and MCCAIN, and representatives from the administration, including Governor Sununu, Attorney General Thornburgh, Secretary of Transportation Skinner, and Roger Porter, head of the Domestic Policy Council.

Again, I want to point out, contrary to an editorial that appeared in a newspaper yesterday, this has not been rushed through. This bill is the result of years of investigation and consultation by the President's National Council on Disability beginning in 1984. The bill was first introduced last year. We have held well over five hearings on this bill, as I said earlier, plus countless hours, days, weeks, and months of negotiations and compromise. Nothing has been hurried about this bill. Indeed, it has been scrutinized to an extent that the vast majority of legislation that comes through here is never scrutinized.

The substitute amendment is a compromise. No party to the negotiations got everything they wanted. I believe the compromise provides an appropriate balance between the rights of people with disabilities and the legitimate concerns of the business community, particularly small businesses.

For people with disabilities, the ADA sends a clear message that they are entitled to be treated with dignity and respect and that they can and will be judged as individuals on the basis of their abilities; not on the basis of ignorance, irrational fears, or patronizing attitudes.

The ADA gives power to individuals with disabilities to make choices, to decide for themselves what kind of life they want to lead, and provides a meaningful and effective opportunity to become independent and productive members of our society. It guarantees individuals with disabilities the right to be integrated into the economic and social mainstream of society; segregation and isolation by others will no longer be tolerated.

For the business community, the substitute recognizes the appropriateness of recognizing cost in devising particular standards for inclusion in the bill. For example, cost was a factor in the decision that the bill should not mandate the retrofitting of existing buses; only new buses must be fully accessible. With respect to public accommodations, only modest changes to existing facilities are required; that is, those that are easily accomplishable without much difficulty or expense. If the provision of special service results in an undue burden, it need not be provided.

Senator KENNEDY and I are committed to this compromise. We will oppose all weakening amendments. We will also oppose any amendments that are intended to strengthen the substitute, if these amendments do not have the support of the administration and Senator DOLE. We are pleased that the administration and Senator DOLE share this commitment. We hope that other Senators will understand how fragile this compromise is and will support it.

The major component of the compromise was the agreement by the chief Senate sponsors to cutback the remedies included in the original bill in exchange for a broad scope of coverage under the public accommodations title of the bill; in other words to extend protections to most commercial establishments large and small open to the public. We would thus consider any amendment that pertains to either of these two aspects of the legislation an amendment designed to destroy this fragile compromise.

More specifically, with respect to employment, the substitute delays the effective date for 2 years from the date of enactment; includes a phasedown in coverage from 25 employees for the first 2 years down to 15 employees thereafter; it adopts many standards and interpretations from the original HEW regulations implementing section 504 of the Rehabilitation Act of 1973, including the obligation to provide a reasonable accommodation unless it would result in an undue hardship. The compromise clarifies that the bill does not protect, and let me repeat, the bill does not protect current drug users and alcoholics. The bill incorporates by reference the remedies set out in title VII of the Civil Rights Act of 1964, which includes injunctive relief and limited back pay, and it deletes the authority to seek compensatory and punitive damages for acts of intentional discrimination.

With respect to public transportation, the substitute authorizes the Secretary of Transportation to grant limited relief to the obligation that all new fixed route buses must be accessible when no lifts are available from manufacturers. It includes an undue financial burden limitation to the general rule that a public transit authority must make available paratransit services to supplement the mainline accessible buses; and provides 20 years for Amtrak to make its stations accessible.

With respect to public accommodations, the substitute delays implementation for 18 months from the date of enactment. It exempts from coverage private clubs and religious organizations and entities controlled by religious organizations; and includes a special rule regarding the installation of elevators in new construction and where the entity is making major structural alterations. Elevators need not be installed if the building has fewer than three stories or fewer than 3,000 square feet per floor except in specified circumstances.

The substitute also deletes references to the enforcement scheme for private parties set out in the Fair Housing Act; that is, compensatory and punitive damages, and instead incorporates by reference the provisions

in title II of the Civil Rights Act of 1964. The substitute authorizes the Attorney General to bring pattern and practice suits and seek civil penalties, with a cap, to vindicate the public interest. The Attorney General may also request monetary but no punitive damages on behalf of an aggrieved party.

With respect to transportation services provided by private entities, the bill delays for 5 years, and 6 years for small entities, the obligation to make new over-the-road buses accessible and requires a study to determine how best to achieve accessibility in the most cost effective manner and to review the impact of the obligation on the provision of services in rural areas.

In closing, let me say that the Americans With Disabilities Act is a landmark statement of basic human rights that will make the promise of equal opportunity a reality for 43 million Americans with disabilities. Enacting the ADA is the right thing to do for people with disabilities. It is also the right way to help strengthen our economy and enhance our international competitiveness. The ADA will save the Government and society billions of dollars by getting people off the dependency/social welfare rolls and into jobs, into restaurants, into shopping centers and into community activities.

Mr. President, I close by laying down the challenge issued by Perry Tillman, a Vietnam veteran who testified before my subcommittee:

> I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs, I didn't lose my ability to achieve my dreams. Myself and other veterans before me fought for freedom for all Americans. But when I came home and found out that what I fought for applied to everyone but me and other handicapped people, I couldn't stop fighting. I have fought since my injury in Vietnam to regain my rightful place in society. I ask that you now join me in ending this fight and give quick and favorable consideration to the ADA to allow all Americans, disabled or not, to take part equally in American life.

I urge my colleagues to support this historic legislation.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will not take a long time in my opening remarks because I think the distinguished Senator from Iowa has spoken very eloquently and I believe has summarized this bill and the substitute, about as well as can be done. I want to personally commend him for his efforts.

Mr. President, this is an important bill. This is a bill that really enfranchises 43 million Americans who have not had the type of coequal treatment in our society that persons with disabilities really deserve. It is a bill that recognizes that the Federal Government does have a role in seeing that their rights are enforced, and it does have a role in helping people with disabilities to be able to help themselves to become independent and productive citizens.

Many persons with disabilities, of course, do more with their lives than many of us who have no disabilities at all.

Mr. President, the time has come for the Senate to send a loud, clear message across this country—individuals with disabilities, no less than all other Americans, are entitled to an equal opportunity to participate in the American dream. It is time for that dream to become a reality.

We now have before us the most sweeping piece of civil rights legislation since the Civil War era. This bill covers public and private employment, State and local government agencies, public and private transportation, public accommodations, and access to telecommunications services. For the first time, these areas of coverage will exist, regardless of whether an entity receives Federal dollars or is a Federal contractor.

Let me say at the outset that much effort has gone into crafting this legislation. The list of those who deserve credit is too long to cover in its entirety. But I think I would be remiss, however, if I failed to recognize the genuine personal commitment President Bush has brought to this issue. The President made a commitment to the citizens of our Nation with disabilities that legislation assuring them equal opportunity would become law. We are on the verge of seeing this Presidential commitment fulfilled. I want to compliment him for it. This is a major, landmark piece of legislation. In spite of what all of us in the Senate and other areas of Congress have tried to do, the bill would not be here today without the efforts of the President of the United States.

In this bipartisan spirit, I want to recognize the outstanding leadership of the chairman of the Subcommittee on the Handicapped, Senator HARKIN, the ranking Republican member of the subcommittee, Senator DURENBERGER, and, of course, the chairman of the Labor and Human Resources Committee, Senator KENNEDY. These congratulations, it seems to me, must also go to their respective staffs who have put in long hours of work as have the Senators, and have shown remarkable dedication to this cause. Although not on our committee, Senator MCCAIN has also played a significant role in this bill, as have many others. I think that all is clearly reflected by this legislative product.

There is an individual who should be remembered as a driving force behind this legislation, and that is my good friend Justin Dart, former Commissioner of the Rehabilitation Administration. More recently, as the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, Mr. Dart has done yeoman work to get us where we are on this legislation, and I am very proud to call him a friend.

Mr. President, I am a cosponsor of this legislation because I firmly believe in its objective—establishing a clear, comprehensive prohibition of discrimination on the basis of disability.

Why I believe this so strongly is summed-up best in an article which appeared in the New York Times a few days ago. The article was written by James Brady, the former White House press secretary under President Reagan, who now continues his service to our Nation as vice chairman of the National Organization on Disability.

He wrote, "People with disabilities—the largest minority of the United States—were left out of the historical Civil Rights Act of 1964. Twenty-five years later, discrimination against disabled people is still pervasive. Congress has a chance to correct this injustice." We could not have said it better.

Today we do have a chance to correct the injustices. Persons with disabilities I have talked to stress that their entire desire is only to be given the same opportunity to work and fend for themselves like anyone else. They are looking for what this bill provides—equal opportunity, not equal results.

Indeed, through their own efforts and with the benefit of a growing array of programs and antidiscrimination provisions at the State and Federal levels—designed to enhance their abilities to lead lives of independence, not dependence—persons with disabilities have long been writing an inspiring chapter in this Nation's history of bringing more and more people into the mainstream of this country.

People with disabilities, through their hard work and self-determination, have already made great advantages and successfully destroyed many of the stereotypes which have been used in the past to deny them equal opportunities. But more can still be done to provide equal opportunity for persons with disabilities. That is why we are here today.

Mr. President, my enthusiasm for this legislation does not, however, mean that I think it is perfect. It is not. There is room to make this legislative product even better, and let me explain that.

Since the beginning of the year, Senator HARKIN and I have discussed the need for this legislation and the overwhelming importance of making it meaningful and reasonable. I have been concerned from the beginning about ensuring that the ability of small business to continue competing

successfully was not compromised by this bill; that the relief against businesses is not unreasonable, and that costly obligations more suited to urban mass transit systems, with their massive Federal subsidies and local tax sources, not be imposed upon the private bus transportation industry, which is basically unsubsidized.

If we place unreasonable, suffocating obligations on these businesses, everyone loses—persons with or without disabilities that currently patronize those businesses and the employees at those businesses who may lose their jobs.

For these and other reasons, I was unable at the outset to cosponsor S. 933 as originally introduced, despite my desire to see the objective of this legislation fulfilled. Senator HARKIN and I have talked about these concerns for several months, and other members of the committee and the administration joined in these talks this summer. Enough changes were made in this legislation during the process that I was pleased to cosponsor this legislation at the time of the committee markup.

Despite my desire to get this legislation passed and despite my cosponsorship of this bill, I feel strongly that we can still make further reasonable adjustments in the bill in the areas I have just mentioned. I think that we can make these adjustments and pass the most sweeping civil rights bill since the Civil War era. I will elaborate on these improvements at the appropriate time during our debate.

However, let me just add that there is one concern that I raised in committee that I will not raise on the floor by way of amendment. That concern is the failure of the bill to cover the Congress. I just want to say to all my colleagues that I believe it is about time Congress recognizes the hypocrisy of subjecting others to obligations that we do not subject ourselves to or that we do not impose upon ourselves. It is with great reluctance that I have decided to refrain from offering that particular amendment. I only do so because of personal requests from various leaders in the Senate and on the committee.

Mr. President, I do think it is important to mention one amendment that needs to be brought up. It is an amendment of some controversy that may cause some heartburn to various people in the Senate. The purpose of the amendment is to provide a refundable tax credit for the costs of very small businesses who have to comply with the public accommodation requirements of the Americans with Disability Act. It is in the form of a refundable tax credit.

The amendment provides for a refundable credit so that complying small businesses can receive an immediate payback from the Federal Government for the costs of complying with this act. If we are going to impose these obligations upon small businesses, we than ought to have some obligation to help them pay for it, because many of these small businesses clearly will not be able correct these problems without irreparably harming their businesses or terminating the employment of people in our society.

The amount of this refundable credit is the lesser of the actual amount of costs incurred by the small business or $5,000. The credit is available every taxable year up to the $5,000 limit, but no business electing the credit will be allowed a deduction for the same expenses giving rise to the credit. This credit would only apply to small businesses required to provide public accommodations, as defined by S. 933 and which has annual gross receipts of not over $1 million and employ fewer than 15 employees. Both the gross income figure and the $5,000 limitation are to be indexed to the Consumer Price Index. So, we are limiting this tax credit to true small businesses.

To explain further, costs eligible for the credit are those paid or incurred for: First, the purpose of removing architectural communication or transportation barriers which prevent public accommodation from being accessible to, or usable by, an individual with a disability; and second, providing auxiliary aids and services to individuals with a disability who are employees or customers of the public accommodation.

Now, costs paid for or incurred in connection with new construction are not eligible for the credit. New construction costs are defined as those in connection with the design and construction of any facility, the first occupancy of which occurs after December 31, 1989.

This amendment will be effective for the taxable years beginning after December 31, 1989. I think it is a reasonable amendment.

Originally, my first idea was merely to exempt businesses with 15 or fewer employees, but I felt that some businesses are so small that we should not be placing this type of a burden upon them. The cost of accommodation might result in forcing them out of business and losing employment opportunities. I also understand that there are some in the disability community and elsewhere, who are concerned about allowing certain small businesses who really can afford it to escape some of the responsibilities this bill requires. This is not my intent. At this time I do not want to go to the small business exemption amendment because of my regard for persons with disabilities and for others who have fought so hard for this bill.

Today, however, we should take into consideration the burdens that are going to be placed upon small businesses. I think the tax credit approach is an appropriate remedy. The reason it is appropriate is because the Federal Government is imposing these obligations. Therefore, I also want the Federal Government to take some responsibility in sharing the obligations.

There is some logic behind that. If the Federal Government has to give a tax credit to the small business persons as defined by this amendment, then, number one, it acknowledges that it is placing some burdens on them and it is acknowledging its obligation to share in the cost of those burdens. It seems to me, that this is significant enough to have my colleagues in this Chamber want to support the amendment.

But there is second good reason for supporting it. We all have lived with the heavy hand of the Federal Bureaucrats. By and large, I think our Federal bureaucracies in this country over the last number of years have been improved immeasurably. I think they are taking into consideration the effects of the regulations they have passed. But we always have the exceptions. We always have those who through zeal or excessive conduct or just plain stupidity put burdens on the small business community that literally are too heavy to bear. Then we have to go through all kinds of anguish, costs, loss of business, elimination of jobs, and impairment to our society before we repeal those particular onerous and burdensome regulations.

This amendment makes sense because what it says to every one of these bureacurats, who basically may have a tendency to overdo it is that we better be reasonable in our regulations, or we are going to have to pay for it. These costs to the Federal Government will have to come from somewhere, and under Gramm-Rudman, will have to be accounted for. My Amendment will make our bureaucracy more responsive to the needs of our society as a whole, and more responsive to make this act work in a decent way in which people can comply without undue burden and undue pain, and without the heavy hand of the bureaucracy.

I know this amendment makes sense. I imagine there will be those who will come on the floor and say you do not know what this is going to cost. I suggest to them, neither do they. The fact of the matter is there are going to be expenses as a result of this very important bill. I am willing to impose those costs. I am willing to go ahead with this bill. But I share some of the concerns raised in the New York Times editorial that appeared yesterdsay. They raised some legitimate concerns that all of us should be aware of when the Government imposes costs upon others.

If we know that, we ought to provide some means where there is some responsibility for the Federal Government as well as small businesses in these areas. Keep in mind, I am trying to limit the tax credit to the very small business. I would not like to go back to the other amendment that would exempt all small businesses with 15 or fewer employees although there is a lot of pressure for me to do so.

I do not know a small business in this country or small business organization that does not want that other amendment. On the other hand, I think there are some good arguments against that amendment. The question is, does the amendment outweigh those arguments? I do not know. I would prefer to do it through tax credits because it is fair. But it means that the changes will have to be made. It means that business will have to comply with this comprehensive bill. By the way, this bill goes far beyond the Civil Rights Act of 1964, but I support it. I am willing to go far beyond it with regard to assisting persons with disabilities to access the mainstream of our society.

What this tax credit amendment would do is provide a balance that is fair and says to the Federal Government, OK, you can impose these burdens, but you will also have to fulfill and carry them out. It will benefit the whole community not just of persons with disabilities. The Federal Government is going to have share in the burdens. We are going to have to recognize that some of these burdens are very expensive and the Federal Government has some obligation, especially to the small business community, to assist in this area.

The amendment which I intend to bring up—regardless of what happens to it, is an important amendment. I hope my colleagues will defeat any motion to table, and defeat any motion that raises a point of order, because I think it will make this bill acceptable to a much larger group of people, and I think it would have a tendency to have strong support by the small business community as well, even though they would prefer to have a 15 employee exemption. I would not like to go to that, but I do understand their interests. I understand their concerns.

My heart is with the community of persons with disabilities. I have worked with this community all of my professional lifetime. I have helped to establish nonprofit corporations to assist this community in certain parts thereof.

I had a brother-in-law who contracted both types of polio. He become a paraplegic. He did have some use of his hands. That brother-in-law went on and finished his undergraduate, got a masters degree in electrical engineering, and worked right up to the time of his death. He was one of the most heroic people I ever met in my life. He never let this get him down. I personally carried him to the Los Angeles Temple with my faith so he could go there. I was glad to do it, and I was proud to do it. I felt deeply toward him. I love him.

I can transfer the love and affection that I have to all persons with disabilities. They did not ask for these problems in most cases. Frankly, some of the most heroic people and the most outstanding people in our society are persons with disabilities. I mentioned Justin Bart. What a powerful force for good he has been.

I can mention many others as well, the brother of our distinguished chairman of the subcommittee. This is an emotional thing but I am not doing this just because of emotions. I think it is the right thing to do. I also think this amendment that I discussed is the right amendment. I hope our colleagues will consider it. I think it is something that should been done.

I want to close, Mr. President—I have taken enough time—by just reading a statement made by James Brady in the article I referenced earlier in my remarks. He said: "Passage of the Americans With Disabilities Act will increase the acceptance, dignity and full participation of citizens with disabilities.

We do not want pity or sympathy. All we want is the same civil rights and opportunities that all citizens have. We want fairness, acceptance, and the chance to contribute fully to our Nation just like everyone else.

Well, Mr. President, I can think of no better way than through this bill. I really believe that we can do this society a great service by passing this bill. I hope we can improve it. If Senators have amendments that will improve this bill, we will certainly consider them. I know there is going to be some controversy over certain segments of this bill.

The fact of the matter is all of these communities deserve support, regardless of our own personal points of view whether we like or dislike various communities where disabilities exist. I intend to fight for those rights and intend to fight for them on the floor.

Mr. President, again, I pay tribute to those who have worked so long and hard on this bill, especially the distinguished Senator from Iowa, members of our committee, the chairman, Senator DURENBERGER, and others who have played noble roles in this regard.

Above all, when George Bush said he wanted a kinder and gentler Nation, I think if there is ever a bill, outside of the child care bill that we passed in the Senate this year, that meets those needs, that will help to accomplish what the President indicated in his campaign, it has to be this bill. And he will deserve, I think, a lion's share of credit for it.

I think he will deserve the plaudits of all Americans for his efforts in trying to get this bill done. And the efforts of those in the White House who have worked so hard in various meetings to try and bring this about, such as Governor Sununu and others.

I think it is a very, very important thing we are doing here today. I intend to do everthing I can to see that it passes. I hope consideration will be given to this amendment that I have. It would go a long way in resolving most of the problems I have with this bill. It is a reasonable thing, and I personally believe we can find a few hundred million dollars that it probably will take.

If it does not, it is going to be imposed on small business who may not be able to afford it. The fact of the matter is no one knows what it will cost, but it is fair because the Federal government ought to have some responsibility here, if it is going to impose these types of burdens. I am willing to impose them, but I want equity with regard to the imposition of those burdens.

I hope my colleagues will give some consideration to that. We have come a long way to where we are today, with the help to the President and the good faith of all 15 members of the Labor and Human Resources Committee, from the far left to the far right, and everything in between. Every one of them voted for this bill, and every one of them voted to bring this bill to the floor of the U.S. Senate.

We are here, and it is an opportunity to do what is right. It is an opportunity to set the record straight for people who have not had these benefits for years. I am grateful for those who have paid the price and done so much to bring it to the floor. I thank each of them, and I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. KERREY). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, today, the Senate begins consideration of legislation to end segregation and discrimination against the 43 million individuals with disabilities in our society.

We have reached this point today because of the commitment and dedication of many people, in particular the President's National Council on the Disabled, which provided the roadmap for this legislation, and Senator Lowell Weicker, our former colleague who first introduced this measure in the 100th Congress.

In this Congress, Senator TOM HARKIN has provided unparalleled leadership as the chief sponsor of this measure. Senator HARKIN's tireless efforts and determination have been

critical to reporting this legislation from the Senate Labor and Human Resources Committee by a unanimous vote.

Senator DURENBERGER and Republican Leader DOLE also have worked hard to bring this legislation expeditously to the Senate floor.

I also want to make special mention of the leadership of President Bush on this important legislation.

His administration is committed to integrating individuals with disabilities into the mainstream of our society. The compromise bill which the sponsors and the administration have agreed to and which is on the Senate floor today, reflects that basic principle.

The Americans with Disabilities Act represents a partnership between Congress and the President which is an historic breakthrough for millions of disabled citizens who deserve an equal chance to participate in the mainstream of American life.

The road to discrimination is paved with good intentions. For years, because of our concern for the less fortunate, we have tolerated a status of second class citizenship for our disabled fellow citizens.

The Americans with Disabilities Act will end this American apartheid. The act has the potential to become one of the great civil rights laws of our generation.

Disabled citizens deserve the opportunity to work for a living, ride a bus, have access to public and commercial buildings, and do all the other things that the rest of us take for granted.

Mindless physical barriers and outdated social attitudes have made them second class citizens for too long. This legislation is a bill of rights for the disabled, and America will be a better and fairer nation because of it.

The Americans with Disabilities Act is the culmination of a quarter of a century of efforts by the U.S. Congress to provide basic protections to our Nation's physically and mentally challenged citizens.

As early as 1962, President Kennedy established a panel to study the status of the mentally retarded in our Nation. The panel offered sweeping recommendations on the need for health and education programs to guarantee the civil rights of the mentally retarded.

In 1963, President Kennedy sent to Congress a landmark national program to combat mental illness and mental retardation, which Congress enacted with strong bipartisan support. The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 and the Maternal and Child Health and Mental Retardation Planning Amendment of 1963 constituted the first comprehensive Federal effort to address the needs of persons with mental illness and mental retardation.

In 1970 the Congress passed the Developmental Disabilities Services and Facilities Construction Amendments of 1970. The statute constituted the first congressional effort to address the needs of a group of persons with handicaps designated as developmentally disabled.

Chief among the later accomplishments of this statute was to provide protection and advocacy programs for persons with development disabilities.

In 1971, Senator Jacob Javits sponsored legislation that extended priority in Government contracts in goods and services to the severely handicapped.

In 1973 the Congress passed the Rehabilitation Act which included section 504—the first civil rights bill for disabled persons. This effort was led by the first chairman of the Labor and Public Welfare Subcommittee on the Handicapped, Senator Jennings Randolph.

In 1975, the Congress passed the Education for All Handicapped Children Act which guaranteed a free and appropriate education for all handicapped children.

In 1985 the Congress passed the Handicapped Children's Protection Act.

This legislation authorized an award of attorneys fees to parents who prevail in lawsuits brought under the Education of the Handicapped Act.

In 1988, after a 4 years struggle, the U.S. Congress overturned the Supreme Court's Grove City decision and once again restored the broad based ban on discrimination against the disabled by those who receive Federal funds.

Also in the 100th Congress, the Congress passed the Fair Housing Amendments of 1988 which strengthened and expanded the rights of the disabled to adequate housing.

Over the past 25 years, the Senate Labor and Human Resources Committee has been at the forefront of legislation to provide a decent life for our Nation's disabled citizens.

I am honored to have had the opportunity as a Member of the Senate and of the Labor Committee to witness and contribute to these historic developments.

The timing of this bill has special significance in the history of civil rights. This year we celebrate the 25th anniversary of the Civil Rights Act of 1964. That legislation helped bring about one of the greatest peaceful transformations in our history for millions of Americans who were victims of racial discrimination, and this legislation can do the same for millions of citizens who are disabled. The Civil Rights Act of 1964 also gave us a stronger, more open-minded society that we are rightfully proud of, and this legislation can make us more proud.

The major provisions of the bill are the following:

In employment, the bill prohibits discrimination by employers with 15 or more employees.

It requires that employers provide reasonable accommodations to disabled employees unless the accommodation would be an undue hardship for the employer.

In public services, the bill contains provisions similar to those in section 504, which are applicable to recipients of Federal aid.

The ADA prohibits disability discrimination by all State and local governments in all of their operations. In public transportation, it requires that all new buses and trains be accessible. It also requires that key stations of subways and railroads be accessible within 20 years.

In public accommodations, the ADA provides that all privately owned restaurants, hotels, stores, service establishments and other businesses open to the public shall not discriminate on the basis of disability. The bill prohibits exclusion of disabled persons, and requires auxiliary aids, such as reading a menu to a blind person in a restaurant, unless such an aid would be an undue burden for the business. It requires that existing facilities be made accessible if it would be "readily achievable" to do so. Readily achievable means easily accomplishable and not involving much difficulty or expense.

For private transportation, ADA requires that, after 5 years, all new buses must be accessible, with small providers having 6 years to comply. The bill provides for an interim study to be completed within 3 years.

Finally, the ADA requires that all telephone common carriers establish relay services to enable hearing impaired persons to communicate with nonhearing impaired persons via regular telephone service.

This bill implements the key recommendation of the Presidential Report on the HIV Epidemic. In his report, Adm. James Watkins referred to antidiscrimination protections for people with AIDS and HIV as the linch-pin of our ability to control the spread of this virus.

Coverage of people with AIDS and HIV infection under the ADA is patterned after the provisions in the Civil Rights Restoration Act and the Fair Housing Amendments Act enacted during the 100th Congress. Including this population of disabled Americans under the bill's scope is not only simple justice—it is sound public health policy.

I hope that we can move expeditiously to approve this important legislation. Our Nation prides itself on op-

portunity for all; individuals are limited only by their own talents and ambition. For too long, the American way of life has been unavailable to the tens of millions of Americans who have disabilities.

During consideration of the Americans with Disabilities Act, the Senate Labor and Human Resources Committee heard testimony from numerous witnesses who have suffered more from prejudice than from disability.

Judith Heumann of the World Institute on Disability, a victim of polio, described several dramatic instances in her lifetime of discrimination:

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. * * * As a teenager, I could not travel with my friends on the bus because it was not accessible. * * * In 1981, an attempt was made to forcibly remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

In March 1988 the Washington Post reported the story of a New Jersey zoo keeper who refused to admit children with Downs syndrome because he feared they would upset the chimpanzees.

In its 1985 decision in Alexander versus Choate, the Supreme Court described an example of discrimination in which

A court ruled that a child with cerebral palsy, who was not a physical threat and was academically competitive, was excluded from public school, because his teacher claimed his physical appearance 'produced a nauseating effect' on his classmates.

In 1987, in School Board of Nassau County versus Arline, The Supreme Court cited remarks of Senator Mondale describing a case in which a woman "crippled by arthritis" was denied a job not because she could not do the work but because "college trusteed [thought] 'normal students shouldn't see her.'"

The committee heard testimony about a woman from Kentucky who was fired from the job she had held for a number of years because the employer found out that her son, who had become ill with AIDS, had moved into her house so she could care for him.

Justin Dart, the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, testified that after 63 public forums held in every State, he had found overwhelming evidence that:

Although America has recorded great progress in the area of disability during the past few decades, our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully human and therefore are not fully eligible for the opportunities, services, and support systems, which are available to other people as a matter of right. The result is massive, society-wide discrimination.

The U.S. Attorney General, Dick Thornburgh, on behalf of the Bush administration, testified that:

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence.

In human terms, the cost of discrimination against people with disabilities is staggering. In financial terms, the cost is no less staggering. In 1986, the Nation spent $169.4 billion in dependent care expenditures for working age people with disabilities, including Federal, State, local, and private expenditures. Of that amount, $77.8 billion, or almost half, was paid by the private sector. If we open up job opportunities for people with disabilities, provide accessible transportation, permit them to communicate via telephone relays, and open the doors of restaurants, stores, and other public accommodations to them, people with disabilities will be independent, rather than dependent members of our society. They will pay taxes and contribute to our economy, rather than receiving benefits. And we will all be better off for it.

The Americans with Disabilities Act reported by the Committee on Labor and Human Resources strikes a careful balance between eliminating discrimination and removing barriers to full participation by individuals with disabilities in our society, without posing undue burdens on American business.

Americans with disabilities deserve to participate in the promise of America. May the enactment of this legislation be the first of many steps in a new effort by Congress and the administration to redeem that promise. I urge the Senate to approve this measure.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have offered a tax credit amendment and I hope my colleagues will support it. I am very pleased to announce that the distinguished Senator from Nebraska, Senator KERREY, and Senator MCCAIN from Arizona have asked to be cosponsors of my amendment which would allow for a tax credit not to exceed $5,000 for businesses with 15 or fewer employees who have $1 million or less in gross profit.

I would ask my other colleagues throughout the Senate to consider cosponsoring this amendment because I think it is a reasonable one. It sets the record straight, and it is appropriate. We do not know what it will cost but if the price tag is too expensive then the Federal Government ought to share the burden if it is going to make this kind of imposition on small businesses.

I do not mind requiring the public accommodations. I do not mind requiring the ramps and other changes that will be needed to provide various public accommodations. This we must do. But I do mind imposing it upon the smallest of the small businesses without any compensation.

Frankly, I think it is time that we have the Federal Government assume its responsibility with regard to passage of legislation. I am very pleased to announce that the distinguished Senators from Nebraska and Arizona are cosponsors. It means a lot to me that they support my amendment. I hope that other colleagues will cosponsor it as well. We will call it up at some time before this debate is over.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I am proud to offer my continued support for the Americans With Disabilities Act [ADA], S. 933, of which I am an original cosponsor, and look forward to seeing its final passage. We all know that equal opportunity is a cornerstone of our Nation. Throughout the history of this Nation, we have fought hard to maintain that goal. The Americans With Disabilities Act is a logical progression toward making sure that America remains the world leader in ensuring equality for her citizens.

The ADA, I believe, will serve to more fully open the American landscape to the disabled. We have an obligation to make available to those who are differently abled the resources of our communities. I believe that we will all benefit from doing this.

When this legislation was introduced, I voiced concerns regarding many of the provisions of the bill. I commend the Labor and Human Resources Committee for their hard work in crafting the significantly improved bill that is being considered here today. I look forward to seeing debate unfold on this bill and any remaining issues of concern discussed.

I am particularly pleased that the Labor and Human Resources Committee has chosen to adopt the language of amendment No. 541 introduced by myself, Mr. HARKIN, and Mr. KENNEDY, and known as the McCain-Harkin amendment. The language of this

amendment was incorporated as title IV in the Americans With Disabilities Act and requires that all telephone companies provide hearing- and speech-impaired individuals with telephone service that is equivalent to that enjoyed by all other Americans. The measure is a major step toward better integrating the hearing- and speech-impaired community into our ever advancing information age society.

Mr. President, over 125 years ago Alexander Graham Bell invented a device to assist his hearing-impaired wife to better communicate. What he invented instead we now know as the telephone. Ironically, this invention has proved to be the single greatest barrier to communication that over 26 million hearing- and speech-impaired individuals now face daily.

In 1934, Congress passed the Communications Act which ensured that all Americans would receive the benefits of Mr. Bell's invention. Since that time, the development of our phone network has been governed by the goal of universal telephone service. Yet, the special needs of this country's hearing- and speech-impaired community have received inadequate attention over the years. The inability of over 26 million hearing- and speech-impaired Americans to fully access the Nation's telephone system is a serious threat to our goal of connecting all Americans to the Nation's telephone system.

The inability to use the telephone has also hindered the deaf community's successful integration into today's world. Without access to the telephone, without the ability to call friends, family, businesses, and employers, one cannot participate actively or effectively in our society. Most of us take the phone for granted and countless times a day reach for it to conduct our daily business. It is hard to even imagine a single day without a telephone. But for over 26 million Americans, this fundamental necessity has been denied.

Title IV of the ADA now seeks to correct this inequity. The measure adds a new section to title II of the Communications Act of 1934 and imposes on all telephone companies nationwide an obligation to provide telephone service to hearing- and speech-impaired individuals. Now, communications-impaired individuals will be able to call someone across the street, upstate, or across the country. Equally important, hearing people will now be able to reach those with hearing or speech impairments. The measure requires that service be provided by all telephone companies whether local or interstate. It is essential to a hearing- or speech-impaired individual's well-being, independence, and full integration into society to be able to call, or be called by, anyone, anywhere, anytime. The gap between communications-impaired individuals and society at large will finally be bridged.

Current technology allows for a hearing- or speech-impaired individual to communicate with a hearing individual through the use of a relay system. This arrangement involves an operator who literally relays messages back and forth. The communications-impaired individual uses a telecommunications device for the deaf [TDD], a typewriter-style device that sends a typed message over the network. The operator reads the typed message to the hearing person and spoken messages are typed back to the TDD user. But technological advances, particularly ones less labor intensive, surely are possible and nothing in this measure is intended to discourage innovation in this area. This country has the finest and most sophisticated telephone system in the world and the hearing- and speech-impaired communities should benefit from advancing technology as well.

The Federal Communications Commission is granted sufficient enforcement authority in this legislation to ensure that telephone services for the hearing- and speech-impaired are provided across the Nation and that certain minimum Federal standards are met by all providers. The States are granted the flexibility, however, to certify to the FCC that services within the State meet the minimum Federal Standards. Once certified, States retain authority over these services. In this way, initiatives to provide service within individual States are not only preserved but encouraged.

By requiring telephone service to be truly universal throughout the country, this measure continues the goals begun in S. 2221, a bill that I introduced last year and that became Public Law 100-542 on October 28, 1988. There, we required that our Federal Government telephone system be accessible to hearing- and speech-impaired individuals. Here, we require the whole Nation to be accessible. In passing this new legislation, we take an even greater step toward granting the hearing- and speech-impaired community the type of independence and greater opportunities sought by other sections of the ADA.

Mr. President, I would like to point out support for this measure by the Competitive Telecommunications Association or "CompTel." This association, comprised of 130 competitive telephone companies from across the country, has submitted a letter applauding the McCain-Harkin telecommunications amendment to ADA and supporting as a worthy goal, the requirement that all telephone companies provide telecommunications services for individuals with hearing and speech impairments. I ask unanimous consent to have Comptel's letter of endorsement printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. McCAIN. Because of my belief in the importance of access to the telephone system by all Americans, I have also introduced the language of the McCain-Harkin amendment as an independent piece of legislation, S. 1452. I commend my colleague in the House, Congressman STEVE GUNDERSON, who has introduced companion legislation, H.R. 3171, which I hope will be added to the House version of the Americans With Disabilities Act.

I wish to take this opportunity to thank the Labor and Human Resources Committee, especially Mr. HARKIN, who has been of enormous assistance to me in this effort. His commitment to hearing-impaired and speech-impaired Americans is without equal.

I also wish to thank Senator HATCH and Senator KENNEDY for their assistance.

Mr. President, if we are to live up to those immortal words, that all of our citizens are entitled to life, liberty, and the pursuit of happiness, then we must truly understand that our hearing-impaired and speech-impaired citizens must have the ability to use the telephone in this modern age. I am, therefore, pleased that this has been made part of this legislation. I know that it will bring a new day and new opportunities for life, liberty, and the pursuit of happiness for our hearing impaired and speech impaired citizens.

EXHIBIT 1

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION,
Washington, DC, September 1, 1989.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: CompTel applauds and supports your amendment No. 541 which provides for telecommunications relay services in the context of S. 933, the Americans with Disabilities Act. Universal access to TDD relay operator services is a very worthy goal. It is important that the obligation to provide this service is equitably shared by all common carriers, as your legislation provides, so that the burden does not fall primarily on interexchange carriers.

While the FCC will ultimately determine questions of funding for the relay operator/translator service, we caution that any rate regulation of underlying interexchange transport services would be a mistake and could foreclose economically efficient private sector initiatives in this area.

It has been a pleasure working with you and your staff on this matter of national public importance in telecommunications.

Sincerely,

JERRY MCANDREWS,
President.

CATHERINE R. SLOAN,
Legislative Director.

Mr. HARKIN. Mr. President, I just want to thank the distinguished Sena-

tor from Arizona for all of his work, his efforts, and his diligence in ensuring that—I guess it is now section 4; it was title 5—section 4 is in the bill regarding a relay system for telecommunications. Senator McCain has been a leader in this area. It was his interest in this area and his efforts that really brought to fruition this whole section 4 that really will provide a national system of relay systems for the deaf and the hearing impaired so that they can communicate not only with each other but with those who are not hearing impaired.

I wish to publicly thank the distinguished Senator from Arizona for all of his work in this area and compliment him on it.

Mr. DURENBERGER. Mr. President, I regret not being able to be here earlier in the morning for the opening statements of my colleagues, but we were involved in the Finance Committee on a hearing on catastrophic health insurance in which the Senator from Arizona has also been very involved, as have others in this body.

But I rise, Mr. President, as the first Republican cosponsor of this legislation to indicate that we have labored hard and long to build bipartisan support as well as President Bush's endorsement for the Americans With Disabilities Act. None of that came very easy. I am sure that there are still some who believe that we did not do enough in this bill.

But, as for me, I think the product before us today is as carefully a balance of the needs and concerns of all of the parties involved as I have seen in the 11 years that I have been here in the U.S. Senate. I think it is a balance that at least I hope will be maintained through the amendment process or the potential amendment process today on the floor.

The bill before us is truly one of the most significant pieces of legislation for any American but, obviously, especially for people with disabilities.

The need for the legislation is clear and was articulately stated by those who have been the pioneers in this area, the chairman of the Labor and Human Resources Committee, the chairman of the subcommittee on which I am the ranking member, and my colleague from Utah, who has committed a good part of his career to civil rights in the Senate, as well.

People with disabilities remain the only major segment of our society who can be outrightly discriminated against. We heard much testimony to this fact before this committee. A young woman with cerebral palsy was turned away from a movie theater. When her mother called the theater to find out why, she was told outright by the theater owner that "I don't want her in here, and I do not have to let her in." And he was absolutely right. Today, he can refuse admission to his theater to a person with a disability. Current law allows every theater owner, restaurant owner in this country not receiving Federal aid to turn away a person simply because they have a disability. This bill would say such conduct will not be tolerated.

As I have traveled around Minnesota discussing this bill with my constituents, and having hearings in all parts of the State, I have become increasingly aware of the subtle—and sometimes not so subtle—means of discrimination against persons with disabilities. I have heard stories about how persons with disabilities will only apply for positions in firms that are wheelchair accessible—about the woman with a master's degree in food science and nutrition who ranked in the top 10 percent on the registered nutritionist examination who—because she had cerebral palsy—was told she was not qualified for a job in a metropolitan hospital. They said her fellow employees would not be comfortable working with her.

It is clearly time that we as a society say that behavior and discrimination of this type will not be tolerated Period.

But this bill is not only about making those of us without disabilities aware and accountable for our actions toward persons with disabilities. This bill is about changing the lives of persons with disabilities. It is about opening opportunities for persons with disabilities by removing the shades that those of us without disabilities wear mostly out of ignorance. It is a statement of our social values. The United States values the contributions made to this country, its part, its present, and particularly its future, by persons with disabilities.

I have heard from many people about what it means and how it can change a person's life when they are judged not by their disabilities but by their abilities and are given a chance to prove themself in a job or in an independent setting.

A constituent of mine told me about his job with the Thein Well Co. in Rochester, MN, doing janitorial work. He talked particularly about the willingness and the patience of his employer in helping him deal with perceived and real barriers in the workplace and how that employer increased his confidence to do his job and to live independently even outside of work. He said, and I quote, "one of the best benefits I have noticed is that my coworkers treat me like 'one of the guys' and my disability seems to disappear."

Mr. President, it is hopes and opportunities like these that this bill will create by opening up all aspects of life to persons with disabilities—from employment to transportation to as seemingly simple a task as getting a sandwich at the corner deli.

The bill before us today is the product of many hours of work between the administration, the business community, the disability community, and others in an effort to establish comprehensive civil rights for persons with disabilities.

The bill's genesis is in the proposals by the National Council on the Handicapped—a 15-member commission appointed by President Reagan. They were introduced as a bill last year by Senator Lowell Weicker. The changes since then have been many. We have eliminated many of the cost concerns that were troublesome to small businesses. In doing so we have won the support of President Bush. We were able to do this while still maintaining the basic principle of this legislation—to provide a clear and comprehensive prohibition against discrimination against persons with disabilities.

Much of the credit for the bill before us today should be given to the chairman of the Labor and Human Resources Committee and especially the chairman of the Subcommittee, Senator Harkin and to his very special staff. Senator Hatch and Senator Bob Dole have worked many hours to get us where we are today.

I want to express, on behalf of all of us in this body, a special gratitude to a Member who is no longer here. There has been no Senator in the time I have been in the U.S. Senate who has not only cared as much about people with disabilities, but actually stood on the floor and in committee meetings until we did something to rectify the injustices against people with disabilities.

I regret very much that Lowell Weicker is not here as the ranking member of this subcommittee and member of the Labor and Human Resources Committee, as chairman and then ranking member of the Subcommittee on Appropriations, who has done incredible things to lay the groundwork for not only this bill, but to make Americans raise their values for people with disabilities.

I think the substitute package, Mr. President, is a very good one.

The key to a good bill is a series of good compromises with the result that both sides feel that they have won. To the credit of all involved, I believe we have accomplished this. The compromise bill before us today strikes a sound balance between the needs of the disability and the business communities. Mr. President, it is a delicate balance, a balance that I believe must remain intact during the course of this debate.

BILL BACKGROUND AND CONTEXT OF THE COMPROMISE

The compromise legislation has taken significant steps to address the concerns individuals had with the bill as introduced.

The business community raised concerns that the bill as originally introduced would provide relief to persons who believe they are about to be discriminated against and a business inability to guard against such speculative complaints. This language was eliminated.

The original language of the ADA found the failure to make reasonable accommodations an act of discrimination. Concerns were raised about the lack of distinction between intentional and unintentional discrimination under this language. The term "failure" was deleted to show the committee's intent that those making good faith efforts with the unintended wrong results not be penalized.

Concerns were raised about the meaning of a number of terms within the bill including reasonable accommodation, undue burden, and readily achievable. These terms were better defined to give entities covered under this bill a clearer understanding of their obligations.

Concerns were raised that the bill as introduced did not give employers enough time to adjust to the requirements of the bill—especially for small business. To address these concerns, the effective date was extended to 18 months after enactment. The regulations are due 12 months after the enactment date in order to provide time to educate covered entities about their obligations under the act. Also, for the first 2 years after the effective date, employers with 25 or less employees are exempt from coverage. This exemption drops to 15 thereafter to comform with existing civil rights practice.

Mr. President, we also took great effort to address the concerns many had over the punitive nature of the remedies section. Instead of allowing punitive and compensatory damages as originally introduced, the bill before us today parallels current civil rights legislation under title II and VII of the Civil Rights Act of 1964. In addition, under the public accommodations title of this bill the Attorney General is given authority to bring pattern and practice cases and award civil penalties. This change will help avoid some of the excessive and unnecessary litigation the original bill would have caused.

Because of the uncertainties of cost and manufacturing capabilities of requiring every new over-the-road bus to be accessible to persons in a wheelchair, the time period for compliance was extended to 5 years for large companies and 6 years for smaller companies. A study was also included to review the access needs and the most cost effective methods of making over-the-road buses accessible. In addition, an entity operating a demand response system need not meet the requirements of every new bus being readily accessible if it can prove that its current operations meet a level of service equivalent to that provided to the general public. It is important to note that the requirements in the bill before us are a far cry from the bill's original requirement to retrofit all existing buses.

These are but a few of the changes we have made to this bill. I believe we have overall developed a fair, balanced, and equitable approach to providing civil rights protections to persons with disabilities.

Mr. President, in 1964, we passed civil rights protections based on race, color, religion, sex, or national origin. In 1967, under the Age Discrimination and Employment Act we added age. Nearly a quarter of a century later, it is time to complete that commitment to individual rights we began so long ago and add persons with disabilities to the list of those protected from unjust discrimination. I urge my colleagues to join me in support of S. 933.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I want to thank my friend and colleague from Minnesota who is also the ranking member on the subcommittee for the handicapped for his strong support of this legislation right from the beginning. I have known Senator DURENBERGER a long time and consider him a friend and, indeed, one who really has the interest of the disabled community at heart. He has always been a strong fighter for social justice and economic justice. I know personally he is very deeply committed to this bill and to the prospect that we will pass this legislation and bring disabled individuals into the full measure of our economic and social life in America. I just want to publicly thank Senator DURENBERGER for his efforts and his strong leadership in this area and for his continuing friendship to all in the disabled community.

Mr. DURENBERGER. I thank my colleague very much.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in strong support of the Americans With Disabilities Act. I wish at the very outset to commend our colleague from Iowa for his distinguished leadership in this matter as chairman of the Subcommittee on the Handicapped and, of course, Senator KENNEDY who is the chairman of the full Committee on Labor and Human Resources, for their leadership in bringing this historic, and it is historic, piece of legislation to the floor of the U.S. Senate.

Mr. President, I also would be remiss if I did not take a moment to recognize as well the tremendous contribution of our former colleague in this Chamber, Senator Lowell Weicker who for years—literally years—fought in support of this legislation. I think it is highly appropriate that during the markup of this legislation before the Labor Committee that virtually every member of the Senate Labor and Human Resources Committee recognized the contribution of Senator Weicker over the years in fighting for the disabled and fighting particularly for what is included in this bill. I wanted to take a moment to thank him and I know I thank him on behalf of all of us.

Mr. President, as chairman of the Subcommittee on Children and Families, I would like to address the important changes that this bill will bring about in the daily lives of children with disabilities and their families. The Americans With Disabilities Act will create an expanded community for children with disabilities and their families. The bill is a statement that we want their participation and that they have a place among all of us. The ADA requires that children with disabilities, regardless of the severity of their disabilities, be permitted to utilize the same public services that others without disabilities utilize as a matter of course.

They are to be permitted to utilize the same health clinics, day care centers, playgrounds, schools, restaurants, and stores that they would normally utilize, in their communities, if they were not disabled. Children will have new social and recreational and educational opportunities that most Americans take for granted. No longer will children be subjected to forced busing to programs outside of their neighborhoods because that is where the "handicapped" program is located.

Such practices severely stigmatize children with disabilities and their families. While it may be more cost efficient in some cases to congregate services for children with disabilities in a centralized location, it has been determined that such costs are outweighed by the benefits to children with disabilities and their families of being able to obtain services in their neighborhoods with their friends and family around.

Discrimination affects not only people with disabilities themselves, but tends to have an effect on the entire family. If a parent with multiple sclerosis who uses a wheelchair is unable to get into a restaurant because of steps, or if a child with cerebral palsy or retardation is refused service at a restaurant, a family activity can be ruined for all.

The Task Force on the Rights and Empowerment of Americans with Disabilities received countless letters from parents, grandparents, siblings, and spouses of persons with disabilities. One such letter, from a person living in Illinois, typifies the hardships suffered by families of people with disabilities:

As a spouse of a person with a disability, I am offended by the constant choice we have to make concerning our family activities. There are too many instances where we as a family are denied because we wouldn't be separated from our disabled family member. Our children and myself are just as much victims of discrimination as my wife. I am appalled that we are put in the position of destroying family unity, to enjoy commonplace activities. Pass the ADA and bring families together.

It is precisely that kind of discrimination that the ADA is intended to eradicate. These opportunities and choices are fundamental to the lives of all persons with disabilities and their families.

Children with disabilities and their families need the Americans With Disabilities Act. I hope that our colleagues would give this their strongest support when it comes up for final passage.

I also point out, Mr. President—I should have at the outset—that Senator ORRIN HATCH, of course, of Utah played an instrumental role. President Bush has been tremendously supportive. The recommendations of the Commission established by President Reagan in no small measure are included in this legislative proposal. So we are bringing together disparate political voices once again about a matter that will undo a tremendous amount of hardship and pain of families and individuals across this country. I am honored and pleased to be a cosponsor of this effort.

Mr. CRANSTON. Mr. President, it is with great pride in our progress so far and with great hope for what is yet to be accomplished that I speak in strong support of the Americans With Disabilities Act of 1989.

Let me first congratulate the sponsor of the bill, the chairman of the Subcommittee on the Handicapped, the Senator from Iowa [Mr. HARKIN], for the outstanding job he has done in developing this legislation. I know that he and the chairman of the Labor and Human Resources Committee, the Senator from Massachusetts [Mr. KENNEDY] have spent countless hours developing this legislation and negotiating with a wide array of interested parties regarding its provisions.

As a result, the measure before us is an excellent compromise that has wide bipartisan support and that sets forth a strong and comprehensive statement against discrimination of individuals with disabilities. It is fair and it is reasonable. Contrary to claims by some, it would not force businesses to make alterations at great expense. Rather it challenges them to develop creative ways to afford people with disabilities every opportunity to participate in American society. The managers of the bill have once again displayed their tremendous skill and knowledge—as well as their commitment—in crafting this legislation.

Mr. President, this bill represents a major advance. It is the culmination of efforts throughout the 1970's and 1980's—beginning with the development and enactment of the Rehabilitation Act of 1973, and its landmark section 504, of which I was a principal author—to secure the civil rights for disabled persons. Section 504, has been highly successful in opening up thousands of educational and employment opportunities to people with disabilities in federally funded programs and activities. But it clearly does not go far enough.

S. 933 would build on 16 years of successful experience with section 504 to eliminate disability discrimination in the private sector and all levels of units of Government. This legislation says to millions of Americans who are disabled that it will no longer be allowable or acceptable for you to be discriminated against—that you will enjoy the same rights and access to jobs, transportation, public accommodations, and housing as do all other Americans.

Mr. President, as we approach the 1990's, people with disabilities are still too often brushed aside and pushed down—and not permitted to use their capabilities to the fullest. When given the opportunity, people with disabilities have made great contributions to the United States and, indeed, to the world. Unfortunately, so many barriers and obstacles exist that those opportunities are still too few and too far between. That has been society's great loss.

We have a great opportunity before us to rectify this situation, and we must seize it.

Mr. President, there are two issues, in particular, with regard to the ADA that I would like to highlight.

MAKING TRANSPORTATION ACCESSIBLE

Mr. President, people with disabilities are particularly dependent on transportation services. Full participation in our society requires the ability to move freely within it—to work, shop, or attend cultural and sporting events. This ability has too often been denied to disabled individuals by transportation systems that fail to provide adequate, accessible services. As the chairman of the Subcommittee on Housing and Urban Affairs of the Banking Committee, which has jurisdiction over mass transit issues, I have long sought to make mass transit more available to disabled individuals and believe that the ADA would go a long way toward achieving that goal.

Specifically, the ADA would require that, when transit operators buy new buses, they must be accessible to people with disabilities, including people who use wheelchairs. Such lift-equipped buses would be required to be maintained and operational as much as possible. No retrofitting of existing buses would be required. The underlying principle is that it is reasonable to require purchase of wheelchair lifts when buses are new and that through attrition—over a 10- or 12-year period—our Nation's bus fleets will gradually become completely accessible.

My home State of California has had such a mandate for lift purchase on new buses for many years. Bus systems in California are increasingly providing a greater degree of accessible service to people with disabilities. With the ADA, residents of all States will enjoy the same freedom of movement.

The bill would also require public transit authorities to provide paratransit services for those who cannot use mainline transit unless the provision of these services would impose an undue financial burden on the transit authority. The bill would also require that rail cars and key rail stations be made accessible to persons with disabilities.

Mr. President, the office of the Parliamentarian informs me that the Banking Committee's jurisdiction is not in any way altered by inclusion of mass transit provisions in this bill. Since 1964, Congress has sought, through the Urban Mass Transportation Act [UMTA], to require that special attention be given to the needs of persons with disabilities in the planning and design of mass transit facilities and services. When the Senate Banking Committee considers reauthorization of UMTA early next year, I am confident that the issue of access by disabled persons will continue to receive close review by the committee. I am also confident that the Banking Committee will maintain active oversight of the mass transit provision in the bill now before us.

COVERAGE OF PEOPLE WITH AIDS AND INDIVIDUALS WHO ARE INFECTED WITH THE HUMAN IMMUNODEFICIENCY VIRUS

Mr. President, I am particularly pleased that this bill covers individuals with AIDS and individuals who are infected with the HIV virus. Over the last 8 years I have heard countless tragic stories of people with AIDS losing their jobs and their homes, being refused services, and being made to feel like outcasts. The absence of the experience of some form of discrimination often appears to be the exception not the rule.

The discrimination is predominantly the result of fear—unfounded fear—about AIDS. Over and over again, our public health officials have told us that AIDS cannot be casually transmitted. As the epidemic continues into the 1990's, it is more important than ever that people with AIDS be protected from discrimination in order that they may be able to continue to work and participate as long as they are able. In addition, the Presidential

Commission on the HIV Epidemic, as well as numerous public health officials, concluded that Federal protection from discrimination is essential to furthering public health efforts to stop the spread of AIDS.

The ADA builds on strong legislative, judicial, and administrative history with regard to coverage of people with AIDS and those who are infected with the HIV virus under antidiscrimination statutes. Consistent with that history, S. 933 would provide—as described in the committee report (S. Rept. No. 101-116 pps. 22-24)—that people with AIDS and those who are infected with the virus are covered under the first prong of the definition of disability as people with impairments that substantially limit major life activities.

For all persons with contagious diseases and infections, however—as section 103(b) of S. 933 as reported makes clear—an employer may have a qualification standard requiring that a person with such a disease not pose a direct threat to the health or safety to others—that is, must not pose a significant risk of transmitting the infection to others—which cannot be eliminated by reasonable accommodation. As medical evidence concerning HIV has shown, however, AIDS carries very low risks of transmission. Therefore, the applicability of such a standard to an individual infected with the HIV virus should be rare.

CONCLUSION

Mr. President, over the last two decades, people with disabilities have made great advances and are increasingly being recognized for their abilities, not their disabilities. But the progress needs to be accelerated. Although I recognize that we cannot legislate attitudes, we can make sure that unenlightened attitudes no longer find support in the law.

Mr. President, expanding our civil rights laws to encompass disabled Americans will profoundly change American society. This bill would not only impact the lives of 40 million disabled Americans, but rather all Americans—because we will all be enriched by the active participation of disabled Americans in all aspects of society.

Enactment of S. 933 would be a major stride forward toward our goal of a United States where all citizens have an equal opportunity to pursue the American dream. I urge all my colleagues to support this landmark legislation.

LEGISLATIVE BRANCH APPROPRIATIONS, 1990

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 3014, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3014) making appropriations for the legislative branch for the fiscal year ending September 30, 1990, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Wilson amendment No. 698, regarding reduction of congressional newsletter costs.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under the consent agreement that was entered yesterday, the only amendment in order to the bill is the Wilson amendment, which relates to mass mailings.

I understand that Senators STEVENS and MOYNIHAN wish to address this issue raised by the pending amendment. After that, I hope we can vote on the amendment, if necessary, and on the bill because we do not have a lot of time to go to conference and resolve some of the contentious issues in this bill with the House. We do not have much time. The fiscal year is quickly drawing to a close. I hope all Members will keep that in mind.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York [Mr. MOYNIHAN].

Mr. MOYNIHAN. Mr. President, I believe the distinguished senior Senator from North Carolina is on the floor and is standing. Is it his wish to make a brief statement with respect to another matter that the distinguished managers might accommodate?

Mr. REID. Will the Senator from North Carolina yield for a brief inquiry?

Mr. HELMS. I do not have the floor.

Mr. MOYNIHAN. I yield to the distinguished manager.

Mr. REID. Will the Senator from New York yield to the Republican manager of this bill for a brief statement?

Mr. MOYNIHAN. It is an opportunity which rarely comes to the Senator from New York, and an honor and a pleasure.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma.

Mr. NICKLES. Mr. President, I appreciate the Senator's accommodation.

I would like to echo what Senator REID has said. We have one amendment pending. That is Senator WILSON's amendment. I understand Senator STEVENS wishes to speak on the amendment. I understand Senator MOYNIHAN wishes to speak on the amendment. I do not know if others do. I think it is important that we finish the bill, and as quickly as possible. I understand Senator HELMS wants to speak on another issue for a few moments. But I hope our colleagues who have an interest in this amendment would come to the floor, speak on it, and that we would vote on the amendment; that then we would vote on final passage, pass this bill, and allow us to go to conference and work out the differences with the House. We are going to have a very significant conference because we have significant differences on mail and other issues. So I hope we will comply with Senator REID's request, and my request, and move as quickly as possible.

I thank the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York [Mr. MOYNIHAN].

Mr. MOYNIHAN. Mr. President, with the kind of indulgence of the most distinguished managers of the legislation before us, I rise to offer an historical note to the debate that we are now engaged in concerning the amendment of the distinguished Senator from California. I do this with a more than average concern that we may be dealing with a faux pas of congressional activity.

At stake is a congressional effort that has been going on from the very beginning of the American Congress. One which is integral to the relations between Members of Congress and the citizens of their respective States, or their districts, in the case of the House of Representatives. In part, we may tend to minimize its importance, and, indeed, sometimes to trivialize its importance by deprecation, if I might put it that way.

Certainly, we have heard suggestions on this floor that the printed mailings from Members of Congress to their constituents can somehow be represented as an abuse of office or an offense against the good reputation of this body. No, sir. The printed newsletter, known at the time as a circular letter, is as old as our Constitution, minus 2 years, and as old as Congress.

In the very earliest hours of the American Congress, we learned something which no other representative body had before. We came upon a system of communication between Members of the body—then in Philadelphia, now in Washington—and a great continent that would grow greater as it expanded westward into the Pacific and up to the Arctic.

This is no small thing. This has been a form of teaching in our democracy, a form of informing, a form of learning what persons in constituences thought. This is a form of congressional speech.

I ask the distinguished managers to take note. This is a form of congressional speech. To strike this privilege, to impair this privilege—which is a privilege of the American people, not of the Members of this body—to hear directly about events they would otherwise not know of or would have

great difficulty to learn about, to infringe on a right of speech. And this at some considerable peril, because freedom of speech is an absolute, or as near as we can come, with Justice Holme's conditions. With great care ought we tamper with such speech.

Here is a fact, Mr. President: The circular letters, printed on a page and mailed under the frank to persons with addresses but not individually addressed, began with the beginning of the American political system. We have a record of them.

The University of North Carolina Press, under the prodigious efforts and energies of Noble E. Cunningham, Jr., has published a three volume collection of circular letters of Congressmen to their constituents, 1789 to 1929. This is published for the Institute of Early American History and Culture at Williamsburg, VA.

The first such letter, Mr. President, I am going to take the liberty of reading into the RECORD. As I do so, I send a message of fraternal greeting over 2 centuries to Representative John Sevier of North Carolina, who on the 10th of January 1791 sent this printed letter from Philadelphia, where Congress was sojourning for 10 years.

"Dear Sir: The news of this place is not very material. Many things are before the Congress, but not much finished." If I may interject, Mr. President, they did not get their work done as expeditiously then as we do now. "A land office bill is before the House, and 30 cents per acre is proposed to be the price of our Federal lands." Thirty cents an acre for the Northwest Territory is what we were talking about, much of which was claimed by the State of Connecticut. But this claim did not prevail, as the distinguished presiding officer, the former chief legal officer of that commonwealth knows. "An excise bill is also on the carpet, for imposing duties on distilled spirits, stills, et cetera, though this, I hope, will not reach us."

That was Mr. Hamilton's excise bill, and it directed attention to distilled spirits and stills.

"The news from Europe is, that Britain and Spain continue indefatigably their preparations for war; and it is thought, by many, that blows will inevitably follow."

"I am of the opinion, should the excise bill be passed—" back to real matters, excise bills, taxes of course,—"we shall derive great benefits from it, (proviso) we can keep clear ourselves," because Mr. Hamilton had plans for import tariffs which was a tax on external goods as well as excise taxes, a tax on internal goods.

Sevier continued, "as it would have a great tendency to encourage emigration into our country, and enable us to sell the production of our own distilleries, lower than our neighbors."

This is a somewhat indirect allusion, Mr. President, which no citizen of North Carolina would have failed to note in those days. The largest distilled product consumed on the Atlantic Seaboard, where 80 percent of the population lived, was rum from the West Indies. Its main competitor was whiskey from the hills farther inland. The only way to bring grain to market was in that form. And it was a great concern of this decade, the first decade of our Congress, to prepare a market for, as he says, "the production of our own distilleries."

We do not think in such grossly parochial terms any longer in our newsletters. They did so in those days and perhaps some even do today.

The simple point was that we had a Member of the House saying, "I think it would be better to put a tax on foreigners than to put a tax on Americans." We do not think like that any longer of course, but they did in those days.

Notice, he mentions emigration. For if there were high tariffs, people who made things would come inside the United States in order to continue to make them. It is an idea that had never occurred to me. I clearly did not know it was an idea at the time that a high tariff wall would encourage emigration because people who are on the other side would want to come on this side. You learn. You learn what is on the minds of the Congress in ways you would never otherwise do so.

I will quickly conclude Mr. Sevier's letter. He says in the second paragraph—and there are only two:

"General Harmer's expedition is much debated by many here, and it is generally believed, that the Northern Indians will be very troublesome the ensuing summer."

This is General Harmer's expedition against the Miami Indians which was thrown back by the Indians with the loss of some 180 soldiers in Harmer's group. It was the beginning of the assault on the Miami Indians in the Northwest territories and is not a particularly honorable episode in American history, in my view.

"A very cold winter here, which in great measure prevents the sending of letters; but shall do myself the honor of communicating to you, every thing of importance that occurs, on every suitable opportunity. Kentucky is to be admitted a member of the Union in June 1782." And then, in that nice flourish of the 18th century, it takes four lines in the printed letter, Mr. President to conclude. "I have the honor to be, sir, with sentiments of esteem, and much regard, your most obedient and humble servant, John Sevier."

Mr. President, I ask unanimous consent that the full text of John Sevier's letter to his constituents be printed at this point in the RECORD.

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

PHILADELPHIA, *10th January, 1791.*

DEAR SIR,

The news for this place is not very material. Many things are before Congress, but not much finished—A land office bill is before the house, and 30 cents per acre is proposed to be the price of our Federal lands. An excise bill is also on the carpet, for imposing duties on distilled spirits, stills, &c. though this, I hope, will not reach us. The news from Europe is, that Britain and Spain continue indefatigably their preparations for war; and it is thought, by many, that blows will inevitably follow. I am of opinion, should the excise bill be passed, we shall derive great benefits from it; (proviso) we can keep clear ourselves, as it would have a direct tendency to encourage emigration into our country, and enable us to sell the production of our own distilleries, lower than our neighbours.

General Harmer's expedition is much reprobated by many here, and it is generally believed, that the Northern Indians will be very troublesome the ensuing summer. A very cold winter here, which in a great measure prevents the sending of letters; but shall do myself the honor of communicating to you, every thing of importance that occurs, on every suitable opportunity. Kentucky is to be admitted a member of the union in June, 1792. I have the honor to be, sir, with sentiments of esteem, and much regard, your most obedient and humble servant,

JOHN SEVIER.

Mr. MOYNIHAN. Mr. President, there arose on occasion a problem which I think is still very much among us. It is a perfectly legitimate problem. You sent out your letter but you were never able to send it to everyone. You missed some. Those you missed wondered what was going on: "Why did you send a letter to a neighbor and not to me?" As it is today, that was a formula for losing votes, which even then was a matter of concern to Members of Congress.

How to deal with this question. Well, we have the testimony of Congressman Matthew Lyon of Kentucky. I quote him from the introduction of the Editor.

Lyon says, "I manage it in this way. When I am canvassing my district—" and canvasisng districts was a term even then, sir,—"and I come across a man who looks distantly and coldly at me, I go up cordially to him and say 'my dear friend, you got my printed letter last session, of course?' 'No, sir,' replies the man, with offended dignity, 'I got no such thing.' 'No!' I cry out with passion, 'No!' Damn that post office.' "Then I make a memorandum of the man's name and address, and when I get back to Washington I write him an autographed letter, and all is put to rights." Blaming the bureaucracy did not begin with the Reagan administration, Mr. President.

Just one last point, if I may ask the indulgence of the managers: These were no trifling things. These were the

first statements of Members of a democratically elected body to their constituents. They were much more important than newspaper stories, which were then always anonymous. For at this time, the press was partisan and news accounts were no more objective than speeches on this floor.

As we all know, Thomas Jefferson and John Adams reconciled toward the end of their lives after long and bitter disputes in the 1780's. They began a correspondence which is one of the treasures of American political history and of the world. In 1813, John Adams was reflecting on how history might view his Presidency and he wrote Jefferson. Above all, Jefferson wanted to help. And there is old John Adams in Quincy, way up North and, of course, Jefferson is now retired. He has just retired to Monticello in the Piedmont, in the South.

"But above all," writes Adams, "shall I request you, to collect the circular Letters from Members of Congress in the middle and southern States to their Constituents? I would give all that I am worth for a complete collection of all those circular Letters."

Five years later, Adams tried to acquire sources for early American history. He called attention to these letters. He said, "You inquire for sources. I know of none better than American Journals' Newspapers and Pamphlets; next to them the like kind of Publications in France, Spain, Holland, and England; but the best of all, are the circular Letters from Members of Congress to their Constituents in the Southern and Western States with Some Reinforcements from the middle States."

That is John Adams—John Adams, second President of this Republic.

Can the frank be misused? Of course. Can newsletters be trivial? Yes. But they are a form of speech and communication from Members of this Senate and the other distinguished body that has been in place for two centuries, never impaired. A right of speech as free as the speech on this floor. And we have John Adams' testimony that if you wanted to know what was going on in those days, you read those letters.

I hope this body would not casually impair a right of speech for a serious, but in the life of the Republic we hope, a transient purpose. Nor harm a form of communication that is as old as this Republic and is as important as any of the forms of political address with which I am aware. Perhaps other Members share that view.

Mr. President, I rise simply to state that if it becomes necessary to vote on this matter, as a matter of concern for the principles involved, I shall vote, "no."

Mr. BRADLEY. Mr. President, the amendment before us is nothing more than posturing.

We all know, Mr. President, that we need to increase the ante in the war against drugs. I have proposed several ways to pay for the war on drugs. Tuesday night's speech by the President gives me hope that more attention will be focused on this devastating national problem. But the way to fight drugs is not by finger pointing or by grandstanding on the floor of the U.S. Senate. The challenge is to get results, and to get results the administration and Congress must work together to make sure that the President's proposal—and a lot more—happens. It is time for our Nation to rally around our families, our communities, our law enforcement agencies, and those State and local officials who are on the frontlines fighting the drug wars.

Mr. President, let us get on with the war on drugs.

As to the value of communicating with our constituents, Mr. President, I believe that eliminating funding for congressional mailings of 500 or more pieces is not in the best interests of the public. If this amendment passed, I would not be able to inform New Jerseyans about a variety of issues that directly affect their lives. For example, to support this amendment would mean that:

I could not have informed New Jerseyans about "How To Protect Themselves From Toxic Chemicals."

I could not have informed New Jerseyans "How To Protect Your Home From Radon Contamination," a serious health problem for many parts of our State.

I could not have informed older New Jerseyans how to protect themselves from overpayment of income taxes, nor could I have given them important consumer information about common-consumer frauds targeted against senior citizens, nor new information prepared by the Senate Aging Committee on prescription drugs.

I could not have informed New Jersey parents how to protect their children from abduction—information which was reprinted and widely distributed in New Jersey schools.

I could not have invited New Jersey high school students each year, as I have done, to participate in the high school leadership conferences. I could not have invited New Jersey male and female students who received college athletic scholarships to conferences that help them better prepare to get a real education in school. I could not have challenged elementary schools in the State to participate in the New Jersey Geography Bee I initiated or the geography class projects competition which I sponsor which have engaged thousands of New Jersey's young people in getting more out of their education.

I could not have informed New Jersey health professionals about how to safely dispose of medical waste so they do not inadvertently contribute to the problems that have plagued our beaches and shoreline.

I could not have notified New Jerseyans about the opportunity for them to meet with me in their own communities to discuss matters of concern to them.

These mailings must be used judiciously. I have supported limitations on the use of mass mailings, but I cannot support efforts to eliminate all funding for this valuable service for constituents. I believe constituents have a right to be informed about laws that affect them and be given an opportunity to ask questions, get answers, and have access to information developed by the Federal Government which affects their daily lives.

In sum, Mr. President, this amendment would distance a Senator from his or her constituents, and that is a big mistake for a representative democracy.

Mr. SIMON. Mr. President, I had not intended to speak on this and I know the politically prudent thing is to just go along on this. But I believe it is fundamentally unsound. We talk about the melting pot strength of this country. I think some people think it is some kind of a breeding process where people from Sweden and Germany and Italy and other countries came here and intermingled and that is what America became.

The melting pot strength of America is the cross fertilization of ideas. Anything that discourages the free flow of ideas in this country weakens the fabric of this country. It is for that reason that I have opposed consistently increases in second-class postage rates for newspapers and magazines and increases in book rates. Yes, I voted for increases in other major packages in other things. But anything that causes less of a free flow of ideas is something that is not in the national interest.

Now, have there been abuses? No question about it. And where there are abuses, let us deal with those abuses. I do not have the answers just off the top of my head, but I know the answer is not to stop the flow of mail and information to our constituents.

Then there is one other thing that I have to add here. There is an assumption that if we stop the mass mailings we are going to have all kinds of savings. In fact, this is kind of a disguised subsidy for the Postal Service and if we do not have this, we are just going to have to vote direct subsidies to the Postal Service. I think that is the reality and we should not fool ourselves.

Now, I do not question the motivation of my colleague from California, for whom I have great respect, but I

think this is not in the national interest.

You ask a very fundamental question really posed by my colleague from New Jersey in outlining some of the things that he has done: Will the people of New Jersey be better off or worse off if those things do not reach them? And I think the answer is they will be worse off. And then you ask the second question: Does this discourage or encourage the free flow of ideas in this country? The answer has to be it discourages them. I think it is not a sound amendment. I am going to vote against it.

Mr. WILSON. Mr. President, I feel compelled to respond to at least some of the statements that have been made by friends and colleagues with whom I clearly entertain an honest disagreement. I have no wish to offend them, but I will have to say that I can think of nothing more presumptuous than to suppose that were the American people suddenly denied congressional newsletters they would be struck ignorant. The idea that the free flow of ideas depends upon congressional newsletters strikes me as absurd.

Let me point out there are dozens of Members of this body who do not send newsletters. I doubt that very many of them have been overwhelmed with complaints from their constituents. Indeed, I will warrant that there have been far more complaints sent to the senders of newsletters protesting what many conceive to be a waste of taxpayers' dollars.

But the purpose here is not really to denigrate the kind of congressional newsletters that are being sent out, because, inevitably in doing that, though I think there is abundant evidence to suggest abuse, we will include some who have made a conscientious effort to use their newsletters in a very careful way for the benefit of their constituents.

I am reminded of a bumper sticker that I saw not too long ago that said, "Do something about junk mail. Tell your Congressman to quit sending it."

But the fact of the matter is there are very conscientious Members who seek to use newsletters to inform their constituents of matters not just of interest but of importance to them. However, I hope no one deludes themselves that that is the sole or even the primary means by which people gain information in this Nation. It is not.

It strikes me ironic that my friend from Illinois, whose motivation I certainly do not challenge, comes to us with a background in the news media. My friend from New Jersey has been most effective in holding news conferences. They are well attended. He seems fully capable of getting across his message. There are newspapers in his State as there are in mine as there are in every State. There are radio stations, there are television stations.

Not only is this gallery active and energetic in its efforts to report the news, insofar as this body makes it, but let us be perfectly honest: The American people do not depend, their lives do not depend, upon the receipt of congressional newsletters.

There have been abuses. There have been congressional newsletters, and in my observation, far more from the other House than from this one, but neither of us can escape the charge that they have been thinly veiled campaign pieces.

But really the whole point, Mr. President, is that they cost a great deal of money, money that could be spent for a variety of much more worthwhile purposes. And one of the most worthwhile, one that we have adjudged to be a priority, to which we have rhetorically referred to as a "war on drugs," requires that we make an effort to reallocate resources in order to provide new prosecutors, new drug enforcement agents, assistance to State and local governments in their law enforcement efforts, new money for expanded education and rehabilitation, to simply generalize the different facets of the approaches that must be taken in what can be called a war on drugs.

So, the purpose is to take money from this function, not simply because it has been abused, though many think that that is reason enough. But, specifically this amendment would seek to take the money from that function and not, I repeat, from the sending of responsive mail, individual letters, even press releases so that people can communicate with their constituents.

It is to, instead, deal with the phenomenon of the mass mailings, and to take that money and spend it instead on the rehabilitation of crack mothers, mothers who engage in substance abuse during pregnancy, producing children, as a result, who will go through a lifetime of diminished capacity, permanently, severely impaired. By that I have specific reference to conditions of mental retardation, physical deformity, susceptibility to stroke, emotional and developmental disorders of a serious nature.

Mr. President, what we are talking about is the fact that annually in this Nation, almost 400,000 crack babies, or babies suffering fetal alcohol syndrome, are born. They constitute, at a rate of more than 1,000 a day, more than 1 in every 10 live births in America annually. I think that is an incredible and a tragic statistic.

The good news, Mr. President, is that it is preventable by a program of aggressive outreach and education so that pregnant women who are using can be informed that they are risking grave peril to their unborn children; by seeking to persuade them to come in early enough in their pregnancy to avoid that kind of serious, irreversible damage, by seeking treatment and becoming drug free, at least for the period of the balance of their pregnancy.

And, in the tragic situations where they are not strong enough to do so, to seek that early treatment, to deal with those mothers who have in fact given birth to an addicted child, to provide the kind of rehabilitation that hopefully will prevent the recurrence of that personal tragedy.

Mr. President, what it is costing us to deal with these children is an incredible amount of money. It costs about $30,000 on the average to provide the neonatal intensive care required to deal with an addicted baby.

The estimate is that in the United States, we are spending in excess of $13 billion just on the care of these children as infants, not to mention projected costs which make it clear that these neonatal expenditures are just the tip of the iceberg.

These are children who face a lifetime of diminished capacity. In my State, in California, school districts are suddenly finding that the cost of special compensatory education is skyrocketing, because suddenly they are confronted with a new population in the schools that require this kind of special attention because of learning disabilities associated very clearly with the substance abuse of their mothers during pregnancy.

Mr. President, the purpose of this amendment is to provide a tenfold increase in the pathetically inadequate amount of money that Congress has thus far authorized and spent for the purpose of dealing with these crack mothers, these substance-abusing mothers who are producing, on an enormously and frighteningly increasing basis, what may very well be a lost generation.

We cannot afford that, Mr. President. And I am referring not just to the tax dollars or the charitable dollars that could otherwise be spent for other purposes. How much better, Mr. President, to spend money in educational ways that allow a child, a healthy child, to make full use of his or her capabilities. How much better to prevent drug use than to have to do this.

But in this instance, rehabilitation is prevention; it is a prevention of the recurrence of this tragedy. And it is a prevention of not only the expenditure of dollars, but the prevention of the incalculable, immeasurable human misery that begins with the penetrating, shrill cry of these babies as they writhe so violently in their cribs, experiencing withdrawal after birth, that they must be swaddled in order to

avoid damaging themselves in their cribs.

Well, that is only the beginning. And there are many in this Nation in a position to know who have made the statement, in full compassion, that perhaps the most fortunate of these children do not survive.

In a hearing before the subcommittee that was chaired by my friend from Wisconsin, the junior Senator from Wisconsin, one of the witnesses from his home State, the director of Public Health for the city of Milwaukee, made the prediction that America will soon see the return of the orphanage as one of our fundamental institutions because of the difficulty, if not the impossibility, of placement in foster care homes of this growing population of damaged children who will be all but impossible to place.

Let me confirm his judgment in that, at least to the extent that one statistic, taken from my State, from the county of Los Angeles, makes terribly clear the increase, and it makes it clear why he predicts the return of the orphanage. Between 1981 and 1987, in Los Angeles alone, there was an 1,100-percent increase in the placement of addicted babies in foster homes. But the experience in those foster homes has been that foster parents really are not equipped to deal with the special problems of those children.

Mr. President, there is already in the pages of America's newspapers, in the commentary on nightly television news, on morning radio broadcasts, an abundance of evidence that this problem which we have thus far ignored, at least to the extent of addressing it adequately, is one that the American people are, in fact, learning about.

But in the 1988 omnibus drug bill, we recognized it to the extent of authorizing a demonstration program. But the dimensions of that program, Mr. President, are so grossly inadequate to the need that the time has come for us to do something serious about it, and this is not posturing, I will say to my friend from New Jersey; it is a tenfold increase, and it is only the beginning.

But what we have done thus far, if the world is interested in knowing, is we have spent $4.5 million in response to 130 applications, half of which were found worthy and only 15 of which could actually be funded because of the inadequacy of the funds which the Congress had made available.

Mr. President, this is a beginning. It is a tenfold increase over that $4.5 million. It is a downpayment on the kind of investment in preventing human misery and God knows what costs in tax dollars that this Nation will otherwise surely suffer if we do not make that beginning. That is what this amendment is about. It simply says there are more important things than sending congressional newsletters and one of those that calls out for immediate response is the funding of a program to deal with the prevention of the addicted and damaged child whose mother engages in substance abuse during pregnancy.

Let us not make it more complicated than it is. Let us understand that this is an opportunity for Congress to do something that we have talked about doing. We talked at great length, but I must say that the talk, I am sure, to our constituents has begun to have a very hollow ring. There are people in this House and in the other one who have criticized President Bush's program as not spending enough. Well, I would simply point out that it is spending more than Congress has authorized under the 1988 omnibus bill. But what we seem to fail to understand is that for all the rhetoric, Congress has repeatedly wasted every opportunity to vote more money by allocating funds from some other spending. I would also say that even when faced with the opportunity to increase taxes, Members of this body rejected that.

So it seems that they are not willing to engage in even what is a beginning step to address what is clearly a critical need, one that calls out in the name of humanity for a beginning that hopefully will lead to the prevention of an incredible personal human tragedy and a national mortal shame.

Mr. President, I will just have to say to you that it would appear that congressional junk mail is not only self-indulgent as the drug use that is so often condemned in it, it seems as if it is almost as addictive. It is time we broke the habit; it is time that we spent taxpayers' dollars in a way that they think a priority. I will tell you that it does not induce great euphoria in the recipients. But the real point is simply that we must, if we are to have any credibility, begin to address what is one of the most urgent aspects of the overall problem of drug use in America and one, which in terms of the kind of concern that has been expressed often on this floor, is especially poignant because the victims are themselves entirely blameless. They are the innocent infants who enter the world not by choice but through the choice of their mothers addicted in a way that means that they will never enjoy the kind of life that they might otherwise have expected.

If this be posturing, Mr. President, then I think Congress needs to do more of it. There are abundant opportunities for us to communicate with our constituents, and I note that among the dozens who send newsletters, the vast majority, if not all, have been returned by their constituents.

If someone is concerned about inviting participation of schoolchildren in a spelling bee or in some other educational opportunity, under this amendment, 499 letters could be sent to 499 school districts making such an appeal. If someone wants to warn his constituents of the dangers of toxic chemicals, let me just say, as commendable as I find that, I think his constituents will find it more valuable if we begin to work on programs that prevent the ingestion of toxic chemicals, the most toxic of which I can think of at the moment is crack.

So let us break the habit, Mr. President, and let us begin to help those who need help in a way that will prevent the recurrence of this tragedy of addicted infants.

Mr. President, I ask unanimous consent that Senators BOREN and KASSEBAUM be added as cosponsors. It is appropriate, I might add, that Senator BOREN be involved in this legislation because he has repeatedly demonstrated great leadership in efforts to reform the abuse of congressional newsletters.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I would like briefly to address the problem of substance abuse by women of childbearing years.

Tuesday evening the President mentioned this issue and I would like to take a moment to commend him for his attention to this particular population.

I chaired a Governmental Affairs hearing on this issue in July. Those hearings documented what we all feared: there are no easy ways to solve this problem. To prevent this substance abuse will take incredible coordination of services: Research, education, housing, nutrition programs, job training, job placement and, perhaps most importantly, health care and residential treatment for both women and their children. There are many pressure points.

After the July hearing, I joined with 29 of my colleagues from both sides of the aisle in sending a letter to President Bush, asking that the drug strategy include plans for preventing and treating substance abuse by women of childbearing years.

This week, a bipartisan, bicameral group of Senators and Representatives sponsored a briefing on the issues surrounding substance abuse by pregnant women. Health care, social service, and legal experts fielded questions regarding the present crisis and the policies needed to respond. Their message was clear: policies that encourage these women to come in to the system—as opposed to policies that are punitive or that drive them away from serv-

ices—are critical. And, as with so many things these days, additional resources are desperately needed.

Yesterday, there was a great deal of talk here on the floor about this particular problem. There was a commendable effort to increase the money available for demonstration programs to treat pregnant and postpartum women and their children. It is a start, and it is something that is under consideration by the chairman and ranking minority member of the Labor, Health, and Human Services Subcommittee on Appropriations.

As the President said in his address to the Nation, winning this war demands everyone's involvement and cooperation. That is precisely why so many Members of Congress have come together to form a bipartisan, bicameral coalition to attack this problem on all fronts. We welcome the help of all of our colleagues in this effort.

Mr. President, I ask unanimous consent that a copy of the letter to President Bush be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, August 7, 1989.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing to focus your attention on the public health crisis of drug and drug-related alcohol use—particularly "crack" cocaine addiction—among women of childbearing years and their infants.

The National Institute of Drug Abuse household survey underscores the need for strong federal leadership in prevention and treatment of substance abuse in this particular population. Across the nation, the sharp rise in alcohol and drug abuse among women of childbearing age is overwhelming our health care and child welfare system, crippling a generation of children and undermining our economic future.

According to the recent survey, ten percent of all babies are exposed to cocaine prior to birth. Combined with the impact on infants of maternal use of alcohol, marijuana, heroine and metaamphetamines, the figures are staggering. These families, caught in the clutches of poverty and addiction, are also at high-risk of AIDS. Nearly 80% of women and children with AIDS became infected as a direct result of drug use. Further, here in the District of Columbia, the skyrocketing infant mortality rate—twice the national average—has been directly linked to maternal alcohol and drug abuse during pregnancy.

Richard Schweiker, former Secretary of the Department of Health and Human Services, in testimony before a Presidential Commission on Drunk Driving, said that, ". . . in the 1950's it was considered a national emergency when 200 young Americans a year aged 15 to 19 died from polio. At the height of the polio epidemic in 1952, 3,000 Americans in all succumbed to the disease, and we rushed to develop a vaccine . . ." The public health problem we are facing today kills seven times more neonates every year than the total number who died at the height of the polio epidemic. Yet, there is no sense of urgency or outrage surrounding this preventable tragedy!

Neither is there any focus on the fiscal costs associated with these tragedies. Even by conservative estimates, maternal drug abuse adds at least $3 billion a year to hospital bills. The combined effect of AIDS and drugs has many inner-city health care systems on the verge of collapse. Add the additional health care, special education, and social services necessary to prepare infants exposed to drugs for kindergarten, and the budget costs are truly overwhelming. The cost-effectiveness of comprehensive treatment services for pregnant addicted women, by comparison, cannot be disputed.

Federal agency coordination and increased financial support for model treatment programs for pregnant substance abusing women and their infants must be a key component of your comprehensive drug strategy to be released September 5, 1989. In addition to increased funding for fiscal years 1990 and 1991, serious consideration should be given to funding more of the approved applications for grants under the Office of Substance Abuse Prevention model demonstration program for fiscal year 1989.

In order to meet the special needs of this population, programs must be family-oriented and community-based. Providing treatment and support services needed to keep families intact must be among our top priorities. And when family systems have disintegrated, we must develop foster care networks and foster group homes that are far more humane and cost-effective than long term acute care. It is our hope that as you consider allocating scarce resources among the various weapons critical to our war on drugs, you will keep the care needs of our children and families in the forefront of your mind.

It is also our hope and expectation that you will give national priority to preventing and treating maternal alcohol problems. Fetal alcohol syndrome is the known leading cause of mental retardation in this country. Several times the number of infants born with fetal alcohol syndrome have fetal alcohol effects, and the related costs are also significant.

Our nation's children are our most valuable resource. By preventing and effectively treating drug abuse, thereby reducing exposure of infants and children to this public health crisis, we will be taking the first of many steps on our Nation's road to recovery.

We urge you to make a strong commitment to financial support of coordinated, comprehensive prevention and treatment services for women of childbearing years who are addicted to drugs and alcohol. It is critical that this commitment be reflected in your comprehensive drug plan. We assure you that such immediate action will receive our full support.

Our children, and millions of American families, deserve no less.

Sincerely,

Herb Kohl, John Glenn, William V. Roth, Jr., Edward M. Kennedy, Sam Nunn, Paul Simon, Nancy Kassebaum, Orrin Hatch, Bill Bradley, Mark Hatfield, Bob Graham, Terry Sanford, Dennis DeConcini, David Pryor, Joseph I. Lieberman, Alan Cranston, Barbara Mikulski, Claiborne Pell, Don Riegle, Jr., Brock Adams, Richard C. Shelby, Christopher J. Dodd, Carl Levin, John D. Rockefeller IV, Dave Durenberger, Jeff Bingaman, William Cohen.

Mr. KOHL. Mr. President, Americans now rank drug abuse as the No. 1 problem facing us today. The President echoed this concern 2 days ago as he announced his comprehensive, national strategy to fight the war on drugs. The President's plan may not be perfect, but we can all applaud his attempt to take comprehensive, coordinated action.

In particular, I wish to commend the President for recognizing the public health emergency posed by pregnant addicted women and their infants. From Washington, DC, to Wisconsin to Washington State, as many as 375,000 infants a year are born exposed to illegal drugs. And, the National Institute on Drug Abuse recently released a survey showing that 10 out of every 100 pregnancies in this country involve exposure to cocaine alone.

During a July 31 Governmental Affairs Committee hearing I chaired on this issue, health, child welfare, and drug treatment experts testified about the serious repercussions of substance abuse during pregnancy. Addiction to crack cocaine has triggered a resurgence of maternal deaths in this country. Infants born exposed to crack and other illegal drugs are at much higher risk of poor health, developmental delays, and even death. Here in our Nation's Capital, the soaring infant mortality rate is directly tied to maternal drug and alcohol abuse. And, fetal alcohol syndrome remains the leading known cause of mental retardation nationwide.

The vast majority of drug dependent pregnant women identified in hospitals have been the victims of physical, sexual, and emotional abuse. The family center in Philadelphia asserts that 80 percent of the drug addicted mothers they treat have been severely battered by their spouses. Such women need housing, food, job training and education. Many lack access to prenatal care. Most need to learn parenting skills and basic facts about child development. Some lack the social support and networks that could propel them into treatment. Even after treatment, others must return to housing where there is constant exposure to drugs and threats to physical safety.

Added to the human tragedies for these mothers and babies are staggering social and fiscal costs. Maternal drug abuse adds at least $3 billion to hospital bills alone. Abandoned infants are flooding an already overburdened foster care system. And, when you take into account the health care, special education, and social services essential to preparing infants exposed to drugs for kindergarten, the budget costs go right off the charts. By comparison, the cost effectiveness of comprehensive treatment programs for

pregnant addicted women cannot be refuted.

Last month, the distinguished chairs of the Governmental Affairs and Labor and Human Resources Committees, Senators GLENN and KENNEDY joined me in sending a letter to President Bush. Along with 26 of our colleagues from both sides of the aisle, we asked the President to make increased financial support for maternal drug treatment programs and coordination of family support services a key component of his drug plan.

And earlier this week, I joined with Senators GLENN, KENNEDY, HEINZ, KASSEBAUM, DECONCINI, SIMON, SPECTER, MOYNIHAN, and MIKULSKI as well as Representatives MILLER, RANGEL, DOWNEY, MORELLA, and VENTO in organizing a congressional briefing on the crisis posed by pregnant addicted women and their children. These Members represented Senate Committees including Governmental Affairs, Labor and Human Resources, Finance, and Judiciary; and House committees including the Select Committee on Children, Youth and Families, the Select Committee on Narcotics, Ways and Means, Education and Labor, and the Congressional Caucus for Women. Organizations participating in the briefing included the Association of Junior Leagues International, the National Council on Alcoholism, the National Association for Perinatal Addiction, Research and Education; the American Public Welfare Association, the American Bar Association, the National Commission to Prevent Infant Mortality, and a wide range of health, child welfare, and legal groups.

Thus, there can be no doubt about the serious concern over drug addicted mothers and children in both Congress and the White House. But this concern must lead to immediate steps toward putting prevention, outreach, and treatment programs into place. Despite approving 72 applications for model drug treatment programs for pregnant women, the Office of Substance Abuse Prevention was only able to fund 18 grants for fiscal year 1989. In the most optimistic scenario, those 18 projects will serve 900 women and infants on an outpatient basis. Yet in Milwaukee County in my State of Wisconsin alone, there are 500 pregnant addicted women who will need residential drug treatment this year.

An additional $20 million appropriated for these programs in fiscal year 1990 would allow OSAP to fund all those applications with merit. And, by authorizing and appropriating $45 million for OSAP pregnancy drug treatment demonstrations in 1990, an additional 5,000 women and infants could be served in both residential and outpatient settings.

Mr. President, I urge my colleagues to join me in addressing this complex issue.

Mr. STEVENS. Mr. President, the Senator from California has said let us not make this more complicated than it is. I am of the opinion that that is a good approach to this amendment. Let me describe the amendment. The first portion of this amendment deals with mass mailings. It would prohibit the use of the franking privilege for unsolicited mass mailings.

The precedents of the Senate in this area of mass mailings are very interesting. This amendment does not cover junk mail, as the Senator from California indicates. It covers mass mailings. Mass mailings mean any mailing within a 30-day period of more than 500 pieces in which the content of the matter mailed is substantially identical.

Let us take, for example, the catastrophic health issue. My understanding is I have received about 10,000 letters so far on that issue.

I see the distinguished Senator from Texas on the floor. It is coincidental. The Finance Committee is exploring this issue and is proceeding to find a way to deal with this issue. As a consequence, my response has been to my constituents—we have your letter and we understand your problem. We are waiting for action from the Finance Committee. We believe they will come up with a new solution and we will report to you what they decide. If you do not like that, let us know. There will be a second letter going out.

Now, mass mailings under the definition of the Senate include followup responses to prior mail. This is what chapter, section 1, of the ethics handbook says with regard to mass mailing. I hope the people managing these Senate offices try to understand that the amendment of the Senator from California will make things much more complicated than they are now. Because it says no unsolicited mass mailings can use the frank.

Now, a franked mailing sent to persons who have sent letters or postcards is not a mass mailing. That is the first response. Any subsequent franked mailing sent to these persons after the initial response would be a mass mailing if the mailing is more than 500 pieces of substantially identical content and is sent within a 30-day period. In other words, if I send out more than 500 followup letters to people on one issue in a 30-day period, that is a mass mailing, and the amendment of the Senator from California makes the whole mailing illegal, prohibited during the 30-day period. I send out 250 the first day, maybe 150 the next and 100 the third day. Anything after the third day makes the whole thing wrong. It is any mass mailing that exceeds 500 pieces. It is not junk mail. It is not newsletters.

I think the Senator from New York has made a great contribution to our understanding of the history of this body by his reference to the circular letters. I enjoyed his presentation. That is the history of newsletters.

The amendment of the Senator from California deals with mass mailings. I currently have pending in my office a whole series of mass mailings that I intend to make. They are issues that are of great concern to Alaskans, and as the Senator from New Jersey has pointed out, we have problems that we have to deal with subjectively. One of them, as I mentioned yesterday, is the oilspill. I have received literally thousands and thousands of questions from Alaskans on the oilspill. We have responded to those once.

A bill has now been passed by the Senate. At the time that bill passed I sent a followup letter to those people telling them what the Senate had done. We will go to conference and bring back a final bill. Ultimately, I will be able to report to them what the final action of Congress has been which I hope the President will approve. Throughout the stages of the legislative process we have a duty to report to our people. Those are not newsletters, but they are mass mailings. I do not think the Senate understands the amendment of the Senator from California because he is again saying they are subject to the precedents of the Senate. Unsolicited mass mailings under the precedents of the Senate mean a followup letter to anyone on the same issue. If you write to more than 500 people, that is a mass mailing. And the amendment of the Senator from California says that is specifically prohibited. It is not simply newsletters he is talking about. Anything that involves any more than 500 mailings on the same subject within 30 days is mass mailing.

I think the Senator from California has made this issue much more complicated than it really is. If he wants to prohibit newsletters, he should say so. Maybe he wants to prohibit junk mail. However, I find it hard to interpret junk mail in relationship to the mailings that go from the Senate. Maybe some things these people send out could be referred to as junk. I have sent out copies of the CONGRESSIONAL RECORD, not the whole RECORD but statements made in the CONGRESSIONAL RECORD, not only just made by myself but by other Senators that are of great interest in the debate, to people in my State who do not receive the CONGRESSIONAL RECORD. We reproduce a page or a single statement that has been made and send it to people who have written to me about specific issues.

Now, to me that is a matter of communication.

Let me talk about the second portion of this amendment, and I would hope that the Senator from California would be willing to enter into a little

dialog about this. The first part of the second section says, "All moneys heretofor appropriated for this purpose are hereby rescinded."

That purpose is unsolicited mass mailing. However, there is no funding specifically for the unsolicited mass mailing. There is funding for total use of the frank.

The only fund that is out there now that is undesignated is the one for mailings. Currently it has been overdrawn. There are no surpluses available. The House and the Senate have spent more money actually than was appropriated for this year.

The amendment goes on to say that these appropriations may be made available for the purpose only of funding any program authorized by Congress to fight the war on drugs. Since there is no money left, how does that get money to the pregnant and post partum women and their infants, as the Senator suggests?

The third portion of that single section, it is all one sentence by the way, says specifically that $45 million is hereby appropriated for the Model Projects Programs for Pregnant and Post Partum Women and their Infants, to be spent pursuant to 42 U.S.C. 290 aa-13 to remain available until expended. That is strictly legislation in an appropriations bill dealing with matters to be covered by another bill that will come before the Senate.

One of the interesting things about this debate to some people should be that we have divided appropriations for the Federal Government into 13 separate bills.

There are rules that exist to prevent what the Senator from California is trying to do. The Senator from California wants to defeat unsolicited mass mailings. So he says he wants to transfer that money, and specifically $45 million of that money to a purpose I think we would all support. As a matter of fact, I have amendments on other bills that specifically deal with these issues and with the fetal alcohol syndrome. I think they have general support, and I do not remember anyone ever taking money away from those programs. As a matter of fact, the Appropriations Committee on two occasions so far has added money to those programs this year.

But what this amendment does is to appropriate in a legislative branch appropriations bill money for a model projects program that is covered by the Labor-HHS appropriations bill.

There is a rule against legislating in an appropriations bill. Unfortunately, because of the way the time agreement was entered into last night, I am informed I cannot raise that point of order now. I regret that. I want the Senate to know that I am going to explore later with the leadership this concept of waiving all points of order with a statement that the amendment of the Senator from California will be "in order." We had no objection to the amendment of the Senator from California being in order to be presented. But that did not mean that we intended to waive all points of order against it, and there is a specific point of order, and it is the one that the Senate ought to think about. I want to say to the Senate that in the whole time I have served on the Appropriations Committee, which I believe is now 20 years, I have never seen this done in the Senate.

Regarding the substance of the amendment, I think we ought to consider it carefully what we are doing. I can see the B-2 issues before the Senate from the Defense bill with people saying, "We don't quite have enough votes to defeat the B-2, but if we put that money into AIDS, maybe we can defeat the B-2. I can see people who do not like the wild horse program in the Bureau of Land Management funding saying, "We do not like that money in there, but we can't defeat it. It's a traditional program. But if we put the money into the fetal alcohol syndrome, maybe we can pick up enough votes to do it."

Sugarcoating ought not to determine the passage of an amendment. I do not mind facing the issue of mass mailings or the issue of newsletters. But to tell people that what is really presented here is an amendment to provide $45 million for the model projects program for pregnant and post partum women and their infants, on a legislative branch appropriations bill; how would you get it before the Senate on a legislative branch appropriations bill without an amendment?

The first thing you do is delete something that you do not like, as I said, and then try to do that. Look at Rule XVI—and I urge Members of the Senate to do that. We ought to be on our guard against such concepts.

I do not have any disrespect for my friend from California. He is my friend. I hope he will be after this is over. I believe that some people question our debates on the floor, why we are antagonistic, and whether we mean what we say when we say our friends are our friends. The Senator from California is my friend, but I could not disagree more with the tactic that he has used. I think it is my right and duty to say so to the Senate, and try to make the Senate understand what it is doing if it passes this amendment.

In the first place, it is going to say that any Senator who writes a letter and asks the staff to send that letter to every person who in the past corresponded on that subject—and there are more than 500 such letters mailed in 1 month—he is going to be subject to the prohibition under this which means he is subject to disciplinary action by the Ethics Committee for having violated the law that pertains to mass mailings. It is not just newsletters. This will circumscribe the way we do business in responding to our constituents. If the Members of the Senate do not understand it, they are going to make a very serious mistake.

If the Senator from California would modify his amendment and say that upon enactment of this act, use of the franking privilege for any newsletters is prohibited, that might be another matter. If he wants to hit newsletters, he should say so. If he wants to hit junk mail—and I would like to have him define that—he should say so. But when he uses the phrase "unsolicited mass mailings," he is going right into the handbook that we give out to everyone of our new employees, talking about what is a mass mailing.

We have defined it. We have presented some decisions for the Ethics Committee on it, and this is wrong. The Senator from New Jersey is absolutely right. This will prevent a Senator from responding to his constituents in the manner that he should.

A person who has written to me on this problem of catastrophic health care to whom I have written, "I will keep you informed as this issue is decided by the Senate," under the amendment of the Senator from California, is not going to get an answer if that person writes to me again. He will not hear from me on the same subject unless he or she writes to me again. Why should we put that burden on a constituent who has asked? Incidentally, the Constitution protects correspondence of a constituent. It would have been an interesting thing for people to refer to that.

But why should we put an additional burden on them? Why should we put an additional cost on our system? I tried to explain this yesterday, too—a mass mailing in the sense I am talking about now where we already received thousands of letters. The response goes through our computers, their names and addresses are there, and we do not have to have anyone go back and type them again. We can take a followup letter and put it into the system. Those go out through the mass mailing process. They are the least expensive way of dealing with that subject.

If we can't send followup letters and even only half of them write back to us again, we have to have people open the mail, log them in, and have us respond to them individually. Again, the cost to the Senate and the taxpayers is more than dealing with the way we do it.

I was pleased to see that the Senator from New Jersey handles his mail the same way my office does, and I presume a great many Senate offices handle it in the same way. We try to be cost efficient in responding to con-

stituent mail. But those followup responses are, under the amendment of the Senator from California, unsolicited mass mailings, and prohibited.

I still do not know how to deal with the second portion of this amendment. It is subject to a point of order, which I cannot raise. It would make available $45 million for a program that I have supported, continued to support, and want to support.

I wonder if it is going to work. I wonder if the mere fact that the Senator from California, who has been an opponent of newsletters for years, coming in here now with an amendment dealing with all mass mailings and attempting to put the money that was previously appropriated for that use into the postpartum program that I presume all of us support, I wonder if we would pass an amendment. I wonder if we are going to respond to that kind of sugarcoating.

If we do, we are going to set a precedent around here that we will hear time and time and time again. I have to say to the Senate that if it works for the Senator from California, the Senator from Alaska is going to attempt the same thing. I have several programs that I do not really support, have voted against, and I think maybe if we tied it to something else, we might finally defeat them. Is that the way we want to do business? However, I do not ever remember doing that. I am reluctant to start down that line. If that is what the Senate wants, it has the chance to decide it today.

I have to commend the Senator from California. He deals with both at once. His second provision not only makes money available to fight the war on drugs, but specifically makes $45 million available to help pregnant and postpartum women and their infants. I know that is a double sugarcoated pill.

I have to say to my friend from California, as a practical matter, I do not like this procedure, Mr. President. I think we ought to face up to the question of how do we communicate with our constituents.

I would be willing to bet that the Senators who represent massive States have FAX banks now. I saw one the other day. It is possible to feed into a FAX bank the telephone numbers of FAX machines in big offices and to send to that FAX bank a FAX of a mass mailing. However, I have to tell you that a FAX bank would not do much good in Alaska.

You know what that costs, Mr. President, to send one FAX on that basis? You are making a telephone call, in effect, to all of the numbers that are fed in there, and it is sending out over the Senate telephone lease lines these FAX's to all those FAX machines in populous States.

Maybe this Senator ought to come in and limit the use of FAX's in Senate offices. They are no good to me. I understand the Senator from California does not use newsletters. He does not use them. I do not blame him if he does not want to use them. He probably uses a FAX a lot more than I do, and I will bet he uses the telephone a lot more than I do. Maybe I should look at the telephone records and find out how much his telephone bill is and decide whether that is fair as compared to my telephone bill, which are both paid by the taxpayers.

I have an analysis of mass mailings. It is interesting to see who uses the frank in terms of mass mailings. This does not talk simply about newsletters. It talks about mass mailings. I am glad to show it to any Member of the Senate. It is a document analyzing mass mailings by postage cost and per capita cost. It shows that the people who used it most in terms of the number of times to constituents, different constituents, are the people from small States. They are the people from North Dakota, South Dakota, Nevada, Montana, Wisconsin, Minnesota, Alaska, Idaho. They are the smaller States.

If you want to look at the other thing, though, in terms of the total cost of mass mailings, the people who spent the most money are the people from the larger States, although they use it less frequently, obviously. When they have one mailing, it costs more money than most small States spend all year. It is a communications device, and that is my point, not something used uniformly throughout the Senate, not any more uniform than the use of transportation money. That is one reason I commend the members of the committee for having put into the report the provision that is there.

I had a lot of calls last night from members of the press that indicated perhaps I was going to filibuster this bill. If this is a filibuster, you ain't seen nothing yet. But I did not want to try to delay and prevent passage of this bill. I have no intent to do that.

Mr. NICKLES. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. NICKLES. I would echo the Senator's comments. He has not filibustered. He has discussed this amendment. There are several Senators that are supposed to be at the White House at 2 o'clock, this Senator included. We would like to have a vote on the amendment. It is the Senator's intention to discuss this bill further.

Mr. STEVENS. I am almost finished. I would be happy to have a vote at your convenience, as far as I am concerned. I think in fairness the Senator from California should have an opportunity to respond. It is not my intention to delay the vote. I leave it to your—if you can get a unanimous consent to vote between now and 2 o'clock, it is all right with me.

Mr. NICKLES. I think it is our hope that we would vote in the next few minutes or possibly postpone the vote for another hour or so. That would be my hope, that we would vote within the next 5 minutes.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Frankly, I already responded to much of what the Senator from Alaska has said.

The PRESIDING OFFICER. The Chair reminds the Senator from California that the Senator from Alaska retains the floor.

Mr. STEVENS. The Senator from Oklahoma wants some time.

(Disturbance in the gallery.)

The PRESIDING OFFICER. The Sergeant at Arms is asked to restore order in the gallery.

The Senate proceedings will continue and the Senator from Alaska may proceed.

Mr. STEVENS. Mr. President, I make this final point. I respect my friend the manager, and his colleague from Oklahoma wants to speak. I want the Senate to know that in the report the committee has directed the Senate Rules Committee and the House Commission on Congressional Mailing Standards to prescribe additional rules and regulations with respect to official mail in the Chambers. The Rules Committee has agreed with this. The bill also directs such rules and regulations to provide for allocation of the franking appropriations for the two Chambers among their respective Members and for charging a Member's official office expense account for the cost of official mail sent by the Member in excess of his or her allocation.

In other words, we have set up a mechanism now in this bill to assure that each Member who exceeds the allocation that is made to him or her will be charged against that Member's official expense account. It will for the first time put an absolute ceiling on mailing costs. I think we have been extremely responsive and responsible in presenting this legislative appropriations bill.

I would urge the Members of the Senate to oppose the amendment of the Senator from California. It is not a drug amendment. It is not an amendment for post partum women or infants. It is not an amendment dealing with newsletters. It is an amendment that is so confused it is hard to interpret.

Mr. NICKLES. Mr. President, for information of Members I think they should be aware it is our intention to have a vote in the next few minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I certainly do not want to delay my col-

leagues, and I know we are fast closing to a time for a vote on this particular amendment. I simply want to add my voice in support of those who are offering this amendment.

I am proud to cosponsor this amendment. I think that we simply cannot face the taxpayers when we have something in terms of $2 million a year on mail cost back to the Senate when we are spending approaching $70 million a year on mass mailings that have not been solicited by the public themselves.

An analysis of those Senators that most use the mass mail and newsletter services indicates that a much higher proportion of the mass mailing and sending out of newsletters is done by those who are up for reelection, those in the election cycle.

That is a coincidence. I do not think that the public thinks that a coincidence.

The citizens are saying to us: "We want you to do your job. We do not want you to campaign for reelection using the taxpayer money."

I think this is a very good opportunity for us to take a very positive step forward in terms of the image of responsibility and integrity for this body to say that we are no longer going to add millions of dollars to the cost of operating the Government to send out mailings that have been unsolicited by the general public.

I followed this practice myself. April 1984 was the last time that I sent out newsletters to my constituents. I have had no complaints from them for not sending out newsletters. In fact, I have had commendation for not spending their tax dollars to send them something they not need to receive.

We have many channels of communication open to use that do not cost the taxpayers money, many ways we can inform constituents about what we are doing.

It is time for us to set an example in these tough budgetary times; it is time for us to do away with what is literally privilege for us, time for Congress to stop using taxpayers' funds to campaign for reelection.

This amendment is a step in the right direction. I hope it will be adopted.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from California.

Mr. WILSON. Mr. President, I will take less than 1 minute. There is little confusion on the floor, except in the mind of the Senator from Alaska, that this is a bill about newsletters and it is a bill about the tragedy of addicted children and those suffering the addiction of their mothers.

The time has come for us to deal with this problem. The Senator from Alaska has serious questions. I refer him to the CONGRESSIONAL RECORD and to the legislative counsel who also disagrees with his analysis.

We should not wait. We should vote and we should vote to end these newsletters and hopefully to begin to end the tragedy of babies born in this Nation innocently addicted and facing a life incapacitated as a result of substance use of mothers during pregnancy.

Mr. DOLE. Mr. President, just 2 days ago, the President of the United States unveiled a plan to fight the war on drugs. The critics immediately began screaming for more money. In looking over the stories in today's news, the value of the President's initiative has been lost in squabbles over the number of dollars going into this or that program.

As I said yesterday, the war on drugs should not become an excuse for raising taxes. We are facing a crisis of epic proportions—every single one of us realizes that the future of our country is at stake.

This is no time to throw budgetary restraint out the window. Americans want us to live within our means. They do not want more taxes! They want us to make the tough choices about spending priorities.

I do not argue with the distinguished Senator from Alaska that these mailings have value. Communicating with constituents is important. But, the real issue here is about priorities. The Senator from Alaska knows that there are Members in both Houses, on both sides of the aisle that take full advantage of the frank, and those who abuse it.

I am convinced that the people in my home State would rather help a newborn baby who is an innocent victim of her mother's drug problem than pay to have a stack of self-promoting mail from the members of the Kansas congressional delegation clog their mailboxes.

This is a golden opportunity for us to show Americans that we are willing to make a sacrifice—to tighten our own belts—to help in the fight against drugs.

The President's program contains a funding plan and additional sources of funds suggested by the Office of Management and Budget. We should not feel limited by that list. I want to put my colleagues on notice that we will be looking for additional sources of funds—in executive travel, for example, or child-care credits for wealthy individuals—to fund a comprehensive assault on the drug problem.

I support Senator WILSON's amendment and hope that we will have a chance to vote on this issue shortly.

Mr. LEVIN. Mr. President, I support the Wilson amendment, which would eliminate unsolicited mass mailings by Members of Congress. The amendment would transfer the $45 million saved by eliminating these mass mailings and would direct it toward helping to pay for the 1988 ominbus drug bill, in particular for substance abuse treatment for pregnant women and their infants.

I believe that the House and Senate should be on an equal footing when it comes mailing privileges. I also think it is important in light of the Federal budget deficit and in light of the competing demands for Federal resources that both the House and the Senate be more frugal in how much they spend on mass mailings. This amendment achieves equity between the House and Senate at the same time that it revises our priorities, and for those reasons, I support it.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from California.

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 Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the the Senator from Colorado [Mr. ARMSTRONG], the Senator from Montana [Mr. BURNS], the Senator from Idaho [Mr. MCCLURE], the Senator from Delaware [Mr. ROTH], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

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

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—83

Bentsen	Fowler	Mack
Biden	Garn	McCain
Bingaman	Glenn	McConnell
Bond	Gore	Metzenbaum
Boren	Gorton	Mikulski
Boschwitz	Graham	Mitchell
Breaux	Gramm	Nickles
Bryan	Grassley	Nunn
Bumpers	Harkin	Packwood
Burdick	Hatch	Pell
Byrd	Hatfield	Pressler
Chafee	Heflin	Pryor
Coats	Heinz	Reid
Cochran	Helms	Riegle
Cohen	Humphrey	Robb
Conrad	Jeffords	Rockefeller
Cranston	Johnston	Rudman
D'Amato	Kassebaum	Sarbanes
Danforth	Kasten	Shelby
Daschle	Kennedy	Simpson
DeConcini	Kerrey	Specter
Dixon	Kerry	Symms
Dodd	Kohl	Thurmond
Dole	Lautenberg	Wallop
Domenici	Leahy	Warner
Durenberger	Levin	Wilson
Exon	Lott	Wirth
Ford	Lugar	

NAYS—8

Bradley	Lieberman	Simon
Hollings	Matsunaga	Stevens
Inouye	Moynihan	

NOT VOTING—9

Adams	Burns	Roth
Armstrong	McClure	Sanford
Baucus	Murkowski	Sasser

So the amendment (No. 698) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, one of the functions of GAO is providing an objective, independent, and impartial forum for the resolution of disputes concerning Federal procurements. I am concerned that GAO in its bid protest process is creating, or may already have created, an atmosphere wherein they are no longer viewed as an effective forum.

Increasingly, even though they feel a protest is justified, frustrated contractors are choosing not to exercise the protest procedures because they feel there is little chance of success. In their view, the GAO bid protest process is not conducive to getting all the facts out.

I understand that the bid protest process must be controlled, so that the procurement process is not unduly hampered by protest actions. But I also recognize the need for and importance of a credible and accessible process to review questionable procurement actions. It is important that these two concerns remain in balance. I question whether that balance exists today.

In light of this concern it would be appropriate for GAO to reassess the bid protest process. It may be appropriate to establish a more effective screening process to quickly identify and rule on those cases that can be decided on the available record and to take a greater role in those cases that merit further investigation.

Mr. NICKLES. Mr. President, I would like to associate myself with the comments of my colleague, the Senator from Wisconsin. It is important that smaller companies, who seek to do business with their government, have confidence that the GAO is an effective forum for the resolution of problems concerning the bid process. I thank my colleague for his helpful observations, and I assure him that our subcommittee will take steps to see to that any problems associated with the GAO bid protest process are rectified.

The PRESIDING OFFICER. 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 PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, a Senator has asked for a rollcall vote on final passage and I therefore request the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on final passage of this bill, H.R. 3014, occur at 7 p.m. this evening and that the bill be laid aside until that time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMERICANS WITH DISABILITIES ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

S. 933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
Sec. 204. Regulations.
Sec. 205. Enforcement.
Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.
Sec. 302. Prohibition of discrimination by public accommodations.
Sec. 303. New construction in public accommodations and potential places of employment.
Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
Sec. 305. Study.
Sec. 306. Regulations.
Sec. 307. Exemptions for private clubs and religious organizations.
Sec. 308. Enforcement.
Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. Prohibition against retaliation and coercion.
Sec. 503. State immunity.
Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
Sec. 505. Attorney's fees.
Sec. 506. Technical assistance.
Sec. 507. Federal wilderness areas.
Sec. 508. Transvestites.
Sec. 509. Congressional inclusion.
Sec. 510. Illegal drug use.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on

characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) DETERMINATION.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual

with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE INQUIRIES.—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) QUALIFICATION STANDARD.—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs.

(b) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 106, concerning employment.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SEC. 201. DEFINITION.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. DISCRIMINATION.

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.

(a) DEFINITION.—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) VEHICLES.—

(1) NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—

(1) IN GENERAL.—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation

services would impose an undue financial burden on the public transit entity.

(2) UNDUE FINANCIAL BURDEN.—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

(3) REGULATIONS.—

(A) FORMULA.—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) ADDITIONAL PARATRANSIT SERVICES.—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(f) CONSTRUCTION.—

(1) IN GENERAL.—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) FRAUDULENT APPLICATION.—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation), such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—

(A) IN GENERAL.—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL SYSTEMS.—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) INTERCITY RAIL SYSTEMS.—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. REGULATIONS.

(a) ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) SECRETARY OF TRANSPORTATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 205. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

SEC. 206. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) FIXED ROUTE VEHICLES.—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) POTENTIAL PLACES OF EMPLOYMENT.—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) PUBLIC ACCOMMODATION.—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(4) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) READILY ACHIEVABLE.—

(A) IN GENERAL.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) DETERMINATION.—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of budget;

(ii) the type of operation of the covered entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(B) INTEGRATED SETTINGS.—Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General), the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) EQUIVALENT SERVICE.—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) DEMAND RESPONSIVE SYSTEM.—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) potential place of employment;

the term "discrimination" as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 7 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 6 years for other providers, except as provided in section 305(d), that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 305. STUDY.

(a) PURPOSE.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) CONTENT.—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;

(2) the degree to which over-the road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) INJUNCTIVE RELIEF.—In the case of violations of section 302(b)(2)(A) (iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

SEC. 309. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) REMEDIES.—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment of this section.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) JOINT PROVISION OF SERVICES.—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) FIXED MONTHLY CHARGE.—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) UNDUE BURDEN.—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intra-

state telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance:

Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. CONGRESSIONAL INCLUSION.

Notwithstanding any other provision of this Act or of law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

SEC. 510. ILLEGAL DRUG USE.

(a) For purposes of this Act, an individual with a "disability" shall not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

(b) However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

SEC. 511. DEFINITIONS.

Under this Act the term "disability" does not include "homosexuality", "bisexuality", "transvestism", "pedophilia", "transsexualism", "exhibitionism", "voyeurism", "compulsive gambling", "kleptomania", or "pyromania", "gender identity disorders", "current psychoactive substance use disorders", "current psychoactive substance-induced organic mental disorders", as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following:

"Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

"(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(D) For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term 'illegal drugs' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

SEC. 513. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The majority leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, the Senate will now resume consideration of the Americans With Disabilities Act. The managers are present, ready to proceed.

All Senators who intend to offer amendments should be prepared to do so immediately. The managers are ready to accept amendments and to proceed to the consideration of this important legislation in the hopes of completing action on it as soon as possible.

With respect to this legislation, Mr. President, I intend momentarily to ask unanimous consent that during the debate on this legislation, the Americans With Disabilities Act, that the substance of the debate be transmitted to the hearing impaired in the television audience by means of signing.

This will mark the first time that a signing interpreter will be present on the Senate floor during debate and it is appropriate that this interpretation be provided as the Senate considers landmark civil rights legislation that will finally extend to all disabled Americans the rights that all of us should be able to take for granted: The right to be treated with respect and dignity, to be valued for our abilities and our merits, not to be judged by the things we cannot do.

Earlier in today's debate, the principal sponsor of this legislation, Senator HARKIN, observed that the only thing a deaf person cannot do is hear. That observation applies to all Americans with disabling conditions.

It is a matter of justice and fairness that we take the first step now to make it public policy that we will not, in our Nation, measure human beings by what they cannot do. We should, instead, value them for what they can do.

Indeed, we could all reflect with some humility on the many talents and abilities that each of us lacks. If we were to be judged by the things we cannot do, few of us would escape censure.

It is as irrational to limit a person's rights or a person's contribution because of one condition as it would be to classify persons by hair color or eye color.

And it is as unjust as limiting a person's rights by reason of skin color—a tragedy that for too long was permitted in our Nation.

Indeed, the extension of fundamental civil rights to the disabled among us represents the logical extension of our society's commitment to the essential worth and dignity of each human being.

I am pleased that debate has begun on this bill; I am pleased that the administration and President Bush support it; and I am particularly pleased that with the admission of the signing interpreter for this debate, we will share with all our citizens the substance of Senate debate on this landmark bill.

Accordingly, Mr. President, I ask unanimous consent that Jean Lindquist be granted floor privileges during consideration of the pending legislation, S. 933, Americans With Disabilities Act.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? If not, the request is agreed to.

Mr. DOLE. Mr. President, I joined the majority leader in requesting the privilege of the floor which will allow hearing impared persons equal opportunity to share in further proceedings on this legislation by providing sign language interpreting services. If the intent of the Americans With Disabilities Act is to assure equal access and opportunity to people with disabilities—then let us start right here in this Chamber—these proceedings are too important to all Americans and therefore should be available as we act to pass this landmark legislation.

COMMENDING THE CREW OF UNITED FLIGHT 232 AND PERSONNEL FROM THE FEDERAL AVIATION ADMINISTRATION

Mr. MITCHELL. Mr. President, in behalf of Senator DOLE and myself and others, I send a resolution to the desk and ask unanimous consent that it be immediately considered.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 174) comending the crew of United flight 232 and personnel from the Federal Aviation Administration.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, on July 19 of this year, a United Airlines DC-10, flight 232 from Denver, CO, to Chicago, IL, experienced a major failure in its No. 2 engine.

Evidently, parts of the failed engine pierced the metal skin of the aircraft and severed hydraulic lines which controlled wing flaps and, therefore, the aircraft itself.

United Airlines Capt. Alfred Hayes immediately declared an emergency and requested rerouting to the nearest airport. Federal Aviation Administration air controllers directed the crippled aircraft to Sioux City, IA, Municipal Airport.

Captain Hayes, First Officer William Records, and Second Officer Dudley Dvorak were joined in the cockpit by flight instructor Dennis Fitch who was a passenger on the flight.

After determining that no procedure had been previously been written on how to fly a DC-10 which was so damaged, the cockpit crew devised a method to steer the aircraft toward the Sioux City airport.

In the meantime, flight attendants Janice Brown, Georgeann Delcastillo, Barbara Gillaspie, Rene Louise LeBeau, Donna McGrady, Virginia Murray, Timothy Owens, Kathy Yeoung Shen, and Susan White helped prepare the passengers for the emergency landing.

FAA air traffic control personnel William, Bachman and Mark Zielezinski and FAA airway facilities personnel Samuel Gochenour, Timothy Norton and Randy Youngberg directed the flight crew to Sioux City and to flight 232's approach for landing.

Without the aid of any hydraulics, the crew was able to bring the aircraft down at the airport.

Mr. President, we have all seen the horrifying pictures of flight 232 breaking apart upon landing.

In what is truly a miracle, 184 persons survived in the tragedy.

The professional manner and superb talents of the flight crew and FAA personnel were responsible for saving these lives, and today we are honoring these individuals with this resolution.

In addition, Mr. President, along with the majority leader, and Senators HOLLINGS, DANFORTH, FORD, and MCCAIN, I am hosting a reception for the crew and their families from 4:30 to 5:30 p.m. today in S-211 of the Capitol. I urge all my colleagues to come to the reception and help pay tribute to this remarkable demonstration of a job more than well done.

Mr. DANFORTH. Mr. President, it is appropriate that the President of the United States and the U.S. Senate are commending today the crew of United Airlines flight 232.

On July 19, 1989, United Airlines flight 232 left Denver. It was bound for Chicago. Enroute the plane developed trouble and was routed to the Sioux City, IA Municipal Airport. The aircraft experienced a near total loss of hydraulic pressure, due to catastrophic engine failure. This event forced the flight crew into a flying environment so unique that no established procedures for this condition existed.

The plane's cockpit crew showed great poise and skill in communicating with airport personnel, devising previously unknown flight procedures, and attempting a difficult emergency landing. The flight attendants performed courageously in preparing the passengers for the landing and assisting them in exiting the aircraft. The brave actions of these crew members were critical to the survival of 184 of those board.

Mr. President, I want to take a moment to commend one of the plane's flight attendants, Barbara Gillaspie. Ms. Gillaspie is from Moberly, MO. She could not come to Washington to receive our commendation in person, as she is recovering still. Mr. President, Ms. Gillaspie's courage and professionalism contributed to the saving of so many lives aboard United flight 232. I want to express to her my appreciation, and that of the Senate, for her heroism. We wish her a speedy and full recovery.

Mr. GORTON. Mr. President, on July 19, 1989, the cockpit crew and flight attendants aboard United flight 232 made history.

Faced with the loss of their number 2 engine and the hydraulic systems critical for maneuvering the aircraft, the cockpit crew—Captain Alfred Haynes, First Officer William Records, Second Officer Dudley Dvorak, and Flight Instructor Dennis Fitch—began a series of in-flight experiments as to how they might control their plane in an upcoming emergency landing at the Sioux City Municipal Airport in Sioux City, IA.

Meanwhile, the flight attendants—Janice T. Brown, Georgeann Delcastillo, Barbara Gillaspie, Rene Louise LeBeau, Donna McGrady, Virginia J. Murray, Timothy Owens, Yeoung Shen, and Susan White—prepared the passengers for the upcoming emergency landing and evacuation procedures.

As the crippled plane approached, members of the Federal Aviation Administration Air Traffic Control—William K. Bachman and Mark W. Zielezinski—and FAA airway facilities personnel—Samual N. Gochenour, Timothy Norton, and Randy Youngberg—performed with poise as they guided United Airlines flight 232 to its emergency landing.

Together, this team of professionals put aside their fear and trepidation and performed the heroic actions which saved the lives of 184 of the people aboard flight 232.

I am especially proud that three of the members of the cockpit crew call Washington State their home. As we gather to commemorate the courageous efforts of this crew, I want to convey my congratulations, respect and heartfelt thanks for their lifesaving efforts on July 19. The people of the State of Washington and our great Nation salute you.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 174) was agreed to.

The preamble was agreed to.

The resolution, and its preamble, are as follows:

S. RES. 174

Whereas, on July 19, 1989, the lives of 184 people on board United Flight 232 were saved, in large part, because of the heroic actions of the crew;

Whereas, the flight's cockpit crew, Captain Alfred Haynes, First Officer William Records, Second Officer Dudley Dvorak and Flight Instructor Dennis Fitch, performed with poise and courage in communicating with Sioux City, Iowa, airport personnel and in attempting a difficult emergency landing at the airport;

Whereas, the flight's cabin crew, Janice T. Brown, Georgeann Delcastillo, Barabara Gillaspie, Rene Louise LeBeau, Donna McGrady, Virginia J. Murray, Timothy Owens, Kathy Yeoung Shen and Susan White, performed with poise and courage in advising passengers prior to the crash and then assisting them in exiting the aircraft;

Whereas, Federal Aviation Administration (FAA) Air Traffic Control personnel, William K. Bachman and Mark W. Zielezinski, and FAA Airway Facilities personnel, Samuel N. Gochenour, Timothy Norton and Randy Youngberg, performed with poise and courage in assisting United Airlines Flight 232 make an emergency landing at Sioux City, Iowa; Now, therefore, be it

Resolved, That the United States Senate wishes to commend the crew members of the United flight 232 and the Federal Aviation Administration personnel involved with United flight 232 for their exemplary efforts on behalf of the passengers of that flight.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I yield the floor.

RECESS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate stand in recess for 3 minutes in order to welcome three of the recently elected Members of the Supreme Soviet.

There being no objection, the Senate, at 2:19 p.m. recessed until 2:23 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. PRYOR].

AMERICANS WITH DISABILITIES ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 708

(Purpose: To end discrimination on the basis of disability in Federal wilderness areas)

Mr. HATCH. Mr. President, I call up amendment No. 708 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 708.

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

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

The amendment is as follows:

On page 95, after line 14, insert the following new section:

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

Mr. HATCH. Mr. President, more than 90 million acres of Federal land are managed as wilderness by the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and the National Park Service. Each of these agencies has been mandated to administer these wilderness areas for the use and enjoyment of the American people in such a manner as to leave the land unimpaired for the future use and enjoyment of wilderness.

In keeping with the intent to keep the land untrammeled the Wilderness Act prohibits the use of motor vehicles, motorized equipment and other forms of mechanical transport. While well-intentioned these wilderness management policies have made it very difficult for persons with disabilities, particularly those confined to wheelchairs, to participate in any kind of a wilderness experience. The opportunity of spending time in an area where human influence does not impede the free play of natural forces or interfere with the natural processes in the ecosystem is an unforgettable and very uplifting experience. This opportunity is very seldom available to persons with disabilities.

I am concerned that our wilderness designations may discriminate against the handicapped by denying them access to our most pristine environments. While the Federal land managers generally but not always allow individuals in wheelchairs into protected lands, they may only travel a short distance before encountering a barrier that makes it impossible to proceed.

I believe we need better to understand the impact of wilderness designation on the disabled. Consequently, this amendment would require the National Council on Disability to study and prepare a report on the effects that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System. It is my understanding that the majority managers are willing to accept this amendment. If that is so, then I will be happy to urge it as soon as they decide to.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I urge the Senate to accept this amendment. I think it is a very constructive amendment. Basically, what we will be addressing here is the accessibility of people with disabilities to Federal wilderness areas. There have been some issues which have been raised in the past, and I think the suggested study which will be made by a competent group, the National Council on the Disabled, will be extremely helpful and useful.

Included in the objectives of this legislation is accessibility to all aspects of our society including the park lands of this Nation and wilderness areas. So I commend the Senator from Utah for this amendment. I would hope the Senate would accept it, and I urge the Senate to do so.

Mr. HATCH. I thank my distinguished colleague from Massachusetts for his kind words, and I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

The amendment (No. 708) was agreed to.

Mr. HATCH. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I believe the intent and purpose of this bill, the Americans With Disabilities Act, to be important in providing people with disabilities with the rights and opportunities necessary to enjoy full participation in our society.

However, there are some questions in my mind regarding the practical implications of the requirements of the legislation on certain situations. Specifically, I am thinking of the employment section of the bill, title I, and how the standards of "reasonable accommodation" and "undue hardship" would be applied across the board to the various industries and businesses in our Nation.

I would like to enter into a colloquy with my friend from Iowa in hopes that he would clarify some of the mechanisms created in S. 933 to prohibit discrimination against people with disabilities in various employment settings.

It is my understanding that a reasonable accommodation, as required in section 102(b)(1)(E), would take into consideration the nature of a particular industry for the purposes of determining what type of accommodation would, or would not, constitute an undue hardship. In other words, the Americans With Disabilities Act would not require that a specific accommodation, which could be easily made in a traditional office setting, be implemented in a nontraditional work setting, such as a construction worksite, if it posed an undue hardship.

Would my colleague please comment on whether or not my interpretations of the language and intent of this legislation is correct, with regards to different industries employing different types of accommodation?

Mr. HARKIN. I would say to my friend from Utah that he has correctly interpreted the "reasonable accommodation" requirement of title I of the ADA bill. Just as each person with a

disability is unique in his or her requirements for accommodation to help meet their potential in the workplace, each industry, and indeed, each separate business, may be unique in the type of accommodation employers are able to provide without significant difficulty or expense. As outlined in the committee report, no action on the part of an employer that is "unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program" is required under S. 933. This is the basic framework that is to apply to all types of different covered industries and workplaces under the bill.

Mr. HATCH. To follow up on this question, I would ask my colleague if I may logically, and correctly deduce that if a specific industry or business finds that it cannot provide certain types of accommodations, because such action would impose an undue hardship on that business or industry, the employer in that business or industry may not be able to hire a person with a certain type of disability; is that so?

Mr. HARKIN. Yes, my colleague is correct. It is clearly stated in the bill and in the committee report that an employer is not required to hire a qualified person with a disability if the employer cannot provide the needed accommodation for the person, because providing the accommodation would cause the employer undue hardship. The exception to this situation is in the case of an employee who offers to provide such an accommodation for himself or herself. In this case, the employer cannot refuse employment to the disabled individual using the "reasonable accommodation requirement" as a reason for the rejection.

Mr. HATCH. If my colleague would be so good as to indulge me for one last inquiry, I would like to bring to his attention a specific example, that of the construction jobsite.

I have heard from several contractors who do not wish to exempt themselves from doing their part in assisting people with disabilities find meaningful employment in the construction field who are confused as to what latitude they will have under the ADA. To state the obvious, construction is physically demanding work. The construction site is a place of employment where permanence and consistency are virtually unknowns. From the digging and pouring of the foundation, to painting and decorating, a project undergoes metamorphosis in which a plot of land may be transformed into a highway, an office building, an apartment complex, or perhaps a single-family house. Points of accessibility for the workers may change daily as a project enters different stages of completion.

My final question to the Senator from Iowa is would, having to make constant different accommodations at different points on the site as would often be the case on temporary worksites, be a factor taken into consideration in assessing which accommodations would pose an "undue hardship" for an employer?

Mr. HARKIN. To answer, I would refer my colleague to the definition of "undue hardship" in the bill and the factors outlined for covered entities to use as a guide in determining whether a particular accommodation would impose an undue hardship on the covered entity's business. To quote the committee report language, these factors include:

(1) the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget; (2) the type of operation maintained by the covered entity, including the composition and structure of the entity's workforce; and (3) the nature and cost of the accommodation needed.

The second factor I listed would include consideration of the special circumstances incurred on the temporary worksite for purposes of determining whether or not an accommodation would post an undue hardship for the employer. Construction is unlike manufacturing, and most other types of industries, in that an employer is usually confronted with monitoring multiple worksites at remote locations, and this would be taken into account under these factors.

It is not the intent of the Americans With Disabilities Act to ignore the economic realities of our Nation's businesses. The provisions of the ADA legislation are simply to provide a framework or guide for employers and other entities to use in removing barriers, where possible, that prevent people with disabilities from working, traveling, enjoying public services, and generally living full, equal lives free from discrimination.

Mr. HATCH. I want to thank my colleague for his comments on this matter and for his time on this matter. I think we have clarified this about as well as we can.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

AMENDMENTS NOS. 711 AND 712

(Purpose: To provide a technical amendment)

Mr. HARKIN. Mr. President, I have two technical amendments which I send to the desk on behalf of myself and the other members of the committee and I ask that they be considered en bloc.

The PRESIDING OFFICER. Is their objection to the consideration of the amendments en bloc? There being no objection, they will be so considered, and the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes en bloc amendments numbered 711 and 712.

Mr. HARKIN. I ask unanimous consent that further reading be dispensed with.

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

The amendments are as follows:

AMENDMENT No. 711

On page 92, line 18, insert a comma after "agent".

AMENDMENT No. 712

On page 86, line 22, strike "2" and insert "3".

Mr. HARKIN. Mr. President, the first amendment simply adds a comma that was inadvertently left out, which may change the meaning or understanding of the sentence in the bill. The second one that I sent up regarding title IV C, provision of services. The provision of services section has been changed from allowing 2 years for the full implementation of services by the carriers to 3 years.

This accomplishes as the bill previously was written and it mandated that the carriers implement an interstate and intrastate relay system within 2 years' time. This did not allow for any time for the State regulatory process to occur.

As amended, the carriers will have 3 years to commence operation of the nationwide relay system. This allows ample time for the FCC to issue its regulations and for the State regulatory process to occur.

This legislation seeks to preserve State and grassroot efforts in the implementation of intrastate relay systems. States must be given time to either devise regulations or legislate for such systems, and then have time to seek and be granted certification by the FCC.

We must preserve the opportunity for the hearing and speech impaired to comment as individual States seek certification. Comments from the valuable insights of the hearing impaired community must be taken into consideration by the FCC as it grants States certification, and this process takes time.

As the State regulatory process and certification process ends, the carriers would then have sufficient time to fully implement any State and Federal regulations in the most efficient manner possible.

So this amendment which I send up helps to ensure that the relay system established by the carriers is the most efficient and highest quality possible. It also gives the carriers time to work in conjunction with each other to make the relay system more economical.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. We agree with these amendments and we urge that they be accepted here on the Senate floor.

The PRESIDING OFFICER. The question occurs on the amendment.

The question is on agreeing to the amendments of the Senator from Iowa.

The amendments (No. 711 and No. 712) were agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. HARKIN. 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 Senator from Utah.

AMENDMENT NO. 709

(Purpose: To provide a refundable tax credit for the costs of small businesses complying with the public accommodations requirements.)

Mr. HATCH. Mr. President, I call up Amendment No. 709 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. KERREY, Mr. MCCAIN, Mr. MCCONNELL, and Mr. THURMOND proposes an amendment numbered 709.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . REFUNDABLE TAX CREDIT FOR COSTS ASSOCIATED WITH PUBLIC ACCOMMODATIONS REQUIREMENTS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. COSTS OF PROVIDING NONDISCRIMINATORY PUBLIC ACCOMMODATIONS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—In the case of eligible small business, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) the eligible public accommodations access expenditures for the taxable year, or

"(2) $5,000.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means a person—

"(1) engaged in the trade or business of operating a public accommodation to which the requirements of title III of the Americans with Disabilities Act of 1989 applies,

"(2) the gross receipts of which for the preceding taxable year did not exceed $1,000,000,

"(3) which employs fewer than 15 employees, and

"(4) which elects the application of this section for the taxable year.

"(c) ELIGIBLE PUBLIC ACCOMMODATIONS ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible public accommodations access expenditures' means amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, or transportation barriers which prevent a public accommodation from being accessible to, or usable by, an individual with a disability, or

"(B) for providing auxiliary aids and services to individuals with a disability who are employees of, or using, the pubic accommodation.

"(2) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible public accommodations access expenditures' shall not include expenses described in paragraph (1)(A) which are paid or incurred in connection with the design and construction of any facility the first occupancy of which occurs after December 31, 1989.

"(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUXILIARY AIDS AND SERVICES AND DISABILITY.—The terms 'auxiliary aids and services' and 'disability' have the meanings given such terms by paragraphs (1) and (2) of section 3 of the Americans with Disabilities Act of 1989.

"(2) PUBLIC ACCOMMODATION.—The term 'public accommodation' has the meaning given such term by section 301(3) of the Americans with Disabilities Act of 1989.

"(3) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(d)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a)(2) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(4) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a)(2) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(5) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in calendar year 1991 or thereafter, this section shall be applied by increasing the $5,000 amount under subsection (a)(2) and the $1,000,000 amount under subsection (b)(2) by the cost-of-living adjustment for the calendar year. The cost-of-living adjustment for any calendar year shall be determined under section 1(f)(3), except that subparagraph (B) hereof shall be applied by substituting '1990' for '1987'.

"(6) NO DOUBLE BENEFIT.—No deduction or credit shall be allowed under this chapter with respect to any amount for which a credit is allowed under subsection (a).

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section, including regulations for determining what expenditures are to be treated as eligible public accommodations access expenditures."

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 35 and inserting:

"Sec. 35. Costs of providing nondiscriminatory public accommodations to disabled individuals.

"Sec. 36. Overpayments of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this is an important amendment and I would add in addition to the Hatch-Kerrey amendment Senators MCCAIN, MCCONNELL, and THURMOND as cosponsors.

Mr. President, while I share the desire of my colleagues to pass a bill as broad and reasonable as possible, I am concerned with the economic consequences this bill may have on some small businesses. S. 933 covers businesses as employers. It also covers businesses as public accommodations, that is as businesses which serve the public by serving customers, clients and visitors.

The employment provisions of S. 933 are contained in title I of the bill. They are effective 2 years after enactment when they apply to employers with 25 or more employees. Two years after that, employers with 15 or more employees will be covered under this bill. So the figure of 25 will reduce down to 15 on the employment side of this bill.

The purpose of that, of course, is to help small small businesses, because this bill is going to be very expensive. It is going to impose a lot of expenses and rightly so. It is time that we did these things. It is time that we brought persons with disabilities into full freedom, economic and otherwise, with other citizens in our society. This bill will do that. In doing so we should be aware that it is going to be costly and it is going to be difficult and there will be some complaints.

If we do not solve the other point I am about to make now, we are really going to have problems. S. 933 requirements imposed on public accommodations are contained in title III of this bill. S. 933 defines public accommodations much more broadly than they are defined in any parallel civil rights statute, specifically title II of the 1964 Civil Rights Act.

Title II of the 1964 Civil Rights Act bans racial, ethnic and religious discrimination in public accommodations. There, public accommodations are defined as places of eating, places of lodging, places of entertainment, and gasoline stations. That is title II of the most broad-sweeping Civil Rights Act in history up until now.

In other words, public accommodations are defined that narrowly; places of eating, lodging, and entertainment and gasoline stations.

S. 933 in turn, the bill which I am for, defines public accommodations to include not only these businesses but all retain businesses, all service busi-

nesses, and more. From sole proprietorships all the way up, beyond 15-employee businesses. In contrast to the employment provisions, however, S. 933 contains no exemption whatsoever from its public accommodations provision.

In other words, we have chosen to exempt businesses that have 25 employees for the first 2 years, then we reduce it down to 15 employees from that point on, from any of the burdens of this bill with regard to employment.

But there is absolutely no consideration given to small small businesses, similarly situated with regard to the public accommodations aspect.

Thus a rural grocery store—and you better get this—a rural grocery store may not be covered by S. 933 when it hires a clerk, but it would be subject to all the bill's requirements with respect to the treatment of its customers. Now I think it should be, and I am prepared to vote for that. But let us all be aware that if we do not have some sort of accommodations, some way of resolving this problem for the small small businesses, "the moms and pops," if you will, the sole proprietorships in our society, then you are going to find a lot of people going out of business because they will not be able to meet the burdens of this particular bill unless we find some way of alleviating that.

Mr. President, as I have said, I want every business in America to serve persons with disabilities. I strongly stand for that. I mean it. This is important. But at the same time, we have to recognize that Federal requirements cost money and some of these people cannot afford to come up with that money.

Someone has to pay for our desire, Congress' desire, if you will, to accommodate persons with disabilities where such accommodations increase costs. In the case of small businesses, they are required to provide auxiliary aids and services for their customers when necessary and to provide them with access so long as doing so does not cause undue burden. Moreover they must remove architectural communication and transportation barriers in existing facilities, areas, or businesses and vehicles, when such barrier removal is "readily achievable."

The terms "undue burden" and "readily achievable" are defined in the bill. Even though in theory these requirements impose less costs, these costs will be more than de minimis where necessary to provide access. For some small businesses, any additional cost or administrative burden can be very troublesome.

Now I am concerned about those small small businesses, and that is why I support this amendment. Traditionally, Mr. President, we attempted to resolve such dilemmas by setting exemptions. A business that falls within the exemption is not bound by the requirements of the act. We have done that with regard to the employment record of this act. Unfortunately, with regard to the services record, which is called public accommodations in this act, such a step would be incompatible with the desire to have coverage applied as broadly as possible.

There is, however, Mr. President, another way. We can cover all small small businesses and mitigate the cost of compliance with Federal requirements by granting certain small businesses a tax credit for the cost of steps they take to make their businesses accessible to persons with disabilities.

Currently, section 190 of the Tax Code provides a deduction of up to $35,000 a year for architectural and transportation barrier removal. My amendment authorizes a tax credit for removal of architectural, transportation, and communication barriers as well as for other accommodations to provide access for persons with disabilities.

The tax credit is available when undertaken to accommodate an employee or a customer and it is limited to $5,000 a year and it is refunded. The credit would only apply to small businesses which are public accommodations as defined by S. 933, have less than 15 employees and a gross income of $1 million or less, really small small businesses.

This gross income figure and the $5,000 credit figure will be indexed annually so that these small small businesses have a break.

Mr. President, such a proposal would retain the bill's broad coverage in public accommodation without penalizing small employers who barely get by as it is. We would not have to wait for lawsuits and the courts to determine the meaning of terms like "undue burden" and "readily achievable" in the context of a small business. And most importantly we would be helping those who want to comply instead of simply penalizing those who do not.

We have a responsibility, Mr. President, to insure that persons with disabilities are accommodated in public accommodations. At the same time, Mr. President, we have a responsibility to ensure that we in Congress address the economic realities of the requirements we impose. My amendment balances those responsibilities and avoids the need to use an exemption.

Mr. President, it is no secret that the small small businesses of this country, the National Federation of Independent Businesses and a whole raft of others want an exemption similar to the exemption with regard to employment. They want 25 employees for the first 2 years of the operation of this bill, reduced down to 15 employees thereafter, which would give accommodation time to meet these burdens.

The disability community would not like that because they feel that would exclude an awful lot of businesses that should not be excluded from the coverage of this bill. I am not so sure about that.

But the only way I could think of coming up with a way of resolving this dilemma is through the tax credit approach.

Look, if the Federal Government is going to impose these kinds of burdens on small small businesses, then the Federal Government ought to help them. It is one thing for us to meet the needs of persons with disabilities. I want to do that. It is another thing to put all kinds of moms and pops out of business and sole proprietorships out of business and small small businesses out of business or to put undue burdens on them that bureaucrats might not feel are undue burdens. Five hundred dollars for a ramp, which is probably the minimum it is going to cost today if it is put in by somebody, is too much money for some small businesses. If they then have to have restroom facilities modified and put bars in the restrooms and if those walls are not solid enough to handle bars, it may cost $2,000 or $3,000 to make those changes, and they may be ordered to make them under this bill. If they do not make them and if they fail to do what this bill says, they might wind up with huge fines and costs of $50,000 for the first infraction and up to $100,000 for the second.

Now, Mr. President, if the Federal Government is going to impose some kind of requisites, then the Federal Government has some kind of responsibility to help with the cost. And I hope my colleagues on the Finance Committee will give some consideration to that.

Now I know they are a little upset because of the change in the tax code. But this is the appropriate place to do it. We have got to solve this problem. Some want it to be with a 15-employee exemption, 25 down to 15 employee exemptions. The community of persons with disabilities do not want that. I am trying to accommodate everybody concerned here, while still having a strong bill that allows for public accommodations in all businesses.

I might add that under title 2 of the Civil Rights Act of 1964, it is nowhere near as broad as this bill is going to be or as this bill is written. We are really giving wholesale, widespread responsibilities to all businesses with regard to meeting the public accommodations section in this bill. They go far beyond section 2, title 2 of the 1964 act.

Mr. President, I think this is a reasonable approach. I think it should be done now on this bill before we get into unnecessary litigation problems. I think it would solve the problems for

all sides. No one presently knows how much it is going to cost, although I think we all know that it probably is not going to cost all that much. If it costs too much, then that is every reason why we ought to have the Federal Government help. If it costs too little, then it is not that important.

The fact of the matter is that the Federal Government should help when it imposes these kinds of burdens. These are mandatory burdens on business. It is not fair if we do not do something to try and alleviate those burdens at least with regard to those who are in the most vulnerable businesses in our society. That is what we are trying to do here. That is what we want to do here.

I hope that my colleagues will consider supporting this amendment regardless of what form it takes here on the floor, but let us understand it. If the amendment is defeated, it is going to be looked upon as the one that was meant to help small businesses in that society, especially those most vulnerable to the need.

So this is an important amendment. It may be the most important amendment brought on this bill today. I think it is. And I hope our colleagues will support it.

In that regard, I ask unanimous consent to add Senator KASTEN as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection it is so ordered.

(Mr. DODD assumed the chair.)

Mr. BENTSEN. Mr. President, my friend from Utah says this is an important amendment. It is. I am sympathetic to his concerns. I started with a small business. I am still invested in small family businesses. I understand his concerns.

But I am also a sponsor and a supporter of the Americans with Disabilities Act.

I think it is good legislation, something we ought to bring to fruition. But this is a killer amendment. This amendment will stop this piece of legislation dead in its tracks because it is an S-numbered bill.

The House is very jealous of its jurisdiction.

Any time you add tax legislation to a piece of legislation that is an S-numbered bill and it gets over there, it is blue-slipped, period. You have done yourself in.

A great deal of work has been done on this bill. It is much too important to Americans with disabilities and we have to see to its successful passage.

The Budget Act clearly stipulates that it is not in order for the Senate to consider any amendment that reduces revenues below the level in the budget resolution. Yet I just heard my friend from Utah say he does not know what this amendment is going to cost. And we do not know the cost either. He is proposing a tax credit that would be indexed to inflation. And, historically, those credits really escalate. So I do not know what the cost is going to be.

The Finance Committee currently is facing the problem of trying to raise the $5.3 billion of new revenues that we are charged with under the budget, and probably another $2 billion or $3 billion on top of that, for expiring tax credits such as the low-income housing and research and development credits.

So, we have an exceedingly difficult task. This task would be made even more diffucult if we're forced to pay for an amendment which may be very expensive. The Joint Tax Committee has yet to tell us how much it is going to cost. That is not the way to legislate. This clearly comes within the jurisdiction of the Finance Committee. We have the tools, we have the expertise, we have the background to deal with these issues. That is the purpose of the Committee system.

When the appropriate time comes, I will make the point of order, that this amendment violates the Budget Act. This point of order can only be waived with the approval of 60 Senators.

I want to further state that the ranking minority member of the Finance Committee, the distinguished Senator from the State of Oregon, BOB PACKWOOD, is also in opposition to this amendment and will support the point of order.

Current law already provides some help for companies that have to make these expenditures to give proper access to their facilities. Section 190 provides that—

> A taxpayer may elect to treat qualified architectural and transportational barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

This section allows a deduction of up to $35,000. The problem with tax credits is that, historically, they have tended to grow and grow and grow.

So, I strongly urge my colleagues to oppose this amendment if you are a supporter of the Americans with Disabilities Act.

In the next couple of weeks we are going to be working on reconciliation in the Finance Committee. We will be dealing with many issues that involve the tax concerns of small business. That would be a much more appropriate time to consider the concerns of my friend from the State of Utah.

But, in the meantime, let us be fiscally responsible. We are all aware of our budget problems. Let us not pass an amendment that we do not know the cost of.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I do not think this amendment is a killer amendment. I do not see that in any way, shape or form.

First of all, the House would have no reason to object because under article I, section 7 of the Constitution, it basically says that all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments on other bills.

This is not a bill that raises revenue. This is not a tax amendment, in the sense of raising revenue. So it is not a killer amendment. It is not going to cost the House of Representatives one ounce of its jurisdiction.

And I can say that we have requested an estimate on what it would cost from the Joint Committee on Taxation, which I believe will be difficult for them to provide because nobody knows what the final regulation is going to be here. That is precisely the reason why we should solve this problem right now on the floor, in this very important bill for a very important community that cannot live with this kind of language that presently exists in the bill without some relief or some protection.

If we are going to impose all these requirements, let us impose them. But let us not have the almighty Federal Government come down and say you have to do all this stuff, but we are not going to help you with it because we might possibly overintrude on the jurisdiction of the Finance Committee. This is precisely what should be done on the floor, because it is an accommodation to try to resolve a problem that I would like to resolve, not in a bad way, but in a good way.

If the almighty Federal Government is going to start dumping all over small businesses, which this bill could be interpreted as, in the sense of requiring all kinds of public accommodation requisites, then the Federal Government ought to pay for it, or at least give a tax credit to help to do it.

We have requested an estimate, so do not use the constitutional argument with me, because it does not apply.

This is not an intrusion on the right of the House to consider all revenue bills first. We have a right to bring this up.

Yes, it would always be better if we could get the advice and consent of the Finance Committee. I have to admit I wish we had been able to do that. But we did not think of this idea until this bill was scheduled for floor debate. We were prepared to come with an exemption of 25, down to 15 employees. And that exemption is offensive to the very people I would like to please with this bill.

That does not mean we will not go with that if this happens to go down in defeat. It is going to take, apparently, 60 Senators to stand up and say:

We are for small businesses. Even though we understand the desire of the Finance Committee to resolve these issues themselves, this is the time to do it, on this particular bill. Because no one knows what impact this is going to have on these small businesses.

Mr. President, we have requested an estimate of the revenue impact of this amendment from the Joint Committee on Taxation. We have not yet received back this estimate. We have not given them enough time, I am sure, because we just recently thought of this idea.

However, Mr. President, we now have to focus on the real economics of this situation. The legislation is extremely important for persons with disabilities. We need this legislation. We need to make sure that our society does not add to the burden of these people by discriminating against them.

However, in providing for the disabilities of our citizens, we must not put the small business person out of business.

This amendment provides a method of ensuring that the requirements of this bill do not do that. Most of our small businesses want to accommodate persons with disabilities.

In order to correct these problems, however, the small business person must spend some money. Sometimes they do not have the money to spend. In some cases, this may be a great deal of money in relation to the gross profit or gross receipts of that particular business.

Do we want to put these people out of business? Do we want to burden them with requirements they cannot afford to comply with?

Members of the Finance Committee will say that this tax credit will cost too much. They will say that we as the Federal Government cannot pay for the cost of removing these barriers for the handicapped. They will say this is the responsibility of the business persons, and I agree to that, generally. It is the responsibility of the business to pay for these changes.

However, we cannot force the small enterprise out of business by forcing them to comply with regulations which they cannot possibly afford to comply without a layoff of personnel or even worse a shutdown of business.

The cost of this tax credit, whatever it turns out to be, will be a cost borne by the American people, regardless of whether it is paid by consumers, by businesses, or by taxpayers via the tax credit. We must recognize that we have lost far more than the revenue loss of this tax credit if these small businesses are forced out of business because of the 1988 bill requirements.

The taxpayer is going to pay for this one way or the other. We might as well do it straight up and help these businesses.

We will have lost jobs if they go out of business. We will have lost the ongoing Federal revenues from those jobs. We will have lost much from the job producing and taxpaying enterprises which they presently provide. This loss will not be merely for 1 year. A loss of business is, in most cases, forever. I submit that as expensive to the Federal Treasury as this tax credit may be, and I doubt it is going to be that expensive, it is by far a better buy in the long run to save the small business that may be forced to lay off employees because of the requirements we are forcing on them.

Let me say one other thing. There is another alternative purpose for my drawing up this amendment, and it is a good one. If we pass this amendment, if I can get the necessary 60 votes, I hope I can talk my distinguished colleague and very good friend from Texas out of not bringing up his point of order, but if he does, it is certainly his right, and I admire him for doing whatever he decides to do. I know he does what he believes right. I would like to mention to him that there is an alternative purpose on my part, and that is, if my amendment passes, than it says to the bureaucrats who have to come up with these regulations, you better be reasonable because it is going to cost the Federal Government some revenues. I would rather have them do that in the confines of this bill than by having a study or doing something in the Finance Committee. It will be a better situation if we put this in the bill, and we do it on the basis of equity. "Look, Federal Government, you are requiring all these requisites; You stand up and participate and help to pay for it," because we are going to pay for them anyway. We might as well do it so businesses do not go out of business. In the process, you are sending a message to our bureaucracy. You are saying, "Look, we are going to go with reasonable approaches here. We are going to go with ramps; We are going to go with certain reasonable approaches, but if you do unreasonable approaches and they cost too much, it is going to cost the Federal Government money."

There will be an incentive for them to be reasonable under the circumstances. Yes, it is a 100-percent tax credit. That is what it should be. If we are imposing these obligations, we ought to be willing to participate in helping to pay for it. Do not you worry, we will not be paying for the large businesses. I am talking about small businesses, businesses with less than 15 employees and less than $1 million total gross receipts and businesses which really are small. I want to solve these problems in advance, and the only way to do it is in the bill. If you do not put it in the bill, even if we try to do it later, it is not going to work as effectively, it is not going to be as good and we have no guarantee it will be done later.

I see others want to speak. I will yield the floor at this time.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I only say I wish my good friend from Utah looked as charitably on tax credits when we were doing the child care bill as we do in the disability bill.

Mr. HATCH. I did. I was the cosponsor of the very tax credit that passed. I might add that I have been a cosponsor of tax credits from the beginning. I am not a Johnny-come-lately to that. Not only did I look favorably, I did not think it was the only way of solving the problem.

Mr. PACKWOOD. I should have known that, Mr. President.

I was intrigued listening to him. He said the reason we did not go to the Finance Committee is we just thought this up. This idea came to us just like this. That is how bad legislation is created. You have $35,000 already in expenses right off the top to put in things for the disabled. It is in the law now, $35,000 off the top, one. Two, clearly, it is a Finance Committee issue? No.

Mr. HATCH. Will the Senator yield on that?

Mr. PACKWOOD. No.

Mr. HATCH. $35,000 is a tax deduction, not a tax credit, and it does not help small businesses.

Mr. PACKWOOD. Sure it does.

Mr. HATCH. Sure it does not if they do not have any income.

Mr. PACKWOOD. It does not help anybody if they do not have any income.

Mr. HATCH. We are talking about the people who bear the burden.

Mr. PACKWOOD. $35,000 in expenses, if you do not have income, my hunch is you are not going to be in business to take the credit. If you get to $35,000 in expenses in business, it is a deduction off the top. Two, nobody has thought this idea up until just a few days ago, maybe a few minutes ago when it came on the floor with this bill.

Three, it is a 100-percent credit. Why not for OSHA? Why not for emissions? Why not for anything else the Federal Government imposes, I might say, on small business and big business? I think what it is, is that the Senator from Utah favors it here because it is his bill. I understand that. Whenever we have a paternal interest in a bill, then we are inclined to do things that we would not normally do in any other bill that was not our own. I would hope very much when the chairman of the Finance Committee makes the point of order, the Senate

would remember what the Senator from Utah said, "We just thought it up." We do not know what it costs. It is clearly in the Finance Committee's jurisdiction, but he likes it because it is his bill. Mr. President, that is not a good enough reason to adopt this provision.

Mr. HATCH. Mr. President, that is not quite what I said, but I will say this: It is easy to come out here and say why do we not apply it across the board in all small businesses and all mandated things the Federal Government imposes on us? Maybe that is a good idea. Keep in mind, we are not just talking about a civil rights bill. We are talking about a civil rights bill that goes beyond the parallel bill, the Civil Rights Act of 1964. We are talking about a bill that leaves it wide open where the Government can impose. It does not define what it imposes, or what it can impose upon small small businesses. We all know what happens when the Federal Government is given full sway to do whatever it wants to do. It generally becomes an oppressive institution. I think it is one of the reasons why Jimmy Carter won the election in 1976. People were fed up with a bureaucracy that was ignoring their needs, which had gotten too arrogant, which had too much power, where there was no way of clipping their wings.

Yes, this is not a new idea, but it is certainly a new idea in the context of this bill. And it is an idea to get around the 15-person exemption that small business really wants addressed here. They think it is just as fair as a 15-person exemption on the employment side of it. Those who argue for civil rights say, "Well, we have never had an exemption on a public accommodation section," but you have never had a public accommodation section like this one. It has never been as broad. It has never applied to so many people. It has never had the crushing effect it could have on small business, especially small small business. Frankly, it has never had the potential for harm and loss of jobs that this one does.

It is nice to stand up here and act like this is some new concept that we do not understand. I am honest in saying I do not think anybody can tell you what the revenue impact will be from this because we do not know what the bureaucrats are going to do or going to impose upon small business. Therefore, this is precisely the type of an issue where we ought to resolve the problem on the floor now so that we do not have people oppressed all over the country; and, if we do not resolve it now and let it go the way it is, and hundreds of thousands of small businesses go out of business because they cannot meet the requirements that are imposed by bureaucracy entrusted with the imposition of those requirements, then we cannot get those small businesses back by amending or changing it later. That is why we have to do it now.

I am sorry to intrude upon the jurisdiction of the Finance Committee. Nobody respects that committee more than I do. Nobody wants to intrude less than I do and nobody has intruded less, in my opinion, than I have, except for possibly the Catastrophic bill. But this is an appropriate place and appropriate time and appropriate statute which is going to appropriately pass to solve this problem. We are doing it in the best interest of the small business of this country. I am talking about small small business, not small business. If we talked about small business, the 15-employee exemption would exempt an awful lot of small business. It may be better, I do not know, but my friends in the persons-with-disabilities community do not want that.

I personally do not want to be pushed into the position of having to fight for that because it is right or because there has to be some equity here.

This is an appropriate way to do it. We are not going to know any more about it later than we know now. All the studying in the world is not going to tell us any more. But we do know one thing. If I am right, and I am right with regard to the widesweeping context of this bill in connection with its parallel bill, the Civil Rights Act of 1964; It goes far beyond this. It imposes the requisites on far more businesses. That being the case, if I am right that we might lose a lot of businesses in this country and a lot of employment in this country, it would be a shame because we worry more about jurisdiction of the committee than we worry about doing what is right on the floor.

I cannot blame anybody. I have seen the Labor Committee lose jurisdiction, and there is nothing more frustrating. But this is not going the hurt the jurisdiction of the Finance Committee, nor is it going to hurt the statutory work of this Senate. In fact, I kind of resent the implication that that is the worst way to legislate. I think it is the best way to legislate when you have an idea that is literally fair. If the Federal Government is going to make these impositions, then, let the Federal Government participate in alleviating some of the problems it is going to create by its mandated approach.

If we are going to start telling small businesses what they can or cannot do, then, let us stand up and help them. Otherwise, let us not tell them what to do. Let us not put on onerous burdens and burdens that are open-ended as to what the ultimate requisites are going to be. Let us not put them on small business.

I have respect for my friends on the Finance Committee, and certainly I could not have more respect for two people than I have for the distinguished chairman and ranking minority member on that committee. They are both articulate, work hard and are outstanding Senators. That is why they are in those positions. They have my respect.

Do not tell me that this amendment is a frivolous amendment. Do not tell me that this amendment should not be passed right now on this bill to help solve these problems that will exist the minute this bill is passed and cannot be solved later, in some instances. They may never be solved if we do not face the problems now. I think we should face them. This is the way to do it. There is a cost to mandating things on the backs of small business in this country. If there is not, there ought to be. But this is one way of making this cost a reality.

I have run this by some of the people in the disability community and they think it is a good idea. They do not want to hurt small business. They do not want to hurt small small businesses. They want to help them. They want to participate. They want to have jobs. They want small businesses hiring them and giving them opportunity and they want to use their services. They do not want to be resented when they come around because that small business has been forced to do something it does not have the money to do.

Let us be honest about it. This is an important issue. I think it is time we face this music. If we are going to start mandating on the Federal Government then let us stand and do what is right by the Federal Government. Let us have them take their responsibility, too, and not just sock it to the small business people, which happens all the time around here.

I want this bill to pass. I want persons with disabilities treated like everybody else. I want to see opportunities for them, which this bill will provide, but I also want to alleviate problems in advance, not later. I think we can do it if we pass this amendment, and I hope all my colleagues will consider this amendment because this is the small business amendment on the Americans with Disabilities Act. It is the one that counts.

If anybody thinks they are going to hide behind a point of order, they better think twice. This is the only time you can help small businesses. If this amendment is gone, that time is past. I am going to vote for this bill regardless, and that may undermine my point because I believe in what is happening in this bill. I have for a long time. I have worked hard to try to help those who deserve the credit for this bill to get it done. But there also

has to be some reason to it, and that is why we are doing this. So I hope that my colleagues will consider these arguments and consider small business today. I hope they will help us to override any point of order that comes up. If they do not, I do not think we are going to be able to hide behind the fact it is a point of order. Everybody is going to know that this is the chance to help protect small business from onerous, intrusive, burdensome bureaucratic intermeddling that all of us have seen and the reason many of us ran for the Congress in the first place.

I have talked long enough. My distinguished colleague from Arkansas wants to talk.

Mr. PRYOR. Mr. President, I thank the distinguished Senator from Utah.

Mr. President, it is my understanding that the distinguished chairman of the Finance Committee, Senator BENTSEN, is awaiting the presence on the floor of the distinguished Senator from Kansas, Senator DOLE, and I have asked Senator BENTSEN if I might make a short statement while that wait is in progress and then maybe ask some questions of the distinguished Senator from Utah and the Senator from Iowa relative to some concerns I have about this bill.

First, Mr. President, I would like to say that I am a cosponsor of this particular piece of legislation. Second, I would like to say that I must admit—and I do not think that this is an admission many of us have not made at some point in our legislative lives—I had not fully read what is in this piece of legislation and in the committee report and begun to reflect on the enormous possible impact and consequence on small business that is embodied in this very large and very aggressive piece of legislation until sometime today. I have read the committee report. I have read the bill. I have many questions. I hope that there are some answers which will enable me to support this piece of legislation.

It is very difficult, Mr. President, as all of us know, to even be perceived as possibly questioning any type of legislation that would be of assistance to the blind, the handicapped, the disabled, the elderly, the physically and the mentally impaired, but I think at the same time we must be very responsible and begin to look between the covers of this bill at what we are about to do and the potential consequence of what we could do to small business across this country.

Mr. President, first let me take the committee report. Let us look at the definition that the ADA bill has for disability with respect to an individual. I quote. "A physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment or being regarded as having such an impairment."

That is the definition which, in my opinion, is extremely loose. In my opinion, also, it is going to be the subject of literally countless issues of litigation in the courts across this country.

Mr. President, also, I was somewhat shocked—and I must say grieved—to learn that in our country—and I am reading, Mr. President, from page 88 of the committee report, the final paragraph—"approximately 43 million persons with disabilities will be entitled to the protections of this legislation as employees, job applicants, clients and customers of places of public accommodation and users of telephone services."

"This bill furthers"—and I am reading from the committee report, middle of page 88, Mr. President—"would regulate all units of State and local government. S. 933 would also"—and this is critical—"regulate private businesses engaged in commerce and open to the general public of which Census Bureau bureau figures indicate that today there are approximately 3.9 million."

This legislation basically preempts all State and local laws and regulations regarding the access for the disabled. Maybe we want to make such a decision like that today.

Mr. President, this legislation is so far-reaching, with such harsh penalties, I think that we ought to reexamine first some of the penalties. For example, we find a very unique situation that is covered on page 100 of the committee report. Mr. President, I will read that section that relates to penalties. "Under S. 933 in an action for a violation of a public accommodation"—we are not talking about a bus or a train or a plane; we are talking about a shoe store, about a grocery store. If they have 15 employees or more—"a private plaintiff"—and I continue quoting from the committee report—"can obtain an injunction and attorneys' fees."

Second, Mr. President, in that same section, but only through the attorney general's action—I believe, if I am not mistaken, this section of the report is Senator HATCH's own language—it is, as a matter of fact. It is in his observations or comments at the conclusion of the views entitled "Additional Views of Senator Hatch," and I commend Senator HATCH for those views. In this section Senator HATCH states that the court can award "civil penalties of up to $50,000 for a first violation and up to $100,000 for subsequent violations."

Mr. President, if I were a lawyer practicing law today in Magnolia, AR, or Corpus Christi, TX, or wherever it might be, I think that I could very easily find a few plaintiffs, find a technical breach of a small business, one, go to court, get an injunction, get attorneys' fees and ultimately stick that small business on a first offense, whether there was ever an intention to discriminate against that individual or not, with a first penalty of $50,000, and a second penalty for a second offense of $100,000.

Mr. President, I fear that what we are passing—and the intentions, once again, are wonderful; they are absolutely beyond reproach or question—but we are passing, I think, a lawyers' dream. This is a bill that is going to create thousands of court cases in these instances that we have just discussed, and I do not know whether we are prepared to make this sort of a leap forward at this time doing as much as we are about to do.

Mr. HATCH. Will the Senator yield?

Mr. PRYOR. I am glad to yield.

Mr. HATCH. Let me correct the Senator on one thing. I agree with what he says, but with regard to the civil penalties they can only be assessed pursuant to an attorney general action.

We need to get that clarified because the bill, we went through that bill. We decided that we will knock out the private action. Only through an attorney general's action can those kind of penalties be set. But the point that the Senator is making, he is allowing up to $50,000 for the first offense and up to $100,000 for any subsequent offense. So it is a very, very tough penalty section, and something that does not exist under the parallel statute of the Civil Rights Act of 1964.

The Senator is correct in raising the importance of that issue, and people should know that. This bill is a tough bill. It is going to protect the rights of the persons with disabilities like they have never been protected before. I am glad the distinguished Senator supports the bill in spite of that.

Mr. PRYOR. Let me say I hope I can support this bill I have some questions. I am not going to be labor and take all the time of the Senate this afternoon asking those questions. I think the Senator from Massachusetts may want to comment or maybe straighten me out on something I have said.

Mr. KENNEDY. I appreciate it. I appreciate my colleague from Utah mentioning this point that, under this bill, there are no damages in individual cases, except those involving public services, as under section 504. For individual suits for violations of the employment or public accommodations provisions, relief is limited to injunctive relief with attorneys' fees. To get injunctive relief, you have to be found to have violated the act, otherwise, the injunctive relief is not available.

So what we are basically talking about is injunctive relief when you have that restaurant that says, "No, you're drooling at the mouth," and the person says "I want to be able to go in there like someone else, even

though I have a disability." Under this bill, that person can get injunctive relief.

If the Attorney General finds reasonable cause to believe there is a pattern and practice of discrimination, he is empowered to bring this matter to the court. Then only if he is successful and prevails he can seek damages, and the court can impose civil penalties.

Finally I just say to the good Senator that I do not know whether he supported the fair housing legislation, but the fair housing legislation had damages in addition to the same penalties that are included in here.

Finally, I would just say, Mr. President, if you look back at the history of section 504, you do not find many individuals who have mental and physical disabilities that have the time or the resources to go down to the courthouse to be able to get that injunction and bring the case.

For the most part, they are spending their full time just coping with the difficulties and challenges of life. What we have seen in the areas of the disability movement is a different pattern in terms of litigation than has been in the case of some of the other violations of the basic civil rights.

So I want to give the assurance to the Senator from Arkansas that the points that have been raised by the Senator from Arkansas are legitimate concerns if we had gone in different directions on this bill. I, personally, would have preferred that we go in that direction because we have seen in the past that where we do not provide an adequate remedy we do not get compliance. That was the trouble with the 1968 Fair Housing Act. That is why we had to revisit it in 1988.

But nonetheless, this judgment has been made, and I think it is a fair judgment. And I accept the statements of the President of the United States, and the Attorney General that if these remedies are not effective he will support making them stronger.

So this is the balance we struck. But I thought we were primarily focused on the amendment of the Senator from Utah, and the matter of the Finance Committee's jurisdiction. So I was reluctant to get into the basic substance of these measures now. But I wanted to assure the Senator from Arkansas because he has spoken with us about these matters previously, and he is a staunch defender of small business.

I thank the Senator.

The PRESIDING OFFICER. The Chair would inform the Senator that the Senator from Arkansas has the floor.

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

I want to commend my friend from Massachusetts and thank him. He has been a long time leader in this fight to protect those people who are disabled, those citizens who are disabled, to guarantee them their rights and they must have these rights. We, as a public policy, have waited too long to grant them those rights. The Senator from Arkansas knows this. All I am attempting to say this afternoon is exactly what are we doing? Are we going too far in some of these areas of penalty? Do need to tighten up the definition of disability? Are we creating a lawyer's mecca here? I do not know these answers. I think the General Motors and IBM's and Fords and Chryslers can deal with these issues, Mr. President. However, I imagine that 85 percent of all of the employers in my State definitely are small business people, and they are working 25 people, or less, along in that number somewhere. Some of these penalties will put them out of business.

I do not know whether they have to show intent, if they are discriminating or not. It is extremely loose, in my opinion, as to the damages the penalties, and how we are going to assess those penalties.

Mr. HATCH. Will the Senator yield?

Mr. PRYOR. Yes.

Mr. HATCH. I believe the Senator is making some very appropriate points. I am for this bill. It has to be tough. We have to do what is right for the persons with disabilities. Let us not deceive ourselves. This can be a tough bill, because it applies across the board to all businesses. The Civil Rights Act of 1964 does not. It limits its published accommodations sections. This bill does not.

In that regard, to make his point, because my State also is a State primarily of small business—I think most States probably are—I have a letter written today by the National Federation of Independent Businesses, the organization that represents 570,000 small business owners, 570,000 of them. I ask unanimous consent that this letter be printed in the RECORD at this point.

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, September 7, 1989.

Hon. ORRIN HATCH,
Ranking Minority Member, Senate Labor and Human Resources Committee, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: On behalf of the 570,000 business owner members of the National Federation of Independent Business, I am writing to offer our support of your amendment to provide a refundable tax credit for $5,000 for small businesses to comply with the provisions of the Americans with Disabilities Act (S. 933).

The ADA bill requires business owners to pay for the entire cost of accommodating the disabled. Since the desire to provide greater access to the disabled is a societal goal, the cost of providing the access should not be the sole responsibility of business owners, but rather shared by the general public. Sharing the costs of compliance equitably can be accomplished in some degree by a refundable tax credit.

Proponents of the ADA bill have claimed that accommodating the disabled will entail little expense. If this is indeed true, the Hatch amendment will not require significant funds. However, if expenses are more than anticipated by proponents of the bill, small business owners will not be so heavily penalized by requirements of the ADA bill if this amendment were to be passed.

NFIB would prefer a small business exemption due to the ambiguities in the ADA bill, the excessive penalties, and other provisions that make compliance particularly difficult for small business owners. However, your tax credit amendment begins to address some of the concerns of small business owners.

Sincerely,

JOHN J. MOTLEY III.

Mr. HATCH. I think that makes the distinguised Senator from Arkansas' case even more important. I also add that the advantage of this tax credit approach is that it also encourages small businesses to go ahead and make accommodations, if there are requirements under the letter of the law or the regulations are uncertain. They are going to want to make these changes. That is the purpose of this amendment. They will want to comply in advance. It will be that much quicker to help our people with disabilities in this country. It is a good idea. We literally should not defeat this on the floor of the Senate today. Now is the time to do it. This is the place to do it. I just wanted to make those points while the distinguished Senator had the floor.

Mr. PRYOR. I thank my friend from Utah. Mr. President, I understand that Senator DOLE has arrived on the floor, and I know there was a discussion about committee jurisdiction, and other items. So at this point, Mr. President, I will yield to the Senator from Kansas, Senator DOLE.

Mr. DOLE. I will just take 1 minute to indicate my opposition to the amendment. I think it is well-intentioned. I can see why the business groups are for it—the Government pays the bill. It is a 100-percent tax credit, a new entitlement program, and it is refundable. Why not be for it? Nobody knows how much it will cost. As far as I know, there is no estimate of the cost, and I do not know how we offset it. It is subject to a 311 budget point of order.

I say to the Senator from Utah, I do not disagree with what he wants to do. We are going to include small business, and certainly there will have to be some changes made by small business and some are going to be painful. However, we have a provision in the statute now—section 190 of the Internal Revenue Code—in fact, it is an amendment offered years ago by myself and the distinguished Senator from Minnesota at that time, Senator

Mondale, which allows a tax deduction up to $35,000 for the removal of architectural barriers for the handicapped. It has been working very well.

Mr. President, I ask unanimous consent that a copy of section 190 be printed in the RECORD.

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

[Sec. 190]

SEC. 190 EXPENDITURES TO REMOVE ARCHITECTURAL AND TRANSPORTATION BARRIERS TO THE HANDICAPPED AND ELDERLY.

[Sec. 190(a)]

(a) TREATMENT AS EXPENSES.

(1) IN GENERAL.—A taxpayer may elect to treat qualified architectural and transportational barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

[Sec. 190(b)]

(b) DEFINITIONS.—For purposes of this section—

(1) ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—The term "architectural and transportation barrier removal expenses" means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) QUALIFIED ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSE.—The term "qualified architectural and transportation barrier removal expense" means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) HANDICAPPED INDIVIDUAL.—The term "handicapped individual" means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sign or hearing impairment) which substantially limits one or more major life activities of such individual.

[Sec. 190(c)]

(c) LIMITATION.—The deduction allowed by subsection (a) for any taxable year shall not exceed $35,000.

[Sec. 190(d)]

(d) APPLICATION OF SECTION.—This section shall apply to—

(1) taxable years beginning after December 31, 1976, and before January 1, 1983, and

(2) taxable years beginning after December 31, 1983.

Mr. DOLE. I have now been working on a revision of that provision which will be revenue neutral, and will do what the distinguished Senator from Utah wants to do—that is, to give small businessmen and small businesswomen some incentive and some relief as to meet some of the requirements in this bill.

I intended to propose this amendment at a later time in the discussion of this bill, and describe it in full, at that time. Code section 198 is going to be revised, and we are going to lower the annual deduction to $25,000 and we are going to make deductible all the expenditures required in this bill. By doing that—this amendment will be budget neutral, and there is not going to be any cost to the Federal Treasury. It has been discussed with staff at the Finance Committee who prefer that the amendment not go in this bill because that committee has no jurisdiction here. I hope to be able to put it in reconciliation, which will be following along here in about 30 days, because I believe and the Senator from Utah believes this is a very important concept. Nevertheless, I could not support a 100-percent refundable tax credit. What is the limit on the size of the business?

Mr. HATCH. Totally limited to small businesses less than 15 employees. The tax credit is up to $5,000, and for those that have less than $1 million in total gross receipts.

It is also limited only with regard to existing structures, because under this bill all future structures are going to have to meet all of these requisites. We are talking about a very limited situation here that is going to be a tremendous encouragement for small businesses to move ahead and comply and help persons with disabilities to utilize their services. This is a credit, not a deduction, which many small businesses would not benefit that much from.

Mr. DOLE. I think there always is that argument, credit or deduction. Credit always sounds better. However, in many cases, a $25,000 deduction, is even better than the proposal of the Senator from Utah.

It seems to me that you have a jurisdictional problem here, a cost problem here, and I would say—with respect to the Senator from Utah in his support of this legislation—that I am compelled to oppose the amendment.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I wanted to thank my colleague from Kansas for his remarks. Something else occurred to me, and I discussed this earlier with the Senator from Utah. That is, that we have already in the bill that any changes have to be reasonable, and accomplished without any undue burden; we have all of that in the bill.

My concern is that if you had a $5,000 refundable tax credit, a small business of the type that the Senator from Utah is talking about but maybe it would only require a $100 modification, such as a change in the hinges on a door, or something that may require $250 or $50, for example.

If the business person says, "Gosh, I can get $5,000 back from the Government; I will put in a whole new front to my store," That is what bothers me about this.

I think there can be very modest changes that can be made that may cost $25, $50, $100. What the heck if I can go to the trough, and I can get $5,000 back in refundable tax credits, I might modify a whole bunch of things.

OPPOSITION TO HATCH TAX CREDIT AMENDMENT

Mr. DURENBERGER. Mr. President, I rise to oppose the amendment offered by the distinguished Senator from Utah [Mr. HATCH]. Although I am sympathetic to the idea of helping companies meet the financial costs associated with complying with this legislation, the constraints of the budget deficit make it very difficult, if not impossible, to find additional Federal revenues to help offset these costs.

One of the main problems associated with this legislation is that we have absolutely no idea what the cost to the Federal Government will be if we adopt this amendment. We have held no hearings on this matter in the Finance Committee. Nor do we have any idea of whether the proposed $5,000 tax credit bears any relation to the costs associated with this legislation. In fact, it appears that this tax credit provides money far in excess than would be needed for most small businesses to comply with this legislation. According to one estimate, 51 percent of the accommodations that must be made will bear nominal costs, and an additional 30 percent of company expenses will cost less than $100.

More importantly, if we adopt this amendment, we will endanger any realistic chance that this important legislation will be adopted by the House this year. As all of my colleagues know, the Americans With Disabilities Act is legislation that has originated in the Senate. Any effort to add a tax component to this legislation will almost guarantee that this legislation will be procedurally set aside when it reaches the floor of the House.

Mr. HATCH. First, after all, the treasurer would issue regulations and, second, those responsible under this bill would have to move on under regulation to show what is reasonable. We would be putting the pressure where it should be—on the bureaucracy and not on the small business person. There is no way they are going to get away with remodeling the front of their building.

The fact of matter is I am afraid what we think in the Federal Government as a relatively modest cost, to them may be monumental under the circumstances.

So the advantage of this amendment is that it is not going to be a very costly amendment. I think it is going to force the bureaucracy to face the music that they cannot make it costly. They cannot put too much onerous burdens on these small business people. It means the Federal Government can no longer hand it to the small business people and say, "We pass it; you guys take care of it yourself."

I know the distinguished Senator does not want to do that. I do not want to do that.

A tax deduction will not solve it. Whatever way you look at it, it is only a partial reimbursement at a later date to the small business person who may be suffering untold business disadvantages because of the burden that is placed upon them.

I just do not see why it is such a big problem.

Mr. HARKIN. Mr. President, I retain a little bit of my time here. I am going to have more to say before the close of the debate on this amendment.

I sympathize with the Senator from Utah. I have a lot of small businesses in my State, too. I want to reach some kind of area where we can address those legitimate concerns of modifications that they may have to make.

As I keep pointing out, the bill specifies that they have to be readily achievable, easily accomplishable, no difficulty, no undue burden, not costly. Those are all things that are in the bill.

I want to make sure that we are not doing something here with this amendment that will really cost the taxpayers a lot of more money in terms of this refundable tax credit.

This ought to be an issue which is brought up on the finance bill at some point down the road but certainly not on this legislation.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator from Texas.

Mr. BENTSEN. Mr. President, the Budget Act clearly stipulates that if you cut the revenue below the levels established in budget resolution it is subject to a point or order. That is the way it ought to be. It is incredibly difficult for us to meet the Gramm-Rudman targets. We are striving to meet them. We are making a lot of sacrifices and shifting priorities. But this amendment is a killer amendment that jeopardizes the Disabilities Act.

The House is exceedingly jealous about their constitutional prerogatives. We have experienced it time and time again when we have tried to attach a tax provision to an S. numbered bill. Watch them blue slip it. How many times do they have to do it before we begin to understand that?

The Tax Code already provides a tax deduction to encourage businesses to make their facilities accessible to the handicapped. Under current law, businesses may deduct up to $35,000 of the costs they expend to remove these barriers.

Now my colleague from Utah says that he wants to add $5,000, a refundable tax credit that would be indexed to inflation. The cost of the credit is likely to escalate year after year.

My friend from Utah does not even give us an estimate. I appreciate his candor. He says he does not know what it is going to cost. He has no idea what it is going to cost. Do you think that is the way we ought to be legislating around here, at a time when we are in a real budget crunch? When we are trying to make ends meet for the taxpayers of this country? Is that a responsible way to legislate? The Finance Committee will be putting together a reconciliation package. We will consider many tax questions involving small businesses. The Finance Committee is the appropriate place to address this issue. We have jurisdiction over this issue. In addition, we have the expertise and staff with experience in dealing with these problems.

I stated an hour or so ago, that I was going to raise a point of order against this amendment. Mr. President, I now make the point of order that the Hatch amendment No. 709——

Mr. HATCH. Mr. President, will the Senator withhold the point of order for a few final remarks?

Mr. BENTSEN. I will withhold my point of order.

Mr. HATCH. I appreciate that.

Mr. BENTSEN. We have been discussing this one for approximately 2 hours.

Mr. HATCH. It is an important amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the accommodation by my colleague. I will be brief because I believe we have exhausted some of the aspects of this amendment.

Mr. President, this is not a killer amendment. If it passes, it is going to be encouragement to small businesses to comply ahead of time. It is going to cause a lot of small businesses to not go out of business. It is going to be a basis for stopping the loss of jobs in our society. I think it is the appropriate thing to do since the Federal Government is making these band-aided approaches.

Mr. President, when one offers an amendment that affects the Tax Code, I think you have to expect arguments from the members of the Finance Committee. Nothing in this Chamber is more forcibly guarded than that committee's jurisdiction. I only wish such loyalty were given to the jurisdiction of other committees as well.

The fact is, for the record, I have requested an estimate of the revenue impact of my amendment from the Joint Committee on Taxation. I have yet received a response. I would be surprised if an accurate estimate can be made because we really have no idea what it will cost a small business to comply with this bill.

Some of my colleagues on the Committee on Labor and Human Resources have repeatedly asserted that the cost to small business will be de minimus, and I am perfectly willing to take them at their word.

I might mention I heard complaints by representatives of the administration. They thought it would cost maybe a couple hundred billion dollars. If that is so, so be it. It is a modest cost compared to the pain we are going to put small business owners through if we pass this bill without this type of an amendment.

We as an institution, at some point, have to come to terms with the simple fact that Federal requirements on the private sector cost money. Even the most meritorious requirement providing access to those with disabilities cost money. What is wrong with helping the small business person meet the requirements that we as the Government impose upon him or her?

Instead of waiting for a court or bureaucracy to determine what is a reasonable cost or undue burden, why not provide assistance and incentive for small business to comply affirmatively with this bill? We are told this idea may have merit, but this is the wrong bill, the wrong time, anything which addresses the Tax Code must originate from the Finance Committee. Regardless of the merits of the proposal we have to wait until the committee acts.

This was the argument that was used when we tried to address the problems with catastrophic health care. This was the argument used when some of us wanted to address the problems with section 89, and this is the argument that was used when some of us wanted to provide a realistic solution to problems facing the working poor through use of an earned income tax credit.

There is nothing barring this body from acting today on this issue. There is nothing barring us except the will to take responsibility for the requirements we are going to impose upon American business.

Mr. President, the Tax Code helps those with gambling debts. It helps those who want to throw lavish parties for clients. It helps persons pay for exotic business meetings. But it will not help small businesses that must abide by a new law by rules we are just

making. Why not? Some have argued we already provided tax reduction from some of the cost of helping those with disabilities by a tax reduction is meaningless to a small store in rural Utah that has to build a ramp and widen its doors so those with disabilities can use the store. Such charges may cost only $500 or $600 but that may be a lot of money to that poor little store in rural Utah.

Today, we are creating a brandnew expense. A tax reduction is meaningless, with all due respect. In order to help those with disabilities become more fully mainstreamed into society, a tax credit is needed.

Mr. President, we are asked to wait until the future to consider this issue. We are asked to wait until the Finance Committee decides this is an appropriate issue to be addressed.

What better time is there than now to help those who must pay these costs, than on the legislation that creates the cost and the one that creates these new requirements?

Mr. President, this is an important issue. I really believe that this is the time to do this or I would not bring this up. I feel badly that the distinguished chairman of the committee had to be here for 2 hours. But this is important. This is landmark legislation. This is legislation that is so sweeping that it is going to affect every business in America, something with regard to public accommodation that the Civil Rights Act of 1964 does not do and with good reason.

I suppose there will be those, once this passes, who will come in and say now we have to do it also under title II of the Civil Rights Act. Well, there is good reason why we did not do it then and good reason why we do not want to do it today. The bill is sweeping and it covers every business in America. It provides burdens that are mandated on the backs of those business people. If they do not comply with them and if they are found guilty and subjected to the penalties provisions of this act it could be very, very costly.

This is a small business amendment. It is hard for me to see why anybody would vote against it. And it may go down to defeat. But I want all of our colleagues to understand that this is the small business amendment. This is the amendment that I believe provides equity to persons with disabilities and it provides equity to small business people throughout this country, especially the small small business people for whom it is intended. I think it also provides equity by forcing the Federal Government to be responsible. The Federal Government often does not take any responsibility. We say, "Well, that is tough." "That is your problem." Well, I am tired of hearing that. I came here to try to change that. That is why I am offering this amendment. And, frankly, it is not a killer amendment.

I have a personal belief that the House would gladly take this amendment because it makes sense. It encourages people to comply with the law. It says to the Federal Government, "You may not make the laws too ambiguous. You better not make them too burdensome. You better not pour it on our small small business people. You better do what is right. And you bureaucrats, you are going to cost us a lot of money if you do not." To me that makes good sense and provides good legislation by proposing solutions in advance. It is such language that occasionally is going to have to be added to major pieces of legislation like the ADA bill because it needs to be done at the time the legislation is passed. So everybody knows that small business is going to have a break but that people with disabilities will also be better off because this amendment will make that happen. It is a lot better than having a 15-person exemption that may unnecessarily exempt businesses that really should not be exempted.

I just think that we ought to vote for this amendment. But since the distinguished Senator from Texas is going to raise the point of order, I will then move to waive the appropriate section of the Budget Act and hope that we can resolve the matter with a final vote.

Make no mistake, if you are for small business, then you should be for this amendment and we have to defeat this point of order or the ruling of the Chair, whichever the case may be. It seems to me only through doing that could we protect the interest of both the disability community and the small, small business sector, all of them, pursuant to a bill that is going to be enacted hopefully today. A bill that is sweeping, that is broad, and that provides tremendous obligations. I do not want anybody to misconstrue it. I know that is what is going to happen. And I think anybody who read this bill or worked on it knows that is going to happen. Frankly, I am going to be for the bill regardless of what happens here. But I hope my colleagues will support me on this.

Mr. BENTSEN. Mr. President, while I am sympathetic to the concerns raised by Senator HATCH, I strongly disagree with his approach.

Make no mistake about it, a vote against this amendment is a vote for fiscal responsibility in budgeting. We are trying to meet very stringent budget objectives. Eventually we want to balance the budget and eliminate our enormous deficit. So we must have the courage to oppose amendments where the sponsor doesn't know or care about the cost.

People that vote for this amendment are voting for a change in law that may cost a significant amount of revenue. We do not know the precise amount but rest assured the taxpayers of this country would have to pay. In addition it would make our task of meeting the Gramm-Rudman targets even more difficult. We wrote several provisions into the Budget Act to make it very difficult for the Senate to adopt provisions that will reduce the revenue below the levels set forth in the budget resolution. So it takes 60 Senators to waive the point of order that I am prepared to raise.

I heard the Senator from Utah say a $35,000 tax deduction is meaningless. I disagree. A $35,000 tax deduction provides businesses with a significant cost savings. It's not meaningless. It was enacted to help businesses that remove architectual barriers to the handicapped. And it was done in the Finance Committee which has the jurisdiction over this issue.

The Constitution provides that revenue bills must originate in the House, and the House insists on that prerogative. Time and time again when someone has successfully attached a revenue measure on a Senate bill, the House has sent the bill back. Keep in mind that we are dealing with a very important piece of legislation. Many Senators have worked hard on this legislation, but this amendment would kill the bill and all that work would go down the drain. That must not happen.

I am a strong supporter of this bill and I do not want to see this piece of legislation "blue-slipped." That is why I must raise this point of order.

Mr. President, that is also why you saw the minority leader, Senator DOLE, and the ranking minority member of the Finance Committee, Senator PACKWOOD, opposing this amendment. I have also been advised that the administration opposes this amendment.

Mr. KERREY. Will the Senator yield?

Mr. BENTSEN. Yes. However, I have been trying to make a point of order for almost 2 hours.

Mr. KERREY. I appreciate the patience of the Senator. I have been trying as well to just make a couple of comments in support of this amendment.

I would just ask for a few minutes to make a comment.

Mr. BENTSEN. I have no objection.

Mr. KERREY. Mr. President, I have tried as a freshman Senator to adhere to the procedures of the Senate. Earlier during debate on the catastrophic protection bill upon which I did not vote, I was asked to wait and I have respectfully, out of respect for the chairman of the Finance Committee, I have waited. And I believe that the chairman of the Finance Committee with the Finance Committee is apt to make

a proposal that will solve the problems that we are currently having with catastrophic protection, set aside what I normally have opted for and tried to adhere to procedures. I attempted to do that.

My difficulty here is I have a personal stake in this bill. I believe the bill is not only needed but it enables the United States of America with pride to stand in the world community and say that when we say we are for liberty and justice for all, we mean it, not just for those who have great resources and strength, but we mean it for everyone. And I hear in remarks of the Senator from Texas that he supports that conceptually. He does not oppose this bill. He supports the bill and its intent strongly.

However, I am also in the position of understanding what small businesses are apt to face by this. The Senator from Utah asked me if I would cosponsor his amendment. I did so gladly because I understand that it is going to be difficult for us to explain that we are voting against this amendment out of our concern for a balanced budget and fiscal responsibility at the moment, in this fiscal year, when we were borrowing in excess of $200 million to pay for fiscal bills.

We are going to be borrowing from Americans, driving the interest up for these small businesses that are trying to stay alive and then we come up with a proposal that will mandate for them to make a variety of adjustments in their physical plant.

The first thing each and every one of them are going to say is, "What does this do? What does it mean?"

We should understand, as I am sure most of my colleagues do, that the very small business that this amendment addresses, will not have the resources to be able to hire an attorney or some other specialist to be able to figure it out. They are going to be wondering whether or not they are in compliance with the law and they are going to have to incur, if not some expense, certainly some of their principal operating officer's time to try to figure out what to do.

Then, once they found out what to do, they will unquestionably have to incur some expenses. The thing I find the most appealing about this amendment, with all due respect, is the procedure that says we are going to provide the assistance to those who are least able to afford it. The larger businesses of the United States of America are apt to have already made adjustments and they are apt to have not only been able to figure out what this means, but they will be able to apply their resources to adjust to the rules accordingly.

This particular amendment does, in fact, provide equity, I think, for those who need it the most. So as not to divide this Nation between employers and small business people and the handicapped community, it seems to me, this amendment needs to be adopted.

I appreciate again very much the patience of the Senator from Texas in permitting me to make these remarks. I urge my colleagues to give this amendment full consideration and to vote for it accordingly.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I have great respect for the distinguished Senator from Nebraska. I am a cosponsor of this piece of legislation. However, I have seen a number of important pieces of legislation "blue-slipped." I do not want that to happen to the Disabilities Act.

So, Mr. President, I make the point of order that the Hatch amendment, No. 709, violates section 311(a) of the Budget Act.

Mr. KOHL. Mr. President, I rise in reluctant support of the budget point of order raised by Senator BENTSEN against the amendment offered by Senator HATCH.

The Hatch amendment represents a good idea: The Federal Government should not force businesses to pay for all of our social legislation. I believe the Americans With Disabilities Act has been carefully drafted to minimize that burden. The bill makes it clear, for example, that business may be required to make modifications in existing facilities only if the cost of doing so is reasonable and does not create an undue burden. If, as the advocates of the bill claim, most of those costs would be in the range of a couple of hundred dollars, then clearly that is a cost which business can reasonably absorb. In fact, it might well cost them more to fill out the paperwork to get a tax credit than the cost of the alterations.

Despite the good efforts of the authors of the bill, I can understand why Senator HATCH is concerned. Good efforts have resulted in bad results in the past.

Unfortunately, I have some problems with the particulars of the Hatch amendment. First, it is dangerous to adopt any legislation that has not been carefully reviewed. This amendment has been through no review; the first time I saw the details was when it was offered today on the floor. Adopting it today would be the kind of mistake we got into with section 89, a mistake no one wants to repeat.

Second, we have no estimate of how much the amendment will cost the Federal Government. It may be a good idea to provide some economic relief to small businesses. But before we ask the taxpayers of America to provide that relief, we should know what the cost will be.

Finally, the bill will not help those businesses who have to undertake extraordinary expenditures. If costs run over $5,000, the business will have to pay for everything. Their liability is open ended. I think these extraordinary expenditures are precisely the ones the Government should help pay.

All of these problems can be addressed, but they take time. The problem of incentives can be addressed with modifications to the Hatch legislation. For example, we could provide an 80-percent tax credit for expenditures over $3,000 or some other appropriate amount. This would provide small businesses with some relief without encouraging wasteful spending.

The problem of cost will be addressed as soon as cost estimates are provided by the Joint Committee on Taxation.

And the unforeseen problems could be corrected through the normal hearing process.

I understand that Senator DOLE may seek to insert language in the reconciliation bill which would address some of these issues. Other Members have introduced bills which also seek to provide the protection that business is entitled to. I will work to see that those efforts are fully considered so that adoption of this legislation does not create unfair burdens on businesses.

I regret that the weight of Gramm-Rudman has fallen on the amendment today. But I believe we would serve this Nation best by waiting until a more careful review of the legislation is undertaken. I will do everything I can to speed that review and assure that businesses in Wisconsin and throughout the Nation get any relief that is needed.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I move to waive section 311(a) of the Budget Act pursuant to section 904(b) of the act and 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 Utah.

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 Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio, [Mr. GLENN], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from Alabama [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

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

The result was announced—yeas 48, nays 44, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—48

Armstrong	Garn	McCain
Biden	Gorton	McClure
Bingaman	Grassley	McConnell
Bond	Hatch	Nickles
Boren	Heflin	Nunn
Boschwitz	Helms	Pressler
Breaux	Humphrey	Reid
Bumpers	Jeffords	Rockefeller
Coats	Johnston	Shelby
Cochran	Kassebaum	Simpson
Cohen	Kasten	Specter
Conrad	Kerrey	Symms
DeConcini	Kerry	Thurmond
Dixon	Lott	Wallop
Exon	Lugar	Warner
Fowler	Mack	Wilson

NAYS—44

Bentsen	Gore	Metzenbaum
Bradley	Graham	Mikulski
Bryan	Gramm	Mitchell
Burdick	Harkin	Moynihan
Byrd	Hatfield	Packwood
Chafee	Heinz	Pell
Cranston	Hollings	Pryor
D'Amato	Inouye	Riegle
Danforth	Kennedy	Robb
Daschle	Kohl	Rudman
Dodd	Lautenberg	Sarbanes
Dole	Leahy	Simon
Domenici	Levin	Stevens
Durenberger	Lieberman	Wirth
Ford	Matsunaga	

NOT VOTING—8

Adams	Glenn	Sanford
Baucus	Murkowski	Sasser
Burns	Roth	

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Chair would rule at this point that the adoption and enactment into law of the Hatch amendment to S. 933 would increase the amount by which revenues are less than the appropriate level of total revenues set forth in the concurrent resolution on the budget for fiscal year 1990 in violation of section 311(a) of the Budget Act, and as a result the point of order is well taken and the amendment falls.

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

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

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I commend the managers of the legislation for the dispatch with which they have handled that matter—all of the Senators who are interested in what is obviously important and, in many respects, controversial legislation.

I now am advised by the managers that the number of remaining amendments has been significantly reduced with just a relatively few remaining. It is my hope, noting the presence on the floor of the distinguished Republican leader, that he will join me in urging all Senators who have possible amendments to be prepared now to come forward and present them so that we may be able to complete action on this matter this evening. Notice of this matter being brought up today was provided Senators over a month ago. Senators should have had the opportunity to prepare themselves for this debate and action, and it will be much to the convenience of all Senators if we could complete action giving everyone the opportunity to be heard and giving everyone the opportunity to present whatever amendment each Senator wishes. I do not want to suggest cutting off anyone in that regard, but we are on the bill, and I hope those who have amendments will bring them forward for full debate and decision on them.

I am pleased to yield now to the distinguished Republican leader.

Mr. DOLE. Mr. President, I want to agree with the distinguished majority leader. I think a number of the amendments are being worked out or have almost been worked out. Some have been worked out and some will be offered very quickly in that modified fashion.

It seems to me there is no reason we cannot complete action on this bill early this evening. There is one area—transportation—under negotiation. Perhaps that can be resolved, which will expedite the process.

But as the majority leader indicated, nobody should be surprised that the bill is on the floor because we have had about 30 days' notice that it would come up this week.

So I join the majority leader. If anybody on this side has an amendment if they would notify staff, or Senator HATCH, the manager on our side, we can take up those amendments as quickly as possible to complete action on this bill hopefully early this evening.

FLOOR PRIVILEGES

Mr. MITCHELL. Mr. President, I ask unanimous consent that Shawna Davies, Susan Newberger, Sally Dunn, and Lisa Gorove be granted floor privileges during consideration of the pending legislation, S. 933, Americans with Disabilities Act.

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

Mr. HELMS. Mr. President, will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. HELMS. Incidentally, I say hello to him. I hope he had a good recess.

Mr. MITCHELL. Yes. I had the good fortune to spend it entirely in Maine.

Mr. HELMS. That is almost as good as North Carolina.

I will say to the distinguished majority leader and the distinguished Republican leader that we have been able to work out definitely two of the three major concerns I had about this bill. I do not know how to describe this for the printed RECORD but we are very close to understanding the third thoroughly. If we are not able to reach that, we will have debate on it and a vote, but I think we will work it out.

I say that to explain why I am not going to call up the amendment right now. But I hope we can work it out. The staff of the distinguished Senator from Massachusetts [Mr. KENNEDY], and my staff worked on it last night, and this morning.

I thank the majority leader.

Mr. MITCHELL. I thank the Senator from North Carolina, and I appreciate his informing us of the progress on the matters with which he is concerned.

I think the managers intend to deal with other pending amendments in the hopes that this can be worked out. If it cannot be, when the others are completed, we can take that up and complete action.

Mr. HELMS. I thank the distinguished majority leader.

Mr. MITCHELL. I thank all Senators, and yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HATCH. Mr. President, I have to say I was pleased that we had a vote on that point of order. It was apparent to 48 Senators against 44 who decided that amendment was a worthwhile amendment.

Mr. President, I think we made a terrible mistake. What we have done here is left the public accommodations section alive without any protection to the small, small businessperson.

It is just typical of the work that we do here in the U.S. Congress. I do not blame the distinguished Senator from Iowa. He was in a box and I know it. The fact of the matter is we typically decimate business, especially small business, and act like it is their problem.

We do it by loading them up with Federal Government burdens in so many ways, and this is not an insignificant way. I can see many mom and pop stores, I can see many sole proprietorships, and I can see many small businesses with just a few employees who are going to get rid of those employees, and who are going to quit serving the public. They simply cannot afford to meet what really are reasonable accommodations. For businesses that make a lot of money, they can meet that burden. But it is a very serious burden for businesses that do not.

I did not expect to win on a point of order because the Finance Committee members all coalesced behind unity in the Finance Committee.

That is a smart thing to do in a lot of ways because it has a degree of uniformity and a degree of unity in a very important committee. But really I do not see why the rest of the Senators have to also fall in line.

This amendment was defeated not because it lost up and down, or won up and down, but that it has so much basis as the small business amendment. Those who voted not to waive the Budget Act voted against small business, and those who voted with us voted for it. Yes, I do not want to break the budget. If there is anybody that has a reputation around here for trying to balance the budget, I suppose I have to be one of them, especially as one of the leading proponents of the balanced budget constitutional amendment. But there comes a limit to all things.

When the Federal Government starts loading up the burdens for small businesses like this, even though it is justifiable from an ethic, moral, and societal standpoint, then the Federal Government has an obligation to help with the cost. I think it is what the vote shows, whether it becomes law or not is relatively unimportant as far as I am concerned. What is important is that there was a majority who thought the way I did; that small business is being taken advantage of unnecessarily by people here who are inconsiderate to their needs.

I am disappointed that we lost the amendment, however, I am elated that we got the majority of the votes on the amendment. It is unfortunate that we had to have 60 votes, but I myself am a supporter of the Gramm-Rudman-Hollings Act, and I am supportive of the Budget Act to the extent that it works. So I cannot complain that it worked in this instance to prevent this particular amendment.

I think it is going to cost us a lot more than approximately $100 million to $200 million which it probably would cost in the tax credit area. It is going to cost us a lot more in loss of jobs and businesses, and perhaps downright hostility to those who are persons with disabilities.

I am not a Johnny-come-lately to the persons with disabilities area either. I have worked intimately and have been on every bill for the disabled since I have been here. I think I voted for virtually every bill that passed since I have been here and is now law. I have been a principal cosponsor of most of that legislation.

It is not like I am trying to cause a problem here, because I voted for this bill in committee without this language and saying straight up in committee I would try to amend it on the floor. Well, I did and I lost. That is OK. But it is not OK that hundreds of thousands of small businesses across this country are going to be in a bind, and in the process, the handicapped, and the small business people are hurt.

I think ultimately the Federal Government will be hurt because it will lose a lot of revenue it would have otherwise received. We will pay for it in the end. That is why, in very few instances, I would use a refundable tax credit to try to solve these problems.

Let me say that I think this bill is a monumental bill. I am for it. I am going to do whatever I can to get it passed today. There are things I wish we could change. There are things I wish we could do to make it better. I think in many respects it is long overdue.

This is the most sweeping piece of civil rights legislation possibly in the history of our country, but certainly since the Civil War era. It is pretty tough to say it is more sweeping than the 13th, 14th and 15th amendments to the Constitution. Again, I am talking about legislation, not constitutional amendments. It is important.

I personally believe every Member of this Senate ought to vote for it. That does not mean it is perfect. We are going to find that certain aspects of this bill are going to be very, very difficult upon implementation. I worry about that, because I really feel that in the end it hurts the very people we are trying to help here. In the end, perhaps, we are going to do more harm to those with disabilities, in some instances, than we do good.

The Senate has spoken, and I can live with that. I have lived with it for more than 13 years.

I want to compliment the distinguished Senator from Iowa on the work he has done on this particular bill and tell him I am going to stand here until we get this bill done. I hope we get it done soon.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I have stood here and listened to the remarks of my distinguished colleague and friend, because we have worked very closely on this bill, and I listened closely to the words he just said. I must say I am a little upset with the characterization of the Senator from Utah on the vote that was cast on the point of order that was raised by the distinguished chairman of the Finance Committee. The reading of the record would show that the Senator from Utah said this was a small business vote, and a vote against his amendment was a vote against small business.

Well, now, perhaps my friend, the distinguished Senator from Utah, really did not mean it that way, but if he did and if he wants to characterize that vote, maybe I can characterize the vote also.

A vote in favor of the amendment offered by the Senator from Utah was a vote to kill this bill. Make no mistake about it, it was a vote to kill this bill. Every Senator knows, just as Senator BENTSEN pointed out, that the Constitution provides that bills of revenue originate in the House of Representatives, not in the Senate of the United States.

Second, we know if this had been attached to this bill and went to the House, this bill would have gone nowhere, it would be dead. We have to go back to committee again and everything else after we worked painstakingly for a year and a half to bring this bill to the floor.

I do not care how much anybody wants to say how much they support this bill and want it passed; that vote was a vote that could have killed this bill and ended all of the work and effort that we have put into it painstakingly.

I am a little disturbed. I am disturbed by this characterization that somehow this was an anti-small-business vote. Nonsense. This was a vote to get this bill through and not to have it killed in the House of Representatives, because of constitutional requirements of where bills of revenue originate.

If the Senator wants to bring up this amendment on a Finance Committee bill or a reconciliation bill, then he will see some different votes, but I did not believe that we should vote on something like this here, because it would have killed this bill. People can embrace the bill and say how they love it, how they want to make sure it passes, and they are for individuals who are handicapped, and yet this amendment would have killed it.

I would also point out that this amendment was never offered in committee. It could have been, but it was not. It was offered here on the floor. Perhaps the Senator from Utah has a good reason why it was not offered in committee. I do not know. But it was not. We could have debated it there.

The Senator from Utah also said that—to use the phrase about falling in line—somehow Senator BENTSEN, the chairman of the Finance Committee raised a point of order and everybody fell in line. I want to make it clear that this Senator did not fall in line behind anybody. The only thing I did was to stand up for this bill, stand up for the Americans With Disabilities Act, to make sure that all of the work and compromises that have gone into this bill was not thrown away because of an amendment dealing with a tax issue which would have been attached to this bill, had it carried.

The Senator from Utah can characterize the vote as he wants to characterize it. I take slight umbrage about it—more than slight umbrage—the characterization of the last vote as an anti-small-business vote. That is nonsense. It was a vote to get this bill through, to make sure that the Ameri-

cans With Disabilities Act could get through to the floor of the House of Representatives and get to the President so the President can sign it.

This is a bill that has the support of President Bush, the support of 63 cosponsors, on both sides of the aisle, and as I mentioned earlier today, over 180 different organizations in the United States, including major religious organizations.

Are we going to jeopardize all of this work and effort because of a tax measure that is not going to stand on the floor of the House of Representatives? Many of us served in the House. I served over there for a whole decade. It would not stand 1 day over there. Maybe the Senator from Utah did not understand that. I do not know.

But the characterization of this vote as an anti-small-business vote is nonsense. There will be times in the near future, on finance bills, on reconciliation bills, when amendments to help small businesses legitimately to meet their responsibilities under this act will arise on the floor. This Senator intends to support them because that is the proper place and the proper time for it but not in this bill, which would have killed it.

Let us take it up on a finance bill. Let us take it up on the reconciliation bill. That is the time and place to do it.

So I think this comity that we have developed over the last several months in working together in an atmosphere of cooperation, mutual respect, and mutual support for this bill should not be attacked and destroyed at the last minute by a characterization of votes that tend to cast a pall or tend to cast a view on a person's vote that is not in keeping with what the individual person himself or herself may have wanted to do on that vote.

I think each person can characterize the vote for himself or herself. I do not think we ought to be about characterizing them as either antibusiness, and quite frankly I do not want to characterize those who voted for the amendment as going to kill the bill.

I am just saying that is the kind of quid pro quo you get into around here when you raise those kinds of issues and start characterizing votes around here. I think we should forget the business about this antibusiness vote or a vote to kill the bill. Let us move on. Let us keep this spirit of comity and mutual respect we had in the past.

Mr. HATCH. I will only take a minute, because I know the distinguished Senator from Minnesota wants to speak, and perhaps has an amendment.

Let me make the record clear; I am sorry the Senator took umbrage because I characterized that as a small business vote. It was a small business vote, and there is nobody who looked at it and listened to the arguments and understood what was going on who could think otherwise.

Does that mean he voted against small business? It depends on what was in his mind. I acknowledge that. Do not misconstrue it; it was a small business vote. I am not going to destroy our comity, either. I respect what the distinguished Senator has done. I take umbrage when I hear an argument that the House is going to reject this because it is unconstitutional, because all these bills have to originate in the House, or this kind of amendment has to originate in the House.

Come on. I trust that the House of Representatives understands the Constitution. It is explicity in this area. In article I, section 7 of the Constitution it says that "All bills for raising revenue shall originate in the House."

This is not an amendment for raising revenues, and anybody who understands the basis of constitutional law understands that. It would cost them revenues, perhaps. We do not know. But it certainly does not fit this particular description of the Constitution of the United States, and it was not a killer amendment.

I might also add that the majority of the Senators here disagreed with the distinguished Senator from Iowa. Had it not been for this Budget Act point of order, it would have passed, and rightly so, because it would help every small business in our country with less than 15 employees that has less than $1 million in gross income or gross receipts, that does not spend more than $5,000 trying to reach the accommodation mandates that a nameless, faceless bureaucracy will put on this bill.

To try to imply that I am trying to ruin this bill or scuttle this bill because I have come up with a legitimate amendment, is pretty offensive to me.

Mr. HARKIN. It is offensive to me that I am voting against small business, too.

Mr. HATCH. Let me just say this and maybe reduce the heat in this room. I repeat it again: I am on this bill not because I want to play games with it. Every once in a while I think that happens to be the case around here. I have been here for 13 years, on every disability bill that has passed. I helped work on them, write them, and fight them through the committee, and on the floor.

This one is no exception, and I am going to fight for this one. Do not tell me that that amendment was a killer amendment. There is no way it was.

I am happy to lick my wounds and admit I lost. I do not care; that is the way life is around here. If you want to win, you want to win; do not tell me it will kill this bill. I would not let it kill the bill. Before I let that happen in conference, I would have stripped it out myself, if that were the case. But it could not possibly be the case.

What it would have done is caused everybody in the Congress of the United States to start thinking it through when we start putting the burdens on the backs of small business. We are not just working for the persons with disabilities here. We have to work for the community as a whole.

When you can benefit them as well as small small business by an amendment like that, it makes sense. It is hardly an amendment that is going to fall because it offends the House of Representatives. I think the House of Representatives would have been glad to have that amendment in there.

Be that as it may, it passed because of majority vote but lost because of technicalities of procedures in the Budget Act. I am sorry I offended the distinguished Senator from Iowa. Make no mistake that was a small business vote.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. HATCH. I do not doubt for a minute his very sincere feeling for him and he was sincere in misconstruing the Constitution and believing the House would not take this. But I thought I made that clear during the debate with the distinguished Senator from Texas who did not refute my point once I made it, and once I read the exact language out of the Constitution.

So I am sorry if I have caused some discomfort to my dear friend from Iowa because I have not wanted to do that. I want to assist him and help him on this bill and not hurt him.

I have had my shot, and we have lost, so let it go at that. But I know what the small business community is going to do. They are going to say——

Mr. KENNEDY. Mr. President, will the Senator be good enough to yield?

Mr. HATCH. I yield.

Mr. KENNEDY. As one working with the Senator from Minnesota, Senator BOSCHWITZ, and the Senator from New Hampshire, I did not get a vote on the floor. I understand they are ready to offer their amendments.

Mr. HATCH. I am, too. Let me finish my remarks, and I will immediately turn it over to whichever Senator gets the floor.

Mr. KENNEDY. I thank the Senator.

Mr. HATCH. Let me say this. We are going to go from here and see what we can do to pass this bill. I hope we will be able to have those who have amendments come to the floor and go over those amendments and dispose of them one way or another, whether up or down, and go from here. At the end of this day I hope we have this bill. If we do, I think it is a great tribute to the distinguished Senator from Iowa, among others, and I will be one of the first to say it. I appreciate everything he has done.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I would like to ask a few questions of the managers of the bill. I must tell you I feel this bill has come without much notice before the Senate. The report was ordered to be printed on August 30, 1989, and it just became available to us upon arrival back at the Senate. Now this very broad, far-reaching bill is immediately before us.

I might say that I interpreted the vote on the amendment of the Senator from Utah to be a small business vote. I do not know how else to interpret it. It was indeed a tax credit.

So while it is within the jurisdiction of the Finance Committee, certainly it is not going to make the bill any less invalid.

I wonder if I might ask the Senator from Iowa a couple questions about this bill, and if I could gain his attention.

The PRESIDING OFFICER. The Chair suggest: Does the Senator from Iowa wish to answer the question of the Senator from Minnesota.

Mr. BOSCHWITZ. I might say the Small Business Committee has held no hearings on this bill. I see the distinguished Chairman of the Small Business Committee. I hope we would be able to hold hearings on this bill at some future time even though it may have passed the Senate. We need to get an idea of what its impact will be on small business. It is an extraordinarily far-reaching bill, as the Senator from Iowa knows.

I very frankly think that most Senators do not understand the implications of some of the provisions.

Let me first, ask when you talk about employment, does the 15 or less employees mean full time or part time employees?

Mr. KENNEDY. I say to the Senator, I believe it is full time employees, those who work more than 22 hours a week.

Mr. BOSCHWITZ. Is there a definition of employees that the Senator from Iowa wants to answer?

Mr. HARKIN. The term employer means a person engaged from industry effecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person except that for 2 years following the effective date of this title and employer means a person engaged in industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person. It is the same definition as in title 7.

Mr. BOSCHWITZ. But it includes part-time employees. I gather from that definition, they do not all have to be there at once is that right? Fifteen or more employees for each working day. So they may have four or five in the morning and five in the evening and six or eight in the middle of the day.

Mr. HARKIN. It says 15 or more employees for each working day.

Mr. BOSCHWITZ. But do they have to all be there at one time, I say to the Senator. Your staff is nodding their heads yes. Does that mean they will have to all be there at one time?

Mr. HARKIN. Well, if the Senator would just withhold for just a moment I will find out the exact answer. This is the same language that has been used in Title 7 for 25 years. So there must not be too much of a problem with it. If the Senator would just hold for a second we will find out if there has been any problem with it for 25 years.

Mr. BOSCHWITZ. I will ask another question.

Mr. HARKIN. Do you have another question?

Mr. BOSCHWITZ. I do. I ask whether or not it would apply to townships, municipal governments, and counties and so forth?

Mr. HARKIN. Yes, it does affect local governments.

Mr. BOSCHWITZ. It does effect all local governments?

Mr. HARKIN. Yes.

Mr. BOSCHWITZ. So even some people who are paid just a few dollars by a local government are included? This may well include even some very small localities?

I would like to ask a question regarding public services while the Senator is looking up the 15 employees. The bill says it requires public entities to purchase new buses and rail vehicles—I am reading, I must say, from the legislative notice not from the act—to assure that they are accessible to people with disabilities including people who use wheelchairs. I would like to know if that applies——

Mr. HARKIN. What section is that?

Mr. BOSCHWITZ. Well, you see now you're asking me the questions. I am supposed to be asking you. Which section is that? As I say I am reading from a legislative notice.

My question is whether or not school buses are included in this. It is not clear to me from reading either the notice or the legislation. I found the section—page 54 of the bill, section 203:

> As used in this title, the term "public transportation" means transportation by bus or rail, that provides the general public with general or special service on a regular and continuing basis.

Then it goes on to talk about vehicles.

Mr. HARKIN. If the Senator would yield on that point, in the report accompanying the bill, on page 45, I believe that would answer the Senator's question regarding school buses. If you will look at the bottom of the page, it says, with regard to school bus operations by public entities, "it is not the intent of this committee to require anything different under this legislation than is currently required of school systems and other entities receiving Federal financial assistance under section 504 of the Rehabilitation Act of 1973."

Mr. BOSCHWITZ. It is not clear to me whether or not they have to do it from what you have just read to me.

Mr. HARKIN. If the Senator would want me to continue reading.

Mr. BOSCHWITZ. Yes.

Mr. HARKIN. The next four paragraphs really outline that. I can read that if the Senator would like.

Mr. BOSCHWITZ. Go ahead.

Mr. HARKIN. I would be glad to read it.

> Agencies of a State, or a political subdivision of a State that provide school bus transportation are required to provide bus service to children with disabilities equivalent to that provided to children without disabilties (whether provided directly or by contract or other arrangement with a private entity).
>
> The school bus transportation provided to children with disabilities must be provided in the most integrated setting possible. This means that when a child with a disability requires transportation, the school bus that serves his/her route should be accessible. This does not mean that all school buses need to be accessible; only that equal nonsegregated opportunities are provided to all children.
>
> School bus operations, as defined in 49 CFRT 605.3(b) and the asssociated revisions established in Highway Safety Program Standard No. 17, means transportation by Type I and II school bus vehicles of school children, personnel, and equipment to and from school or school-related activities.

Mr. BOSCHWITZ. I confess to the Senator I am not familiar with type 1 and type 2 school bus vehicles.

Mr. HARKIN. I must say to the Senator I am not either.

Mr. BOSCHWITZ. This does not mean that all school buses need to be accessible; only that equal nonsegregated opportunities are provided to all children.

Consider a rural community or a suburban community for that matter. Is it adequate that the school district provide a separate vehicle that is not segregated, only that equal nonsegregated opportunities are provided to all children? Would that not be a segregated opportunity? They only need to send out a van of some type?

Mr. HARKIN. It says it must be provided in the most integrated setting possible.

Mr. BOSCHWITZ. In any case, it is not the intention of this bill to provide that each school bus running around my State or yours requires a lift for a person who has a wheelchair?

Mr. HARKIN. The Senator is correct. Our intention basically is to con-

tinue the provisions in law that have already been there for many years.

Mr. BOSCHWITZ. Has the Senator determined whether the employees are full-time or part-time yet? Otherwise, I will get on with another question.

Mr. HARKIN. We are finding that out.

Mr. BOSCHWITZ. Is an apartment House a public accommodation?

Mr. HARKIN. Anything that is covered by the Fair Housing Act is not covered by this; it would be covered by the Fair Housing Act.

Mr. BOSCHWITZ. This bill does not cover dwellings where people live; is that correct?

Mr. HARKIN. As I understand it, that is correct, because those are covered under the Fair Housing Act amendments.

Mr. BOSCHWITZ. Is it correct to say that this bill does not cover dwellings?

Mr. KENNEDY. If the Senator from Iowa would yield. It does not cover dwellings that are covered or excluded by the Fair Housing Act.

Mr. HARKIN. If I might, if the Senator would look at title III of the bill, section 301(3), the term, "potential places of employment," and also "public accommodations," later, "such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968."

Mr. BOSCHWITZ. Could the Senator from Iowa, or perhaps the Senator from Massachusetts, describe to me how mental handicaps are covered by this, and how an employer is affected? I am trying to put myself in this position. I have hired a lot of people in my business career. What happens if somebody comes and has some mental infirmity? How does the employer, the small businessman, treat that person when he comes and applies for a job?

Mr. HARKIN. Just as any other person that comes and applies for a job.

Mr. KENNEDY. Will the Senator yield?

Mr. BOSCHWITZ. Yes.

Mr. KENNEDY. I think, if my good friend from Iowa would yield, first of all we have the definition of a disability, which the Senator is familiar with. It is spelled out, on page 41 of the bill, as follows:

> The term "disability" means, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or the record of such an impairment; or being regarded as having such an impairment.

So I would see the situation where, if there were someone who was mentally retarded and was going in to apply for a job as a laser scientist, and the employer said he is not——

Mr. BOSCHWITZ. That is not going to happen.

Mr. KENNEDY. I cannot hear the Senator.

Mr. BOSCHWITZ. That is not what happens. I do not employ laser scientists. I never did. How about a warehouse man——

Mr. KENNEDY. If I can try to answer the Senator's question, maybe it will not be an adequate answer but if I may be permitted to try to complete the answer? What he is basically talking about is if that individual has the ability or capacity to perform the job and the reason that employer says no is because that person is mentally retarded, then this act provides protection.

If the job description is going to be one in which that individual does not have the capability because of said mental retardation or mental illness, he cannot perform the essential functions, then the decision by the employer not to hire that individual would not be a violation of the act, if there was no possible reasonable accommodation.

Mr. BOSCHWITZ. I must confess to the Senator from Massachusetts that in my business I not only did not hire laser scientists, in most instances, I did not even have a job description for people who came in to be hired. It is a very subjective type of judgment that I made—that most businessmen make—unless they are looking for laser scientists or unless they are looking for a schoolteacher or unless they are looking for people who have specific skills.

My business was a retail business. I would say to the Senator from Massachusetts, a business person makes a pretty subjective judgment as to whether or not a person has the ability to sell, or do warehouse work. These are the things that we got involved in. Those kinds of subjective judgments that employers have been making can still be made under this act. Is that correct?

Mr. KENNEDY. The Senator is correct. "Qualified individual with a disability" is someone with a disability who with or without reasonable accommodation can perform the essential functions of the employment position that such individual holds or desires. Essential functions is defined as meaning "job tasks that are fundamental and not marginal."

Mr. BOSCHWITZ. I thank the Senator from Massachusetts. I would say the legislation that has been passed here, in Congress, over the years, has given greater access to people who have disabilities of various types. It is very rewarding to see people who have disabilities able to lead fuller lives. I have been blessed to not have had disabilities, nor my children, thankfully. So I do not have, perhaps, as direct experience as some. But to see people being able to live fuller and richer lives is indeed one of the better things that I have observed in recent years.

I just must say, Mr. President, it is difficult to make out the scope of this act. When I have some more time to look at the bill, I may make more comments here on the floor. Or I will ask my friend, the Senator from Arkansas, who I see has now left, to hold some hearings in the Small Business Committee. We need to get a better understanding of the scope of this bill and how it impacts small business and business in general.

As I understand it, the bill really was negotiated during this past recess. The report was printed, or ordered to be printed, on the 30th of August, and it is now the 7th of September. As a result we have had, if I may say so, inadequate time to consider this bill. Perhaps the Senator from Iowa, who has been working assiduously on this bill for a period of time, does not think so. The Senator from Minnesota, however, feels that he has not yet had a very good opportunity to examine the bill.

AMENDMENT NO. 713

(Purpose: To require a judge to consider if a defendant who is accused of discrimination on the basis of disability has acted in good faith)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. BOSCHWITZ] proposes an amendment numbered 713.

On page 84, between lines 7 and 8, insert the following new paragraph:

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

Mr. BOSCHWITZ. Mr. President, as the ranking minority member of the Senate Small Business Committee, I am concerned about the effect of this legislation on small business. Frankly, I am afraid many Members do not fully understand the impact of this bill. Yet it is probably going to go to final passage this evening, a day or two after we reconvene after a recess. It may well be that small business will find itself least able to afford the changes that are mandated by the pending legislation.

I do not mean to suggest for a moment that handicapped people should not receive all the consideration they need in order to live meaningful lives. My amendment would amend title III of this bill, the public accommodations section of the Americans With Disabilities Act. Currently in title III, when an individual believes he or she has been discriminated against on the basis of a disability, the

Attorney General—and it is my understanding that that is the United States Attorney General—can file a civil action in Federal court, seeking an injunction and monetary damages.

I'd like to turn to the act once again and ask my friend from Iowa another question.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. If the Senator will yield, is the Senator through offering his amendment?

Mr. BOSCHWITZ. No. I am not through offering the amendment. On page 83, section B says, "If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in the pattern or practice of resistance," so forth.

This is the Attorney General of the United States, as I understand it; is that correct?

Mr. HARKIN. That is true; it is the Attorney General of the United States.

Mr. BOSCHWITZ. Often there is a right of referral or there is a concurrent authority that is given to a State attorney general so that the State attorney general can initiate these lawsuits. Is that anticipated or is that possible under these provisions?

Mr. HARKIN. This does not preempt the State from adopting those kinds of provisions.

Mr. BOSCHWITZ. I understand it is not preempting the State from passing the same kind of law, but there would not be a referral to the State attorney general or the State attorney general would not have concurrent jurisdiction granted him by the Attorney General of the United States so that he could move forward with this kind of litigation; am I correct in that?

Mr. HARKIN. The Senator is correct.

Mr. BOSCHWITZ. I thank the Senator. In any case, under title 3, when an individual believes that he or she has been discriminated against on the basis of a disability, the Attorney General can file a civil action in Federal court seeking an injunction in monetary damages. The damages could take the form of a civil penalty for as much as $50,000 for a first time violator or up to $100,000 for a repeat offender. In addition, the Attorney General is authorized to seek monetary damages for the individual harmed by the discrimination.

My amendment will specify that during the process of assessing that injury, if any, that has been caused an individual, a court must take into consideration the good faith effort on the part of the defendant to comply with this act.

Clearly, the Americans With Disability Act is a complicated piece of legislation. Employers are going to be required to spend billions of dollars, regretfully, in modifying their facilities in order to comply. The majority of businesses start out with a total capital in the beginning of under $20,000.

It will be virtually impossible for many of these small businesses to immediately accommodate all types of disabilities. The point to this legislation is that they should comply, but during the period leading up to full compliance, they should be given the benefit of reasonable, good faith efforts to comply.

My amendment will not deter efforts to prevent discrimination based on a handicap. It would, however, be beneficial to small business who are attempting to comply but are still caught in a civil action that results in large financial penalties.

I urge my colleagues to support this amendment to S. 933.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Is the Senator making a request for the yeas and nays?

Mr. BOSCHWITZ. I make the request 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. If there is no further debate, the question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Mississippi [Mr. LOTT], the Senator from Alabama [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 171 Leg.]

YEAS—90

Armstrong	D'Amato	Hatch
Bentsen	Danforth	Hatfield
Biden	Daschle	Heflin
Bingaman	DeConcini	Heinz
Bond	Dixon	Helms
Boren	Dodd	Hollings
Boschwitz	Dole	Inouye
Bradley	Domenici	Jeffords
Breaux	Durenberger	Johnston
Bryan	Exon	Kassebaum
Bumpers	Ford	Kasten
Burdick	Fowler	Kennedy
Byrd	Garn	Kerrey
Chafee	Gore	Kerry
Coats	Gorton	Kohl
Cochran	Graham	Lautenberg
Cohen	Gramm	Leahy
Conrad	Grassley	Levin
Cranston	Harkin	Lieberman
Lugar	Nunn	Shelby
Mack	Packwood	Simon
Matsunaga	Pell	Simpson
McCain	Pressler	Specter
McClure	Pryor	Stevens
McConnell	Reid	Symms
Metzenbaum	Riegle	Thurmond
Mikulski	Robb	Wallop
Mitchell	Rockefeller	Warner
Moynihan	Rudman	Wilson
Nickles	Sarbanes	Wirth

NAYS—0

NOT VOTING—10

Adams	Humphrey	Sanford
Baucus	Lott	Sasser
Burns	Murkowski	
Glenn	Roth	

So the amendment (No. 713) was agreed to.

Mr. BOSCHWITZ. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BOSCHWITZ. Mr. President, I would like to clarify with my friend from Iowa the question of part-time employees. He was able to do so for me on the floor here and perhaps we can get him to do so on the RECORD. I would also like to put into the RECORD a lead editorial from the New York Times of yesterday. Perhaps it was already put into the RECORD.

Mr. KENNEDY. May we have order, Mr. President? The Senator is entitled to be heard.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BOSCHWITZ. I would like to put into the RECORD the lead editorial from yesterday's New York Times and before I do so, I would like to read just a little bit from it. The first paragraph says: "With surprisingly narrow public scrutiny, Congress is moving swiftly to extend broad civil rights protection to the Nation's 40 million disabled citizens."

Mr. HARKIN. May we have order in the Senate? I cannot hear.

The PRESIDING OFFICER. We will have order in the Senate. The staffs will take their seats in the back of the room.

The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, "The sentiment is laudable," the editorial continues. I certainly agree with that. "To bring the disabled closer to the mainstream of American society. But the legislation is vague; not even its defenders are able to calculate its benefits and costs. Those costs could be monumental. The proposal thus requires patient, unemotional examination." And that is something that I have not yet had the time to do, I say to the President. But it is true that with surprisingly narrow public scrutiny, as the New York Times lead editorial says, we are adopting a very, very broad bill.

The editorial also states that the bill calls for a study after the bill is passed, not before, to determine how much this would cost the companies. And that is why I asked that the Small Business Committee perhaps hold hearings after the passage of the bill here in the Senate to get a better understanding of what would be imposed on business in general and small business most particularly.

"The bus companies are angry," the editorial continues. "Most businessmen are simply fretful and confused. That's partly because the bill's language is so vague."

So we are considering a major piece of legislation, I say to the President of the Senate. And we are doing so with narrow public scrutiny, and narrow scrutiny here in the Senate itself.

My friend, the Senator from Iowa, points out that because of the very low rates of employment among the handicapped, 25 percent among men and 13 percent among women, perhaps this bill will improve that and perhaps there will be broad savings to the Government and to society if the handicapped were able to work, and they would be able to live fuller, richer, more meaningful lives.

I certainly agree with that, and I hope that this bill achieves those goals. But just as the editorial writers of the New York Times felt there was rather narrow scrutiny of this legislation, so do I, and it is because of that that I have made the statements and asked the questions that I have asked. Would the Senator from Iowa now tell us a definition of what 15 employees means?

Mr. HARKIN. If the Senator would yield, after checking the full definition, as I understand it, the definition is that the 15 employees, each of the 15 employees have to work 20 hours per week. That is really the definitive point, and that is the 20 hours per week. So that as I understand it, if you had 14 employees that worked for 20 hours, but you only had 1 who worked for 10 hours, then you are not covered. It has to be 15 that work 20 hours each per week.

Mr. BOSCHWITZ. It is not very clear because it says 15 or more employees for each working day and each for 20 or more calendar weeks in the preceding calendar year.

Mr. HARKIN. It has been in effect for 25 years. We copied that language.

Mr. BOSCHWITZ. That is what it intends to mean.

Mr. HARKIN. Yes.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Tennessee.

Mr. GORE. I rise in support of S. 933. This bill represents a long-overdue declaration by our country that people with disabilities deserve fair and equal treatment in our society. Discrimination against such persons can no longer be tolerated. It is a statement of a very basic concept: People with disabilities are full and equal citizens of America, and they shall no longer be locked out, harassed, shunned, abused or otherwise deprived of opportunities that other Americans take for granted.

Madam President, in hearings before the Subcommittee on the Handicapped of the Senate Committee on Labor and Human Resources, Dr. Mary Lynn Fletcher of Lenoir City, TN, gave very graphic descriptions of the types of discrimination she and other people with disabilities face on a daily basis. She spoke eloquently about what she termed "the benign neglect and outright discrimination we face every day." In her testimony, Dr. Fletcher stated:

> I live in agony from week to week as to how I shall be able to get my groceries or how I can gas my car at the self-service stations. When I am able to go to Knoxville to hear our orchestra, I am unable to get into the building. When I do get inside the building, if I need to go to the bathroom, I would have to crawl up a flight of stairs.

One of the key rights of Americans is the right to exercise judgment to select the officers and officials who will make up our Government. That is the right to vote.

Hear again, the right of access to the ballot box is one of the cornerstones of our American system, and as Dr. Fletcher testified,

> We who are mobility impaired or sensory impaired do not yet have the right to vote by virtue of inaccessibility.

As a practical matter, many Americans with disabilities find it impossible to vote. Obviously, such a situation is completely unacceptable and unconscionable. We must take strong action to end the tradition of blatant and subtle discrimination that has made people with disability second-class citizens.

No one can tell who might have a disability someday as a result of accident, illness, or simply as an aspect of the aging process. Prohibiting discrimination on the basis of disability is an investment in the future of all individuals and our Nation as a whole. This act would establish a clear prohibition against discrimination on the basis of disability and would promote the development of reasonable, definitive, and effective standards for assuring access for people with disabilities.

By requiring only modifications that are readily achievable and providing that employers do not have to take actions that are unduly burdensome, the bill establishes flexible, workable, and realistic obligations to eliminate discrimination against persons with disabilities. The time has come for enactment of such legislation that says to all persons with disabilities, "You are a welcome and valued member of our society. Henceforth, discrimination against you shall be unlawful."

So, Madam President, to do less would be unfair, imprudent and un-American. I am proud to support this vital legislation, and I compliment the sponsors and the authors of the bill and urge my colleagues to support it.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Today we are discussing a landmark piece of legislation, the Americans With Disabilities Act of 1989. This bill is thought-provoking in that it calls to mind many real, and unmet, needs of our disabled citizens.

As I watched this floor debate this morning, we realized an alarming fact, that our debate was completely inaccessible to hearing-impaired Americans. Nobody had considered providing an interpreter for the hearing-impaired citizens who will be so vitally affected by this legislation, by our deliberations today.

So I scrambled along with the leadership and the floor managers to arrange for an interpreter, and our debate is now being simultaneously translated into sign language. I sincerely hope that we can extend our use of this service and further integrate hearing-impaired Americans into our national legislative process.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. I wonder if I could seek the assistance of a manager or somebody who is knowledgeable about the contents of this bill. I am concerned because it has come to my attention today that there are provisions in this bill that I do not understand. I came to work this morning thinking that we are going to vote on a bill to help the handicapped, and I would certainly be sympathetic to that.

I would not think you would have to be very smart to know that the ideals of our country certainly call upon the Senate to do whatever it can to be helpful to people in wheelchairs or who have some kind of a physical disability or handicap of some sort and who are trying to overcome it. I am concerned because it has been brought to my attention by counsel that there is doubt about some of the provisions.

Specifically, as I understand it, this bill intends to prohibit discrimination on the basis of disability in employment, public accommodation, public services and telecommunication. It defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of such an individual.

What concerns me is the thought that this disability might include some things which by any ordinary defini-

tion we would not expect to be included. When my staff drew my attention to this—and I guess they must have spent most of August working on it, because they came in armed with cases and memos and so forth, which I have not fully digested. They are concerned that we will not cover such things as illegal drugs.

For example, if a person is a consumer of illegal drugs, does he gain a protected status under this bill?

Mr. HARKIN. I can answer definitively to the Senator that current users of illegal drugs are not, and we are working out a couple of amendments with the Senator from North Carolina and a couple of others to better clarify that.

Mr. ARMSTRONG. I appreciate that.

Would the same apply to alcohol abuse?

Mr. HARKIN. The same thing applies to alcohol abuse.

Mr. ARMSTRONG. I thank the Senator.

May I read a list of related items? I think perhaps the Senator is going to allay some of my fears.

Mental disorders, such as alcohol withdrawal, delirium, hallucinosis, dementia with alcoholism, marijuana, delusional disorder, cocaine intoxication, cocaine delirium, disillusional disorder.

I have a whole list of these.

Am I correct in assuming that these would not be covered as disabilities?

Mr. HARKIN. Well, obviously I am not familiar with these disorders.

Mr. ARMSTRONG. Can I submit this list and ask that the staff look at it overnight?

When my people brought it to my attention, my first reaction is, come on, you guys have had too much time and not enough to do to come up with this list.

But in fact, they responded by saying that the list was drawn from court cases under other legislation which has similar definitions. I could not imagine the sponsors would want to provide a protected legal status to somebody who has such disorders, particularly those who might have a moral content to them or which in the opinion of some people have a moral content.

What I would like to do is submit this list for the Senator and his staff to look at overnight; so if that is the case, we ought to address it and straighten it out if we could.

Mr. HARKIN. I will be forthright to the Senator from Colorado. I am hopeful we will finish the bill tonight. The majority leader said that. I said we are looking to clarify the intent of the legislation. Some people brought things to my attention earlier that I think do need clarification, that current users or illegal drugs are not covered by this bill.

Mr. ARMSTRONG. How about homosexuality and bisexuality?

Mr. HARKIN. That is not covered by this bill.

Mr. ARMSTRONG. How about exhibitionism, pedophilia, voyeurism, and similar?

Mr. HARKIN. That is not covered by this bill.

Mr. ARMSTRONG. That is not covered?

Mr. HARKIN. I can state definitively that is not covered.

Mr. ARMSTRONG. How about compulsive kleptomania, or other impulse control disorders?

Mr. HARKIN. Those are not covered.

Mr. ARMSTRONG. I beg your pardon. You say you are sure?

Mr. HARKIN. They are not.

Mr. ARMSTRONG. How about conduct disorder, any other disruptive behavior disorder; not covered?

Mr. HARKIN. There we are a little uncertain, because some may be mental disorders or may be closely connected with a mental disorder; they could be covered.

Mr. ARMSTRONG. I think this has been helpful. I will submit a list and will be grateful if we could return to the subject, because I would feel uncomfortable if there were some doubt and Senators then found themselves in a situation where, for example, someone who abused alcohol or abused marijuana or something, tried to seek protection under this act and employers were put to a test and there was doubt about it.

If there is any doubt, I would like to offer an amendment. If there is not any doubt, I am perfectly satisfied to clarify the record.

Could I, while I have the managers' attention, ask one other question, and perhaps we could just solve that problem without an amendment as well.

I am told that in the bill there is a provision which says in effect that a party who brings litigation under this bill, if the party is successful, may recover attorneys' fees from the other party to the case. Is this correct?

Mr. HARKIN. The only way that applies, is getting injunctive relief. I tell the Senator that the first draft of the bill when it was introduced last year provided for the recovery of compensatory damages, punitive damages. We have taken that out.

The only cause of action now for an individual is injunctive relief. If injunctive relief is granted, then the individual can get relief.

Mr. ARMSTRONG. What happens, could the Senator tell me, if an individual seeks such relief? As I understand, what they do is go to the EEOC, and the EEOC actually prosecutes the case for them. If there is a finding against the employer, that is, the EEOC prevails and gets an injunction of some kind, as I understand it, EEOC could seek and under the statute be given some compensation for attorney fees. Is that correct?

Mr. HARKIN. Would the Senator repeat that last statement?

Mr. ARMSTRONG. As I understand the way this works, if I am an employee and I think I am unfairly and illegally discriminated against——

Mr. HARKIN. On the basis of handicap——

Mr. ARMSTRONG. I go to the EEOC and tell them my story. If they agree, they actually then bring the case?

Mr. HARKIN. I am informed by the staff that in that situation, you do not get attorneys' fees.

Mr. ARMSTRONG. You do not?

Mr. HARKIN. No.

Mr. ARMSTRONG. Could you then clarify under what circumstances fees might be payable by the losing party to the party that prevails?

Mr. KENNEDY. Will the Senator yield?

Mr. HARKIN. Yes.

Mr. KENNEDY. It is private parties. This is standard language included in all civil rights. There is no variation, I understand. It is limited to the private parties, as the Senator from Iowa pointed out.

Mr. HARKIN. If I could give an example. If a private person, an individual with a handicap, let us say, was discriminated against either in employment or let us say in public accommodations, maybe once, twice, has been discriminated against and not allowed into a place because of disability, and that person went out and hired a private attorney to go to court to seek injunction against the place of business to keep them from doing that again and that person prevails, that is when they would be able to recover attorney fees.

Mr. ARMSTRONG. If the handicapped person prevails, then the person against whom they prevail should pay the attorney fees to the person who brought the case?

Mr. HARKIN. In that case, if injunctive relief is granted.

Mr. ARMSTRONG. I appreciate that. My question is, suppose the person who is being sued prevails. Can they also get attorney fees paid?

To take an example, if a person is seeking access to public accommodation, if they prevail against the provider of the accommodation, they can get the attorneys' fees.

Suppose the reverse is right. The provider of the public accommodation proves they did not violate the law. Can they get the attorney fees paid?

Mr. HARKIN. No.

Mr. KENNEDY. I wonder if the Senator would yield on this point, as a matter of practice the answer is "no." If considered by the judge to be frivolous, then there can be no award of at-

torney fees for the defendant and that is following the other civil rights legislation.

Mr. ARMSTRONG. Mr. President, let me point out that in a lot of analogous cases where there is good faith on both sides there is heavy litigation expense often over quite technical points of law. My concern is that the burden of bearing those attorneys' fees should not be a factor in the outcome. In other words, if it is fair that the plaintiff's get their attorney fees if they prevail, then it ought to be equally fair that the defendants get their attorney fees if they prevail whether before the EEOC or the district court or whatever.

My question is, would that not be a reasonable provision to include in here whichever side is entitled to attorney fees if they prevail that the other side be entitled?

Mr. HARKIN. As a practical matter we know the demographics of the handicapped people. Most of them are very low-income people. They do not have a lot of assets.

As I said, this was a compromise that we worked out in this bill to take out the damages that preclude the kind of actions I think the Senator sort of at least obliquely is talking about where someone might bring a case, get attorneys, go out and prosecute and go out and pay attorney fees, that kind of thing. That is not in the bill. The only thing is injunction.

You take a handicapped person as the distinguished chairman of the committee pointed out earlier, and they have enough just to get through the day. They have enough of a tough time just to keep themselves together to get through, day by day, and do not have the financial resources to go out and frivolously try to prosecute a case.

I think the instances in which, practically speaking, instances in which cases could be brought for injunctive relief would be very few and will involve egregious cases of multiple types of discrimination, probably against more than one person with a disability.

Suppose an individual with a disability goes into a place of public accommodation and is told he cannot come in or something, is that person going to go to court and get an injunction? No, they will just go someplace else. They will say, "Heck, we will not go back to that place of business again."

Practically speaking the cases you find will be the egregious cases and multiple kinds.

Mr. ARMSTRONG. Mr. President, then if that is the case then I think I would agree with the argument of the Senator from Iowa. I think the more likely instance is a little different. I think it is more likely sort of at margins at the frontier of the law where we are litigating some question as what is reasonable, what kind of accommodation must be made to a handicap and it might involve some very technical issues and it might not involve some poor person who is just trying to buy a cup of coffee in the neighbor coffee shop or might involve much larger actors on the Nation's stage than that.

I guess I want to think about it. I urge the Senator from Iowa to think about it.

My intention is if it is fair on one side it is fair on the other. I would be willing to take it on both sides or put in both sides.

It does not seem fair to me if someone's side is entitled to get attorney fees if they prevail the other side should not have the same right to attorney fees if they prevail.

While I appreciate what the Senator said about the plight of the handicapped, I also have firsthand knowledge of a bunch of people who get harassed by lawsuits all the time. I am not worried about General Motors. They can afford to hire a battalion of lawyers. I am worried about a typical case involving small public entities, small companies. They do not have full-time lawyers nor can hire a part-time lawyer. The lawsuit is a heavy burden for them to bear. In a lot of cases they end up caving in.

I am not talking about an employment issue. I am talking about tax matters and environmental issues, and the threat of lawsuits becomes a serious problem whether a public or private entity.

I am saying we ought to equalize the law particularly so where it involves prosecution of the case by a public agency.

Although I understand the Senator's explanation that would not be a case under this bill. If it is an EEOC proceedings they cannot get compensation back for attorney fees, that is a great reassurance because it is particularly unfair if you have the government taking some private individual or some school district or some fire district or some local jurisdiction to court.

I thank the Senator for his explanation. I will send these items over.

Mr. HELMS. Will the Senator yield?

Mr. ARMSTRONG. I am happy to yield.

Mr. HELMS. I am interested in the Senator's statement that this bill is aimed at the egregious violators. Was the Senator saying that is the intent of the bill?

Mr. HARKIN. No; I am sorry. The Senator misunderstood what I said. I think in 99.9 percent of the cases where a case would be brought for injunctive relief, those would be in very egregious cases of discrimination, probably on a multiple basis.

Mr. HELMS. I would say to the Senator, once a horde of bureaucrats descends upon a small businessman, then he is hooked.

Is there not some way that the Senator can make legislative history to emphasize that you do not intend for these bureaucrats to go out and look for victims—and that is what I think they would be—can you make some sort of legislative history on that point? You almost made it in what you said.

Mr. HARKIN. There is nothing in the bill that provides for any agency of Government to go out and do that kind of thing. This is left as a private right of action for a disabled person. The only provision in the bill that provides for the Attorney General of the United States in pattern and practice cases to vindicate the public interest, then the Attorney General then can go out on his own and prosecute a case. But that is the only provision in the bill. There is no other area there.

Mr. HELMS. There is going to be some agency in the Government administering this legislation if and when it is enacted and signed into law. Is the Senator telling the Senator from North Carolina that no effort by the Government will be made, short of the Justice Department, the Attorney General, to go out and look into these things? Will there not be any other agency?

Mr. HARKIN. In the employment sector, the Commissioner of EEOC would be empowered to hear cases that would be brought by a disabled person in the employment sector. And the Commissioner of EEOC could, in pattern and practice cases, also bring a case against someone in a pattern and practice case. But those are the only two.

First of all, as the Senator from Colorado pointed out, if a disabled person brought a case under employment, it would go through the administrative remedies of EEOC first and, of course, that would go to the Commissioner of EEOC. But he would not, in that kind of situation, be able to proceed on his own.

Mr. HELMS. If the distinguished Senator from Colorado would yield further to me, I would say to the Senator that on all three matters that the Senator from Iowa and the Senator from Utah and I, along with the Senator from Massachusetts, have discussed and we have been able to reach a pretty good accommodation. But I am still concerned about the tendency of this Government, the IRS for example, to focus in and say we are going to get this guy's hide. I want to be sure or as sure as I can be that this legislation is not implemented in that fashion. Is there something the Senator could say for legislative history as to the intent with respect to—well, let us call it what it is—the persecution of some small businessman.

Mr. HARKIN. I can assure the Senator that it is not this Senator's intent. I trust after reading the bill myself and the report and the colloquy that we have had here on the floor, the amendments that have been accepted, and those are still being worked on, I want to make it perfectly clear that there is no intention in this bill whatsoever to persecuting small business people in any way whatsoever.

Let me clarify two points.

First, regarding the availability of damages as a remedy for private individuals enforcing the act, the Senator from Colorado raised this question in the context of employment and public accommodations covered by titles I and III of the act. It is true that the employment provisions of title I make available the rights and remedies of title VII of the 1964 Civil Rights Act, which provides for backpay and equitable relief. Also, under the public accommodations provisions of title III, the bill expressly limits relief to equitable remedies. However, title II of the act, covering public services, contains no such limitation. Title II of the bill makes available the rights and remedies also available under section 505 of the Rehabilitation Act, and damages remedies are available under that provision enforcing section 504 of the Rehabilitation Act and, therefore, also under title II of this bill.

Second, let me clarify the extent to which administrative remedies are available. Under title I of the bill, the EEOC is authorized to investigate complaints of discrimination in employment. Under title III of the bill, covering public accommodations, the Attorney General is authorized to investigate alleged violations of title III, and is authorized to undertake periodic reviews of compliance of covered entities. Under title II of the bill, covering public services, administrative enforcement is available to the same extent it is available under section 504 of the Rehabilitation Act.

Mr. HELMS. I thank the Senator.

Madam President, I will seek the floor if the Senator from Colorado has yielded.

Mr. BOSCHWITZ. Would the Senator from Colorado yield? I would like to ask a question.

Mr. ARMSTRONG. I would be glad to yield, but the simplest thing is for me to yield the floor and let the Senator from North Carolina and the Senator from Minnesota continue. I do yield the floor.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado had the floor. The Chair was lenient in order that questions could be answered.

Who does seek recognition?

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. I ask the Senator from Iowa what kind of relief does someone who was injured received? Are there any kind of damages that they can receive? Let us say that a handicapped person is discriminated against under this bill. Can that handicapped person sue for damages?

The reason I ask this question—and it is kind of in response to the question of the Senator from Colorado—the Senator from Iowa said that this was not going to generate a great deal of legal business. Most of the stuff we pass around here—and the Senator from Colorado and the Senator from North Carolina and I are three of the nonlawyers in the place—but most of what we do around here seems to generate a lot of legal business. My question is: Is there any kind of court relief? Is there any kind of damages that a person can sue for under this bill?

Mr. HARKIN. No. I assure the Senator from Minnesota the whole nature of the compromise that was worked out with the administration provides that there are no damages in this bill. There was in the initial draft. There is not in here. In the employment section, there is only injunctive relief and back pay.

Mr. BOSCHWITZ. In the event it was an employer——

Mr. HARKIN. That is right.

Mr. BOSCHWITZ. But that would not apply to a person who was applying——

Mr. HARKIN. No. In the public accommodation title it is only injunctive relief.

Mr. BOSCHWITZ. So that we should not expect under this legislation that people are going to go out and get a lawyer and say I will take a third of whatever we recover because this legislation would not do that.

Mr. HARKIN. It would not.

Mr. BOSCHWITZ. I thank the Senator and I thank the Senator from North Carolina.

AMENDMENT NO. 714

(Purpose: To amend sections 304 and 305 relating to the accessibility of over-the-road buses to individuals with disabilities)

Mr. HOLLINGS. Madam President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself and Mr. CHAFEE, proposes an amendment numbered 714.

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

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

The amendment is as follows:

(1) Amend section 304(b)(4) by inserting "except as provided in section 305(d)," immediately after "Other providers,"; by striking "6 years" and inserting in lieu thereof "7 years"; and by striking "5 years" and inserting in lieu thereof "6 years".

(2) Amend section 305(a) by striking "Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792)" and isnerting in lieu thereof "Office of Technology Assessment".

(3) Amend section 305(c) to read as follows:

"(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

"(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

"(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

"(3) member selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).".

(4) Amend section 305(d) by striking "Board," and all that follows and inserting in lieu thereof "Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.".

(5) Amend section 305 by adding at the end the following new subsection:

"(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).".

Mr. HOLLINGS. Madam President, this amendment has been worked out I think on both sides of the aisle.

Madam President, I appreciate this opportunity to offer an amendment to S. 933, the Americans with Disabilities Act of 1989, which relates to the study required by this bill on the access needs of individuals with disabilities to intercity buses.

Currently, this study is to be conducted by the Architectural and Transportation Barriers Compliance Board. My amendment seeks to change the author of this study from the Architectural and Transportation

Barriers Compliance Board to the Office of Technology Assessment [OTA]. OTA has a proven track record in studying issues related to technology and in helping to develop consensus on critical issues such as this. In addition, OTA can assemble the experts necessary to address both aspects of the study mandated by S. 933.

This is a critical study which is to address the specific problems and costs that may be associated with the requirement in the bill that new intercity buses be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

In addition to studying the access needs of individuals with disabilities to over-the-road buses and the most effective methods for making these buses accessible, the study is to include an examination of the impact of accessibility requirements on the continuation of intercity bus service, in particular the impact on rural service. I believe OTA is best equipped to perform this type of economic analysis which is critical to making a determination of whether accessibility requirements in this legislation might impose so great a burden on private bus companies as to have the unintended effect of hastening the deterioration of private bus service, and in particular, rural service.

A second component of my amendment would increase by 1 additional year, the timeframe for compliance of the requirement in the bill that within 6 years after enactment for small providers—to be defined by the Department of Transportation—and 5 years for other providers, all new over-the-road buses purchased or leased to provide public transportation services must be accessible to and usable by individuals with disabilities. These numbers would change to 7 years and 6 years, respectively.

I believe it is important that the bus industry as well as the Congress have at least 3 years between the time the study is completed and the date by which the lease/purchase requirements would become effective to assess the findings of the study.

The final component of my amendment would provide for another 1-year delay in implementing the lease/purchase requirement if the President finds, after reviewing the OTA report, that a significant amount of intercity bus service would be endangered if providers were compelled to comply with the accessibility requirement. This additional year would provide more time for Congress, if it deemed it necessary, to propose additional legislation to address these concerns.

The economic health of the intercity bus industry and the continuation of intercity bus service are both of vital importance to me and to the Commerce Committee, which I chair. While I am a cosponsor of S. 933, and applaud the members of the Labor Committee for their commitment and diligence in crafting this comprehensive legislation, it is with the above concerns in mind that I urge my colleagues to support this amendment.

I would try to answer any questions.

I thank both sides, Senator DOLE and Senator HARKIN, and particularly Senator KENNEDY, for their understanding of the concerns that we have had in the Commerce Committee.

Mr. KENNEDY. Mr. President, I want to say that I will support the amendment of the Senator from South Carolina. I hope that the membership will accept it.

I had felt, quite frankly, that the committee substitute in the areas of transportation, which is a key element in this whole legislation, provided for a period of study but also provided for the implementation in a 5-year period, in terms of private intercity buses, and 6 years for small providers. This amendment extends that time by 1 year.

But what it will do is it will permit what I consider to be the best technical agency that exists, really, in our country, the OTA, to do the very technical work in terms of the technical complexities for transportation. It then permits the Architectural and Transportation Barriers Compliance and Review Board to comment on that particular study.

I have complete confidence, as I know the Senator from South Carolina has, that the OTA really is perhaps the best agency to be able to make this judgment. I know he and I are always reluctant to mandate studies upon that body. But I think given the uniqueness of this particular challenge, and given their expertise, that this is appropriate.

My own belief, having been at the hearings and studied the issue, is with this kind of study we are going to find that concerns by the bus companies are going to be dramatically eased.

The new technologies which are coming on line and which are being utilized, for example, in a number of the European countries, and some new technologies in Denver, CO, and Johnstown, PA, indicate that many of the concerns which had been expressed previously have not been a problem. I think that is going to be demonstrated again with this bill.

So, though I felt that what is in the committee substitute was a preferable way of doing this, I understand the concerns. I am very hopeful that in the interim, between now and those 6 and 7 years, that we are going to be able to demonstrate that the kinds of objective that we had hoped to achieve in the legislation are going to be easy to accomplish and that the companies themselves were not going to wait until the deadline but will take the opportunity to buy accessible vehicles sooner. That is my own firm belief, having talked to some of those in the transportation industry who are also on the cutting edge of technology.

The Senator has worked on this issue. I know the members of the Commerce Committee have special expertise and interest in these areas of transportation. It seems to me this is a satisfactory solution.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, I want to say I think the amendment by the Senator from South Carolina makes a lot of sense and I would like to be added as a cosponsor, if I might.

Mr. HOLLINGS. I appreciate it.

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

Mr. CHAFEE. I think he is directing the study to the proper group and furthermore, he is dealing with a problem that is a real one.

I am familiar in our State with relatively small bus companies, privately owned, that go intercity, and they are deeply concerned.

The technology, I think, is going to astonish us with the developments that take place in the next several years. I cannot help but believe that we are going to see the brains of America turn toward developing ramps and lifts that are far less expensive than those currently existing, and far more efficient.

But I do think we have to give them a chance. Therefore, I think the amendment of the Senator from South Carolina is a good one. I believe that we want these privately owned bus companies to continue. They are providing the service, and with the decline of rail service in so many instances and certainly with the expense that is going to come about with air transportation, in many instances, or no air transportation at all, we are dependent upon these intercity buses. So we want them to succeed. And we also want to them to be able to provide for the handicapped in a sensible fashion.

I think it is a good amendment and hope it is accepted.

Mr. HOLLINGS. Madam President, I thank my distinguished colleague from Rhode Island. I appreciate very much his support and comments.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Madam President, I rise in support of this bill as it was reported out of committee. It is a good bill, solidly written, and one that will finally bring long-deserved civil rights to those among us with physical or mental impairments. I am proud to be a cosponsor of S. 933.

The Americans With Disabilities Act of 1989 will provide a long-needed comprehensive ban against disability-based discrimination, which is still a

pervasive problem across the United States. The ADA is based, in part, on the successful experiences of some States and localities, including Colorado, which have made great progress against particular aspects of disability discrimination.

I am proud of what the State of Colorado, particularly the Denver area, has accomplished in both transportation and public accommodations. This bill is crucial so that people nationwide can receive the same protections.

In Denver, we recognize that public transportation is essential to a true integration of people with disabilities into our community, as well as to successful employment. The Denver Regional Transportation District has long had a commitment to accessible public transit, and we know that it is reasonable, regardless of climate, to require that newly purchased buses be equipped with lifts.

Equally important is access to private transportation to facilitate traveling from city to city. It is very important that both intracity buses and intercity over-the-road coaches be accessible to people with disabilities, whose travel needs do not stop 5 miles from their houses anymore than yours or mine. I support both requirements fully.

The transit industry is concerned over what it sees as financial drawbacks to making private intercity service accessible, but an objective look at the facts amply demonstrates that there are not genuine obstacles.

The bus industry says that providing accessibility to an over-the-road coach costs an extra $35,000, takes up a third of the baggage space, and results in a loss of 11 or 12 seats. The truth is, however, that accessible over-the-road coaches have been and are manufactured which do not pose such problems. The Stewart & Stevenson Power Co. of Commerce City, CO, outfits buses with little or no loss of passenger or baggage space. These are the ones we use in Denver. In the Denver area, 17 accessible coaches are successfully operating today, with more coaches on order, for which the purchase price is only an extra $11,000—not $35,000. On these buses the lifts take up no baggage space—not a third—and result in the loss of only one seat—not 11 or 12. Moreover, maintaining these lifts has proven extremely cheap, and we have seen that as refinements are made to the design of the buses, the cost is going down.

It is simply a distortion for the over-the-road coach industry to pretend that this technology does not exist, or to deny that technology in general cannot adapt. When a market is created for accessible over-the-road coaches—which it will be by this bill—companies will race to outdo each other for the chance to offer evermore inexpensive accessible coaches.

The Americans with Disabilities Act already includes a special exemption to assist this specific industry in the transition to nondiscrimination. While publicly funded transit entities have 30 days to stop purchasing inaccessible vehicles, and most private entities have 2 years, large private intercity providers are given 5 years, and small ones are given 6 years. This is more than ample time to gear up and to refine methods for compliance.

In addition, the act requires a study to decide the best method for making intercity service accessible and describes how the study will be carried out. The purpose of this study is to decide how the service can best be made accessible, not whether it should be made accessible. The intention of the Americans with Disabilities Act is that newly purchased vehicles will provide accessible intercity service within the time limits specified, in order to comply with the law.

It is not only fair and just, but reasonable from a fiscal perspective, to end disability discrimination. Let it be this year that our Nation takes a firm stand against one of the last bastions of intolerance: the one which besieges 43 million Americans, our largest minority. Let us pass a comprehensive ban against unnecessary barriers, and facilitate an end to segregation and exclusion for our disabled citizens. Let us enact the Americans with Disabilities Act of 1989.

I think this is a good amendment. I do not think the problem was as grave as was suggested earlier. I just want to cite very briefly the experience of the regional transportation district in Colorado.

In the Denver metropolitan area, it has already done a great deal of retrofitting of buses. They have not found this. We have been working on this issue for 15 years. They have not found this to be the kind of onerous problem that was suggested 15 years ago in Denver. The adaptation of these buses has been done and it has been done at a very reasonable price.

The comments by the distinguished Senator from Rhode Island are exactly correct. The ingenuity is moving out and moving out very smartly and I think we will find this kind of access to the handicapped of transportation is going to work all across the country as it is now working in Denver.

I want to thank the distinguished chairman, Senator HARKIN, for the very good job he has done to work this out, and I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I want to rise also in support of the amendment and to say that we are going to accept the amendment. Obviously, we have worked this out with the distinguished Senator from South Carolina.

I share with the Senator from South Carolina, and I know a number of other Senators here, a real concern about the effect of this bill on intercity bus transportation. I spent about an hour in my office the other day with the president of Greyhound and, quite frankly, he raised a lot of concerns in my mind.

I did not mean to single out that company but that company serves a lot of small towns in my State and I am sure in South Carolina and everyplace else.

The president of that company pointed out some real concerns which I took to heart.

I have a great concern what effect this might have on intercity bus service, especially in small towns and communities in rural America. So, I have been trying to find some middle ground, some way of balancing these interests, the legitimate interests of trying to get from this point to some point in the future when we do have buses that are accessible but doing it in a way that does not put an onerous burden on these bus companies that is going to drive them out of business or make them take away some of the service they give to small towns and communities.

So I believe the amendment that the Senator from South Carolina has crafted strikes that balance, and I want to also reassure those bus companies, the large ones and the small ones—we have some in our State, two small bus companies—that we are going to monitor this very closely. I believe the Senator from South Carolina has correctly identified the agency that should do the study and with the residual input from the architectural barriers review committee.

He is right in having the OTA do the study. I want to assure those bus companies, and I am sure the Senator from South Carolina would assure they will also, that we are going to monitor this as we go along. If we see any kind of harmful impact out there, we are going to take remedial action. We are going to do something here to make sure that there is no deregulation of those bus services to those small towns and communities in our States. I believe this amendment has really balanced those interested and struck a good middle ground. I want to compliment the Senator from South Carolina for coming up with this amendment, and we are not only more than ready, we are very happy to accept it.

Mr. HOLLINGS. I thank the distinguished Senator from Iowa. Madam President, I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 714) was agreed to.

Mr. HOLLINGS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HOLLINGS. I thank the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Madam President, we only have 7 or 8 minutes before I understand there is going to be a vote on the legislative appropriations bill; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS. I want to engage the distinguished floor manager in a colloquy involving some things that may have already been clarified, but they were not clarified in my mind. First of all, there is a provision in here that says, for example, all buses purchased within 30 days or after 30 days from the enactment of this provision must meet these standards.

Does that mean that any buses on order at that time would not be included in that? Is that correct?

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. So that only if you issue a purchase order for buses after 30 days would you have to put the lifts on, for example.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. And have a modified rest room on it, and so on; is that correct?

Mr. HARKIN. No. Let me clarify for the Senator. We are only talking about public transit.

Mr. BUMPERS. I understand that. We are talking about public transportation.

Mr. HARKIN. The other ones we are talking about were private transportation.

Mr. BUMPERS. We have two classifications here as I understand it. The criteria of this bill has always been applicable to public transportation where Federal funds were involved, is that not correct, under the Rehabilitation Act?

Mr. HARKIN. Yes; the Senator is correct.

Mr. BUMPERS. What we are doing now is extending this to all public accommodations; that is, owned by cities, counties, States, and so on, whether Federal funds are involved or not, as well as private intercity carriers.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. With respect to public transit, the bill provides that people in those categories provide buses 30 days after the enactment of this bill must order buses that come into compliance with the bill; is that correct?

Mr. HARKIN. I must say to the Senator, only buses that are purchased by public transit authorities and used for fixed route public transportation.

Mr. BUMPERS. I am not talking about Greyhound. That is a privately owned company. We are talking about city buses and publicly owned buses, owned by the State, county, city, and so on.

Mr. HARKIN. Yes.

Mr. BUMPERS. In that provision, does not this 30-day provision apply to them?

Mr. HARKIN. Yes; it does.

Mr. BUMPERS. We will come back to the privately owned bus companies in a moment. So my question is, and I am trying to clarify the record, I do not want to be argumentative, a lot of people want to know the answers to these things and the record may be silent if we do not clarify it. The question is if you have issued a purchase order for a bus prior to 30 days after the enactment of this bill, you will not be required to make that bus comply with the terms of this bill?

Mr. HARKIN. If I might read from the report to the bill on page 47.

Mr. BUMPERS. Page what?

Mr. HARKIN. Page 47 of the report.

Mr. BUMPERS. I am with you.

Mr. HARKIN. Down toward the bottom of the page:

> The term "new" means buses which are offered for first sale or lease after manufacture without any prior use. Buses for which a solicitation is made within 30 days after enactment of this legislation are not subject to the accessibility requirement and thus are not required to have wheelchair lift equipment.

Mr. BUMPERS. That part of the report now answers my question, I say to the Senator. If they get a fleet of buses delivered to them within that 30-day period, they are not obligated to retrofit them or do anything else to them.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. When it comes to the regulations which probably will be written in the area of public accommodations—we are talking about hotels, restaurants, so on—the Justice Department, as I understand it, will enforce that; is that correct?

Mr. HARKIN. Excuse me, what will the Justice Department enforce?

Mr. BUMPERS. Let me ask the question. Who will enforce this law regarding public accommodations for the disabled—hotels, restaurants, grocery stores, Wal-Marts, all those?

Mr. HARKIN. There will be two entities: Individuals with disabilities who at some point would want to bring an injunctive case, a case for injunction against a business or the Attorney General in a pattern and practice case are the only two that would be enforcing this.

Mr. BUMPERS. The Attorney General and who?

Mr. HARKIN. Any private individual.

Mr. BUMPERS. A private individual can sue, that is true. We can assume, can we not, that the Justice Department will write the regulations to implement the terms of this bill?

Mr. HARKIN. That is true.

Mr. BUMPERS. I assume DOT will write the regulations for the public transportation part.

Mr. HARKIN. I think the Senator is correct.

Mr. BUMPERS. We have this provision in here which really causes me more problems than anything else. I am going to vote for the bill. I am a cosponsor. I am also chairman of the Senate Small Business Committee. However, this term "readily achievable" is a very, very indefinite term. My question is this: When I look at the report and I look at that term, who will decide what is readily achievable? You have some criteria set out here in the bill and in the committee report, but it seems to me that readily achievable is like beauty; this is going to wind up being in the eye of the beholder. For example, in looking over the legislative bulletin of the Democratic Policy Committee, and I do not mind sharing this with our friends on the other side of the aisle, it says on readily achievable, "factors to be considered in determining whether an action is readily achievable include, one, the overall size of the covered entity, such as the number of employees, number and type of facilities and the budget size; two, the type of operation, including the composition and structure of the entity and, three, the nature and cost of the action needed."

I say to the Senator, if you will agree with me that when you have this kind of criteria out here, that these can only be considered a partial list of factors to be considered. It is not considered to be an exhaustive list, is it, of what is readily achievable? Let me give you an example. If I am in the hardware and furniture business, which I was once, and somebody says, "Your business does not comport with this bill and with the regulations promulgated thereunder by the Department of Justice. Now that person can bring a suit against me at that time, can they not?

Mr. HARKIN. A qualified person, yes, could bring a suit against you.

Mr. BUMPERS. If somebody comes into my place of business and looks around and says, "Look, I cannot use your restroom, I had to get my brother to help me up the steps"——

The PRESIDING OFFICER (Mr. BRYAN). The hour of 7 o'clock has arrived. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I understand under the previous order the vote on the legislative branch appropriations bill is to occur at 7 p.m.; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I be allowed to address the Senate for 1 minute.

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

Mr. MITCHELL. Mr. President, we are near completion of this bill. If any Senator has an amendment that he or she wishes to offer, that Senator should be prepared to do so immediately after the vote that is now about to occur on the legislative branch appropriations bill, or if any Senator wishes to speak on the subject of the disabilities bill, that Senator should be prepared to do so, so that we can complete action if all amendments are offered and disposed of this evening.

So I ask all Senators, those who wish to address the subject matter of this bill, or who wish to offer an amendment, or both, be prepared to do so immediately following the completion of the vote on the legislation branch appropriations bill.

I thank all Senators for their courtesy.

Mr. BUMPERS addressed the Chair.

Mr. MITCHELL. If Senators are prepared to proceed, this will facilitate our disposition of this matter finally.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Senator.

Mr. KENNEDY. Will the Senator yield.

Mr. MITCHELL. Yes.

Mr. KENNEDY. Without cutting off the Senator from Arkansas, at the termination of the vote the Senator from North Carolina—we have been working with him for about 5 hours on his particular amendments. I think we have an agreement. It should not take long. I would like to see the vote process move forward and to accommodate the Senator from North Carolina. I wonder if that would be appropriate.

Mr. BUMPERS. Mr. President, I do not know that it makes a lot of difference whether the Senator from North Carolina goes first or second. I want to accommodate the managers. If they prefer to get that amendment disposed of and have an agreement, then I would like to get recognized immediately after that amendment. Either way.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I would prefer for Senator BUMPERS to proceed with his colloquy because he had a train of thought going and I am going to be here anyhow.

Mr. BUMPERS. I am, too. So, with that understanding, I will just proceed with this colloquy. As I say, 10 minutes is about all I want and it might not even take that long.

Mr. HELMS. Mr. President, I would prefer to say that the staff of Senator KENNEDY and others are working with my staff right now and I think it will be completed by that time.

Mr. MITCHELL. I thank the Chair.

The PRESIDING OFFICER. The 1 minute of the majority leader has expired.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, if I can have the attention of the distinguished floor manager, I will try to be as brief as possible. I cannot be brief unless I have the attention of the floor manager.

Mr. HARKIN. I apologize to the Senator from Arkansas. I was covering a couple of other things. I will be glad to respond as best I can to the questions.

Mr. BUMPERS. Mr. President, to continue the colloquy before we were interrupted by the vote, let me ask and clarify something before we go on. Is it correct to say that one who is aggrieved by failure of anybody to comply with this act must exhaust, as we lawyers say, his or her administrative remedies before they proceed to file suit.

Mr. HARKIN. That is affirmative.

Mr. BUMPERS. In that connection, Senator, if somebody who is disabled goes into a place of business, and we will just use this hypothetical example, and they say, "You do not have a ramp out here and I am in a wheelchair and I just went to the restroom here and it is not suitable for wheelchair occupants," are they permitted at that point to bring an action administratively against the owner of that business, or do they have to give the owner some notice prior to pursuing a legal remedy?

Mr. HARKIN. First of all, Senator, there would be no administrative remedy in that kind of a situation. The administrative remedies only apply in the employment situation. In the situation you are talking about——

Mr. BUMPERS. That is true. So one does not have to pursue or exhaust his administrative remedies in title III if it is title III that is the public accommodations.

Mr. HARKIN. Title III.

Mr. BUMPERS. Title II is employment.

Mr. HARKIN. That is correct.

Mr. BUMPERS. That has the small business exemption also and it is also in title II where you must exhaust your administrative remedies before you go to court?

Mr. HARKIN. Title I.

Mr. BUMPERS. What title is it that covers public accommodations, restaurants and—title III? In that case, the same example, if a person feels aggrieved because a business is not up to the standards of the bill, according to someone who is disabled, what do they do? Do they write the Attorney General or go down to the courthouse and file a lawsuit?

Mr. HARKIN. If the Senator will permit me, I think the practical outcome of a situation like that would be that a handicapped person would talk to the owner of the business and say, "Look, I would like to come to your establishment, I would like to eat or shop here or buy things here. But quite frankly I cannot get into your business, I cannot use your facilities because they are nonaccessible, and we would like you to make some changes so it can be accessible."

Mr. BUMPERS. That is all well and good, but is there any prohibition against that person filing a lawsuit at that time because they are not in compliance, indeed, in violation of this bill?

Mr. HARKIN. I would have to answer to the Senator that that would depend upon the kind of violation and whether or not the provisions of the bill that outline what readily achievable means, easily accomplishable, without much difficulty or expense. Now, if the Senator is talking about a business that employs several hundred people, that may not have a ramp or something like that, that is nonaccessible, that is one thing. If the Senator is talking about a small business, that mom and pop establishment, that is quite a different story.

Mr. BUMPERS. Senator, what I want to know is, does the bill distinguish between those two as far as remedies are concerned? There is no distinction between somebody with 3 employees and 30,000 employees in this bill.

Mr. HARKIN. Turning to injunctive relief, the Senator is right, there is no difference. But in terms of what the court would find based upon the legislation, based upon the record that we have made and the report and the regulations that will be promulgated, then the court would decide whether or not what the plaintiff was seeking in that case is readily achievable, easily accomplishable, carried out without much expense, in accordance with the size of the business.

Mr. BUMPERS. But my question is this: Is there anything in the bill that would preclude any person who feels aggrieved by the lack of accessibility to a mom and pop grocery store with three employees from immediately

going to the courthouse and filing a lawsuit?

Mr. HARKIN. First of all, I will say to the Senator, and let me repeat again and again and again, there is no provision for damages in this bill.

Mr. BUMPERS. Wait a minute.

Mr. HARKIN. The aggrieved party cannot go down and sue for damages.

Mr. BUMPERS. Is the Senator absolutely sure of that; in both title I and title III, you cannot sue for damages?

Mr. HARKIN. Absolutely; that is out of the bill.

Mr. HATCH. Could I add something, if that is possible, to the distinguished Senator from Arkansas? There is no right to sue for damages on a private basis?

Mr. HARKIN. That is right.

Mr. HATCH. The Attorney General can sue to implement the civil penalty damages.

Mr. HARKIN. In pattern and practice cases.

Mr. HATCH. That is right. The Attorney General can also ask for monetary damages, but it is limited to the Attorney General.

Mr. HARKIN. That is right.

Mr. BUMPERS. So the Attorney General would have to give permission before you could sue for damages?

Mr. HATCH. No; the Attorney General could sue for damages.

Mr. BUMPERS. But not an individual?

Mr. HARKIN. Let me make this clear. The Attorney General in a pattern and practice case can find a violation, and can then levy a fine—it is not damages—levy a fine. He can also request monetary damages—not punitive damages, only monetary damages—on behalf of the aggrieved person, whatever monetary damages may have accrued to that person. That is only the Attorney General who can do that.

Mr. BUMPERS. The term "readily achievable," does that apply to both transportation and public accommodations? You have some criteria set out in the report as to what is considered to be readily achievable.

My question is, Does that term apply to both title I and title III; public transportation and public accommodations?

Mr. HARKIN. No. It only applies in title III, I would respond to the Senator. It does not apply to transportation.

Mr. BUMPERS. Now, I understand. "Readily accessible" applies to transportation; does it not?

Mr. HARKIN. I does apply.

Mr. BUMPERS. Readily achievable in title III applies to public accommodations. Going back to readily accessible, we discussed a moment ago the question of buses, and the Senator from Iowa has said that any buses owned by a public entity prior to 30 days after enactment of this bill would not have to be retrofitted.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. If I am a disabled person and I complain about a bus not having a chair lift for my wheelchair, my question is, What does readily accessible mean? Does it mean that the bus company is obligated to make that bus readily accessible to me?

Mr. HARKIN. If the Senator is talking about old buses and buses which they have purchased or put in a purchase order for prior to 30 days after enactment of this bill——

Mr. BUMPERS. The answer is "No."

Mr. HARKIN. The answer is "No."

Mr. BUMPERS. I think this is a very important point. I want to be sure we are right on that. The Senator is telling me that even the term "readily accessible" does not apply to any bus purchased prior to 30 days after the enactment of this bill.

Mr. HARKIN. That is absolutely correct.

Mr. BUMPERS. That is what the colloquy is all about. I want to get things like that clarified.

Mr. HARKIN. I understand.

Mr. BUMPERS. Now when it comes to the regulations, for example, to implement title III of this bill, the public accommodations part, you have this question of "readily achievable." You have this rather indefinite term "readily achieveable" in here, you are saying that the size of the building, the number of employees, the cost of all those things go into determining whether it is readily achievable or not. Is that correct?

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. So readily achievable is a term that I am not familiar with as a term of art. I practiced law for 20 years before I got into this business and I never heard that term before. So this is a new term that is in this bill, and "readily achievable," that sort of is like beauty. It is in the eye of the beholder, is it not?

Mr. HARKIN. Would the Senator repeat the question?

Mr. BUMPERS. I said the term "readily achievable" is like the term beauty. Beauty is in the eye of the beholder and readily achievable means that some judge says it means, does it not?

Mr. HARKIN. Again, if I could direct the Senator's attention to a further reading on page 65 of the report.

Mr. BUMPERS. Page 65 of the committee report.

Mr. HARKIN. Of the report. I think the Senator was reading from part of that earlier in terms of readily achievable.

Mr. BUMPERS. I read that. We are in agreement on this: You have some criteria set out here.

Mr. HARKIN. I do not know if the Senator read on down to the end of this page and clear onto the next page because it further defines what readily achievable means and what it does not mean.

"It is important to note—" I would read on for the Senator—"that readily achievable is a significantly lesser or lower standard than the 'undue burden' standards used in this title and the 'undue hardship' standard used in title I * * *" "The concept of readily achievable should not be confused with the phraseology of 'readily accessible.'" "The phrase 'readily accessible to and usable by individuals with disabilities' focus on the person with a disability." On the other page, page 66:

> Readily achievable, on the other hand focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier, if barrier removal cannot be accomplished readily, then it is not required.

I can read the whole thing there.

Mr. BUMPERS. Is it fair to say then that if there is a barrier that cannot be readily removed, that its removal cannot be readily achieved, then that operator is not obligated to furnish access to his place of business to a handicapped person? Is that correct?

Mr. HARKIN. Just a moment.

The Senator is correct; unless the operator of that establishment can make the services readily available without undue burden.

Mr. BUMPERS. It seems to be that the Senator is giving with the right hand and taking away with the left.

Mr. HARKIN. No. It is the same. What I am saying is if you have a barrier that cannot be removed, readily achievable, cannot be removed, the operator of that establishment does not have to do anything else unless they can provide the services under the same criteria.

Mr. BUMPERS. What you are saying then is that even if he cannot readily achieve a removal of the barrier, he still has to provide access to the handicapped person through some other method.

Mr. HARKIN. If it is readily achievable.

Mr. HATCH. That is right.

Mr. HARKIN. If it is readily achievable.

Mr. BUMPERS. I am getting confused here. Let us walk through this so I understand what we are talking about.

Mr. HARKIN. Maybe I could read on to page 66 to the Senator.

Mr. BUMPERS. All right.

Mr. HARKIN [reading].

> * * * the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Those are the kinds of examples we included in there to show what we mean by readily achievable.

Mr. BUMPERS. Let's walk through this example. This may seem a bit bizarre, so let me clarify what I believe to be a contradiction in this bill.

Let us assume that you have 40 steps in front of a business. I used to attend the First Methodist Church in Charleston, AR, and it had 30 steps. It never occurred to me until my father's funeral that this was a big problem to a lot of people.

Let us assume you have that and let us assume that it is determined that removal of that barrier would not be readily achievable under the criteria of this bill.

Now what I understand you to be saying, I say to the Senator, is even though it is determined that it is not readily achievable to provide access under those conditions, that there must be some alternative method designed. Maybe the regulations of the Justice Department say you have to have a ramp, which is in this case would be, we will say, 20 feet high and 75 feet long. But my point is this: If it is determined that it is not readily achievable because of its costs you are saying that he is still obligated to provide services through some other alternative if that is readily achievable.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. Well, it is readily achievable or it is not.

Mr. HARKIN. No, access may be readily achievable or may not. The providing of services again may be readily achievable or it may not. As I said, I gave an example. For example, let us say there are three or four or five steps going up to a dry-cleaning establishment, the mom and pop operation on the corner. To put a ramp up and remove the steps might come as an undue amount. But if a handicapped person came to the door and said, I want to leave my dry cleaning and go to the door, fine.

Mr. BUMPERS. That is all well and good. That is an easy example. The one I gave you is not so easy. I am not talking about where somebody who can drive up to the drive-in window and come up to the first step and hand in their dry cleaning. I am talking about a case where the cost of providing access may very well cost as much as that businessman is going to take in in the next 30 days.

Mr. HARKIN. Well then, if that is not really achievable he would not have to do it.

Mr. BUMPERS. But you are telling me if that is not readily achievable then he must provide similar services if it is readily achievable.

Mr. HARKIN. If the service is readily achievable.

Mr. BUMPERS. Let us go further. Let us assume there is no alternative that is readily achievable. Then what happens?

Mr. HARKIN. He has no obligation.

Mr. BUMPERS. He is free.

Mr. HARKIN. Yes.

Mr. BUMPERS. So the disabled just do not have access to his place of business, is that correct?

Mr. HARKIN. That is correct.

Mr. BUMPERS. That is all I was trying to get at.

Let me ask you another question. I do not want to belabor this. I am for the bill. I hate to get personal. My daughter was paralyzed in a wheelchair for 6 months, and it sensitized me to something I would never have been nearly as sensitive to if I had not had that experience. So I am going to vote for the bill, and I must tell you I want these people to have access. I will do anything in the world to accommodate them. But as a former small businessman and chairman of the Small Business Committee of the U.S. Senate, I am concerned. I am concerned about what I think may put some people out of business. And the reason we are here debating this bill, the reason we are talking about it, is that we are obligated here to weigh the interest of the rights of the handicapped, which ought to be total, against what is obviously going to be quite a burden for a lot of small business people.

And what I am trying to do is to set this record straight so that these small business people who do not want to pay a penalty and who want to come into compliance have some understanding of what their rights are.

Now my question is this: going back to the same illustration. Somebody is going to write some regulations and say, for example, you will provide a ramp for wheelchair people if the building is less than three stories high. Somebody is going to go to have to make some kind of a regulation about what you do to provide accessibility and what you do not do. And I am assuming that the Justice Department is going to write some regulations. Is that a fair statement?

Mr. HARKIN. That is a fair and accurate statement.

Mr. BUMPERS. OK. Let us assume that some businessman gets out there and he says, "Look, this is a crazy regulation. I know that the Senator from Florida and the Senator from Arkansas did not take leave of their senses, and they did not intend for me to have to comply with such an onerous burden. It would bankrupt me if I did it."

But you know what the administrative law is on regulations, do you not? The courts almost always defer to the "expertise" of the regulation writers. In hundreds of cases where the court writes a decision, the judge says, "I think this regulation is crazy, too, and if it were a case of first impression for me, I would rule it invalid. But the case law is that we always defer to the expertise of the regulation writer."

So you have got this same old problem that we have hassled with for years in the business community, where they feel so terribly put upon when they find an onerous regulation and then find that the court feels an obligation to defer to the regulation writers. Is that not correct?

Mr. HARKIN. I want to respond to the Senator by saying that I am every bit as sensitive to the plight of small businesses as the Senator is. I have never been a small business operator, but the district I used to represent when I was in the other body and the State that I now represent is a State of many small businesses. That is basically the backbone of our State's economy. Many of my relatives were small business operators in the State of Iowa. I can assure the Senator that this Senator paid due diligence to every aspect of this bill as it was drafted, redrafted, negotiated, hammered out, compromised, amended to make sure that the burden on small businesses is modest, as we say in the legal profession, to make sure that we strike a balance. Again, I would just tell the Senator that we were basically faced with two options. One, we could say, do not do anything. Well, what does that say to handicapped persons—do not do anything? Well, that is not acceptable. I am sure the Senator would not want to stick to that—do not do anything, leave things as they are.

On the other hand, we could have gone completely the other way saying, retrofit everything, make everything accessible, no exceptions. That would have bankrupted the small businessman. We did not want to do that. So we crafted this language with this readily achievable standard, with the standards that we put in it to ensure that the regulation writers from the Justice Department cannot go off on some tangent and write regulations that would be onerous, burdensome, and disastrous to small businesses.

I can assure the Senator that this Senator, because I am so interested in this area and because of my interest in small business—and I serve on the distinguished Senator's Small Business Committee—that I am going to be paying very close attention to this as these regulations come out.

Now, again, we are going to have a chance to review those here. We will get a chance to review those. And we are going to make sure that they follow our intent in these regulations. When they promulgate or propose regulations, the business community is going to get them. They are going to be able to talk to us and let us know whether or not those are burdensome, whether or not they are going to run them out of business. At that point we can go in and we can make the necessary changes. The Senator knows the regulatory process just as well as I do and the way they promulgate regulations.

So I just want to state that this is not the end of it. It is not the end of our oversight responsibilities either. So when they promulgate those regulations, and put them out for review and comment, we are the ones that are going to look at them to make sure they are responsible regulations.

Mr. BUMPERS. Senator, why are school buses exempt from the public transportation part of this?

Mr. KENNEDY. If the Senator would permit, there are provisions in here to provide that those children that are going to be of school age that are going to need transportation will be provided it in a way that will also permit other children to be involved in it.

This was an accommodation that was worked out with the various school boards, school districts, school teachers, and the disability groups, reviewing the kinds of needs that those within the disability groups had that were attending school.

Mr. HARKIN. I did not hear the response of my distinguished chairman, but these entities are all covered under section 504. That has been in law for 15 years. That law covers school buses right now anyway.

Mr. KENNEDY. And has worked in a satisfactory way.

Mr. BUMPERS. Are public schools exempt? In other words, if there is a school building out here with three flights of stairs, do they have to come into compliance?

Mr. HARKIN. I would reply to the Senator, again, schools are covered under section 504 of the Rehabilitation Act.

Mr. KENNEDY. The schools, as you know, get title I funds and other kinds of Federal funds.

Mr. BUMPERS. They were supposed to have been covered a long time ago under the Rehabilitation Act; is that correct?

Mr. HARKIN. Yes.

Mr. BUMPERS. Have they been?

Mr. KENNEDY. By and large, I think the overwhelming majority have been.

Mr. BUMPERS. I just have two quick questions. Does my colleague know by what percentage the Greyhound Corp. says that this bill is going to increase the price of Greyhound bus tickets?

Mr. HARKIN. I would respond to the Senator I do not know the exact amount. What did they say?

Mr. BUMPERS. I understand they say it is going to increase the cost of tickets by as much as 25 percent. That is going to be an incentive for people to take the plane rather than a bus, is it not?

Mr. HARKIN. That is based on what assumption for the cost of the lift?

Mr. BUMPERS. I do not know what their assumptions are. But they say a new bus costs about $200,000 and that these lifts would cost as much as $30,000. Then they have to retrofit—not retrofit, but they are going to have to buy a different kind of a restroom to accommodate these folks.

Mr. HARKIN. I would respond to the Senator, I spent over an hour in my office the other day with the president of the Greyhound Corp.

As I said earlier to the Senator from South Carolina, he raised some very grave concerns in my mind about the provision of bus services to small towns and communities. That is why we accepted the amendment offered by the Senator from South Carolina, because I believe that amendment struck a good compromise and a good balance. Again, in this area, we will be reviewing, after 3 years, the study that OTA comes up with.

That study will address, some of the concerns the Senator has raised.

Mr. BUMPERS. How many cities in Iowa are dependent on bus service for transportation? Does the Senator know the answer to that?

Mr. HARKIN. I would say in excess of 200.

Mr. BUMPERS. That would be a good guess. In my State it is about 149.

Mr. HARKIN. I would say in excess of 200. That is why I am very concerned about this.

I point out, in testimony we always hear the price of lifts is between $30,000 and $35,000. I do not know if the Senator heard the statement of the Senator from Colorado earlier. Currently there are lifts being installed on buses in Denver, CO, for less than $12,000. These lifts take out only one seat and take no baggage area whatsoever. So, it really is not a $30,000 or $35,000 cost.

I would also reiterate what the Senator from Rhode Island said earlier. When West Germany mandated lifts on their buses, it is amazing what happened. Some entrepreneurs went to work and they developed this lift that only cost $8,000 or $9,000. That is the one being used in Denver. It is made in West Germany. West Germany.

I will tell the Senator this and I will stake a lot of money on this bet with the Senator. If we pass this bill we will find businesses out there looking at 4,000 buses that the Greyhound Corp. has, plus a lot of others, it is going to be about 16 years from now when the new buses will be phased in. We can bet our bottom dollar someone is going to be out there, the new technology is going to come along and these new lifts will be cheaper. There is just no one looking for the way now because there is no demand for it.

We all know we can get the lifts for less than $12,000 installed. I bet my bottom dollar in a couple or 3 years we will get it lower than that.

I think Greyhound was using as a basis their $30,000 or $35,000 lifts. I know that is not going to be the case in the future.

Mr. BUMPERS. One further question. I heard this alluded to earlier in the evening and I do not know how it was resolved.

Let us assume that somebody brings an action against a business and they make 20 counts of violations of this act. Let us assume that the judge determines that 19 of those counts are specious, frivolous, and throws them out and finds for the plaintiff on one ground and provides injunctive relief on that one ground.

Is the plaintiff entitled to attorney's fees?

Mr. HARKIN. The best answer I can give the Senator, and I really do not know, I honestly have to say I do not know the answer to that.

But from a legal background, and having practiced in court, as the Senator has, I would say that would be to the court to determine the legal fees, I suspect.

Mr. BUMPERS. Let us assume the court throws out 15 allegations as being specious and finds for the plaintiff on 5. Do you know whether or not that changes anything?

Mr. HARKIN. Well, again maybe those five are the most important. Maybe those cases involve the ones that caused the harm in the first place. Again, I do not know. I have to think this will be left to the court to determine: A, whether or not they should get attorney's fees and, B, how much attorney's fees they should get.

Mr. BUMPERS. I think the Senator is probably right. There is a substantial body of case law that says that if any substantial portion of the complaint is sustained, then they are entitled to attorney's fees.

How about the guy running a hardware store, if he is a defendant? What if the judge throws all 20 allegations out? Is the hardware store owner entitled to attorney's fees?

Mr. HARKIN. Well, again if it is a frivolous lawsuit the hardware store owner could go after them for attorney's fees; if it is a frivolous suit. Obviously, if all 20 are thrown out that almost seems to be a prima facie case,

but I do not know. That is up to the court.

Mr. BUMPERS. The Senator from New Mexico and I and a lot of us passed these equal access to justice bills here, saying that the businessman whom the Government wrongfully sues ought to be entitled to attorney's fees just like the prevailing plaintiff is entitled to attorney's fees. In the case of the prevailing defendant, the rule is, as I understand it, in the case where all 20 allegations were found to be specious and frivolous, the court still has to find that they were brought in bad faith before the hardware store owner can get attorney's fees. So the standard is quite different for the two. And the businessman is put at a very distinct disadvantage on attorney's fees in those cases.

Mr. HARKIN. I think in the case the Senator is talking about, the Government is on one side of that case. I agree with the Senator on that.

Mr. BUMPERS. I am not talking about a case where the Government brings it. I am talking about where an individual brings it.

Mr. HARKIN. In this case the individual here, a disabled person, my colleague is right, would be able to get attorney's fees. Again, it would be up to the court to decide how much and what was a fair and reasonable amount of attorney's fees that person could receive.

Mr. BUMPERS. I thank the Senator for accommodating me. We may have just muddied up the record worse than it already was.

Mr. HARKIN. I do not believe so. I think the Senator made a good contribution tonight. I think there were some things that needed to be clarified and I think they were clarified, and I appreciated that.

Mr. BUMPERS. I commend the Senator for all the work he has done on this. I know it has been a labor of love for him. He and the Senator from Massachusetts, the chairman, both worked diligently on it and are to be commended.

I must say, I am not torn to the extent that I am not going to vote for the bill. But I am so concerned that I am going to watch the regulations being written very carefully and get my two bits worth in, in the comment period.

Mr. HARKIN. I can assure the Senator that as a member of his Committee on Small Business, I will be right behind him in that endeavor.

Mr. BUMPERS. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

LEGISLATIVE BRANCH APPROPRIATIONS, FISCAL YEAR 1990

The Senate continued consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 3014.

The legislative clerk read as follows:

A bill (H.R. 3014) making appropriations for the legislative branch for the fiscal year ending September 3, 1990, and for other purposes.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been previously ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from Ohio [Mr. METZENBAUM], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

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

The result was announced—yeas 81, nays 9, as follows:

[Rollcall Vote No. 172 Leg.]

YEAS—81

Bentsen	Fowler	Matsunaga
Biden	Gore	McCain
Bingaman	Gorton	McClure
Bond	Graham	Mikulski
Boren	Gramm	Mitchell
Boschwitz	Grassley	Moynihan
Bradley	Harkin	Nickles
Breaux	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pell
Burdick	Heinz	Pressler
Byrd	Hollings	Pryor
Chafee	Humphrey	Reid
Coats	Inouye	Riegle
Cochran	Jeffords	Robb
Cohen	Johnston	Rockefeller
Cranston	Kassebaum	Rudman
D'Amato	Kasten	Sarbanes
Danforth	Kennedy	Shelby
Daschle	Kerrey	Simon
DeConcini	Kerry	Simpson
Dodd	Kohl	Specter
Dole	Lautenberg	Stevens
Domenici	Leahy	Thurmond
Durenberger	Levin	Warner
Exon	Lieberman	Wilson
Ford	Lugar	Wirth

NAYS—9

Armstrong	Garn	McConnell
Conrad	Helms	Symms
Dixon	Mack	Wallop

NOT VOTING—10

Adams	Lott	Sanford
Baucus	Metzenbaum	Sasser
Burns	Murkowski	
Glenn	Roth	

So the bill, (H.R. 3014), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. NICKLES. I move to lay that on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. BUMPERS] is recognized.

Mr. REID. Will the Senator yield until we finish a matter on this bill?

Mr. BUMPERS. I will be happy to yield to the Senator from Nevada.

Mr. REID. Mr. President, I move that the Senate insist on its amendments and request a conference with the House 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. REID, Ms. MIKULSKI, Mr. ADAMS, Mr. BYRD, Mr. NICKLES, Mr. HATFIELD, and Mr. STEVENS, conferees on the part of the Senate.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I wish to again congratulate Senator REID for the outstanding work he has done on this bill. It has been a pleasure to work with him.

Mr. HELMS. Mr. President, for the record, I wish to ask the distinguished manager a few questions about this bill, the Americans With Disabilities Act of 1989.

In the bill, the definition of "individuals with disabilities" includes anyone with a physical or mental impairment limiting one of life's major activities, and anyone regarded as having such an impairment.

The report lists many mental and physical disorders and therefore it must have been the intent of S. 933's authors that it be an all-encompassing bill; is that correct?

Mr. HARKIN. Well, the Senator's question was, Did we intend for the bill to be all-encompassing?

Mr. HELMS. Yes.

Mr. HARKIN. Within the definition the Senator just read, that is correct.

Mr. HELMS. I thought the Senator would say that, so I will be specific. Does the list of disabilities include pedophiles?

Mr. HARKIN. What?

Mr. HELMS. P-e-d-o-p-h-i-l-e-s?

Mr. HARKIN. I can assure the Senator no.

Mr. HELMS. How about schizophrenics?

Mr. HARKIN. Schizophrenics, yes.

Mr. HELMS. Kleptomania?

Mr. HARKIN. Well, I am not certain on that.

Mr. HELMS. Manic depressives?

Mr. HARKIN. Manic depressives, yes. I can state that.

Mr. HELMS. People with intelligence levels, as measured on standardized tests such as the IQ test, which are so far below standard average levels as to limit substantially one or more major life activities, but who do

not have any identifiable mental disease?

Mr. HARKIN. It is my understanding that they would be covered in this bill. If I understood the Senator correctly to say that it was so low that it did limit one or more, I do think I heard the Senator say that. I did hear the Senator say the IQ is so low that it limited one or more life activities.

Mr. HELMS. Correct.

Mr. HARKIN. Yes; in that case.

Mr. HELMS. How about a person with psychotic disorders?

Mr. HARKIN. I am told, yes. I am informed by staff it covers that.

Mr. HELMS. Homosexuals?

Mr. HARKIN. No; absolutely not.

Mr. HELMS. The Senator is certain about that?

Mr. HARKIN. I am absolutely certain.

Mr. HELMS. Transvestites?

Mr. HARKIN. Absolutely not.

Mr. HELMS. People who are HIV positive or who have active AIDS disease?

Mr. HARKIN. Just a moment, I may have misspoken.

Let us back up to transvestite. I said no, but I am told by staff that one court at one time held that a transvestite was mentally impaired, and I further understand the Senator from North Carolina added an amendment to the fair housing amendments last year that took care of that, and it was accepted.

Mr. HELMS. Where does that leave us with respect to this bill?

Mr. HARKIN. I do not know. Just a minute.

If the Senator would like to offer an amendment, we will accept it. If can I ask the Senator, if it could be drafted the same way you did last year on the Fair Housing Act.

Mr. HATCH. I agree. I think the Senator is doing a service by pointing that out.

Mr. HELMS. I thank the Senator.

Mr. HATCH. If we can also work on other similar problems, we can work them out as fast as we can.

Mr. HELMS. I will ask the managers of the bill, with respect to the categories I have identified which meet the act's definition of disabilities, will this act make it unlawful to take those conditions into account in making employment decisions if the employer cannot prove that the condition in question will prevent the employee from performing the functions of the job in question?

Mr. HARKIN. I am sorry, could the Senator repeat that? It is a legal question, and I have to make sure I understand it.

Mr. HELMS. Let me give the Senator the short form. Does an employer's own moral standards enable him to make a judgment about any or all of the employees identified in our previous question?

Mr. HARKIN. Are you talking about transvestites?

Mr. HELMS. Pardon?

Mr. HARKIN. Are you talking about transvestites?

Mr. HELMS. Right, or kleptomaniacs or manic depressives. You said they are covered and that schizophrenics are covered as well. How far does your covered list of individuals go in denying the small businessman—so often referred to on this floor—the right to run his company as he sees fit?

Mr. HARKIN. All we are saying in this bill is that those persons who are identified as being covered by this act, and we just talked about some of them, they are covered by the act, that just means—we are talking about title I employment—that these people have to be judged on the basis of their abilities and not on the basis of a disability, taking into account what they can do and how they can perform on a job and are they qualified for the job.

Mr. HELMS. Who makes that judgment?

Mr. HARKIN. The employer.

Mr. HELMS. And you think he ought to have a right to make that judgment? Is that the intent of this act?

Mr. HARKIN. He should have the right to make that judgment in the manner in which the act provides for such judgments.

Mr. HELMS. I thank the manager of the bill for stating that for purposes of the legislative history on this act.

Mr. HARKIN. The Senator is right.

Mr. HELMS. So the employer makes the judgment. Does the Senator also say the employer should not, under this act, be hauled into court for making that judgment?

Mr. HARKIN. The employee would have the right. If the employees feel they were discriminated against on the basis of their handicap, then they would have the right first to go to EEOC. They have to exhaust their administrative remedies first. They would go to EEOC and file a complaint.

Mr. HELMS. I understand, but the EEOC is not exactly a dispassionate, disinterested party in this. These questions and your answers are meant to give some guidance to the EEOC and everybody else involved as to the intent of this legislation. So what does the legislation intend to do in the instances I have mentioned?

Mr. HARKIN. In which case?

Mr. HELMS. All of them the individuals whose handicaps you said were covered under this bill.

Mr. HARKIN. The act intends, if you are talking about the employment section—and that is what we are talking about—that employers will treat employees or prospective employees based on their abilities to perform the job or jobs in question, not based upon any disability that that person might have had at one time or may have had previous to that one point in time.

Mr. HELMS. Which means according to the Senator's answers that an employer cannot really exercise his judgment in the case of schizophrenia or with a manic-depressive; that is what I understand the Senator to have just said.

Mr. HARKIN. That is not exactly what the Senator said.

Mr. HELMS. What exactly did my friend say?

Mr. HARKIN. What this Senator said, in cases where a person has a disability, let us say schizophrenia, the employer has obviously every right to determine what that disability is and whether or not it would affect the performance of that person's job, the ability of that person to perform the job or the jobs in question. If it did, then the employer could say this person was not qualified. If, however, the disability in question, whether schizophrenia, manic-depressive or whatever it might be is, let us say, controlled by drugs, the person is under a doctor's care, and the person is qualified for the job, then the employer can say, "Well, I am not going to hire you based on your disability," but the employee then would be able to go to the EEOC and file a complaint and show, A, that that employee is qualified; B, that the disability in question does not inhibit his or her performance on that job. Then it would be up to the employer to respond.

Mr. HELMS. Then this bill runs full tilt into more and more bureaucracy. How is an employer, or prospective employer, supposed to find out whether a man is a pedophile or schizophrenic. An employer cannot even inquire about such a handicap under this act, can he?

Mr. HARKIN. I think I have it clear, if the Senator will ask the question.

Mr. HELMS. Is it true that under this bill, a prospective employer is prohibited from even inquiring of a job applicant whether or not that applicant is a schizophrenic or a manic-depressant or if he has any of the other disabilities the Senator says are covered in S. 933. So how is an employer supposed to know when he cannot ask? An employer cannot ask, correct?

Mr. HARKIN. It is my understanding that that would not be permissible as a first step in the employment process. But after a conditional offer of employment is made—I understand that is the term of art—after a conditional offer of employment is made, then the employer can ask that they fill out a medical history and all that kind of thing and they can inquire into that. The point is that in the initial stages the approach would be that the employer wants to find out: Is this

person qualified for the job? Can this person perform the job in question?

After that, then there comes a conditional offer of employment based upon other things. And that is when they fill out the medical history.

Mr. HELMS. Let me go to title III, covering public accommodations which as used in this bill includes an adoption agency. Can an adoption agency, for example, take any of the disabling conditions into consideration before allowing the completion of an adoption?

Mr. HARKIN. Under title III, is the Senator talking about under public accommodations?

Mr. HELMS. Yes.

Mr. HARKIN. Can an adoption agency do what?

Mr. HELMS. Take any of the disabling conditions that the Senator and I have been discussing into consideration in connection with a proposed or requested adoption?

Mr. HARKIN. I am sorry, I just do not understand the question. I have to be honest, I do not understand.

Mr. HELMS. The Senator has said that the long word that I used for one who has had relations with a child, a pedophile, is not covered by this act. Is that correct?

Mr. HARKIN. That is correct.

Mr. HELMS. But a schizophrenic is covered, the Senator said. But I want to know if an adoption agency is forbidden to take that into consideration if the prospective adopter is a schizophrenic or manic-depressive.

Mr. HARKIN. Let me rephrase it and see if I understand. The Senator is saying, let us say, there is an adoption agency and a couple comes in that want to adopt a child.

Mr. HELMS. Right.

Mr. HARKIN. Can the adoption agency inquire? Is that what the Senator is asking? Can they inquire as to whether or not——

Mr. HELMS. First, I am asking if they may inquire. And second, if the adopters are otherwise qualified to adopt, does the adoption agency—under the definitions of this act—have the right to say, "No, sorry about that, but you are a manic-depressive by your own acknowledgment; we cannot let you have the child?" Will the adoption agency be able to do that without being hauled into court?

Mr. HARKIN. I would respond that I do not believe so just as a general rule. I think they would have to do that on an individual basis.

When the Senator uses the term manic-depressive, that is like an IQ level. There are various stages of being a manic-depressive; it may be a slight manic-depressive completely controlled by prescription drugs, or it could be a manic-depressive so severely impaired they just cannot handle themselves any longer. Each case has to be handled on its own merits and that is what the adoption agency, I am sure, would look at.

I am sure there are plenty of manic-depressives in this country—I know some. I have met some who are completely controlled under doctors' orders as long as they are on prescription drugs. They may have a slight case of it. But each case would have to be handled on its own merits.

Mr. HELMS. The Senator said that homosexuals are not covered in the definitions.

Mr. HARKIN. That is correct. Homosexuality is not a disability.

Mr. HELMS. I want to be sure about that.

Mr. HARKIN. Yes.

Mr. HELMS. We have an amendment in process with respect to transvestites. But the Senator says that—well, the committee report says, as a matter of fact, if I recall correctly, that those who are HIV positive or who have active AIDS disease are covered.

Does that mean that an adoption ageny cannot inquire about HIV infection under this bill? I apologize for raising all these questions but I need to know the answers.

Mr. HARKIN. Again, I would ask what is the relevancy to an adoption agency whether or not a person has tested HIV positive? What is the relevancy of that to whether or not they can be good parents?

Mr. HELMS. If I understood the Senator's question, I hope he is not serious. What is the relevancy of somebody who tests HIV positive or who has AIDS with respect to the adoption of a child, is that what the Senator is asking me?

Mr. HARKIN. Is this something that is absolutely relevant to whether or not one or both parents can be good parents? I am asking the Senator.

Mr. HELMS. I think it is absolutely relevant.

Mr. HARKIN. In that case, if it is relevant, and that is proven, the adoption agency can take that into account.

Mr. HELMS. What does the bill say, though? What is the intent of the bill with regard to this?

Mr. HARKIN. Maybe I should ask the Senator, and again I ask the Senator why it would be relevant if someone tests HIV positive? Maybe there is something I do not understand.

Mr. HELMS. I think the Senator does understand.

Mr. HARKIN. No. I do not understand.

Mr. HELMS. You want to put a child up for adoption and subject him to a terrible risk. Bear in mind, Senator that approximately 85 percent of the HIV-positive people in this country are drug users and/or homosexuals.

Mr. HARKIN. Then they can take that into account.

Homosexuals are not covered by this on the basis of their homosexuality. And current drug users, I might add, are not covered by this, either on the basis of their current illegal drug use. It is people who have AIDS and HIV infection who are covered on the basis of those disabilities.

Mr. HELMS. I thank the Senator. I think we have made some important legislative history today.

Mr. HARKIN. Because they are HIV-positive, I point that out, that makes them covered.

Mr. HELMS. Mrs. Helms and I were blessed many years ago with the privilege of adopting a child who has been the biggest blessing to us. And you will not believe the questions that the adoption agency asked. The questions were endless.

So the Senator is telling me, I hope, that nothing will be changed about that, that the adoption agencies can continue to ask the questions, and that they can continue to refuse to assign a child to prospective adopters. Is that what the Senator is saying, under this bill?

Mr. HARKIN. If I understand the Senator's question correctly, the Senator is correct. What the bill is saying is they just cannot refuse to go forward simply because someone has a disability. They can take a lot of factors into account; but not on the basis of disability.

Mr. HELMS. I hope this act is not going up one side of the street and down the other on its definitions.

But let me move on. Under section 102(c), preemployment screening is virtually eliminated. Would the Senator agree with that?

Mr. HARKIN. As I said before, a preemployment type of screening is not permitted, but as a possible condition of employment, it is.

Mr. HELMS. Then could a hospital, for example, or other health care provider, or a day care provider for that matter, be permitted to make inquiries regarding the following factors before offering a person employment as a physician.

Mr. DOMENICI. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order. Those who have business other than that before the Senate at this time will please remove themselves from the floor.

The Senator from North Carolina.

Mr. HELMS. I thank the Chair. I hate to inconvenience my colleagues, but I am interested in the answers I am getting.

Let me start again. Could a hospital or other health care provider or day care provider be permitted to make inquiries regarding various disabling conditions before offering a person employment as a physician, or a psychiatric or psychological counselor,

nurse, paramedic, hospital orderly, or a teacher?

Mr. HARKIN. Could the hospital do what?

Mr. HELMS. Make inquiries regarding these various conditions. Let me state three or four such factors.

Can they ask, for example, whether the applicant is infected with any contagious disease, such as HIV? Can they ask that question?

Mr. HARKIN. Again, after a conditional offer of employment is made, the answer is yes.

Mr. HELMS. May they ask regarding a history of psychosis, neurosis, or other mental, psychological disease or disorder?

Mr. HARKIN. If I might be a little bit more specific on this, the purpose of this prohibition—that is, the prohibition on initial asking of these questions—is to ensure that employers do not inappropriately screen out people with disabilities at the initial stage of the application process by simply reacting to a prejudice or stereotype about a person's disability.

Of course, in some jobs, medical examinations are necessary or useful prerequisites for a job. Therefore, the amendment allows employers completely at their discretion to institute medical examinations of job applicants after such applicants have received conditional offers of employment. There is no restriction on the scope of these medical examinations. Therefore, if an employer chooses, this examination may include a test for HIV. There are three requirements on the use of these medical exams. The tests must be given to all job applicants, the results must be kept confidential, as described in the Act, and the results may be used only in accordance with the amendment. That is, if test results show an applicant is in fact not qualified for the job, the results may then legitimately be used to justify withdrawing the conditional job offer. And this way, applicants know why the job offer has been withdrawn and can contest it if necessary. These requirements all derive from the basic concepts underlying the amendment, and have been in place for 15 years under section 504.

Mr. HELMS. So the Senator is saying that if a job applicant comes into the Tom Harkin Pharmacy, in Iowa, and he would like to talk to you about a job, you say OK. Let us go back in the office. You cannot ask that applicant any of these questions at that point. It is only at the time, according to my understanding of the Senator's answer, that you offer him a job that you can ask him these legitimate questions? Is that correct?

Mr. HARKIN. Well, no. It is a conditional offer of employment.

Mr. HELMS. Which is what I said.

Mr. HARKIN. That is right. Then you ask the questions.

Mr. HELMS. Will the Senator tell me what is the purpose of that? Why take Tom Harkin, the pharmacist Tom Harkin, who says, "Look, I don't want any drug user, I don't want anybody with a history of psychosis, neurosis, or mental or psychological difficulties or disorder—do you have any of those problems?" This is before a conditional job offer is made. He is prohibited at that point from even asking the question.

Mr. HARKIN. I will respond to the Senator by saying that at that point you can ask about the applicant's ability to do the job. If I had a pharmacy, and the person came in for a job, you name the job. What job is it, Pharmacist?

Mr. HELMS. I use that as an example.

Mr. HARKIN. Let us say they came in to be a pharmacist. You want a job as a pharmacist.

Mr. HELMS. Not necessarily. It can be a clerk.

Mr. HARKIN. OK. They want to be a checkout clerk. Well, I might inquire as to their experience, what job they have held before. They know how to run a cash register. What is your job history? What is your previous job? Have you ever had any experience working at a checkout counter? I might check into all of that. Are you qualified for that position? And if, first of all, I determine they are not qualified, they have never had a job like that, I would say, well, I need someone who is qualified. But if I determine that they are qualified, at that point I can then say, "OK, I will offer you this job conditionally." Now I have to know some other things.

The idea, if I might respond to the Senator quite frankly, is that the testimony that we have received in our committee demonstrates instances when individuals were judged on the basis of their disabilities and not their abilities. I can tell the Senator it happens every day all over this country.

There is a wellspring of fears and unfounded prejudices about people with disabilities, unfounded fears, whether people have mental disorders, whether they are manic-depressives or schizophrenia or paranoia, or unfounded fears and prejudices based upon physical disabilities. The point of the bill is to start breaking down those barriers of fear and prejudice and unfounded fears, to get past that point so that people begin to look at people based on their abilities, not first looking at their disability.

That is really what the point of this legislation is, is to get past that initial barrier. Certainly, at the point of conditional offer of employment, of course, an employer can inquire about all sorts of things, as long as all applicants are asked. I thought I would clarify that as to the intent of what this bill is seeking to do.

Mr. HELMS. If the Senator will forgive me, I know everybody has a different idea about how to draft a piece of legislation. If this were a bill involving people in a wheelchair or those who have been injured in the war, that is one thing. But how in the world did you get to the place that you did not even include transvestites? How did you get into this business of classifying people who are HIV positive, most of whom are drug addicts or homosexuals or bisexuals, as disabled?

BOB DOLE in an expression said something about disabled. It does not mean unable. Now, everybody in this Chamber has an abiding interest in handicapped people. But I do not know how you got so far afield in definitions of who is going to be covered by this. I will not ask you to comment on that.

Mr. HARKIN. If I might respond, some people only think of people who are physically disabled as being handicapped. People can be mentally handicapped as well.

There may be physical handicaps people have that are not readily apparent to people. There are all kinds of handicaps that in one way or another limits one of the major life activities of an individual. So I mean, we obviously could not restrict it and say just those people who use wheelchairs. We had to cover all kind of disabilities, mental as well as physical.

Mr. HELMS. Two of the finest Senators we have ever had in this Chamber, the Senator served with, as did I, Senator Stennis of Mississippi, and the late John East, both in wheelchairs, and I marveled at their ability and intelligence. If anybody tried to discriminate against John Stennis or John East, I would be right on them.

I do not understand why, for example, you went down the road of including in your definitions people who are HIV positive, because 85 percent or more of the HIV positive people in this country are known to be drug users or homosexual or both.

Mr. HARKIN. Then I respond to the Senator that they are not covered under this bill on the basis of their homosexuality or drug use.

Mr. HELMS. The Senator better read his committee report, because it says they are covered.

Mr. HARKIN. They are covered on the basis of their HIV infection but not on the basis of being current drug users.

Mr. HELMS. I am talking about the HIV positive.

Mr. HARKIN. I beg your pardon?

Mr. HELMS. I am talking about those who are HIV positive. You include them as handicapped, and you protect them, and the guy that runs that pharmacy we were talking about, if he dares to ask a question about it before there is a conditional job offer,

he is in the soup, according to this; is that not correct?

Mr. HARKIN. If he did it after the conditional job offer, then he can ask.

Mr. HELMS. What was the point in making him go that far? Why could he not sit down and say, son, I want to talk to you about several things that are important to me as the owner of this drugstore. Are you HIV positive? Are you this or that? Because your condition and beliefs are important to me in the operation of my drugstore. Why can the employer not do that? Why does he have to go through all this rigamarole and get down to making a conditional job offer, at which point he has the right to ask the question? Why was that done? Why was that scenario set up?

Mr. HARKIN. Because even though the person may be HIV positive, he may still be qualified for that clerk job of running that cash register. He may be fully qualified, and not a current drug user.

Mr. KENNEDY. Will the Senator yield?

Mr. HELMS. Sure.

Mr. KENNEDY. I would like to point out, if we can go back a little bit, about the conclusion that we were going to follow our decision. As the chairman of the President's Commission on the HIV epidemic has pointed out, the linchpin of our ability to control the spread of this virus is protection against discrimination. If we fail to provide this protection, we will continue to drive this epidemic underground.

Now, continued inaction may be satisfactory to certain individuals in this body, but the President's Commission on HIV, the new congressional AIDS Commission, and a wide array of public health and medical organizations have repeatedly stated that in terms of a public health policy protection under the act is extraordinarily important in terms of bringing this epidemic under control. So, individuals have lived up to 8 years after testing HIV positive, and we are thankfully making medical advances with each passing day.

The most recent Public Health Service report that was released 2 weeks ago, has demonstrated that AZT has had a positive impact on those that have tested positive but do not have the disease. Now, the question is, if you are going to encourage individuals to come forward for counseling and testing and crucial medical care—if you are going to get them to go out and pursue voluntary testing, we must not limit their protection under this act. If we do, we are going to find out about the countless individuals that have lost their jobs, their homes. They are going to be subject to discrimination in various other aspects of society, then you are going to find out that you "ain't" going to be able to provide much testing and counseling, and the disease is going underground.

Now, in the particular provision of the legislation we have pointed out very clearly, if you are asymptomatic and HIV positive, you are protected; if you have full-blown AIDS, you are also protected. I think this is completely consistent with public health policy, and reflects the bipartisan consensus that brought us to this day.

It is the recommendation of the President's Commission. And it certainly, I think, is a compassionate and wise public policy. Now, the Senator from North Carolina may not agree with that judgment, but that is at least some of the background of why we have included people in all stages of HIV diseases in the legislation.

I ask unanimous consent that these letters of support for this provision be printed in the RECORD.

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

NATIONAL COMMISSION ON AIDS,
Washington, DC, September 6, 1989.

STATEMENT OF SUPPORT FOR AMERICANS WITH DISABILITIES ACT

We, the Members of the National Commission on Acquired Immune Deficiency Syndrome strongly support passage of the Americans with Disabilities Act, legislation which would implement the key recommendation of the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

People living with AIDS and HIV infection, and those regarded as such, deserve the same discrimination protections as all people with disabilities. Such protections from discrimination are not only necessary to enhance the quality of life for people with AIDS and HIV infection, they are—as the Presidential Report and the Institute of Medicine have reported—the linchpin of our nation's efforts to control the HIV epidemic.

Thousands of Americans who should seek voluntary counseling and testing services and many who need life-prolonging medical treatment will not come forward if they believe that doing so could result in the loss of their job or lack of access to public accommodations. Legislation that is based not only on compassion but sound public health principles is a must if we are to reach and assist these individuals.

We are extremely pleased that the majority of the United States Senate and the White House have made a bipartisan commitment to enact the Americans with Disabilities Act. We oppose any efforts to reduce the scope of coverage of the present bill, particularly with respect to HIV, the specific focus of this commission. The ADA will provide a clear and comprehensive mandate to greatly extend discrimination protections for people with disabilities. We are proud to endorse this landmark legislation.

While the political process can play a positive role in any successful resolution of the AIDS crisis, we must fight to keep the focus on public health. Fear and division must be dissolved through understanding and cooperation. Compassion must rule the day.

Finally, I must add that discrimination against individuals infected with the virus is unacceptable. This is a point that has been made again and again, especially in the final report of the President's Commission on the HIV Epidemic and by President Bush. HIV infection cannot be spread by casual contact. There is no medical reason for discrimination.

This Administration is committed to enacting legislation that will prohibit such discrimination. For example, we are working with Congress on legislation, the Americans with Disabilities Act, which includes under its scope Americans with HIV infection. Passage of this law will protect these people from discrimination.

Compassion, not prejudice, is needed. AIDS began early in this decade as a disease that threatened to divide Americans. It threatens to divide us today. It has been said before, and I will say it again: there can be no "us" and "them" in confronting AIDS—only "us," all of us, together.

In the end, the AIDS epidemic, painful and difficult as it may be, can offer us lessons—in science and in spirit, generosity and compassion. AIDS must not "divide and conquer." To the contrary, it must bring all of us together. We must care about one another, and help care for one another. We must learn one another's problems. We must, in a profound sense, speak one another's language.

Louis Sullivan, MD, is the secretary of health and human services.

ORGANIZATIONS SUPPORTING THE INCLUSION OF PEOPLE WITH AIDS INTO THE AMERICANS WITH DISABILITIES ACT

ACLD, An Association for Children and Adults with Learning Disabilities;
AIDS Action Council,
AIDS National Interfaith Network,
Alexander Graham Bell Association for the Deaf,
American Academy of Child and Adolescent Psychiatry,
American Academy of Otolaryngology Head and Neck Surgery,
American Academy of Physical Medicine and Rehabilitation,
American Association for Counseling and Development,
American Association of the Deaf-Blind,
American Association for Marriage and Family Therapy,
American Association on Mental Retardation,
American Association of University Affiliation Programs,
American Baptist Churches, U.S.A.,
American Civil Liberties Union,
American College Health Association,
American Council of the Blind,
American Congress of Rehabilitation Medicine,
American Deafness and Rehabilitation Association,
American Diabetes Association,
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO),
American Foundation for AIDS Research,
American Foundation for the Blind,
American Medical Association,
American Nurses Association,
American Occupational Therapy Association,
American Public Health Association,
American Psychiatric Association,
American Psychological Association,
American Speech-Language-Hearing Association,
American Social Health Association,
American Society for Deaf Children,
American Speech-Language-Hearing Association,

Americans for Democratic Action,
Arkansas Department of Health,
Association for Education and Rehabilitation of the Blind and Visually Impaired,
Association for the Education of Rehabilitation Facility Personnel,
Association for Retarded Citizens of the United States Autism Society of America,
Black Coalition on AIDS,
Blacks Educating Blacks about Sexual Health Issues,
Blinded Veterans Association,
Bronx Lebanon Hospital,
Brooklyn AIDS Task Force,
Camden County Red Cross,
Center for Population Options,
Central Navajo AIDS Coalition,
Child Welfare League,
Christian Church (Disciples of Christ),
Chronic Fatigue Syndrome Information Institutes, Inc.,
Church of the Brethren,
Church Women United,
Colorado Department of Health,
Committee for Children,
Common Cause,
Community Service Council of Greater Harlem,
Conference of Educational Administrators Serving the Deaf,
Convent House,
Convention of American Instructors of the Deaf,
Council for Exceptional Children,
Deafness Research Foundation,
Disabled But Able to Vote,
Disability Focus,
Disability Rights Education and Defense Fund,
Epilepsy Foundation of America,
Episcopal Awareness Center on Handicapped,
Federation of Community Planning,
Friends Committee on National Legislation,
Gallaudet University Alumni Association,
Gazette International Networking Institute,
Harvest America Corporation,
Health Education Resource Organization,
Health Issues Task Force,
Hispanic Office Catholic Center,
Human Rights Campaign Fund,
International Association of Parents of the Deaf,
International Polio Network,
International Ventilator Users Network,
Juvenile Diabetes Foundation,
Lamda Legal Defense And Education Fund,
Latinas AIDS Research Project,
Leadership Conference on Civil Rights,
Learning How, Inc.,
The Lutheran Office for Government Affairs, Evangelical Lutheran Church in America,
Mental Health Law Project,
Merrimach Valley AIDS Project,
Midwest Hispanic AIDS Coalition,
Milwaukee Indian Health Board,
National AIDS Information Clearing House,
National AIDS Network,
National Alliance for the Mentally Ill,
National American Women's Health Education Resource Center,
National Association for Music Therapy,
National Association of Community Health Centers,
National Association of Counties,
National Association of the Deaf,
National Association of Developmental Disabilities Councils,
National Association of People with AIDS,
National Association of Private Residential Resources,
National Association of Protection and Advocacy Systems,
National Association of Rehabilitation Facilities,
National Association of Rehabilitation Professionals in the Private Sector,
National Association of Social Workers,
National Association of State Alcohol and Drug Abuse Directors,
National Association of State Mental Retardation Program Directors,
National Coalition for Cancer Survivorship,
National Council on Alcoholism,
National Council of Churches,
National Council of Community Mental Health Centers,
National Council on Disability,
National Council on Independent Living,
National Council on La Raza,
National Council on Rehabilitation Education,
National Down Syndrome Congress,
National Easter Seal Society,
National Education Association,
National Family Planning and Reproductive Health Association,
National Fraternal Society of the Deaf,
National Gay and Lesbian Task Force,
National Handicapped Sports and Recreation Association,
National Head Injury Foundation,
National Hospice Organization,
National Industries for the Severely Handicapped,
National Mental Health Association,
National Minority AIDS Council,
National Multiple Sclerosis Society,
National Network of Learning Disabled Adults,
National Network of Runaway and Youth Services,
National Organization for Rare Disorders,
National Organization on Disability,
National Ostomy Association, Inc.,
National P.T.A.,
National Puerto Rican Coalition,
National Recreation and Park Association,
National Rehabilitation Association,
National Spinal Cord Injury Association,
Native American AIDS Prevention Center,
Nevada Treatment Center,
New Jersey Department of Health,
Niagara Frontier AIDS Alliance,
Paralyzed Veterans of America,
Pascua Yagu Tribe,
People First International,
Phoenix Indian Service,
Presbyterian Church, (U.S.A.),
Private Paralyzed Veterans of America,
People First International,
Rainbow Lobby,
Self-Help for Hard of Hearing People, Inc.,
Spina Bifida Association of America,
Synagogue Council of America,
Telecommunications for the Deaf, Inc.,
The Association for Persons with Severe Handicaps,
The Epsicopal Church,
The Gray Panthers,
Tourette Syndrome Association,
Union of American Hebrew Congregations,
Unitarian Universalist Association of Congregations,
United Cerebral Palsy Associations, Inc.,
United Church Board for Homeland Ministries,
United Church of Christ, Office for Church in Society,
United States Student Association,
Issue Development and Advocacy Unit, General Board of Church and Society, The United Methodist Church,
Women's Equity Action League,
Women's Legal Defense Fund, and
World Institute on Disability.

U.S. SENATE,
Washington, DC, September 6, 1989.

DEAR SENATOR: This week you will likely be voting on the Americans With Disabilities Act of 1989 (S. 933). We, the undersigned, leaders of denominational and religious-based agencies, call upon you to support fully the passage of ADA as reported out of the Committee on Labor and Human Resources on August 2, 1989 and to vote against any amendments that will weaken the protections the current version provides.

The time for full civil rights protection for our fellow disabled Americans is long overdue. The passage of ADA in its present form will mean that all Americans will be able to enjoy the opportunities this nation provides its citizens by empowering people living with disabilities to move from lives of dependency to lives of self-fulfillment and productivity.

Months of negotiations between the Administration and Senate leadership produced a bipartisan bill which was unanimously reported out of committee. President Bush has announced his full support for ADA in its current form and opposes any amendments during consideration by the full Senate. In addition, the bill already has 57 cosponsors in the Senate as well as 223 consponsors in the House.

We are grateful for the resolution of problems in the bill during the committee markup process that concerned issues of separation of church and state.

The religious community is committed to the passage of this landmark legislation which would ensure the civil liberties for disabled Americans. We testify to this unity by our signatures below.

Robert W. Tiller, Director, Office of Governmental Relations, American Baptist Churches, USA;

Herbert Blinder, Director, Washington Ethical Action Office, American Ethical Union;

Asia A. Bennett, Executive Secretary, American Friends Service Committee;

Sally Timmel, Director, Washington Office, Church Women United;

Kay S. Dowhower, Director, Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America;

Father Robert J. Brooks, Presiding Bishop's Staff Officer, Washington Office of the Episcopal Church;

Joseph R. Hacala, S.J., Director, Jesuit Social Minitries, National Office;

Mary Anderson Cooper, Acting Director, Washington Office, National Council of Churches;

Mary Jane Patterson, Director, Washington Office, Presbyterian Church (USA);

Rabbi Irwin M. Blank, Washington Representative, Synagogue Council of America;

Rabbi Lynne Landsberg, Associate Director, Religious Action Center for Reform Judaism, Union of American Hebrew Congregations;

Robert Z. Alpern, Director, Washington Office, Unitarian Universalist Association of Congregations in North America;

Rev. Jay Lintner, Director, Washington Office, Office for Church in Society, United Church of Christ;

Joyce V. Hamlin, Director, Washington Office, Women's Division, The United Methodist Church; and

Jane Hull-Harvey, Director, Department of Human Welfare, General Board of Church and Society, The United Methodist Church.

May 10, 1989.

DEAR SENATOR: We, the undersigned representatives of denominations and faith groups in the United States, are deeply concerned about the discrimination daily faced by individuals with physical or mental disabilities. Such discrimination can be found in every segment of life in this society. Although there have been some improvements in the last few years, largely due to protections afforded by section 504 of the Rehabilitation Act of 1973, such discrimination remains a pervasive problem for over 42 million disabled Americans.

As members of faith groups, it is our responsibility to strengthen and heal one another within the human family. The unity of the family is broken where any are left out or are subject to unequal treatment or discrimination. "If one member suffers, all suffer together; if one member is honored, all rejoice together" (1 Corinthians 12:26). Those with physical and mental disabilities have for too long been the target of such suffering, prejudice and discrimination effectively denying them the opportunity to compete on an equal basis for all of the rights, privileges and opportunities that are afforded to others as members of this society.

We write today to express our support for strong federal legislation addressing these issues, particularly in the private section where much of that discrimination now takes place. We urge that you support legislation to protect the rights of persons with disabilities including particular attention to the problem of discrimination in employment, communications, access to public services, and public accommodations. One such piece of legislation introduced in Congress which appears to us to meet our principles is the Americans With Disabilities Act of 1989. This legislation provides protection against discrimination for individuals with disabilities similar to protection provided other minorities in current civil rights law.

We also want to make clear our support for inclusion of those infected by the Human Immunodeficiency Virus and people living with AIDS. We concur with the report of the Presidential Commission on the HIV Epidemic:

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone. Discrimination against persons with HIV infection in the workplace setting, or in areas of housing, schools, and public accommodations is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.

The Americans With Disabilities Act provides that an individual with a disability must be given equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. We urge you to support this bill, or similar legislation, that protects the rights of the disabled by helping to insure that all members of this society are allowed to participate on an equal basis.

Thank you for your consideration of this important issue.

Sincerely,

Dr. Daniel E. Weiss, General Secretary, American Baptist Churches, USA;

Dr. John O. Humbert, General Minister and President, Christian Church (Disciples of Christ);

Dr. Donald E. Miller, General Secretary, Church of the Brethren;

Dr. Claire Randall, President, Church Women United;

The Most Reverend Edmond L. Browning, Presiding Bishop, The Episcopal Church;

The Reverend Dr. Herbert W. Childstrom, Bishop, Evangelical Lutheran Church in America;

Edward F. Snyder, Executive Secretary, Friends Committee on National Legislation;

The Reverend Arie R. Brouwer, General Secretary, National Council of Churches;

The Reverend James Andrews, Stated Clerk of the General Assembly, Presbyterian Church (U.S.A.);

Rabbi Irwin M. Blank, Past President, Synagogue Council of America;

Rabbi Alexander Schindler, President, Union of American Hebrew Congregations;

Dr. William F. Schultz, President, Unitarian Universalist Association;

Dr. Avery D. Post, President, United Church of Christ; and

Bishop Robert C. Morgan, President, General Board of Church and Society, The United Methodist Church.

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
September 5, 1989.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: Today is an historic day for America's largest minority—43 million citizens with disabilities. This afternoon, the Senate will begin consideration of S. 933, the Americans With Disabilities Act of 1989, a comprehensive bill to eliminate discrimination against all persons with disabilities.

The Consortium for Citizens with Disabilities (CCD) and scores of other national organizations that are supporting this legislation have worked long and hard with the Senate and the Bush Administration to achieve a bill that provides people with disabilities comprehensive civil rights protections while still addressing concerns of the business community.

This is a bi-partisan bill which has the full support of the Bush Administration. However, we expect that some amendments will be offered that will nullify the protections the bill seeks to provide. The Bush Administration is committed to oppose all weakening amendments. We ask you to join the Administration in opposing all such amendments.

As President Bush has stated:

"I am going to do whatever it takes to make sure the disabled are included in the mainstreams. For too long the disabled have been left out of the mainstream, but they're not going to be left out anymore".

On behalf of America's 43 million citizens with disabilities, we urge you to support this long overdue legislation and oppose all weakening amendments to the Americans With Disabilities Act.

Thank you.

Sincerely,

ACLD, An Association for Children and Adults with Learning Disabilities,

AIDS Action Council,

AIDS National Interfaith Network,

Alexander Graham Bell Association for the Deaf,

American Academy of Child and Adolescent Psychiatry,

American Academy of Otolaryngology Head and Neck Surgery,

American Academy of Physical Medicine and Rehabilitation,

American Association for Counseling and Development,

American Association for Marriage and Family Therapy,

American Association of the Deaf-Blind,

American Association on Mental Retardation,

American Association of University Affiliated Programs,

American Baptist Churches U.S.A.,

American Civil Liberties Union,

American College Health Association,

American Council of the Blind,

American Congress of Rehabilitation Medicine,

American Deafness and Rehabilitation Association,

American Diabetes Association,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO),

American Foundation for AIDS Research,

American Foundation for the Blind,

American Nurse Association,

American Occupational Therapy Association,

American Psychiatric Association,

American Psychological Association,

American Public Health Association,

American Social Health Association,

American Society for Deaf Children,

American Speech-Language-Hearing Association,

Americans for Democratic Action,

Association for Education and Rehabilitation of the Blind and Visually Impaired,

Association for the Education of Rehabilitation Facility Personnel,

Association for Retarded Citizens of the United States,

Autism Society of America,

Blinded Veterans Association,

Center for Population Options,

Child Welfare League of America,

Christian Church (Disciples of Christ),

Chronic Fatigue Syndrome Information Institute, Inc.,

Church of the Brethren,

Church Women United,

Committee for Children,

Common Cause,

Conference of Educational Administrators Serving the Deaf,

Convention of American Instructors of the Deaf,

Council for Exceptional Children,

Deafness Research Foundation,

Disabled But Able to Vote,

Disability Focus,

Disability Rights Education and Defense Fund,

Epilepsy Foundation of America,

Episcopal Awareness Center on the Handicapped,

The Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America,

Friends Committee on national legislation,

Gallaudet University Alumni Association,

Gazette International Networking Institute,
Human Rights Campaign Fund,
International Association of Parents of the Deaf,
International Polio Network,
International Ventilator Users Network,
Juvenile Diabetes Foundation,
Lamda Legal Defense and Education Fund,
Leadership Conference on Civil Rights,
Learning How, Inc.,
Mental Health Law Project,
National AIDS Network,
National Alliance for the Mentally Ill,
National Association of Counties,
National Association for Music Therapy,
National Association of the Deaf,
National Association of Developmental Disabilities Councils,
National Association of People with AIDS,
National Association of Private Residential Resources,
National Association of Protection and Advocacy Systems,
National Association of Rehabilitation Facilities,
National Association of Rehabilitation Professionals in the Private Sector,
National Association of Social Workers,
National Association of State Alcohol and Drug Abuse Directors,
National Association of State Mental Retardation Program Directors,
National Association for Law and the Deaf,
National Association for Cancer Survivorship,
National Association on Alcoholism,
National Association of Churches,
National Association of Community Mental Health Centers,
National Association on Disability,
National Association on Independent Living,
National Association on La Raza,
National Association on Rehabilitation Education,
National Down Syndrome Congress,
National Easter Seal Society,
National Education Association,
National Family Planning and Reproductive Health Association,
National Fraternal Society of the Deaf,
National Gay and Lesbian Task Force,
National Handicapped Sports and Recreation Association,
National Head Injury Foundation,
National Hospice Organization,
National Industries for the Severely Handicapped,
National Mental Health Association,
National Mental Health Consumers' Association,
National Minority AIDS Council,
National Multiple Sclerosis Society,
National Network of Learning Disabled Adults,
National Network of Runaway and Youth Services,
National Organization for Rare Disorders,
National Organization on Disability,
National Ostomy Association, Inc.,
National P.T.A.,
National Puerto Rican Coalition,
National Recreation and Park Association,
National Rehabilitation Association,
National Spinal Cord Injury Association,
Paralyzed Veterans of America,
People First International,
Presbyterian Church (U.S.A.),
Rainbow Lobby,
Self Help for Hard of Hearing People, Inc.,
Spina Bifida Association of America,
Synagogue Council of America,
Telecommunications for the Deaf, Inc.,
The Association for Persons with Severe Handicaps,
The Episcopal Church,
The Gray Panthers,
Tourette Syndrome Association,
Union of American Hebrew Congregations,
Unitarian Universalist Association of Congregations United Cerebral Palsy Associations, Inc.,
United Church Board for Homeland Ministries,
United Church of Christ, Office for Church in Society,
United States Student Association,
Issue Development and Advocacy Unit, General Board of Church and Society, The United Methodist Church,
Women's Equity Action League,
Women's Legal Defense Fund, and
World Institute on Disability.

NATIONAL ORGANIZATIONS
RESPONDING TO AIDS,
September 6, 1989.

DEAR SENATOR: The undersigned members of the NORA coalition urge swift consideration and passage of S. 933, the Americans with Disabilities Act (ADA). This Act extends non-discrimination protection for people with disabilities, including people with AIDS and HIV infection, in the areas of private employment, public accommodations, and public services.

It is our understanding that an effort may be made to exclude people with contagious diseases, or to exclude solely people with AIDS and HIV infection, from the coverage of this Act. We strongly oppose any such exclusion.

As a coalition of national organizations whose constituencies have been touched by the AIDS epidemic, we know that people with AIDS and HIV infection are people with disabilities, just like all other individuals with disabilities covered under the ADA. Individuals with AIDS or HIV infection often experience completely unjustified discrimination in the areas of employment, public accommodations and public services—discrimination often based on fears, myths and stereotypes concerning AIDS and HIV infection. The ADA is of critical importance in ensuring that such individuals are protected against unjustified discrimination.

The public health concerns that have been raised regarding coverage of people with AIDS or HIV infection are completely unfounded. The ADA clearly provides that any entity covered under the bill may require that a person with a currently contagious disease or infection may not pose a direct threat to the health or safety of others. Such a requirement meets any valid public health concern. Indeed, under the current best medical evidence, people with AIDS or HIV infection would not pose such a threat.

We strongly urge you to oppose any effort to exclude people with AIDS or HIV infection from coverage under the Americans with Disabilities Act, or to limit coverage for such individuals in any fashion.

Thank you for your attention to this important matter.

Sincerely,
AIDS Action Council,
AIDS National Interfaith Network,
American Association for Counseling and Development,
American Association for Marriage and Family Therapy,
American Civil Liberties Union,
American College Health Association,
American Foundation for AIDS Research,
American Jewish Committee,
American Medical Student Association,
American Nurses' Association,
American Psychiatric Association,
American Psychological Association,
American Public Health Association,
American Social Health Association,
Americans for Democratic Action,
Association for Retarded Citizens,
Center for Population Options,
Child Welfare League of America,
Chronic Fatigue Syndrome Information Institute Inc.,
Committee for Children,
Disability Rights Education and Defense Fund,
Human Rights Campaign Fund,
National AIDS Network,
National Association of Community Health Centers,
National Association of Counties,
National Association of People with AIDS,
National Association of Protection and Advocacy Systems,
National Association of Social Workers,
National Association of State Alcohol and Drug Abuse Directors,
National Association of State Arts Agencies,
National Council on Alcoholism,
National Council on La Raza,
National Family Planning and Reproductive Health Association,
National Gay and Lesbian Task Force,
National Hospice Organization,
National Minority AIDS Council,
National Network of Runaway and Youth Services,
National P.T.A.,
National Puerto Rican Coalition,
Planned Parenthood,
Rainbow Lobby,
Synagogue Council of America, and
United Church Board for Homeland Ministries.

Mr. HELMS. Well, all that is well and good. What I get out of all of this is here comes the U.S. Government telling the employer that he cannot set up any moral standards for his business by asking someone if he is HIV positive, even though 85 percent of those people are engaged in activities that most Americans find abhorrent. That is one of the problems I find with this bill.

How about asking if this employee would come in to see the pharmacist, TOM HARKIN; he cannot say, look I feel very strongly about people who engage in sexually deviant behavior or unlawful sexual practices. He cannot ask about that, can he? Because these people are covered.

Mr. HARKIN. Homosexuality is not covered in this bill.

If I might respond to the Senator further a little bit on the issue of HIV positivity.

Mr. KENNEDY. Mr. President, if the Senator will yield. No matter how those who may not want to support this legislation attempt to distort its intent, no matter how many times these issues are raised on the Senate

floor, they do not apply. The definitions are clear.

Now I know the Senator from Colorado has a long list of various kinds of conduct that has been extracted from the DSM III and we are trying to review it. We received it late this afternoon. We are trying to determine the best approach for proceeding.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. KENNEDY. I apologize.

Mr. HELMS. No apology is necessary.

We are making some important legislative history and frankly the Senator has given me more and more reason not to support a bill that I would like to support.

Mr. HARKIN. If the Senator could just yield I would like to finish my statement on the HIV matter.

Mr. HELMS. Yes, I yield for that purpose.

Mr. HARKIN. I just want to read, Mr. President, the statement that came out here by the Secretary of Health and Human Services, Dr. Louis Sullivan. He said that:

> While the political process can play a positive role in any successful resolution of the AIDS crisis, we must fight to keep the focus on public health. Fear and division must be dissolved through understanding and cooperation. Compassion must rule the day.
>
> Finally, I must add that discrimination against individuals infected with the virus is unacceptable. This is a point that has been made again and again, especially in the final report of the President's Commission on the HIV Epidemic and by President Bush. HIV infection cannot be spread by casual contact. There is no medical reason for discrimination.
>
> This Administration is committed to enacting legislation that will prohibit such discrimination. For example, we are working with Congress on legislation, the Americans With Disabilities Act, which includes under its scope Americans with HIV infection. Passage of this law will protect these people from discrimination.
>
> Compassion, not prejudice, is needed.

I am not going to continue the other ones. I want to point out that this is a letter from Dr. Louis Sullivan, the Secretary of Health and Human Services.

Mr. HELMS. I thank the Senator. Dr. Sullivan is a fine man. I like him personally. He admitted he was wrong on a position he initially took, for example, on the clean needle issue. He took the position that we ought to give out needles. Now he is saying we ought not to do it. So who knows what his position will be or anybody else who professes to know what the risk of HIV positive is.

Mr. ARMSTRONG. Mr. President, will the Senator yield for a moment.

Mr. HELMS. I yield.

Mr. ARMSTRONG. Mr. President, I was intrigued by the discussion a moment ago between the Senator from Massachusetts and the Senator from North Carolina.

The Senator from Massachusetts pointed out that I was concerned about voyeurism and assured the Senate that voyeurism is not a protected classification under this proposed bill.

I would be relieved to think that is true but in fact there is no basis that I can find for that because the definition which is contained in this bill is exactly the same definition that appears elsewhere in the law. Cases which have been litigated have referred to what the Senator described as some book and which I will now identify, if I may, as the Diagnostic and Statistical Manual of Mental Disorder published by the American Psychiatric Association. This is the book which the courts have looked to to define what constitutes a mental impairment under statutory language which is identical to this proposed in this bill.

On page 289 of that book, the report of the American Psychiatric Association, is described the mental impairment of voyeurism. Voyeurism is in unless we take it out.

In due course, I am going to have an amendment that will take voyeurism and some other things out.

My concern is not just to try to imagine everything that might be in and try to make a list and take it out, although I could do that. My concern is that the big underlying premise of the bill is far too broad.

I do not want to impose on the Senator from North Carolina.

Mr. HELMS. The Senator is not imposing.

Mr. ARMSTRONG. If I could elaborate on this point a moment, historically Congress has extended the certain protected classifications of persons protected under the civil rights law.

We have said that it is and shall be against the law for a person to discriminate in employment, promotion, public accommodation, and so on, because of race, religion, and sex.

These are easily discernible factual situations. A person is or is not a man or a woman. A person is or is not a Catholic, a Jew, a Mormon, whatever, a Baptist, a Presbyterian. That is something we can readily determine. A person either is or is not Irish, Italian, and so on.

This bill proceeds from an entirely different point of view, and I hope Senators will take a moment to just refer to the bill at page 41 and read what the definition selection is.

> The term "disability" means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individuals.

That is a very broad vague definition.

I think the proper way to proceed and I am simply not learned enough or well enough informed to suggest an amendment to do so, but the proper way to proceed, as I have suggested to the managers of the bill, is for them to list the specific protected categories that they——

Mr. HELMS. Precisely.

Mr. ARMSTRONG. Wish to afford civil rights protection. That is what we have done in the past when dealing with very clear-cut, readily discernible categories.

Now we are extending in a very broad and in an unquantified way this civil rights protection in a manner which is appealing to the heart but which should give our heads some concern because we do not know for sure what these words mean.

The best way to determine what "necessity" might mean is go to the court cases and the court cases when I seek recognition to offer my amendment I will cite to say specifically, but I will tell a story at that time about an FBI agent that was found to be a compulsive gambler.

In that particular case when the Government brought its motions they tried to say, look compulsive gambling is not a protected classification, and the judges said that is not right.

I will tell you all about it when we get to it, but I make the point that his reference in determining whether or not compulsive gambling was or was not covered was this document, what the Senator from Massachusetts described as some book.

That book, let me tell Senators again, is a diagnostic and statistical manual of mental disorders of the American Psychiatric Association.

I do not know if it is a good reference. I do not know if it is the best source of information.

It is the source of information which the courts use; therefore, if they say voyeurism is in, if they say pedophilia is in, then I think we have very little room to expect that in the future if we adopt the same statutory language that some other court will arrive at a different conclusion.

I apologize to the Senator from North Carolina for imposing on his time, but since the issue arose I wanted to speak to it before the subject got cold and when the Senator has completed his statement, which I followed with interest, I will arise to seek recognition and offer an amendment.

Mr. HELMS. I thank the Senator.

Mr. President, I want to say this to the distinguished managers of the bill, with all due respect, nobody knows what this bill is going to cost. It may be we do not care what it is going to cost.

But I will tell you this much: I predict that 12 months after the implementation of this bill you are going to have a furor in this country which will

make the catastrophic insurance issue look like a tea party. You wait until the flood tide of restrictions and demands rolls down upon the small business men and women of this country.

This bill is too broad. Nobody and I mean, nobody has any idea what it will cost.

I was interested in the estimated or average annual cost of providing just some of the types of accommodations or auxiliary aids required under this act.

Can either managers of the bill tell me, for example, what the provisions of a full-time reader required to assist a blind executive, accountant, attorney, or other professional whose job requires extensive reading are? Does anybody have any idea about the cost of just that?

Mr. HARKIN. If the Senator would just bear with me for 1 minute.

Mr. HELMS. Certainly.

Mr. HARKIN. The Senator wants to know what it would cost for a full-time reader.

Mr. HELMS. No, for providing full-time readers to assist blind executives, accountants, attorneys, or anybody who has to have and do extensive reading in connection with his job.

Mr. HARKIN. Let me just answer the Senator that again it really depends upon whether or not this is undue hardship for the employer or the business in question. If it is IBM, perhaps that is not a big deal. But if it is a small pharmacy, as the Senator said earlier, that's a different story.

What I presume you mean, is, if a blind person came in for a job, and said, "You must provide a reader for me." Well, if I had TOM HARKIN'S pharmacy out in Adel, IA, I could not afford that. That would probably be an undue hardship so I would not have to do that. On the other hand, if it was IBM, maybe that would be something that could be done.

Let me just read from the report here:

Witnesses also explained that there will also be a need for more expensive accommodations, including readers for blind persons and interpreters for deaf persons. But even costs for these accommodations are frequently exaggerated. Dr. I. King Jordan, President of Gallaudet University, explained to the Committee:

Often, interpreters can be hired to do other things as well as interpret—administrative secretaries or professional staff, even, who interpret on an only-as-needed basis. Most of the time, people hired who are deaf function without an interpreter except when they are in a meeting or except when they are attending a workshop or except when there is a very essential need for one-to-one communication. But, I think it needs to be made clear to people that the accommodations are not nearly as large as some people would lead us to believe.

That is the testimony of Dr. Jordan. So, again, as I said earlier, it depends upon the situation.

Mr. HELMS. Well, nevertheless, section 102(b)(1)(e) provides that an employer's failure to make "reasonable accommodations"—and the Lord only knows what that means because that will be decided in court—the employer's failure to make these reasonable accommodations for the disabilities of a qualified applicant for employment constitutes illegal discrimination under section 102(b)(1)(e). And the committee report itself specifically mentions the provision of readers for blind people. That is the reason I brought it up.

The committee report also mentions personal assistance for wheelchair-bound people, so forth and so on. Now the provision of some accommodations may cost small business people many thousands of dollars and send them down the chute.

The act may even require the hiring of additional personnel to achieve an accommodation, as the Senator himself said.

So to wind up my question, does this bill contemplate any point at which the accommodation of a disabled employee poses an undue hardship? Does it do so if these costs exceed 5 percent of the employee's salary, paid for by the employer for the performance of the job in question, or 10 percent or 20 percent? Can the Senator enlighten me at what point it becomes an undue hardship on a small business man or woman.

Mr. HARKIN. Let me read from the report:

The weight given to each factor in making the determination as to whether a reasonable accommodation nonetheless constitutes an "undue hardship" will vary depending on the facts of a particular situation and turns on both the nature and cost of the accommodation in relation to the employer's resources and operations. In explaining the "undue hardship" provision, the Department of Health, Education, and Welfare explained in the appendix accompanying the section 504 regulations (42 Fed. Reg. 22676 et seq., May 4, 1977):

Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a State welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

Let me also say this about attendants. The definition of auxiliary aids and services in section 3 specifically includes interpreters and readers. Subsection (d) refers to "other similar services and actions." It is critical to make clear that "similar services" includes the services of attendants and personal assistance providers. Many severely physically disabled workers who are qualified for employment are not hired or are forced to quit their jobs because they may need some assistance during the work day. It makes no sense for a talented person who has skills to contribute, to sit idly at home receiving benefits because he needs assistance in the rest room twice a day, or needs someone to provide some assistance to him on out-of-town business trips. The question, as in any other accommodation, is whether it poses an undue hardship on the employer given the size of the employer's operation and the cost of the accommodation. This accommodation has been provided by employers under section 504 for over a decade without difficulty. Attendant care can usually be arranged easily and will not be an undue hardship on most employers.

Mr. HELMS. You know, I bet you the person—and I say this with no disrespect to him or her—who wrote that has never run a small business in his or her life. That is a bunch of senseless verbiage.

Let me say this to the Senator—and I will conclude and I thank him for his patience—the bottom line is that every question I have brought up is going to be decided in a Federal court after thousands of employers are sued under this act if it becomes law.

The distinguished Senator from Arkansas said a while ago, if I remember correctly, that this bill ought to be retitled and called the Lawyers' Relief Act of 1989, because there is going to be a lot of people in law offices and a lot of people in Federal courts.

But I have an amendment, and I think I am going to step aside for the time being because the Senator from Colorado said he would be caught up in a moment.

I would inquire of the Senator if he is ready to proceed with an amendment.

Mr. ARMSTRONG. Mr. President, if the Senator would yield, we are ready in principle, but we have a couple little loose ends we would like to take care of before we offer the amendment.

Mr. HELMS. I think we are about to reach an agreement with all of the players in the negotiations on the third matter which I discussed with the distinguished Republican leader. I appreciate the manager of the bill taking care of two of them already and agreeing with my suggested changes.

AMENDMENT NO. 715

(Purpose: To clarify the definition of handicapped under the Rehabilitation Act of 1973)

Mr. HELMS. 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 North Carolina [Mr. HELMS] proposes an amendment numbered 715.

Mr. HELMS. Mr. President, in the interest of time, I am reluctantly going to 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 the appropriate place in Title I, insert the following new section:

SEC. . AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended–

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or prossession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions."

(D) For purposes of section 503 and 504 of this Act as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol interferes with such an individual's performance of the duties on the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of federal law.'"

Mr. HELMS. Mr. President, this has been carefully worked out and agreed to by all sides in this matter.

If I may ask the Senator if he would incorporate in his remarks his assurances to me this amendment will not be dropped in this conference?

Mr. HARKIN. I was going to engage in that colloquy with the Senator on the amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I hoped our technical amendment clarifying the applicability of the ADA to illegal drug users would have been sufficient to allay the concerns of the Senator from North Carolina. I must say to the Senator I would have preferred not to amend any other statute during the consideration of S. 933; a position, which I might add, with which the administration concurs.

However, since I know of the Senator's commitment to further the effort to combat illegal drugs in our society, we will not oppose this amendment to the Rehabilitation Act of 1973, clarifying its applicability to individuals who currently use illegal drugs.

I do think we have provided some important safeguards in key areas and I appreciate the willingness of the Senator from North Carolina to accommodate some of our more serious concerns.

So, therefore, we do accept the amendment. I want to assure the Senator and to reassure the Senator—because I assured him before—that this amendment will be kept in conference.

I give him my commitment on that, that we will maintain this as we go into conference with the House on any differences that may arise in other parts of the bill or even in this part—but we will keep this in.

Mr. KENNEDY. Mr. President, I would like to make some important points about this act's approach to individuals who use or are addicted to illegal drugs must be emphasized, as a result of this amendment.

First, in general, the act does not protect persons who use illegal drugs when a covered entity acts against such persons on the basis of their illegal drug use. However, there is one significant exception to this general exclusion of individuals who currently use illegal drugs from the act's protection. The act specifies that covered entities that provide medical services may not deny the benefits of those services to an individual who currently uses illegal drugs on the basis of his or her illegal drug use, if that individual is othewise entitled to such medical services. Thus for example, a medical care provider may not refuse to treat an individual for a broken bone or for HIV-related illnesses simply because that person happens to use or be addicted to illegal drugs.

Second, the act does protect individuals who once used illegal drugs but no longer do so. The act expressly includes individuals who have successfully completed a supervised drug rehabilitation program or who have otherwise been rehabilitated, and no longer use illegal drugs, within the definition of individuals with a "disability." Therefore, persons who are subjected to discriminatory actions because of a history of illegal drug use which they have successfully overcome are fully protected by the ADA.

This protection not only extends to people who overcome their drug problems by completing two supervised treatment programs, but also extends to those who overcome such problems without the help of formal treatment—including individuals who are able to stop using illegal drugs on their own or through participation in self-help groups such as Narcotics Anonymous.

In addition, the act's protections extend to rehabilitated individuals who no longer use illegal drugs, but who continue to participate in treatment programs—such as a methadone maintenance treatment program—or continue to receive after-care counseling or participate in self-help groups. This reflects our recognition that these activities can be crucial to many individuals' ability to successfully sustain their recovery.

In this connection, it is important to note that the definition of "illegal drugs" in this act does not include controlled substances that are taken pursuant to a medical prescription. This includes all kinds of drugs taken under medical supervision, including experimental drugs. One example of such a controlled substance is methadone taken as part of a course of methadone maintenance treatment.

Retaining these protections for persons who formerly used or were addicted to illegal drugs, but who have successfully been rehabilitated and no longer use illegal drugs, is an absolutely essential component of our national war against drugs.

It also helps to carry out our national commitment to encourage all those who need it to come foward for treatment, and to ensure that individuals who have successfully overcome drug problems will not face senseless or irrational barriers that work to impede their full reintegration into society.

One final point must be emphasized. If an individual who uses or is addicted to illegal drugs also has a different disability, and is subjected to discrimination because of that particular disability, that individual remains fully protected under the ADA.

Mr. HELMS. Mr. President, this amendment amends section 504 of the Rehabilitation Act of 1973 by deleting current drug users from the definition of handicapped.

Drug users are currently protected against discrimination by the Rehabilitation Act of 1973. Sections 503 and 504 of that law provide that no Federal agency or federally subsidized pro-

gram may discriminate against disabled Americans. That is fine on its face, but as with many Federal laws it's the underlying language that hits the average American where it hurts.

Mr. President, you cannot walk outside and pull one person off the street who will tell you that a drug user is handicapped. Yet, that is precisely what the Rehabilitation Act says. For purposes of Federal programs and assistance, Uncle Sam considers abusers to be handicapped. They are protected by the same law that serves the mentally retarded, the deaf, the blind, and those with muscular dystrophy.

On Tuesday night we launched a war on drugs. Both President Bush and our colleague, Mr. BIDEN, committed themselves and their parties to eliminating the scourge of drugs from our streets.

I think there is no better time than now to start this bipartisan battle for the very soul of our Nation. It is time to put our rhetoric into action. We can start by getting tough and smart with drug addicts.

I did not pull this amendment out of the blue. This amendment has a long history. A version of it was first offered by the distinguished Republican leader, Mr. DOLE, on September 23, 1986, as part of the Drug Free Federal Workplace Act. During the Reagan administration both Education Secretary William Bennett and his successor, Lauro Cavazos, strongly endorsed this position.

Mr. President, can you imagine a federally subsidized day care program being forced to hire a person on drugs? Ridiculous, correct? Wrong. Mr. President, the U.S. Government has the power to force that day care center or school to hire a drug abuser to care for our children.

As my good friend, Mr. COATS, pointed out on May 10, the results of the Rehabilitation Act are "shocking." That is the word Mr. President, shocking. In a drug free America our Government cannot get rid of users in the Federal work force or from programs which get Federal money because they are "individuals with handicaps."

Our schools have to keep the addicts and the pushers in class or on the payroll because according to this law they deserve the same treatment as children with unwanted disabilities.

My amendment puts an end to the abuse of our civil rights laws.

In September 1986, former Assistant Attorney General Richard Willard testified in favor of this change before the House Post Office and Civil Service Subcommittee. He stated clearly that the Reagan Justice Department agreed with the language of this amendment because of the propensity of some courts to adopt an overly broad reading of the Rehabilitation Act, requiring repeated offers of rehabilitation before allowing the Government to take action against the drug addict who cannot do his job. It is wiser policy for the Government to discipline the addict.

As I said earlier, Secretary Cavazos supports this amendment. Many public schools have adopted get tough policies against drug addicts, but as a consequence of the Rehabilitation Act, they have been forced by the Federal authorities to change their policies and to even take back students and employees whom they have expelled or fired for repeated drug violations. If they do not take the abusers back they risk the loss of Federal funds.

In 1985, for example, the Department of Education's Office of Civil Rights received a complaint from a school janitor who had been fired after becoming addicted to pain killers prescribed for another member of his family. This janitor also tested positive for heroin and cocaine.

After a 6-month investigation, this drug addict was found to be a handicapped person. The school would have had to keep the janitor on the job even though he had not tested clean and even though the school did not want this individual in contact with young children.

This is a classic example of how difficult it is to get the drug addicts and abusers out of the schools because of the Rehabilitation Act. This is not an isolated incident. Many other departments of the Government can catalog the countless times they have been called upon to mainstream drug addicts at the expense of common sense.

As more and more people become aware of how the Rehabilitation Act can be stood on its head to protect drug abusers, the money Congress spends on education and drug enforcement and rehabilitation goes down the drain along with the confidence the American people have in their basic institutions.

Under current law the drug abuser cannot be isolated. It is exceedingly difficult to confront and discipline a member of a "protected class" who is subject to the extensive and complete procedural safeguards of the Rehabilitation Act.

Mr. President, let me finally address the issue of compassion for those who have fallen into the narcotic and alcohol trap. Anyone who wants to help himself break the cycle of drug addiction should be given that chance. We should not hinder those who legitimately want to make their life better. My amendment does not threaten the ability of drug abusers to participate in federally conducted or assisted drug rehabilitation programs.

In fact, Mr. President, the Rehabilitation Act contains no funding whatsoever for drug rehabilitation services. That act only authorizes vocational rehabilitation as part of titles I, II and III.

My amendment does not even affect these vocational rehabilitation provisions—much less drug rehabilitation services—because I am amending title V of the act not titles I, II or III. Title V deals with federally supported programs or activities.

Let me also emphasize that I have incorporated the same language for the Rehabilitation Act that Senators HARKIN and KENNEDY agreed to put in title I of the Americans With Disabilities Act. That means current—and that is a very important word—current abusers of illegal drugs do not qualify as handicapped for the purposes of Federal programs.

In addition, the amendment ensures that expectant mothers who are currently abusing drugs and alcohol will be able to get federally assisted care for their babies who are born into this world as victims of drug abuse.

Mr. President, the war on drugs will be lost if those who abuse drugs are allowed to hide behind laws designed to help those who are seriously handicapped.

For these reasons, I urge the adoption of my amendment to the Rehabilitation Act.

Mr. President, I ask unanimous consent that a letter to Senator DOLE from Secretary Cavazos on this subject be printed in the RECORD at this point.

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

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, October 12, 1988.

Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: I write to urge your support of an amendment to S. 2852, the Omnibus Anti-Substance Abuse Act of 1988. The amendment would make clear that illegal drug abusers are not defined as "individuals with handicaps" due solely to their illegal use of drugs.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial asssistance. Because the current definition of "individual with handicaps" in the Rehabilitation Act includes the term "drug abuser", it is difficult for school districts to impose effective disciplinary measures upon students who abuse drugs.

Virtually every public school in the country is covered by this anti-discrimination statute, the practical (and presumably unintended) effect of which—when combined with the present definition of "individual with handicaps"—is to make it virtually impossible to establish a drug-free educational environment.

The amendment is supported by the Administration and is the same as that contained in Section 103 of S. 2849 of the 99th Congress which you introduced on September 23, 1986 on behalf of the Administration.

This amendment is vitally important. The goal of a drug-free environment in American public schools will be very difficult to achieve without enactment of this amend-

ment. I strongly urge you to make every effort to gain its enactment. The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

LAURO F. CAVAZOS.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 715) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

AMENDMENT NO. 716

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolna [Mr. HELMS] proposes an amendment numbered 716.

At the appropriate place in the bill, add the following:

"For the purposes of this Act, the term 'disabled' or 'disability' shall not apply to an individual solely because that individual is a transvestite.".

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, without losing my right to the floor, I would like to inquire of the Senator is this the same language that is in 504?

Mr. HELMS. The Senator is correct. My instruction to the staff was that. It is exactly the same wording.

Mr. HARKIN. With those assurances then, Mr. President, we have no problems with the amendment and readily accept it.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 716) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

Mr. HELMS. Mr. President, I want to thank the distinguished managers of the bill for their patience in helping me try to understand the technicalities of the bill as now written.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 717

Mr. HARKIN. Mr. President, I have a technical amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 717.

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

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

The amendment is as follows:

On page 92, line 24: strike "or" before "observing," and add "or administering" after "observing."

On page 93, lines 3-4: strike lines 3-4; insert the following:

"(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance."

"Provided that paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

Mr. HARKIN. Mr. President, there are two technical amendments to section 501(c), the provision regarding insurance.

First, the term "administering" has been added to section 501(c)(2).

Second, a new section 501(c)(3) has been added to address one particular concern. There was some concern raised on the part of those who administer self-insurance plans that the language of section 501(c)92) could be read to affect the preemption doctrine of the Employee Retirement Income Security Act of 1974. Congress does not intend in this bill to affect in any way such preemption doctrine and therefore the following technical change has been made.

The provisions of the committee's report language in this area of course still apply.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 717) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

AMENDMENT NO. 718

(Purpose: To exclude an employee or applicant who is a current user of illegal drugs from the definition of "qualified individual with a disability")

Mr. HARKIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 718.

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

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

The amendment is as follows:

On page 50, strike line 21 and all that follows through page 51, line 21.

On page 51, line 22, strike "(d)" and insert "(c)".

On page 52, between lines 9 and 10, insert the following new section:

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protection of this Act if such individual also uses or is also addicted to drugs.

(b) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting drug testing of job applicants or employees or making employment decisions based on such test results.

On page 52 line 10, strike "104" and insert "105".

On page 52 line 17, strike "105" and insert "106".

On page 52 line 22, strike "106" and insert "107".

On page 53 line 4, strike "105" and insert "106".

On page 53 line 6, strike "107" and insert "108".

On page 93 line 20, strike "106" and insert "107".

RELATING TO ILLEGAL DRUGS AND ALCOHOL

Mr. HARKIN. Mr. President, as a result of the discussion with the White House and numerous Senators, including Senators COATS and DANFORTH, we have drafted an amendment pertaining to the problem of illegal drug use and alcohol abuse that is wholly consistent with our national drug strategy, meets every legitimate concern of the business community, and promotes the national effort to maintain drug free workplaces. The amendment includes four points:

First, the amendment provides that any job applicant or employee who is a current user of illegal drugs will be expressly excluded from title I's definition of a "qualified individual with a disability." Therefore, no one who cur-

rently uses illegal drugs is entitled to any employment protections under the ADA, regardless of whether that person is a casual user of drugs or an addict and regardless of whether his or her illegal drug use has any adverse impact on job performance. Employers may thus refuse to hire and may discipline or fire any person who currently uses or is addicted to illegal drugs without violating the ADA. Of course, any person who has another disability, covered under the Act, is not excluded from the protections of the act if such individual also uses or is addicted to drugs.

Second, in addition to explicitly removing current illegal drugs users from the act's employment protections, the amendment also expressly allows employers to: prohibit the use of illegal drugs or alcohol by all employees; require that employees not be under the influence of illegal drugs or alcohol at the workplace; require that employees conform their behavior to requirements established pursuant to the Drug Free Workplace Act; and hold a drug user or alcoholic to the same qualifications, performance, and behavioral standards to which all employees are held, even if unsatisfactory performance or behavior is related to the individual's drug use or alcoholism. This is explained in detail in the committee report at pages 40-42.

Third, the amendment explicitly states that nothing in the act prohibits or restricts employers from conducting drug testing or from making employment decisions based on such test results. Therefore, the act allows drug testing before and during employment, and applicants who are tested and denied jobs and employees who are tested and disciplined or fired on the basis of test results showing illegal drug use have no protection under the ADA.

Fourth, the amendment does not require employers to make any reasonable accommodations for current illegal drug users—including those addicted to illegal drugs—and does not require employers to offer such accommodations to any individual who violates any of the rules or requirements set out in the statute. This is because employers' obligations to make reasonable accommodations extend only to those who have a disability within the scope of the title. Since current illegal drug use—including addiction—does not constitute such a disability, no duty of reasonable accommodation exists with respect to any applicant or employee who currently uses illegal drugs.

At the same time, the ADA retains employment protections for applicants and employees who have overcome drug or alcohol problems, including those who are participating successfully in treatment programs and are refraining from illegal drug use or alcohol abuse.

Mr. COATS. When S. 933 was first taken up by the Labor and Human Resources Committee, I was concerned by the language of the original bill relating to illegal drug and alcohol users. Because I believe that there should be a clear and unequivocal statement in the Americans With Disabilities Act that a person who uses illegal drugs and alcohol is not entitled to any protection under the ADA and that illegal drug use should not be considered a disability, I offered an amendment to S. 933 which would have provided a complete exclusion of users from the provisions of the bill. Although this amendment was not accepted, what finally emerged from the lengthy negotiations that produced this much improved version of S. 933 is language which I believe substantially incorporates the intent of my original amendment, at least as far as the employment provisions of title 1 are concerned.

I am pleased that the sponsors of S. 933, the White House, and the representatives of the various business and civil rights organizations that participated in these negotiations settled on the language contained in the new section 104 of S. 933. I am satisfied that this provision makes it clear that employers can implement a zero tolerance policy and maintain a drug-free workplace.

I wish to thank Senators HARKIN, KENNEDY, HATCH, DURENBERGER, the minority leader, and the others who negotiated on S. 933 for fashioning a legislative solution to the issue of drugs and alcohol which meets my own concerns and greatly strengthens this legislation.

Understandably there has been some confusion and concern in the business community and elsewhere over the degree of protection from employment discrimination under the ADA for individuals who continue to use illegal drugs or alcohol and an employer's rights to take action in the case of drug and alcohol use. Senator DANFORTH, for instance, was prepared to offer an amendment to S. 933 to make sure that the bill offered no such protection. Accordingly I would ask the chairman to clarify the legislative intent with regard to the question of illegal drug and alcohol use and the language in the new section 104.

For the record, I would like to address several specific questions to Senator HARKIN to help to clarify the situation.

Under section 104 of the ADA can an employer refuse to hire a job applicant or discharge an employee who is a current user of illegal drugs without facing a charge of illegal discrimination?

Mr. HARKIN. Yes.

Mr. COATS. Can an employer refuse to hire a job applicant or discharge or discipline an employee who is an addict who is also currently using illegal drugs or alcohol without violating the act?

Mr. HARKIN. Yes.

Mr. COATS. Is an employer protected if he or she fires or disciplines an employee who is a casual illegal drug user?

Mr. HARKIN. Yes.

Mr. COATS. I realize that the act does not take a position endorsing employee testing, but under the ADA can an employer use drug testing as a means of determining whether the employee is currently using illegal drugs? Can the employer fire or discipline the employee if through testing it is determined that the employee is using illegal drugs?

Mr. HARKIN. Yes.

Mr. COATS. Can an employer use drug testing as part of the pre-employment screening process? Can the employer then refuse to hire that applicant if it is found that he or she is using illegal drugs without being charged with discrimination?

Mr. HARKIN. Yes.

Mr. COATS. What if the addict has been rehabilitated or is under treatment for addiction—can that employee be fired if he or she no longer uses illegal drugs or alcohol?

Mr. HARKIN. No.

Mr. COATS. Is the employer under a legal obligation under the act to provide rehabilitation for an employee who is using illegal drugs or alcohol?

Mr. HARKIN. No; there is no such legal obligation.

Mr. COATS. Thank you, Senator.

Mr. DANFORTH. I would appreciate it Mr. Chairman, if I could have clarification of an issue of particular concern to many employers. There is currently an effort underway to establish drug-free workplaces in our Nation. Will anything in the ADA inhibit such efforts? In particular, what is the impact of technical changes made to the bill with respect to the issue of illegal drugs and alcohol?

I would also appreciate it if the Senator would address the impact of the act on drug testing by employers. For instance, if an employer administers a test for illegal drug use, and refuses to hire any applicants who test positive and fires any employees who test positive, would such individuals have a claim of discrimination under the ADA? That is, can we assure employers that they will not face litigation under the ADA by current users of illegal drugs and alcohol?

Mr. HARKIN. Let me state it as clearly as I can. Users of illegal drugs, including those addicted to illegal drugs, are not protected by the ADA, regardless of whether the employee or applicant is otherwise qualified and

the employee is meeting performance standards.

The technical amendment with respect to illegal drugs and alcohol was made to remove any question about the meaning of the statutory language. Although many of us believe that the language of the bill, as reported, was clear, others criticized the bill as being too vague with respect to the issue of the use of illegal drugs.

The new language assures employers that they need not worry about having to defend actions brought by casual drug users, who are not covered under the act. The act does protect drug addicts who are not current users. And we all agree that people who use controlled substances under medical supervision are unaffected by this provision of the act.

With respect to drug testing, the ADA explicitly states that nothing in the act prohibits or restricts either drug testing or employment decisions taken on the basis of such drug tests. Therefore, an applicant who is tested and not hired because of a positive test result for illegal drugs, or an employee who is tested and is fired because of a positive test result for illegal drugs, does not have a cause of action under the ADA. If an employer performed a test which actually measured the current use of illegal drugs and the test was positive for the use of illegal drugs, the applicant or employee has no protection under the ADA. It is not a question of the employer having a defense in an action by the applicant or employee. The employer needs no such defense because the applicant or the employee has no cause of action.

So, I think we can assure the Senator and employers, without hesitation, that employers will not face litigation under the ADA on the part of current users of illegal drugs and alcohol either for testing or for taking disciplinary action against such individuals based on such testing.

Mr. ARMSTRONG. Mr. President, I have not had a chance to see the amendment. This is a matter of interest to me. Do we have a copy of the amendment?

Mr. HARKIN. It is at the desk. We tried to clear this with both sides. I thought it had been cleared.

Mr. President, in the meantime, I ask unanimous consent that we can move ahead in the interest of time to accommodate the distinguished minority leader. I move to set aside the amendment.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

The Senator from Kansas.

AMENDMENT NO. 719

(Purpose: To provide a plan to provide entities with technical assistance)

Mr. DOLE. Mr. President, I send an amendment on behalf of myself and Senator DOMENICI and Senator GRASSLEY to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. DOMENICI, and Mr. GRASSLEY, proposes an amendment numbered 719.

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

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

The amendment is as follows:

On page 95, strike lines 4 through 14 and insert the following new subsections:

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

Mr. DOLE. Mr. President, let me explain this amendment. It has been cleared on both sides. It is a technical assistance amendment.

It is important that both the employers and businesses and the handicapped fully understand this legislation, once it is passed, if it is to be implemented. So that is precisely what the amendment does. It will enable the responsible Federal agencies to establish a strong Governmentwide technical assistance program. Such a program will help to educate the public about the requirements of this bill.

Entities in the private sector need to be aware of what accommodations are both necessary and cost effective, as well as what is the best suited for particular disabled individuals.

Since many of these accommodations will be made in areas which traditionally have not been covered under the Rehabilitation Act—that is, other than universities or Federal contractors in excess of $2,500—a longstanding expertise can be applied in implementing the ADA in these new areas.

The same standards exist in the ADA that have existed for over a decade in the Rehabilitation Act. For example, reasonable accommodations which do not provide an undue burden and are limited by business necessity and safety are principles which can be defined by a decade of experience.

Technical assistance is instrumental in providing these definitions to the private sector. A thorough understanding of these principles will greatly hasten the implementation and practice of this important piece of legislation.

Given the comprehensive nature of the ADA, I believe it is our obligation to see that people with disabilities understand their new rights under the bill and that employers and businesses understand the nature of their new obligations.

The PRESIDING OFFICER. Is there further debate?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, unless the distinguished minority

leader is in an extreme hurry, I wonder if I might just take 3 or 4 minutes and comment on the amendment I just cosponsored. I want to make some views and observations about this bill, as well as some of the new definitions with reference to disability.

Mr. President, far be it from the standpoint of the Senator from New Mexico to understand this bill as well as those who have worked on it for many, many months, if not for years. It may be that some Senators who have concerns about definitions and breadth of definitions may have a point. But I would like to point out just one very precise aspect of this bill that I am very, very laudatory of the committee about, and hopeful that it will work.

It has to do with mental illness. I am not aware of the total series of definitions that come within the term "mental illness," but what I hear most of the time here on the floor of the Senate and in public discussions, are references to one, two or three of the most serious mental illnesses that are around. As soon as you talk about mental illness somebody says what about somebody who is schrizophrenic or manic-depressive or bipolar effective.

Let me suggest to the Senate that if Winston Churchill were alive today and was applying for a job and somebody wanted to eliminate from the workforce a manic-depressive, they may very well not hire Winston Churchill because it is almost universally accepted by those who diagnose the illness today that Winston Churchill was a manic-depressive.

I might also suggest that if Abraham Lincoln were to walk in and ask for a job, he might face the same problem. About 90 percent of those who look back and diagnose, would say Abraham Lincoln would today be carrying around a diagnosis of manic-depressive. I could go on and on with reference to names that are from bygone eras.

I tell you, there are hundreds of thousands of Americans today who have been diagnosed or are being treated for manic-depression, bipolar effective disease or schizophrenia, and I do believe we have to make a serious effort to eliminate the automatic stigma attached to those ailments. Think back in all our lives when we used terminology like "schizophrenia" or "that is schizophrenic." We all perceive some idea in our minds about people who have those kinds of ailments. It turns out that more times than not, we are wrong in our perception of their abilities. We certainly overstate their disabilities.

As I said, I am not informed enough on the broad diagnostic use of words that come within mental illness, but I submit that the time has arrived in the United States when people who have mental illnesses that are clearly defined, such as the three I have talked about here this evening, that they not be automatically discriminated against for employment in this country.

That is not to say that for certain types of jobs and under certain observations by the experts in this country, be they psychologists, psychiatrists or even the new more combined professional people who work with these kind of illnesses in the United States, individuals with these illnesses may not be right for the job. But, clearly the time has come when they deserve an unbiased evaluation of their capability based upon the disease rather than some subjective disability attached to just the use of the name.

I think it is going to be difficult to implement legislation like this, and I understand, perhaps as well as most here, that the marketplace in the United States on the private sector side is a marketplace that responds to performance. Certainly I do not want to be part of forcing employers, especially those that are small, minimize their capability of succeeding in a very competitive American marketplace. But I do believe we have to make a start and we have to make a start in applying the term disability beyond some of those very easily defined and easy to see disabilities that come to our mind rather automatically when we think of disability.

I might suggest that there may have been a time in history when if you had diabetes somebody asked you, do you have diabetes and they could have said to you, we cannot hire you.

Certainly that is not the case today. Certaintly you can have a disease as grave as that and fit more jobs. You are either in the process of being maintained, or we are coming close to finding a cure, or your disability is sporadic.

I think the time will come because of giant strides in understanding mental illness and the brain when somebody who walks in to seek employment will find no more prejudice. They will find that people will understand that it is a disease rather than some figment of the imagination or some subjective bias. There will come a time when somebody says, "I have suffered from schizophrenia," that people will then sit down and talk intelligently about that situation as it applies to that human being and their ability to get a job and hold a job in the American marketplace.

In that respect, it appears to me that we are making a very positive stride in the right direction if we really are concerned about job prejudice in the United States. It is very simple to say it is only a matter of sex discrimination and perhaps race and perhaps religion, as some have suggested. Those are easy ones.

But they just scratch the surface in terms of the suffering that goes on in the lives of people who are assumed to be disabled because of some of the niches that they are put in, especially when it comes to serious mental illness properly diagnosed and, currently, rather well understood.

In that respect, it is obvious to the Senator from New Mexico and with respect to this bill, that the employers of this country are going to have to get a lot of help and we are going to have to go slow and watch the regulations as they are developing.

Because of that I am pleased to cosponsor Senator DOLE's amendment which will provide a very significant opportunity to inform the employers of the United States in an orderly, well-defined, proper manner of "do's and don'ts" of this new law. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I am a cosponsor of this bill. I think it is a good bill. I hope the passage of this legislation will end the years of discrimination for millions of Americans.

Mr. President. I know there are concerns about it. All of us have been involved in the past with the passage of other antidiscrimination legislation, whether it is fair housing or whatever it might be. I think when it is all said and done, we have learned from experience that these matters have been worked out and worked out successfully for the majority of Americans.

We look back on the passage of that legislation which was, in many cases, accompanied with a good deal of anger and dismay on the part of some. I can remember when I was in the State house. There were marches on the State house involving those who were opposed to the fair housing legislation. Now people look back and say what was all the fuss about?

Indeed, I think that is going to be a similar situation in connection with the Americans With Disabilities Act.

Mr. President, the Americans with Disabilities Act, ADA, holds out the hope of ending an era of discrimination for millions of Americans with disabilities. What we are considering today is not whether to make the commitment to fully integrate individuals with physical or mental impairments into our society. I believe that every Senator is eager to make that commitment. The question is how to make such a commitment, and most importantly, how to allow every American and business to join us in this effort. The answer is to enact the compromise legislation before us.

ADA, as it is currently drafted, will integrate fully those with disabilities into everyday American life.

The bill will break the barriers of discrimination faced by those who are unable to climb the stairs and walk into a store.

It will allow the talents and contributions of Americans to flourish, particularly for those people who choose and are able to join the workforce.

The legislation will ensure that adequate transportation is available, so that mobility and independence are not hampered.

Furthermore, it will allow people with speech and hearing impairments to effectively use telephone systems.

Tremendous barriers exist for many individuals with handicaps, preventing them from functioning as full partners in America. Someone who uses a wheelchair cannot go into a store if there is only a flight of stairs and no entrance ramp, or if the door is not wide enough to allow the wheelchair to pass through. Those using wheelchairs may not be able to get on the bus to get to that store, and may be unable to work in that store. Discrimination against those with disabilities is not just in our minds and attitudes, it also lies in the physical environment, which is geared toward non-disabled people. ADA signals to the Nation that we must all contribute toward changing not only attitudes but also the physical environment, so that full integration will finally be achievable.

We are asking the transportation industry, the telephone industry, and other American businesses, large and small, to join in this effort. What we are are asking in this bill is reasonable. It is the product of intense negotiations and shows a willingness to compromise on the part of many. I wholeheartedly commend those who were involved in the discussions, particularly the authors of this bill, Senators HARKIN, DURENBERGER, and KENNEDY, as well as other concerned Senators, including the distinguished Republican leader. Moreover, the consensus package before us would not have been possible without President Bush's strong commitment to end discrimination toward those with disabilities.

The Americans with Disabilities Act is critical to ensuring that individuals with disabilities will be embraced by mainstream America. Yet, it is not the only reform we need to make. I have introduced the Medicaid Home and Community Quality Services Act, S. 384, to amend the Medicaid Program to provide people with disabilities with options for care. S. 384 will create a system of services so that people with disabilities can live and work in their communities. For too many years, individuals with physical or mental impairments have been locked away in institutions. My legislation would enable many Americans with disabilities to remain in their communities and still receive assistance from the Medicaid Program. Community placement allows many to gain independence and a sense of self-worth.

Full integration of those with disabilities requires a concerted effort from us all. Our Nation must work together to change our past discriminatory behavior and create a future of hope for all Americans, including those with disabilities. I urge my colleagues to support the compromise measure. Thank you, Mr. President.

Mr. HARKIN. Mr. President, might I ask the status, what amendment are we considering on the floor?

The PRESIDING OFFICER (Mr. LEVIN). The pending amendment is the amendment of Senator DOLE, No. 719.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HARKIN. If the Senator will withhold.

AMENDMENT NO. 715, AS MODIFIED

Mr. HELMS. Mr. President, inadvertently the text of the amendment that was approved earlier did not include some stylistic language changes. I ask unanimous consent that this version be substituted for the version that was sent inadvertently to the desk.

The amendment, as modified, is as follows:

AMENDMENT NO. 715, AS MODIFIED

At the appropriate place in Title I, insert the following new section:

SEC. . AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions."

(D) For purposes of sections 503 and 504 of this Act as such sections related to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The Term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of federal law.".

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 715, as modified) was agreed to.

Mr. HARKIN. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 720

(Purpose: To include Congress as a beneficiary of this Act)

Mr. GRASSLEY. I send an amendment to the desk and ask for its immediate consideration. It is an amendment by Senators DOLE, SPECTER, and HUMPHREY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself, Mr. DOLE, Mr. SPECTER, and Mr. HUMPHREY, proposes an amendment numbered 720:

At the appropriate place add the following:

Notwithstanding any other provision of this Act or of Law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

Mr. GRASSLEY. Mr. President, you have just heard the amendment read in its entirety.

This amendment is very straightforward. It says that, starting today, and at long last, Congress will begin to live by the same laws it passes for others.

It goes to a simple question: Are there two sets of laws in this country—one that applies to Congress and one for the rest of America?

I am frank to note that Congress has been, historically, quite good at exempting itself from the laws it passes for others.

Mr. President, this breeds contempt among the public—the practice says that Congress somehow thinks it's above the law.

At a minimum, it goes to a lack of public accountability. At its worst, it is raw hypocrisy.

The practice ought to stop, and today is as good a time as any to start.

Here is a short list of some of the major laws—laws imposing substantial obligations on the American public—all passed by the Congress, on which Congress has exempted itself: This list is by no means inclusive, I may have missed some, and the list was recently published in a book called, aptly enough, "The Imperial Congress."

They are: The Social Security Act of 1933, the National Labor Relations Act of 1935, the Minimum Wage Act of 1938, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Freedom of Information Act of 1966, the Age Discrimination Act of 1967, the Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Act of 1972, Title 9 of the Higher Education Act of 1972, the Rehabilitation Act of 1973, the Privacy Act of 1974, the Age Discrimination Act Amendments of 1975, the Ethics in Government Act of 1978, and the Civil Rights Restoration Act of 1988.

Mr. President, make no mistake: I agree that it is important to end any discrimination against individuals with disabilities—and that we end discrimination nationwide. Indeed, I find the goals of this bill to be laudable, and I commend its sponsors.

But nationwide means just that—it does not, or should not, exempt this little enclave up here on Capitol Hill.

Discrimination is wrong—no matter who practices it.

Who here wants to say that Congress should have any more reason to discriminate against people with disabilities than any other entity or person?

Does this Chamber have any more right to make second-class citizens of certain people, while prescribing it if done by any other person, or business?

Why can't Congress stand up and say, "We believe so strongly in anti-discrimination that we will apply all the bill's sanctions and remedies to us, as well"?

If it's too burdensome for the U.S. Senate to live by this bill's command, then why it is any less burdensome for a small business to comply with it?

So, Mr. President, as I said, it is a very straightforward amendment. It is about starting to apply the laws that we apply around the country to us and this is the time to start it. This amendment will do it to this very important bill.

Mr. FORD. Mr. President, I do not want to take exception to the amendment of the distinguished Senator from Iowa, but this amendment puts us in a very peculiar position. The executive branch will then have control of the legislative branch. What you are doing is taking away the separation of the three branches of Government. So under this seemingly straightforward amendment, it puts the executive branch in charge of the legislative branch, and I do not think we want this.

Now, I am willing to work with the Senator, and if the managers of the bill want to accept his amendment, maybe we can work something out in conference. The Rules Committee would have jurisdiction. The Rules Committee ought to have an opportunity to try to work it out. We have had other things referred to us for a period of time to try to work out the problems. We need something to function outside of the executive branch to control this basically as the Senator from Iowa would like to have it. But I want to bring to the attention of my colleagues that we are now passing an amendment that gives the executive branch control over the legislative branch.

If that is what you want, go right ahead. But it begins to break down, and I am not sure it is constitutional. So if we want to do something to comply with the law, we will have to set up the mechanism to do that so that the executive branch would not be the dominant figure over the legislative branch.

I thank the Chair.

The PRESIDING OFFICER. Is there further debate? If not, the question is on——

Mr. FORD. Mr. President, is there any way that the Senator from Iowa would agree that in conference we begin to try to work out something? I would like for him to set his amendment aside so that we might be able to work out something overnight. This is another one of those sugar-coated amendments that the distinguished Senator from Alaska was talking about earlier today, and we have now stepped into a deep mire that is not going to fly, in my opinion. So if we are going to accept this without a vote, I think we ought to at least have some discussion with the proponents of the amendment to be sure that there is some agreement that we work it out in conference and we do not leave it to the executive branch to take over the legislative branch.

Can I get some assurance from the Senator from Iowa?

Mr. GRASSLEY. If the distinguished Senator from Kentucky is asking me, at the point this is adopted, to work something out in conference, I am always ready, willing, and able to do that. But I want this amendment adopted now. If we want it opened up for discussion later on, yes. I am always willing to do that.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, am I correct that the pending business is the amendment offered by Senator GRASSLEY?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Mr. President, I know there were some concerns raised about this by the distinguished Senator from Kentucky, the chairman of the Rules Committee. I do understand the problem of having the executive branch having jurisdiction over the legislative branch, but in the interest of time and in the interest of moving this along, conceptually I support the amendment.

I was surprised, frankly, that we did not cover Congress. I think Congress ought to be covered by this act. However, I am always sensitive to the constitutional problem of not having the executive branch run the legislative branch or vice versa. I am told that Senator HATCH had an amendment earlier dealing with this matter which did not have that kind of a problem. But I think in the interest of moving the bill along, and with the understanding that as we go to conference on this bill, we are going to have to address the particular problem of not giving the executive branch jurisdiction over the legislative branch, that we will have to work on this in conference. First of all, to make sure that Congress is covered, but also to make sure that it is Congress, the legislative branch, that enforces the provisions of the act. I just say on our side we are willing to accept the amendment with that understanding, and we will work on that in conference.

Mr. GRASSLEY. Will the Senator yield?

Mr. HARKIN. Yes.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. The way my colleague laid it out, Mr. President, Members of this body, is very satisfactory to me, and I think these problems can be worked out to everybody's satisfaction.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I understand that we are pushed for time. It is quarter of 10 at night. So we want to get it over with and go on and make a mistake and hope that we can take care of it at the conference. I think that I brought it to the attention of my colleagues, and apparently my colleagues are so anxious to get the bill passed tonight,

they will swallow camels and choke on gnats.

I will not discuss the amendment. I think you are wrong. I think the procedure is wrong. I am for the amendment. I am for the content of the amendment and what it attempts to do. I have no problem with that. I have no problem in complying with the amendment in my office here or back in my State.

I think what we are doing now is allowing something to transpire that the Senate has approved, knowing full well it is wrong, that it is the executive branch in control now of the legislative branch and, in my opinion, that is not proper under the framework of the Constitution or the way the Senate should operate.

So, Mr. President, I want the record to show my violent objection to the content of the amendment, because it does not contain the portion that was similar to the Hatch amendment earlier that would not have brought this similar problem on.

I know it sounds good, that we ought to be doing the same thing the small businessmen should do. I have no problem with us doing that, or my office being required to follow these standards. But I think that under the procedure, a longstanding agreement here, that we should not allow the executive branch to start taking over and telling the Senate what they should and should not do. We are supposed to pass legislation. The executive branch will either sign or veto it and carry it out, based on a court case.

I am not a lawyer. It makes my problem a little difficult for me to quote the law. With my limited knowledge, I say that we are making a mistake here tonight. And I promise my colleagues one thing: If it does not come back in the agreement as I have described it here, then it will take much longer to pass it the second time from conference than it did the first time to go through the Senate.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Iowa.

All those in favor, say "aye."

Opposed, "no."

Mr. GRASSLEY. I ask for a rollcall.

The PRESIDING OFFICER. The Senator from Iowa.

Did the Senator request a rollcall?

Mr. GRASSLEY. A division, Mr. President.

The PRESIDING OFFICER. A division is requested. Senators in favor of the motion will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, the amendment was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. I move to lay that on the table.

The motion to lay on the table was agreed to.

Mr. HARKIN. Mr. President, I inadvertently forgot to add Senator NUNN as a cosponsor to the bill. I ask unanimous consent that his name be added as a cosponsor.

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

AMENDMENT NO. 718

Mr. HARKIN. Mr. President, I understand that we have worked out our amendment with Senator HUMPHREY.

Mr. HUMPHREY. Yes. If the Senator will yield.

Mr. HARKIN. I yield the floor.

The PRESIDING OFFICER. Senator HUMPHREY.

Mr. HUMPHREY. Is not Senator ARMSTRONG next on the informal lineup?

Mr. ARMSTRONG. I appreciate the courtesy of the Senator from New Hampshire, but I am glad to have him proceed.

May I inquire of the Chair if the amendment would automatically recur, the amendment in which Senator HUMPHREY is interested?

The PRESIDING OFFICER. The amendment of the Senator from Iowa is pending.

Mr. ARMSTRONG. I asked at the time that it be laid aside so I could read the amendment to be sure I understood the meaning and purpose of it. I have no objection to it, though there is a question or two that inspires my curiosity, and I will direct my inquiry to the Senator from Iowa or the Senator from New Hampshire.

There is not anything I object to, but it is not clear what happens if a person is an abuser of alcohol who does not abuse alcohol on the job, but regularly, perpetually, perhaps flagrantly and publicly abuses it every night; but he shows up for work the next morning.

Am I in some way precluded from taking into account, if I am an employer, his offsite drinking, as one of the issues that I might evaluate him on for employment or promotion or continued tenure?

Mr. HARKIN. If the Senator will indulge just a second. I might say to the Senator this was an amendment worked on with Senator DANFORTH and Senator COATS which we had agreed to and the administration agreed to it.

Mr. ARMSTRONG. Senator, if you would use the mike, I think all Senators would want to hear.

Mr. HARKIN. I am sorry. This is an amendment we worked out with Senator DANFORTH and Senator COATS and the administration. We had agreed to it. Right now, I am sorry to say that I do not have it in front of me. I do not seem to have the amendment in front of me right now. I will try in good faith to answer the Senator's question, if he would repeat it for me.

Mr. ARMSTRONG. The question is, as I said a moment ago, I have no objection to anything I read in this amendment, but it is not clear to me how a likely factual situation might be handled. It is very clear in this that if a person shows up drunk on the job, that that person may be discharged and that there is nothing in this bill that would prevent an employer from doing so.

My question was a more likely factual situation where someone perhaps is an abuser of alcohol off the job, maybe even—and this is not a far-fetched or even unusal situation—a person who abuses alcohol regularly, even flagrantly, even publicly night after night is seen out in public making a fool of himself, staggering, but somehow managing to come to work sober the next day.

If I am an employer and wish to take that factual circumstances into account, is there anything in this bill or amendment which would prevent me from doing so? In other words, may I make that one of the factors I take into account as to whether I wish to hire or promote such a person?

Mr. HARKIN. I believe you can take that into account, because I believe that reflects on the person's performance on the job. Obviously, if a person works for someone and they are out getting drunk every night, that reflects also upon the employer's workplace.

Mr. ARMSTRONG. Because it might bring disgrace?

Mr. HARKIN. Exactly. So I believe the employer could take that into account, because it affects the employer's workplace.

Mr. ARMSTRONG. I appreciate that explanation. I have no objection to the amendment.

Mr. HARKIN. I think that would be the case.

Mr. ARMSTRONG. I thank the Senator.

The PRESIDING OFFICER (Mr. BINGAMAN). Is there additional debate?

The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 718) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HUMPHREY. Mr. President, the bill before us is one of the most radical pieces of legislation I have encountered in my 11 years in the Senate. Like most radical legislation, it has laudable policy goals. We all want

to improve the lot of the handicapped, and I would gladly support reasonable and cost-effective legislation to achieve that goal.

But this bill treads so heavily on individual liberty, private property rights, and the legitimate concerns of employers that I cannot support it. I am equally concerned with the enormous hidden costs of this legislation. The New York Times, which is normally the first to endorse civil rights legislation, has just published an editorial stating that the costs of the ADA "could be monumental," but "nobody has even tried to spectulate about its costs." The reason for this is clear: the more that is disclosed about the bill's price tag, the more likely that Congress will feel the heat from the public about this spendthrift legislation.

I do not expect that many other Senators will oppose this bill, or even seriously question its provisions. Not many Senators enjoy the prospect of being protrayed as unsympathetic to the plight of the handicapped. And that is exactly what occurs when Members break from the pack and point out the excesses and flaws of these bills, as I can attest from past experience.

Nonetheless, after a thorough review of this extremely complex legislation, I feel it is important to call the Senate's attention to some of its major flaws and excesses.

EMPLOYMENT PROVISIONS

Other equal employment opportunity laws have required employers to treat applicants and employees on an evenhanded and nondiscriminatory basis. This bill departs from that principle. It requires employers to extend special treatment to accommodate the special needs or disabilities of the 43 million Americans the bill classifies as disabled.

And we are not simply talking about the blind, the deaf, or persons confined to wheelchairs. Under this bill, drug addicts and alcoholics are classified as "disabled persons" and given special employment protection. So are schizophrenics, manic depressives, and persons with extremely low IQ's. So are persons with deadly infectious diseases, like AIDS. In fact, the definition of protected "disabilities" in this bill is so broad that virtually any mental or physical shortcoming can be invoked as grounds for demanding the special "accommodations" which the bill requires employers to provide.

The bill compels employers to make "reasonable accommodations" to the "physical or mental limitations" which would otherwise render a person unfit for a job. It is anybody's guess how this radical new rule will be applied, because the bill provides inadequate guidance.

The committee report gives a few examples of what it regards as clear-cut cases of mandatory accommodations. For example, a business or agency can be required to hire a hand-sign interpreter to enable a deaf person to perform a job he could not perform without one. Of course, the committee report fails to tell us that the employer's annual cost for such a sign-language interpreter is $21,000 to $23,500.

Similarly, an accounting firm or other business would be required to hire a special reader to assist a blind accountant or executive who is "otherwise qualified." In other words, the bill will sometimes require an employer to hire two employees to get one job done. That's not an antidiscrimination law. It's a confiscatory law.

The bill also requires employers to provide auxiliary aids and devices which are necessary to enable disabled persons to perform a job. One example: computers with speech synthesizers and special software for blind persons. Cost? $5,000. And this bill will make it an act of illegal "discrimination" for a small businessman to decline to acquire such costly equipment to accommodate a disabled applicant for a job. That's outrageous.

While the committee report gives examples of clear-cut accommodations for the disabled, it studiously avoids the more bizarre accommodation requirements imposed by the bill. What are employers expected to do to accommodate alcoholics, the mentally retarded, or persons with neurotic or psychotic disorders? This Senator has no idea, and I doubt that other Senators do either. Of course, we don't have to comply with the bill, because as usual Congress is exempt from the law in question. But for the small businessman throughout America who will have to comply, the vagueness and complexity of this bill's requirements will constitute a legal nightmare.

The only concession the bill makes to small, hard-pressed businesses is that they need not make an accommodation if it constitutes an "undue burden." But again, the bill gives no meaningful guidance as to what this means. Employers will simply have to guess at how much money they must spend for readers, interpreters, and special equipment to accommodate the countless varieties of "disabled persons" protected by this act. If they guess wrong, they face the prospect of litigation, injunctions, and $50,000 fines for violations. And on top of everything else, the bill will require them to pay the attorney's fees of those who sue them, as well as their own.

The bill also prohibits employers from making entirely legitimate inquiries regarding the fitness of prospective employees prior to making an offer of employment. For example, police departments and school boards are barred from prescreening applicants for jobs as policemen and schoolteachers to find out if they have a history of drug addiction, mental illness, or emotional instability. After the job has been formally offered, the act permits some limited inquiries of this kind but these are only permitted if the employer can establish that its inquiries meet a strict test of "job-relatedness" and "business necessity."

It is obvious that these unprecedented Federal restrictions on employee qualifications will deter employers from preserving high standards of fitness, safety, and efficiency within their work force. It is nothing short of outrageous to prohibit police departments, hospitals, and other employers responsible for public health and safety from applying strict and selective hiring standards. But that is precisely what this bill does.

PUBLIC ACCOMMODATIONS

In its effort to reshape the structural landscape of America in the name of handicapped accessibility, the ADA will require even the smallest shops, offices, and clubs to struggle with a complex and incomprehensible set of structural and architectural regulations.

The most sweeping requirements of this title concern the construction of new facilities. Any business, club, school, shop, or office which plans to construct or acquire a new building or facility must comply with complex Federal accessibility requirements which are at once strict and imprecise.

Any newly constructed facilities must comply with the strict Federal standard of "ready accessibility" for the handicapped. This means that no new shops or offices can be built which require climbing or descending stairs to enter the facility. We all know that there are many thousands, perhaps millions, of facilities throughout America which do not meet this standard of accessibility. Compliance with this new nationwide handicapped building code will require a drastic revolution in the design of commercial and office construction and design. Construction on elevated or depressed terrain will have to be avoided, since access to such buildings would clearly require stairs for access. The commonplace design of office basement space for "walk-down" shops will be illegal. The use of popular townhouse-style designs for small office and professional buildings will be greatly restricted because of accessibility problems.

The accessibility requirements will require greater space per office unit, and thereby increase construction and rental costs. All restroom facilities will have to be larger to accommodate wheelchair access and maneuverability requirements. Wider doorways and corridors will require more office space. Split-level designs in shops and stores will violate accessibility require-

ments, unless ramps or elevators are provided.

One of the most costly aspects of the bill will be its requirement for the installation of elevators in any building with over two stories. Three-story buildings without elevators are commonplace in American society and commerce today. Small office buildings, college dormitories and fraternity houses, clubhouses, boarding houses, and numerous other small business or association facilities are housed in three-story buildings. While many three-story buildings are equipped with elevators, many are not. And the reason for not including elevators is invariably the same: elevators are very expensive.

Installation of elevators in basic three-story buildings will generally add in the range of $35,000 to $45,000 to the cost of construction. For commercial buildings, the cost of elevators for a three-story building would be $75,000. Proponents might argue that many contemporary buildings of more than two stories would be built with elevators even without this legislation. Some are and some aren't, but that is not the point. This bill prohibits small businesses, clubs, and other private organizations from exercising their right to choose a far less costly form of building. For many businesses and organizations, the benefit to handicapped persons from this costly requirement will be marginal and speculative. But the increased building costs for businesses, associations, schools, clubs, and other organizations will be very real and very substantial.

In this regard, it needs to be said that the cost and economic impact assessment in the committee report is laughable. It says that the costs of these new accessibility requirements for new constructions and renovations "are generally between zero and 1 percent of the construction budget." This claim is bogus on its face. The cost of elevators alone—$35,000 to $75,000 for a small three-story building—totally refutes the report's assertion. So does the fact that these new accessibility requirements have never been applied to the unlimited range of private sector facilities covered by this legislation. As the New York Times has stressed, the fact is that no one knows the extent of the costs entailed by this bill. The mandatory installation of elevators alone will entail enormous extra construction costs. So will the need to design buildings in a manner that will eliminate stairs as a necessary mode of entrance. The committee report's economic impact "assessment" simply avoids addressing the real cost impacts, and that is a real disservice to the paying public.

Like the bill's employment section, the bill's public accommodations section is riddled with vague terms and requirements which will make compliance virtually unachievable. The bill requires removal of all architectural barriers from existing facilities if such removal is "readily achievable," which the bill defines as something that can be done "without much difficulty or expense." Alterations of existing facilities must incorporate handicap accessibility to the "maximum extent feasible." Auxiliary aids and special services must be provided for the handicapped except if the cost would constitute an "undue burden."

No one will really know what these terms mean until the courts have thoroughly interpreted them. In the meantime businesses, schools, and other organizations will have to make their best guess at what the law requires of them. The penalties for guessing wrong will be harsh, including $50,000 fines, injunctions, and payment of the plaintiff's lawyers' exorbitant attorney's fees.

I could continue with other examples of this bill's excesses, such as the costly requirements for equipping all buses with lifts, but the point is the same. In the name of a good cause, this bill imposes unreasonable restrictions on individual and economic liberty. It treats sensible business decisions, based on efficiency and frugality, as invidious discrimination. It imposes radical changes on the construction and design of commercial and private buildings throughout America without confronting the economic consequences. And it prohibits employers from applying the most basic standards of fitness in making hiring decisions.

The New York Times editorial may have put it best when it said this about the ADA:

> It requires little legislative skill * * * to write blank checks for worthy causes with other people's money.

For all these reasons, I will vote against this legislation.

AMENDMENT NO. 721

Mr. HUMPHREY. Mr. President, I will send an amendment to the desk which I understand is agreeable to both sides.

Frankly I am astounded that this bill has arrived on the floor in the shape we find it. There is a glaring loophole in the bill as it is now written which this amendment seeks to address the amendment which I will offer in a moment. The loophold creates benefits for drug addicts, of all classes of people, at a time when we are trying to deal effectively with the scourage of drug use in our society.

Mr. President, I will cite one example. As the bill is now written if a private school should expel a student because of drug use that student under the bill would have recourse to a suit claiming discrimination.

The committee report makes it quite clear that drug addiction is to be considered a handicap and falls under the scope of this bill. I will read what the committee report says:

It says: "It is not possible to include in the legislation a list of all the specific conditions, disease or infections that would constitute physical or mental impairment," et cetera.

It goes on to say the term includes, however, such conditions as, and skipping over a whole list of conditions, drug addicts.

So clearly, according to the committee report the bill in its original form, a form which is now before us, is intended to create benefits for drug addicts, right at a time when we are trying to fight this scourage of drugs in our society. I think that is one example on how poorly and hastily written this bill is.

Nonetheless, I want to thank Senator HARKIN, Senator KENNEDY and all involved for their cooperation in coming to an agreement on an amendment which I will now send to the desk.

AMENDMENT NO. 721

The PRESIDING OFFICER. The Senator will suspend. As I understand it the Senator has offered the amendment and that being the case the clerk will read the amendment.

The legislative clerk read as follows:

> The Senator from New Hampshire [Mr. HUMPHREY], proposes amendment numbered 721.
>
> At the end of the bill, add the following:
>
> For purposes of this Act, an individual with a "disability" shall not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.
>
> However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

Mr. President, this business of drug abuse and the loophole in this bill which we are now seeking to close is very serious business indeed and I am sure the Senator from Iowa will agree and it would be most unfortunate just as we are launching a new phase in this effort against the drugs in our society it creates special protection for the drug users. That ought not be the intent and effect of the amendment. It should be to close the loophole and take away the protection that a drug user would have absent this amendment.

It is a serious amendment, and I am grateful I have the support of the floor manager and others in formulating this compromise amendment.

I want some assurance and I am not going to seek a rollcall vote on this given the lateness of the hour. I want some assurance from the Senator that this is not just a sop to this side that his acceptance in this amendment is

not just a sop and this thing is going to fall by the wayside in conference.

I want assurance that the Senator take this seriously and will make a good faith effort to retain it in the conference report.

Mr. HARKIN. If I might respond to the Senator, we have looked at this amendment and we accept the amendment. It has been worked on.

Quite frankly, I believe that the bill as drafted did answer adequately the concern raised by the Senator from New Hampshire. However, if more clarifying language or stricter language can be incorporated as the Senator has drafted here that is fine with this Senator.

I can assure the Senator from New Hampshire that we will maintain this language because quite frankly I feel the language in this amendment really does what we did in the beginning. But if the Senator from New Hampshire feels it did not, that is fine; we will accept this language to allay any fears, apprehensions, or misgivings that this Senator or others might have that we did not accomplish this in the beginning. So I assure him we are going to keep this language because I think it does what we initially wanted to do anyway.

Mr. HUMPHREY. I thank the Senator for that assurance.

I find his remarks strange in light of the clear language in the committee report which says that drug addiction is one of the conditions which is to be regarded as a handicap condition under this bill. That is what the report says.

The Senator is entitled to his interpretation but that to my way of thinking is a wide open loophole to create protections for persons addicted to drugs. The purpose of this amendment is to close that loophole. I think the language is clear and explicit, and I thank the floor manager for his assurances that this language will be retained in conference.

Mr. HATCH. If the Senator will yield, I will fight for that language as well and we will try to make sure it is kept in any conference we have on this issue.

I appreciate the Senator in his efforts and work and ability to compromise on this matter.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment (No. 721) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, we are about ready to conclude this matter. I believe that we have reached an accommodation with the distinguished Senator from Colorado.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, the distinguished Senator from Colorado has worked long and hard this evening with the majority floor managers and the minority floor manager to try and resolve what really are very difficult problems. We have arrived at a compromise amendment that is a very good amendment, much to the credit of the distinguished Senator from Colorado.

Should this amendment pass, by voice vote, and I believe it will, I will personally commit to keep this amendment in conference, if there be any conference. I would like to ask my colleagues, both the majority floor manager, the distinguished Senator from Iowa, and the distinguished Senator from Massachusetts, the chairman of the committee, if they also would be willing to give assurances that we will keep this amendment in any conference or in any final version of this bill.

Mr. KENNEDY. Mr. President, I would accept this amendment. It has been the result of many long hours of negotiations. I feel that there has been a good deal of good faith given and take on this amendment. It really represents a compromise. It is certainly not one that I would have wanted in the legislation, but we have divisions and concerns that have been expressed on this floor and in previous debates.

I think that this is a compromise which we can live with. I will do everything I can to ensure that it be maintained in the conference. Realistically, I know that if it is not, we will be facing this issue down the road in the course of further debate and discussion on some of the other matters that are not unrelated to the measures which we have been debating this evening.

So I want to say that we appreciate the position of the Senator from Colorado. I cannot say that I agree with it, but I know that he cannot agree with the way that we have framed the various definitions. Of course, I do want to point out that some of the behavior characteristics listed such as homosexuality and bisexuality are not, even without this amendment, considered disabilities.

This does represent a compromise. I still firmly believe that the basic, fundamental integrity of the measure is maintained. I hope we have addressed the most obvious concerns of the Senator from Colorado and have done it in a way which is consistent with the integrity of the legislation.

Mr. HATCH. Could I also have the comments of the distinguished Senator from Iowa as well?

Mr. HARKIN. I join my distinguished chairman in saying that this has been worked out long and hard. I think that it is a meaningful amendment. The language in the amendment is something I agree with. We certainly will make sure that it stays in the bill as it winds its way through the other body and through conference.

AMENDMENT NO. 722

Mr. ARMSTRONG. Mr. President, in view of the statements that have just been made, I send to the desk an amendment and ask for it is immediate consideration. Under the circumstances, since it is very brief, I ask that the clerk read the amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] for himself and Mr. HATCH, proposes an amendment numbered 722.

Under this act the term "disability" does not include "homosexuality," "bisexuality," "transvestism," "pedophilia," "transsexualism," "exhibitionism," "voyeurism," compulsive gambling," "kleptomania," or "pyromania," "gender identity disorders," current "psychoactive substance use disorders," current "psychoactive substance-induced organic mental disorders," as defined by DSM-III-R which are not the result of medical treatment, or "other sexual behavior disorders."

Mr. ARMSTRONG. I have known Senators from time to time who come to the floor and have an amendment which has been agreed to and then made a lengthy speech and talked themselves out of it.

I think the amendment speaks for itself. It is, as the Senator from Utah and the Senator from Massachusetts have described, a product of a compromise which we have been working on through the evening. It seems to me that it expresses pretty well what would be the common wisdom of the body. So I commend it to the attention and the approval of my colleagues.

Mr. President, I also want to make this point, however, and I would invite the attention of anyone who wants to be involved in making the RECORD on this. The fact that we have enumerated what is not included is really for the comfort of Senators and it should not be assumed by anybody, including someone who might read the RECORD of this proceeding, that because we have failed to exclude something that it is necessarily included.

What we are adopting here is an amendment which is a practical com-

promise to avoid a protracted debate, to avoid a series of rollcalls, and to address, as the Senator from Massachusetts has accurately expressed it, the most obvious concerns. But no one should assume that because we have failed to mention something that it is necessarily covered by this admittedly broad bill.

Mr. President, with that word of explanation, I think we are ready to go to a vote. And while it had been my intention to ask for a rollcall, in light of the assurances that the managers of the bill have been kind enough to extend, I see no reason to have a rollcall on this.

I assume it would pass by a large margin and perhaps unanimously, and that there is no need for that under the circumstances.

I appreciate their willingness to support the amendment through conference and look forward to this being included in the final version of the bill.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from Colorado for his willingness to work this out.

I would also like to ask him to list me as a principal cosponsor, on this amendment, because I think he has done the Senate a singular service. I think these are areas that basically have been ignored in the bill, which, had they not been resolved by the distinguished Senator from Colorado, might have led to, I think, all kinds of misunderstandings with regard to rather sweeping language of this bill.

So I want to personally thank the distinguished Senator from Colorado. I think his workmanship is excellent. And I think we all owe him a debt of gratitude. I think the country will owe him a debt of gratitude when this bill is implemented.

So, with the Senator's permission I would like to be a principal cosponsor of this amendment.

Mr. ARMSTRONG. I would be honored and I ask unanimous consent the Senator be listed in that way, but I want to note in passing it is his skill that enabled us to work out the amendment in such an amicable fashion. I am grateful to him and the Senator from Massachusetts particularly for helping us put together some words that everyone could readily agree to.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah is listed as a cosponsor of the amendment.

Mr. HARKIN. Mr. President, we have here a compromise amendment to deal with various concerns that have been raised. I do not believe that this amendment is necessary or even particularly appropriate for this bill. Nevertheless, in order to deal with particular concerns raised, we are including this amendment.

First, I would like to point out that some of the behavior characteristics included on this list are not disabilities to begin with and individuals with such characteristics would not be considered people with disabilities even without this amendment. For example, homosexuality and bisexuality are not disabilities under any medical standards.

In addition, I would like to point out that for individuals with many of the other behavior characteristics included on this list, which would have been considered disabilities under this act, in many situations, such individuals would not have been qualified for various employment positions, for example. Therefore, this amendment was particularly unnecessary.

However, at the very least, this amendment is narrowly focused. That is, if a person exhibits only a sexual behavior disorder, that person is not a disabled person under this act and cannot bring a cause of action for discrimination based on that disorder. Of course, this provision cannot be used as a pretext for discrimination based on other disabilities.

In addition, the intent of the Senate is that only those who have one of the behaviors listed in this provision, and do not have a disability that is covered under this act, are to be excluded from protection. So, for example, a community health program which serves mentally retarded adults in its program, may not expel that adult solely on the basis of the fact that he exhibits a sexual behavioral disorder. Instead, the program must treat the individual as a person with a covered disability under the act—that is, mental retardation—and the program may then, of course, apply the eligibility criteria recognized under the act.

Finally, I would like to point out that this amendment excludes only current psychoactive substance use disorders and current psychoactive substance-induced organic mental disorders. Therefore, any individual who has recovered from, or is perceived as having, such disorders would still be covered by the act.

As I noted before, I do not think this amendment was necessary in any form. However, I wished to make these points clear regarding the compromise amendment that we have agreed upon.

The PRESIDING OFFICER. Is there further debate?

If not, the question is in agreeing to the amendment.

The amendment (No. 722) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ARMSTRONG. 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 Senator from New Mexico.

Mr. DOMENICI. I wonder if I might ask the Senator from Colorado a question. I was listening when he quickly summarized this amendment and he indicated that while he had a list of exceptions to a general definition, that it was not intended to be exclusive. That did not mean that anything that was not in your excluded list was not automatically included.

I wonder, was my colleague just expressing his opinion or is there something in the amendment that says that?

Mr. ARMSTRONG. No, Mr. President, I was simply expressing my opinion and reporting for the benefit of the RECORD what has occurred.

Had we not been able to reach an agreement on this particular list of excluded items, there would have been a protracted debate and series of rollcalls and the convenience of the Senators would have been disrupted and maybe the bill would have been postponed or perhaps it would have passed. It is nothing more than a practical accommodation. But I am saying no Senator should vote for the amendment or for the bill feeling that because we forgot to mention some form of disability, that it is in or out. That is a separate question.

What we do know is that this specific list of categorical exceptions do not form the basis for a discrimination claim under this bill.

In all other respects, we are silent. In other words, there is no presumption that something is in or out as a result of this amendment except for those things which are mentioned.

Mr. DOMENICI. The only reason I raise the question is I think the normal legal interpretation is, when you start listing things, and you do not list some things, then anything that is not listed is presumed to have not been intended. It just appears to me that the Senator is doing a little more than he thinks.

If legislative history is being made here, you are trying to say this is not intended to be anything other than a list that we are voting on. It is not inclusive or exclusive. It does not thoroughly define the entire prospect for inclusion or exclusion?

Mr. ARMSTRONG. Mr. President, the problem with this bill, and I had not expected to be diverted into a lengthy discussion of this but since the Senator raised it, let me just say to the Senator and anybody else interested, on page 40 the purpose of the bill is expressed in the following terms "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with diabilities and to provide clear,

strong, consistent enforceable standards," and so on.

It does not do that. What it expresses is a point of view, a value system, and sets up a standard which is so vague that it is going to be the subject of lengthy and somewhat unpredictable litigation, in my opinion.

I have clarified it to some extent by my amendment, but I do not represent to Senators or anybody else that I have provided clarity on subjects that I have not directly addressed. I am telling you my amendment does not solve that problem.

As a matter of fact, I am told there are lines of cases on both sides. Sometimes when statutes enumerate things as being excluded, that means other things are included, and sometimes it has worked the other way. My intention, my belief, what I think the legislative intent is, is that we are silent on that question. The fact that we have excluded some items does not automatically put something else in.

Mr. DOMENICI. I thank the Senator.

I wonder if either Senator HARKIN or Senator HATCH would engage in just a brief colloquy with the Senator from New Mexico?

Perhaps Senator HATCH.

I have been in contact in the last couple of days with those who represent and serve the blind people in this country and in my State. As one would expect, they clearly are in favor of this bill. But there is a concern that they have and I think we ought to share it here and make sure that everybody understands what we are trying to do.

In section 302(b)(1)(c) I think we are making an effort to say that as public accommodations for those who are disabled within the context of this bill began to flourish in this country, we are apt to have more specialized programs for the disabled. This might involve a special accommodation in a museum program, or we might even begin to have certain classes within an academic institution that are specially equipped for the disabled.

We might have any number of specialized programs or approaches to accommodating those who are disabled. The blind particularly feel that frequently, accommodations are thrust upon them because they are blind when, as a matter of fact, they would very much like presented to them the option to either take the special approach that is provided for the disabled or take the usual approach which is there for the nondisabled.

There is an example, referred to in the report language, of the experience a blind person has had recently at a museum. The museum has a special program for the disabled and this blind person was directed into the line for the special program because he is blind and they wanted to put him over there. He may very well rather be in the line with the rest of the people and go through the museum in a manner that is not especially tailored for the disabled.

I am sure, as this law is implemented, there are going to be major changes in the efforts on the part of public institutions to accommodate to the disabled. I am concerned because I think the National Federation for the Blind and others from around the country, including people from my State who are with the New Mexico Commission for the Blind, want to make it clear that this bill is not intended to force the optional disabled program on them, but quite to the contrary that we want a policy that up front, they should be provided with the option. They should not be automatically herded into the disabled opportunity or program, but rather that it is the intention that our society move in the direction of making this optional, and know to be optional so long as there is not some other fact that is prevailing, like safety or the like. That is pretty obvious.

Mr. HATCH. The Senator raised an excellent issue. This bill requires they be given the option.

The Senator has raised the issue, has raised it correctly. His fears are not justified. The bill requires that the blind be given the option so they can make that option.

Mr. DOMENICI. I thank the Senator. Frankly, I am not sure. I was trying to improve on this language to give it even more of a positive thrust, so that they would not always be put in the position that they are pushed in the direction of the disabled program and they have to kind of force their way out of it. I cannot quite draft that without getting myself into some kind of a bind with reference to an accepted definition.

But I hope we are really sincere about this being an up-front option.

Mr. HATCH. We are.

Mr. DOMENICI. And those who are providing this kind of a new accommodation to a program or an opportunity such as that for the education of the disabled, will understand that we do not intend this to be the exclusive way that the disabled will be treated under those circumstances.

Mr. HARKIN. If the Senator would yield, I would support what my distinguished colleague, the Senator from Utah said. It is not only in the report. It is also right in the legislation itself.

If I might read from the appropriate section, section 302, subsection (c), "opportunity to participate." It says:

> Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

So it is right in the legislation, and then we clarify it even further in report language, which the Senator alluded to.

Mr. DOMENICI. I thank the Senator.

Mr. HARKIN. I agree that it should be up front and they should be allowed that opportunity right up front to participate in an activity that is not separate.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. Are there further amendments to the bill? The Senator from Iowa.

Mr. HARKIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 723

(Purpose: To allow certain capital expenditures of small businesses for auxiliary aids and services and reasonable accommodations to be treated as expense items, and for other purposes)

Mr. DOLE. Mr. President, I am going to offer an amendment and then withdraw the amendment in keeping with what I said earlier today in reference to deductions, which I think is an important concern for small businesses. There is a deduction provision now in the statute. You can deduct $35,000 a year for removal of architectural barriers. I had an estimate from the Joint Tax Committee, and if we reduce $35,000, your allowable expenses under section 190 of the IRC is $21,000, then we can make expenditures for auxiliary aids and services and reasonable accommodation for the handicap expensing as long as they occur in the taxpayers' business. We can broaden that scope of the particular section. By reducing it from $35,000 to $25,000, we can cover what may happen under this bill. In other words, it is revenue neutral, no cost. I hope we might consider it when we take up reconciliation. I send the amendment to the desk on behalf of myself and the Senator from Utah, Senator HATCH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Kansas [Mr. DOLE], for himself and Mr. HATCH proposes an amendment numbered 723.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . EXPENSING OF CERTAIN CAPITAL EXPENDITURES TO ASSIST DISABLED.

(a) ADDITIONAL ITEMS ELIGIBLE FOR EXPENSING.—Section 196(b) of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ITEMS INCLUDED.—The term 'qualified architectural and transportation barrier removal expense' shall include any of the following expenses in connection with a trade or business which are chargeable to capital account:

"(A) Expenses for auxiliary aids and services (as defined in section 3(1) of the Americans With Disabilities Act of 1989).

"(B) Expenses in connection with providing reasonable accommodations (as defined in section 3(8) of such Act) to individuals with disabilities."

(b) DECREASE IN MAXIMUM AMOUNT WHICH MAY BE EXPENDED.—Section 190(c) of the Internal Revenue Code of 1986 is amended by striking "$35,000" and inserting "$25,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

Mr. DOLE. Mr. President, I will pursue in the Finance Committee budget reconciliation bill, to ensure that small businesses will be entitled to deduct the expenditures necessary to provide the reasonable accommodations and auxiliary aids and services that are required under this law. In this way, smaller employers for whom these costs are disproportionately severe will be protected.

Unlike the amendment offered by the Senator from Utah, however, my amendment will be made revenue neutral by reducing the total amount of such expenditures which are eligible for immediate expensing by larger firms each year from $35,000 to $25,000. Even with this reduction, however, the maximum tax savings to which businesses are entitled will exceed the $5,000 credit proposed by my colleague from Utah.

Mr. President, my amendment and the amendment of the Senator from Utah have the same important goal—to help small businesses help the disadvantaged. I believe this goal is important and I intend to pursue it vigorously.

Nevertheless, because it is possible that the addition of a tax measure could impede the progress of the Americans with disabilities legislation, I will withdraw the amendment at this time.

The amendment (No. 723) was withdrawn.

The PRESIDING OFFICER. The Senator has that right.

Mr. BUMPERS. Will the Senator from Kansas yield for a question?

Mr. DOLE. Let me finish my statement. I believe any delay in this vitally important legislation is unwarranted. However, I pledge to my colleagues that I will raise this issue again in the Finance Committee at the earliest opportunity.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I thank the Senator from Kansas for yielding. Earlier this evening when I got into a colloquy with the Senator from Iowa on this subject I failed to mention one question I had and that is this $35,000 tax deduction. I want to clarify that. If a business operator spends $100,000 to remove barriers from his business in order to accommodate this bill, does this bill say he may only deduct $35,000 of that $100,000?

Mr. DOLE. This bill will be silent on the matter. Section 190 of the revenue code amendment I offered with Senator Mondale years ago says $35,000 in the first year. And the rest is eligible for depreciation.

Mr. BUMPERS. In the case I gave, if the business operator spends $100,000, he can write off $35,000 of it the first year and the rest of it would be depreciable in accordance with the depreciation standards.

Mr. DOLE. The Senator is correct.

Mr. BUMPERS. The Senator is suggesting if we reduce that off to $25,000, what?

Mr. DOLE. Then we can broaden the amendment because it is somewhat limited under section 190. It relates to removal of architectural barriers. There can be many other obligations imposed on small businessmen and women. If we lower it from $35,000 to $25,000 where it was a few years back, we can cover everything in this bill. And it is revenue neutral, so we do not have the budget problem as the Senator from Utah had earlier today.

Mr. BUMPERS. Mr. President, I appreciate the explanation of the Senator from Kansas. I want to study it a little further. I would be reluctant to reduce that advantage that that does give small business, when you reduce it from 35 to 25 the first year, that is still a further encumbrance on small business.

But I do not want to prolong this debate here this evening. I was just curious about that because I did not understand that. I read the bill and it did not make much sense to me.

Mr. DOLE. I might say in most cases it would exceed the $5,000 credit imposed earlier by the Senator from Utah.

Mr. BUMPERS. Yes, it would that. If you took 28 percent of $35,000, obviously that is going to be more than $5,000. We asked the Joint Tax Committee if we could keep the 35 and still broaden the base. They advised we could not do that. To lower it to $25,000, to find some offset, I will be glad to keep it at $35,000. I do believe there are things in this bill popping up in the next 6 months or a year, and I want to be able to tell my businessmen and women, as you do, that we have some provision in the Tax Code that will help ease that, as far as what they are required to do as far as public accommodations are concerned.

Mr. DOLE. It is important. I do hope to follow this up in the reconciliation bill. I will be happy to work with the Senator from Arkansas and others to see if we can come up with a better formula.

Mr. BUMPERS. I thank the Senator from Kansas.

The PRESIDING OFFICER. Are there further amendments to the bill?

Mr. BUMPERS. Third reading.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

AMENDMENT NO. 724

Mr. HARKIN. Mr. President, I am going to send a technical amendment to the desk. Basically, it is a severability clause which states that if any provision in this act would be found to be unconstitutional, that such provisions shall be severed from the remainder of the act, and such action shall not affect the enforceability of the remaining provisions of the act. It has been cleared on both sides. I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 724:

At the appropriate place insert the following:

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 724) was agreed to.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ARMSTRONG. Mr. President, I wonder if I could have the attention of

the Senator from Utah to just discuss an amendment that we adopted early in the day on access to wilderness areas for handicapped persons.

Mr. President, it is my understanding that earlier today the Senator from Utah offered and the Senate accepted an amendment which would provide for a study to determine the extent to which handicapped persons have access to these wilderness areas and what provision ought to be made for them in the future.

I was not present on the floor when that amendment was adopted, but first I would like to compliment the Senator from Utah for thinking of this and getting it included in the bill. But I express my hope that there be included in the study sort of a broad-guaged look at the recreational opportunities in these wilderness areas that are made available to people who may be blind or who may be in wheelchairs or in some other way have a physical handicap. Am I correct that that is the intention and purpose of the Senator's amendment?

Mr. HATCH. That is the intention. I think it is time for us to consider the needs of persons with disabilities with regard to wilderness areas and, frankly, other areas as well, but my amendment was limited to the wilderness.

Mr. ARMSTRONG. Mr. President, if the Senator will yield further, I want to pin down two specific things.

Would the study include the effect of Federal policies, practices, and procedures for access of individuals with disabilities? In other words, would we look specifically at what the rules are governing access to wilderness and get some recommendations?

I understand the Commission would not have the authority to make changes but come back with recommendations with respect to how we could open these wilderness areas up to people particularly in wheelchairs.

Mr. HATCH. The answer to the Senator's question is yes, that is one of the purposes of the amendment, and I believe they have to come back with that kind of recommendation.

Mr. ARMSTRONG. I thank the Senator, and again I compliment him for having the foresight to add this to the bill.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. Are there further amendments?

Mr. HARKIN. Mr. President, I know of no further amendments, and I urge adoption of the committee substitute to the bill.

Mr. President, today we have come together in support of a common goal and a common vision—stopping discrimination against persons with disabilities. This is one of the proudest days of my life: as the chief sponsor of the Americans with Disabilities Act, I know that soon all Americans will have access to the American dream.

I want to give special thanks to President Bush, Governor Sununu, and Attorney General Thornburgh for working with us in formulating the compromise package passed here today. I also want to thank Senators KENNEDY, DOLE, DURENBERGER, MCCAIN, and HATCH for their tireless efforts which have lead us to this moment in history.

I want to say a special thanks to a good friend, former Senator Lowell Weicker, without whom we would not be here today. His unflagging commitment to improving the quality of life for persons with disabilities and all those in our society who are too often ignored and discriminated against, still inspires us all. It was Lowell Weicker who first brought this bill forward last year.

Within the Bush administration, I want to thank Bill Roper, Grace Mastelli, Mary Ann McGettigan, Hans Kuttner, David Sloan, and John Wodatch.

Within the business community, I want to thank Sue Messinger, the National Association of Manufacturers, Dick Crawford, of the Restaurant Association, and many others which I know I am forgetting.

And for the staff of the Senate who have worked to make this day a reality for 43 million Americans with disabilities. First, and foremost, I want to thank Bobby Silverstein, my staff director on the Subcommittee on the Handicapped. We would not be here today without the commitment and sensitivity that Bobby has demonstrated over the past months. He has educated us all about what this bill will really do for America: ensure equal opportunity for all. He has helped bring forces together who under many other circumstances, would never appear in the same room. But Bobby's persistence made it all work. I must also thank Bobby's wife, Lynne, and their two sons, Mark and Evan, for sharing Bobby with us.

Thanks must also go to the rest of my staff for their efforts: Terry Muilenburg, Katy Beh, Chris DeGraw, Sarah Huber, and Stacy Racine, as well as Carolyn Osolinik, Michael Iskowitz of Senator KENNEDY's staff, Carolyn Boos with Senator DURENBERGER, Maureen West with Senator DOLE, Mark Disler and Chris Lord with Senator HATCH, Judy Wagner with Senator SIMON, and Mark Powden with Senator JEFFORDS.

To the disability community, my friends, I thank all of the 180-plus organizations who worked with me on this historic legislation. I want to especially thank Justin Dart, Sandy Parrino, Jim Brady, Harold Russell, Jay Rochlin, Ralph Neas and the leadership conference on civil rights, Liz Savage, Chai Feldblum, Bob Burgdorf, Tim Cook, Dave Capozzi, Dennis Smurr, Paul Marchand, Marca Bristo, Lex Frieden, Carleton Lee, Tom Sheridan, Randy Rutta, Karen Franklin, Phil Calkins, Bonnie O'Day, Eric Griffin, Steve Pardieck Denise Rozelle, and the hundreds of others who have contributed so much.

Very, very special thanks goes to Pat Wright at the Disability Rights Education and Defense Fund [DREDF]. Pat, along with MaryLou Breslin, Arlene Mayerson, Marilyn Goldern, and the rest of the crew, kept the rest of us going when the hour seemed late and the discussion seemed futile. Pat's commitment to disability rights is unwavering, her passion for equality, unsurpassed, and her determination is what really got all of us here.

Mr. KENNEDY. Mr. President, today's action by the Senate marks a historic step in the long journey to complete the unfinished business of America and bring full civil rights and fair opportunity to all our citizens.

In a sense, this legislation is an emancipation proclamation for the disabled, and America will be better, fairer, and a stronger nation because of it.

Forty-three million disabled men, women, and children will benefit from our action. For too long they have been invisible Americans, denied opportunity, victimized by prejudice, excluded from everyday activities of society.

Our message to America today is that disabled people are not unable. With the challenge facing the country, we cannot afford to ignore the talent of the disabled, or neglect the skills they have to offer.

Mindless physical barriers and outdated social attitudes have made them second class citizens for too long. Now, with this legislation, they will have a fair chance to participate in the mainstream of American life.

This is a proud day in the history of civil rights. It is difficult to believe that this Congress will enact a more far-reaching or more important bill.

I also want to take this opportunity to emphasize the importance of this legislation in our battle against AIDS.

By approving this legislation, we are acting not only to create a better, more equitable society; we are also taking an essential step to protect the health of all Americans. By outlawing senseless discrimination against people who are infected with HIV—or those who are regarded as infected, we are dramatically strengthening our ability to bring the AIDS epidemic under control.

Like most predators, the AIDS virus thrives best in the shadowy environment of fear and uncertainty. Our purpose here is to close—once and for all—an unfortunate and very costly chapter of the AIDS public health emergency. Both the Senate and the President are sending the clearest pos-

sible message to Americans who fear that they may be infected with the HIV virus. Society does not wish to punish those with HIV disease—we seek to offer our concern, our compassion, and our help.

In the past, public health efforts to halt the spread of HIV have been severely hampered by the legitimate concern of infected people concerning AIDS-related discrimination. Why be tested, they ask, if the price of testing might be the loss of employment or housing?

To protect the health of all Americans, including future generations, it is vital that every person who might be HIV-infected feels able to volunteer for testing and counseling as quick as possible. Through changes in education and behavior, we can stop more Americans from being infected. Step one is for people with HIV disease to learn about their condition and take measures to avoid infecting others.

After 8 years of steadily increasing AIDS deaths, medical tools are now at hand to help many infected people fight for survival. These encouraging advances in treatment provide clear motivation for people to seek early testing and medical intervention.

By barring discrimination based on HIV infection, we clear the path not only to voluntary AIDS testing and counseling—but also to appropriate medical treatment that benefits the individual patient.

With this measure, we call for an end to finger pointing and fear mongering about AIDS. We know with great certainty how this disease is and is not transmitted. There is no scientific or medical reason to shun people with AIDS or HIV disease. In fact, those who persist in labeling some people with AIDS as guilty and others as innocent are themselves guilty of undermining our national effort to bring this epidemic out of the shadows and into the sunlight.

The legislation is a tribute to the common decency and common sense of the American people—who understand that the best defenses against AIDS are education, understanding, compassion, and a continued commitment to research to find enduring solutions. In time, these are the tools that will turn the AIDS epidemic into nothing more than a painful memory.

Today is a landmark day for all people with disabilities and all Americans.

I would like to thank the people who have worked long and hard to make this bill a reality: Pat Wright, Arlene Mayerson, Ralph Neas, Chai Feldblum, Bob Burgdorf, Liz Savage, Evan Kemp, Dave Capozzi, Paul Marcherd, Carlton Lee, June Osborn, and Tom Sheridan. And I especially want to thank my own staff: Carolyn Osolinik, Michael Iskowitz, Laverne Walker, Amy Reginelli, and Nick Littlefield, who have worked for many months to bring us to this successful passage of the bill tonight.

I also wish to thank again Senator HARKIN and his staff director, Bobby Silverstein for his leadership throughout this debate and the development of the bill, Senator ORRIN HATCH for his strong advocacy on behalf of the bill, and especially his work tonight in negotiating the final amendments to the bill, and Senator DOLE, the minority leader and Senator MITCHELL, the majority leader for their leadership throughout the consideration of the ADA bill.

Mr. DOLE. Mr. President, I rise today to urge Senate passage of S. 933, the Americans with Disabilities Act. It was a long time in coming and many—on both sides of the aisle—have worked long and hard to get us here today.

You know, many have called people with disabilities the last minority. Enactment of the Americans with Disabilities Act will bring this last, and largest, minority group into a position of achieving equal opportunity, access and full participation in the American dream. Mr. President, that's what the ADA is all about.

BIPARTISANSHIP IN ACTION

The ADA is also a good example of bipartisanship in action. The bill originated with an initiative of the National Council on Disability, and independent Federal body comprised of 15 members appointed by President Reagan and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities.

In 1986, the council issued an important report. The report, "Toward Independence," concluded that the major obstacles facing people with disabilities are not their specific individual disabilities but rather the artificial barrier imposed by others. The report also recommended that Congress "enact a comprehensive law requiring equal opportunity for individuals with disabilties, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

During the last Congress, my Republican colleague, Senator Lowell Weicker, introduced a bill developed by the National Council, titled the "Americans with Disabilities Act." Although this bill was not considered by the full Senate, it initiated a dialog and became the basis for the current revised bill introduced by Senators HARKIN, KENNEDY, and DURENBERGER earlier this year. I acknowledge and commend the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.

President Bush also deserves to be commended for his leadership on the bill. Let's face it. We would not be here today without the support of the President. His willingness to sit down at the negotiating table demonstrated the administration's sincere commitment to expand civil rights protections for people with disabilities.

And the fact that we have moved forward with the ADA demonstrates that the President wasn't kidding in his Inaugural Address when he said that this "is the age of the offered hand."

I would also like to take this time to commend the efforts of other members of the administration, notably Gov. John Sununu, Attorney General Dick Thornburgh, Secretary Sam Skinner of Transportation, National Council of Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities.

The ADA has also benefited from the input of numerous White House staff, including Bill Roper, John Wodasch, Hans Kuttner, David Sloane, Boyd Hollingsworth, Bob Funk, Bob Damus, Ken Yale, Evan Kemp, and Mary Ann McGettigan. All these individuals have made significant contributions to the legislation that is before us today.

AN IMPROVED BILL

Like President Bush, I believe that the ADA will help to create a more inclusive America, an America that does not place needless and harmful barriers in the way of her citizens with disabilities. I also believe that the bill before us today addresses many of my previous concerns—concerns that I raised during my testimony before the Labor Committee last May.

I am particularly pleased with the bill's tough—but fair—remedies provisions. The remedies available in the event of employment discrimination, for example, are the familiar and well tested remedies of title VII of the Civil Rights Act of 1964—enforcement through the Equal Employment Opportunities Commission with recourse to the courts. Punitive damages and immediate access to jury trials are simply not available under the ADA in it's revised form.

Furthermore, the only person who can bring suit for civil penalties and monetary damages under the bill's public accommodation's section is the Attorney General. So—as you can see—lawyers will not be able to build careers out of law suits against public accommodations brought on a contingency fee basis. That was the case under S. 933 as originally introduced, but not now.

So those who would suggest that the ADA will unleash a mountain of litigation, I believe, are simply missing the point.

COSTS

But let there be no mistake about it. The vision of a barrier free society for all Americans can be expensive. It is not cost-free—particularly for our Nation's small businessmen and businesswomen.

One of my primary concerns is the financial affect of the ADA on our Nation's private bus industry. The private bus industry is the most affordable form of mass transportation for the poor, the elderly, and rural Americans. It is not a subsidized mass transit system. Greyhound, for example, has estimated that the annual cost of ADA to the company will range from $40 to $100 million.

Advocates in the disability community believe this estimate is too high, but in any event it will be costly. Obviously, we cannot allow the important protections of this legislation to bankrupt an industry that provides critical service.

The bill contains a provision directing the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the feasibility of equipping private intercity buses with lifts. The bill also imposes a lift requirement 5 to 6 years after the bill's enactment.

Now, some have suggested that the ADA should not impose any lift requirements until after the results of the Board study becomes known. In other words, they claim that the ADA should not put the cart before the horse.

Others argue that without statutory requirements, the issue of making private intercity buses accessible will not get the attention it deserves.

I believe both positions have merit. Individuals with disabilities are entitled to access to transportation even in the rural areas, to the extent that access is technologically feasible and cost effective. This is an area I intend to follow closely. My support for ADA is based upon my commitment to seeing that its provisions can work to the benefit of all and the detriment of none.

INCENTIVES AND TECHNICAL ASSISTANCE FOR SMALL BUSINESSES

While costs alone should not be reason enough to deny the disabled their civil rights, there should be accompanying incentives for small businesses to meet the requirements of the bill. To this end, I will soon introduce an amendment to the Tax Code for the express purpose of ameliorating the financial burden to small businesses complying with the ADA.

This amendment will allow small businesses to deduct their expenditures on such terms as "auxiliary aids and services" and "reasonable accommodations"—all, to some extent required by the ADA.

Employers, persons with disabilities, and other affected parties must have access to accurate information. As a result I intend to offer an amendment which will enable the responsible Federal agencies to establish a strong governmentwide technical assistance program. Such a program will help to educate the people of the bill.

There are many knowledgeable and qualified experts—such as the Dole Foundation, to assist in this endeavor. Other experts include the President's Committee on Employment of People with Disabilities and the Job Accommodation Network, the National Association of Rehabilitation Facilities, the National Council on Disability and the Disability Rights and Education Defense Fund, to name a few.

Given the comprehensive nature of the ADA, I believe it is our obligation to see that people with disabilities understand their new rights under the bill and that employers and businesses understand the nature of their obligations.

CONCLUSION

Mr. President, being here today demonstrates that these are not dark days for civil rights in this country. It proves our commitment to expand our civil rights so that they embrace every American. The tradition of civil rights law is one of opportunity. And the ADA is squarely in that tradition.

I would also like to make one final point here. The eradication of discrimination in employment against persons with disabilities will result in a stronger work force and lessen dependency on the welfare system. It will ensure that we fully utilize the potential talents of every individual within our society. A 66-percent unemployment rate for persons with disabilities is simply unacceptable—and it is simply too expensive for America to afford.

In closing, I ask unanimous consent to print in the RECORD the "Op-Ed" piece written by my friend James Brady, President Reagan's Press Secretary. His poignant remarks are certainly worth noting as we consider this legislation.

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

[From the New York Times, Aug. 29, 1989]

SAVE MONEY: HELP THE DISABLED

(By James S. Brady)

WASHINGTON.—Astonishingly, it is legal under Federal law for a restaurant to refuse to serve a mentally retarded person, for a theater to deny admission to someone with cerebral palsy, for a dry cleaner to refuse service to someone who is deaf or blind. People with disabilities—the largest minority in the U.S.—are left out of the historic Civil Rights Act of 1964. Twenty-five years later, discrimination against disabled people is still pervasive.

Congress has a chance to correct this injustice. The Americans with Disabilities Act is now before the full Senate, and President Bush and more than 200 national organizations have endorsed the bill.

As a Republican and a fiscal conservative, I am proud that this bill was developed by 15 Republicans appointed to the National Council on Disability by President Reagan. Many years ago, a Republican President, Dwight D. Eisenhower, urged that people with disabilities become taxpayers and consumers instead of being dependent upon costly Federal benefits. The Disabilities Act grows out of that conservative philosophy.

Today 66 percent of working-age adults with disabilities are unemployed and dependent on Federal subsidies. The Disabilities Act could save taxpayers billions of dollars by outlawing discrimination, putting disabled people on the job rolls and thereby reducing Government disability payments.

Experience has shown that no civil right has ever been secured without legislation. A law such as the Disabilities Act would insure that facilities and employers—public and private—maintain minimum standards of accessibility. The act would require installation of ramps, elevators, lifts and other aids in new private businesses and public buildings, and on newly purchased buses and trains. And it would prohibit discrimination in private employment, public accommodations, transportation and telecommunications.

By breaking down barriers in stores and offices, it would enable more disabled people to purchase goods and services—and thereby strengthen our national economy. By breaking down barriers in public transportation, the act would allow more people with disabilities to be employed and participate in community activities. The act would free hundreds of thousands of citizens who are virtually prisoners in their homes because of inaccessible transportation and public accommodations.

There are 37 million people in America who live with some form of disability. I never thought I would be one of them. Most people don't like to think about disability at all. But disability can happen to anyone. In fact, as our population ages and medical technology prolongs life, many more eventually will be disabled.

Since I took a bullet in the head eight years ago during the assassination attempt on Ronald Reagan, I have come to know the daily problems, frustrations and needs of those who live with disability. I have had to learn to talk again, to read again and to walk again. I have succeeded, and I know that everyone can learn to overcome the final obstacle to our equal inclusion in American life: prejudice toward people with disabilities.

Passage of the Americans with Disabilities Act will increase the acceptance, dignity and full participation of citizens with disabilities. We do not want pity or sympathy. All we want is the same civil rights and opportunities that all citizens have. We want fairness, acceptance and the chance to contribute fully to our nation—just like everyone else.

Mr. DOLE. Mr. President, I ask unanimous consent to have printed in the RECORD a list of staff people who have done an outstanding job and who worked tirelessly on this legislation.

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

STAFF WORKER ON ADA

Bobby Silverstien, Katy Beh, Terry Mullenberg, Mark Disler, Chris Lord, Mark Busey, Carolyn Boos, Michael Isokwitz,

Carolyn Osolinik, Jill Ross, Maureen West, Dennis Shea, and many others.

Advocates: Pat Wright, Liz Savage, Chai Feldblum, Janet Dorsey, Bob Bergdorf, Paul Hearne, Lex Friedan, and Paul Marchand.

Mr. RIEGLE. Mr. President, this year, our Nation celebrates the 25th anniversary of the landmark 1964 Civil Rights Act. Under that act, women, senior citizens, racial, religious, and cultural minorities were granted equal justice under law. With equal opportunity, these people began to take advantage of the economic and political options open to other Americans. Today, Mr. President, I doubt anyone would deny that our country has profited from the social, political, and economic gains of these people.

Likewise, we can benefit from the removal of the barriers that now prevent 43 million Americans who have physical and mental impairments from fully realizing the opportunities that this great country offers. The disabled are more likely to be poor and unemployed than the nondisabled. I believe this is the case not so much as a result of one's disability as it is of discrimination in employment and lack of access to transportation and communication services.

Mr. President, it is clear to me that the relative disadvantage of the disabled to the nondisabled is a direct reflection of the lack of a clear, comprehensive, and enforceable prohibition of discrimination against the disabled. It is time that this Nation eradicate the irrational fears and misconceptions about the disabled and the resulting discrimination that have kept disabled people out of the mainstream of society. Mr. President, it is time, long over due, to enact the Americans With Disabilities Act [ADA].

The ADA prohibits public and private-sector discrimination in employment and access to public accommodation, services, transportation, and telecommunications. While all of these aspects are vital, as chairman of the Senate Banking, Housing, and Urban Affairs Committee, I am particularly interested in the public transportation section. It is critical that adequate public transportation services be available to disabled persons so that they are able to take advantage of new employment opportunities available as a result of the ADA. The ADA strikes a reasonable balance between the needs of the disabled and the financial obligations of public transit systems.

Much debate has surrounded the issue of costs, particularly with regard to small businesses. We cannot dismiss the financial impact that the ADA will have on businesses as well as State and local governments. We must remain vigilant to insure that compliance with this act does not have counterproductive resulting in a loss of jobs and a decrease in opportunities.

At the same time, the costs of not eradicating discrimination will exceed those of complying with this act. By allowing discrimination to continue, we foster an environment that encourages retirement from the work force and dependence on Government assistance. The $60 billion per year that the Federal Government now spends on dependency in the form of disability benefits and programs will only escalate. The idea embodied in the ADA will increase independence and therefore reduce Government spending while at the same time grant equal opportunity to all disabled Americans.

Furthermore, our economy can no longer afford not to enlist the unique abilities and talents of people with disabilities. Disabled Americans can help the country by working, and, according to a Harris poll, they want to work. The poll reveals that 82 percent of disabled people would give up Government benefits in favor of a full-time job. In addition, although two-thirds of the disabled aged 16 to 64 do not work, two-thirds of them would like to work. We also must remember that productive workers are also taxpayers and consumers, further contributing to the health of the economy.

Since the days of its inception, this Nation has encouraged and valued independence and self-sufficiency. Their is no better expression of these values than the Americans With Disabilities Act. I urge its swift passage.

Mr. COATS. Mr. President, I am pleased to be able to support S. 933, as reported, despite certain problems, I see in this legislation. Full and equal protection under the law for persons with disabilities is long overdue. Our society must no longer tolerate discrimination against any of its citizens, especially those with physical and mental impairments.

I believe that this landmark civil rights bill, despite its flaws, will accomplish its goals. The ADA bill is comprehensive, far-reaching, fair and tough. It has real teeth in its enforcement provisions. S. 933 will go a long way to ensure that Americans with disabilities will no longer face discrimination in employment, in public accommodations, in public services, transportation or communications services.

I am pleased that my amendments relating to drug and alcohol abuse and religious institutions were substantially incorporated into the ADA bill during the lengthy negotiations that resulted in the amended, much improved version of S. 933 that the committee finally approved and we are now considering. Naturally I would have preferred that my original amendment to exclude totally drug abusers from the bill's provisions were adopted, because I felt that there should be a clear statement that a person who uses illegal drugs is not entitled to any employment protection under the ADA and that illegal drug use should not be considered a disability. However, despite strong support for this position by the business community and the White House, those negotiating settled on different language.

Despite certain ambiguities that remain in the bill and the committee report, I am satisfied that the language agreed to by the sponsors of S. 933, the White House, and the representatives of business and civil rights organizations that worked around the clock to fashion this bill will accomplish the major purposes of my original amendment. I believe that S. 933, as amended, will ensure that employers can implement a zero tolerance policy and maintain a drug-free workplace.

S. 933 now contains specific language providing defenses to employers from a charge of discrimination if they: prohibit the use by all employees of alcohol or illegal drugs at the workplace; require that employees not be "under the influence of alcohol or illegal drugs" at the workplace; require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act and Department of Transportation regulations; and hold a drug user or alcoholic to the same standards of performance and behavior that they hold other individuals.

Furthermore, S. 933 does not preclude an employer from conducting drug testing of job applicants or employees to determine what constitutes being "under the influence" and to maintain a zero-tolerance policy and from using the successful completion of a drug test as a basis for making employment decisions. An employer has the right to refuse to hire job applicants and to discipline or discharge employees who are found to be using illegal drugs or alcohol, without being charged with discrimination.

In short, section 104 of title I is intended to make clear that an individual job applicant or employee who currently uses alcohol or illegal drugs is not protected by the ADA's nondiscrimination provisions. At the same time, and consistent with the Rehabilitation Act of 1973, it is intended that rehabilitated alcoholics and drug users will be protected under this law.

Having stated my support for S. 933, and my intention to work for its speedy passage, I also wish to associate myself with Senator HATCH and others who have expressed concerns about the impact of the ADA on small business and the problems facing the bus industry as a consequence of the costly requirements imposed on both by this legislation. I am hopeful that the spirit of compromise and determination which resulted in the amended

legislation which we voted out of committee will carry the day, so that these remaining problems can be worked out to the satisfaction of all parties, and this legislation, which has White House support, will be enacted into law.

Mr. PRESSLER. Mr. President, while I support the concept of the Americans With Disabilities Act—to prohibit discrimination on the basis of disability—I am very concerned about its impact on small businesses in my State. It is in everyone's best interest to prohibit discrimination in employment, public services, and public accommodations for the handicapped. But we need to make certain that we don't bury small businesses in the process.

I am concerned about the ramifications the enactment of this bill would have on small businesses and I am pleased that it addresses some of those concerns. We have been working closely with the National Federation of Independent Business [NFIB] to protect small businesses. One reason I became a cosponsor is to make sure small business interests were addressed. It's no exaggeration to say that 99.9 percent of the businesses in my State can be classified as small businesses. These businesses are the economic lifeblood of rural America and their voice deserves to be heard when legislation of this magnitude is considered.

The National Federation of Independent Business [NFIB] is a strong voice for the small business owner and operator. I rely heavily on this organization's advice and am proud to have regularly received its Guardian of Small Business award. The NFIB has identified S. 933 as one of its key votes.

NFIB has made a strong case for a small business exemption. It is imperative that Disability Act requirements avoid placing an undue burden on small businesses.

It is also important to have a clear understanding of whether or not abusers of drugs or alcohol are classified as disabled. This is one area that, I believe, will be addressed in the form of an amendment and I support that effort.

Progress on these and other issues was made during Senate Labor Committee consideration of the legislation. I urge my colleagues to continue in this spirit of compromise during floor consideration of the Americans With Disabilities Act of 1989.

Mr. BIDEN. Mr. President, the history of the effort to guarantee full civil rights to all Americans has been a history of struggle. The core Federal civil rights statutes were only passed after many hard battles were fought and won, and it has taken relentless vigilance to ward off encroachments on those rights. Recently, advocates for civil rights have been fighting a rearguard action, in part because several recent Supreme Court decisions cut back on important rights. At the same time that we are defending the rights most Americans thought were already settled, we must not forget the struggle to take major strides in new areas. Today, in fact, we have before us one of the most important and comprehensive expansions of civil rights since the Civil Rights Act of 1964.

There are a number of estimates of the number of disabled Americans, ranging from 20 to 50 million persons. Far too many of these citizens have been effectively prevented from fully participating in American society, and have been denied many of the basic opportunities most of us take for granted.

Too many disabled persons have been locked out of the American workplace, excluded from jobs for which they are more than capable.

Too many disabled persons have been barred from public accommodations, and essentially segregated from the equal access the rest of us enjoy.

Too many deaf or hearing-impaired persons have been cut off from our Nation's most important communications system, the telephone network, because there are not enough telecommunications devices for the deaf [TDD's].

Too many persons with impaired mobility have been blocked from taking part in a variety of opportunities, because simple physical access has not been provided.

The Civil Rights Act of 1964 already prohibits a wide range of unreasonable discrimination against persons based on their race or religion. Now it is time to add disability to that list.

Mr. President, the evidence is overwhelming that there is and has been widespread discrimination against disabled Americans. Much of the impetus and thinking behind this bill came from the National Council on the Handicapped. In their recent report, On the Threshold of Independence, they stated that:

> Based on testimony and comments from hundreds of people with disabilities, parents, and others, the most pervasive and recurrent problem faced by disabled persons appeared to be unfair and unnecessary discrimination.

Similarly, a recent poll found that one of every four disabled Americans aged 16-65 has encountered job discrimination because of their disabilities.

This discrimination is patently unfair. Too many people forget that the disabled have many abilities as well as disabilities; too many people fail to see the intelligence, energy, and potential of millions of Americans. Disabled Americans are not asking for pity or for a handout. They are asking for a fair chance to compete and take part on an equal basis, so that they can enjoy independence and self-determination. One of the primary conclusions of Toward Independence was that:

> Federal disability programs reflect an overemphasis on income support and an underemphasis on initiatives for equal opportunity, independence, prevention and self-sufficiency.

By eliminating barriers to opportunities, this legislation can open the way to independence for millions of disabled Americans.

What disabled Americans want and deserve is an opportunity to take part in the basic functions of modern life without facing unnecessary and degrading barriers. Mary Custis "Custy" Straughn, chair of the Delaware State Advisory Council for the Coordination of Services to the Handicapped, eloquently made this point in a recent letter to me. As she wrote with characteristic wit and understatement:

> Personally, I look forward to the day when I can have an accessible polling place that will accommodate my electric wheelchair. Crawling or hiring an ambulance (as I did during the last general election) isn't really my style.

Our moral obligation is particularly clear in light of the situation faced by veterans who were paralyzed or otherwise disabled in combat. These persons sacrificed much and risked even more to ensure that all of us would enjoy freedom. It is a sad and unacceptable irony if these veterans are themselves prevented from enjoying many of these freedoms by virtue of those disabilities.

This discrimination not only harms disabled persons by preventing them from reaching their potential and making their lives less full, it harms all of us and our national economy. Millions of disabled Americans who are perfectly capable of being productive, working citizens, and who would gladly contribute their skills and their tax dollars to our society, are instead locked into dependency by unjust discrimination.

The Americans With Disabilities Act is a fair and reasonable piece of legislation, which seeks to accommodate the very legitimate concerns of the business community. First, the bill is much more carefully crafted than the version introduced last year. The new bill, for example, requires only those structural changes that are readily achievable.

Second, the bill has been extensively amended in extensive negotiations between the administration and the principal sponsors of the bill on the Labor Committee.

Third, there is already strong precedent in Federal law for this legislation. The 1973 Rehabilitation Act already bars discrimination against the disabled in federally funded programs or by Federal contractors. Thousands of businesses have profitably done busi-

ness with the Government while meeting these requirements, and there is a lot of experience with these sorts of rules.

Fourth, many of the accommodations which can make a huge difference to disabled persons are surprisingly simple and inexpensive. One study found that over half of the accommodations for disabled employees made by Federal contractors resulted in no additional cost, while another 30 percent resulted in costs of between $1 and $500.

Mr. President, too many Americans for too long have failed to see the promise and abilities of disabled Americans. By focusing unduly on what disabled persons could not do, we as a society have often missed what they could. We can and must do better. We can no longer afford to lose the input of millions of disabled persons because of unthinking or ignorant prejudice. As we face the modern, information age, international economy of tomorrow, we must take full advantage of the skills and abilities of all Americans.

Mr. PELL. Mr. President, I rise today to offer my congratulations to just some of the many people who have helped bring this historic legislation before the Senate today. As an original cosponsor of S. 933, the Americans With Disabilities Act of 1989, and as a member of the Senate Labor and Human Resources Committee, which last month unanimously reported favorably to the Senate a substitute version of S. 933, I know well that there are many who deserve great kudos for the action I believe we will take later today.

First and foremost, my distinguished colleague from Iowa and fellow member of the Senate Labor and Human Resources Committee, Senator HARKIN, deserves recognition and great congratulations. As the tireless sponsor of this comprehensive civil rights legislation and as chairman of our committee's Handicapped Subcommittee, Senator HARKIN has been a capable and effective leader who has garnered the bipartisan support of a majority of Senators. Assisting him in crafting this landmark legislation has been our chairman, Senator KENNEDY, who has devoted much of his own time and energy, as well as that of our committee, to ensuring the swift passage of this legislation. Both our Republican colleagues on the committee and the Bush administration also deserve recognition and thanks for their help in reaching a compromise which has resulted in an excellent bill.

But most important of all, Mr. President, are the congratulations due the American people. Today, the Senate will approve for the first time legislation which will guarantee to the Nation's more than 40 million persons with disabilities the same rights and opportunities to participate fully in all aspects of society that the rest of us have enjoyed for so long. The emphasis finally is on ability, and not on the disabling condition which makes some unable to walk, see, hear, or talk. We have seen graphically demonstrated, both in Senate hearings, and at home by constituents in our own States, that persons with disabilities have much to contribute to our communities, our workplaces, and our lives.

In my own State of Rhode Island, passage of this legislation would provide Federal protections to almost 170,000 persons with disabilities. These Rhode Islanders have waited long enough for the Federal Government to recognize their valuable contributions to society and to remove the barriers which have hampered even their best efforts to lead self-sufficient and productive lives.

Mr. President, I am pleased to rise today in support of this landmark, bipartisan legislation. To the disabled among us, this is indeed a red-letter day. And for our Nation, it is a day we can point to with pride, for we will have embraced those who have for too long been outside the mainstream of American life. I urge my colleagues to support this important legislation, and look forward to swift passage of this comprehensive civil rights law.

Mr. LEAHY. Mr. President, this is a remarkable day in the Senate. Today we begin debate on landmark legislation that will extend the simple justice of our Nation's civil rights laws to people with disabilities. And for the first time, debate in the Senate will be accessible to Americans with hearing impairments through the use of sign language.

I am proud to support S. 933, the Americans with Disabilities Act of 1989, because it is right and just to remove the barriers that make it impossible for disabled Americans to be fully productive participants in our society.

Americans with disabilities do not want sympathy. They simply want to participate fully and equally in our society. They want to work. To go to the movies. To call their doctors' office to change an appointment if necessary. Activities most Americans take for granted.

The ADA bill will put an end to discrimination against the disabled in employment, public services, public accommodations, transportation, and telecommunications.

The bill will open museum and restaurant doors, make travel more accessible, and provide countless job opportunities for 43 million Americans. It will give dignity to those who have been relegated to a second class life of segregation and poverty.

Some have argued that this legislation is not affordable, that it will cost too much to implement the ADA. In this country, equality for all Americans is not a matter of cost. It is a matter of justice.

Every year, we spend billions of dollars on disability benefits for people who can and want to work, but can find no employment. Every year we lose billions of dollars in lost taxes and lost productivity by shutting 43 million Americans out of the work force. If we remove barriers to work for the disabled, we can turn welfare payments into tax receipts.

The substitute amendment for S. 933 has the backing of 60 Senators and the administration. It is a fair but fragile compromise produced after extensive discussions among the members of the Senate Labor Committee, the business and disability communities, and the administration.

Mr. President, next month Vermonters will attend the Disability Awareness Day Employment Conference which recognizes Vermonters with disabilities for the abilities—not their apparent limitations—and helps educate employers on hiring, providing access, and keeping people with disabilities on the job.

I hope to tell them that the Senate has moved this country one step closer to granting equal opportunity for Americans with disabilities by passing this important legislation.

Mr. REID. Mr. President, I rise today in support of the Americans With Disabilities Act. I will vote for this Act not because I believe it is in any way a perfect piece of legislation—it is not—but because I believe in the drafters' intent. Its purpose of providing a national mandate for the elimination of discrimination against individuals with disabilities is one that must be achieved.

The population is aging at a rapid rate, and with an increase in the average age comes an increase in the likehood that an individual will be handicapped in one way or another. Now is certainly the time for preparing for the future by building accessible buildings and prohibiting discrimination in the workplace. A growing handicapped population must have the opportunity to take care of itself. Improved access to public services and jobs is the best way to help the handicapped help themselves.

When I vote for this legislation, I will be casting two votes, one for the fair treatment of the disabled and one as a vote of faith in the House of Representatives. I trust that the other body will continue the hard work done here in the Senate under the commendable leadership of Senator TOM HARKIN.

The September 6, 1989, New York Times editorial page carried a piece that others have mentioned today. In fact, I had planned to rise and ask that the editorial be submitted for the

RECORD, but Senator BOSCHWITZ felt the same way and has already submitted the editorial. The editorial points directly to what worries me most about the bill and what I trust the House will due its best to clarify—vagueness.

A piece of legislation with as good intentions as the Americans With Disabilities Act deserves careful and thorough consideration of its practical application. Estimates, no matter how rough, of cost to businesses are essential. Also essential and necessary for the estimates and for the protection of business owners are specifics rather than the three factors set forth that stop reasonable accommodation from becoming an unsustainable portion of a business' budget.

The report language is a positive step toward specificity and it helps clarify the intent to protect businesses from exorbitant costs. Yet, the remainder of the hike should be made here in Congress by those of us responsible to the voting public. Relegating the hard choices of how much is enough to an agency, the Attorney General and the courts just won't do.

We've made some progress on this bill here on the floor. Obviously there is room for improvement. Businesses of little resources will, in particular, be helped by Senator BOSCHWITZ' amendment to provide that courts consider good-faith efforts of employers when deciding civil claims. All businesses deserve the fair treatment in court allowed by good-faith consideration, but it is the small businesses that could suffer undue hardship if penalties were assessed without consideration of bona fide efforts to accommodate the disabled.

Again, Mr. President, I commend Senator HARKIN and his subcommittee staff on producing a bill which I believe will evolve into the long overdue civil rights law holding protections for this Nation's 43 million disabled.

Mr. MOYNIHAN. Mr. President, we have before us today a historic opportunity to strengthen the civil rights protections of disabled Americans. I refer to the Americans With Disabilities Act of 1989 of which I am proud to be an original cosponsor. It is more appropriate for us to be considering such an important piece of legislation this year, this being the 25th anniversary of the enactment of the Civil Rights Act of 1964.

Quite simply, this bill will provide protection of all disabled Americans from the discrimination which sadly persists in America whether in employment, public access and public accommodations, transportation or communications. We must eliminate these barriers and to my mind this legislation will do just that.

We too often think of the disabled as somehow in need of our sympathy and in need of public support without acknowledging their independence of spirit and many constructive achievements. Disabled Americans are providers of care and love to their children in families; they are, when not obstructed from equal access, employers as well as employees—providers and producers of goods and services within our economy. Disabled Americans want to do all that they are able and want to do without the constraint of false and artificial discriminatory barriers.

Among the disabled individuals afforded protections under this bill are people with a diagnosis of HIV infection. We find ourselves at a crossroads in the battle against AIDS. Recent research indicates that therapeutic drugs, particularly AZT, are effective in asymptomatic HIV positive people. This monumentally important revelation gives hope to literally millions of potentially infected individuals where hope didn't exist before. But to believe that people with AIDS are not or may not become disabled and therefore should not be entitled to the same protections afforded any other disabled individual is to fail to understand the public health urgency of this disease.

As debate regarding testing continues, with the hope that these treatments will be made available, we must do all within our power to guarantee confidentiality and protections against discrimination. Indeed, the President's Commission on the HIV Epidemic stated quite clearly:

> As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

I hardly think it necessary to remind my colleagues of the scale of tragedy associated with this dread disease. To break its grip requires all our commitment of medical resources including the availability of treatment therapies. In the case of AIDS, the issues of discrimination are particularly apparent. Without the protections this legislation provides our successful efforts to control and bring to an end this epidemic will be seriously hampered.

I believe it hugely valuable that we extend, as this legislation does, protections from discrimination for those who are rehabilitated or recovering from drug or alcohol addiction. To turn away from individuals who have recognized their addiction to drugs and alcohol and who have sought, successfully, treatment would indeed be a cruel hoax. I salute these efforts.

We can all take great pride in supporting this legislation and it is my hope that all disabled Americans will find the kind of country President Kennedy, who knew of the untapped talent and resources of disabled Americans, called for in the last year of his Presidency, when he said:

> I am hopeful that people all across the country in the next year will make a special effort to bring into their lives in one way or another, by assisting, by hiring, by working with, men and women who are handicapped, either physically or mentally handicapped.

Mr. ROBB. Mr. President, I rise today in support of S. 933, the Americans With Disabilities Act. While I understand and sympathize with some points of concern raised by representatives of the transportation industry, I believe that S. 933 is an extremely positive and meaningful commitment toward protecting the civil liberties of disabled Americans. And I am pleased to be a cosponsor.

According to the Constitution of the United States, no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." We take tremendous pride in our Constitution, Mr. President. We furiously defend the freedoms it clearly extols. And as a Congress, we continually debate its applicability to our modern world and we create laws to guard the basic premise of justice upon which we've built our society.

Today, Mr. President, this Congress has an opportunity to extend the civil liberties guaranteed all Americans to those of us who are disabled.

The Americans With Disabilities Act creates a prohibition on acts of discrimination against individuals for reasons of disability. Specifically, it bans discrimination in employment, in public services, in public accommodations, in transportation, and in telecommunications.

To me, cosponsorship of S. 933 is consistent with our work in Virginia during my term as Governor. In 1985, after 2 years of intense legislative negotiations with the General Assembly and the business and transportation communities, I was pleased and proud to sign into law an administration initiative we called the Virginians With Disabilities Act.

The bill's declaration of purpose states,

> It is the policy of this Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment.

Although our transportation section is optional, the employment section is extremely comprehensive. I think you may be surprised to learn that the Virginians With Disabilities Act has no small business exemption. As you can imagine, opponents foretold a groundswell of litigation.

Last week, the Virginia Department for the Rights of the Disabled took an informal, unofficial survey to identify some of the cases that had been filed in the circuit courts of the Commonwealth. The department identified six reported circuit court cases, five of which dealt with employment issues. In addition, the Department for the Rights of the Disabled has filed four other cases pending outcomes, two of which appear to have been settled outside the court system.

Mr. President, this is over a 4-year period.

I believe the Commonwealth has proved that strong employment rights for the disabled do not result in an uncontrollable surge of litigation, pitting the business community against the disabled community.

During the 2 years we debated the Virginians With Disabilities Act, Mr. President, the two groups often went head to head. But as we balanced the hopes of the disabled with the uncertainties of many business leaders, we did more than craft historic legislation. We initiated a dialog that continues today.

Four years ago, I would not have predicted that the Virginia Retail Merchants Association would enter into a public/private partnership with the Virginia Department of Rehabilitative Services to place job-ready disabled Virginians into association member jobs. Nor would I have imagined that my successor would have an opportunity to appoint the president of the Retail Merchants Association—as a private citizen—to the Board of the Department of Rehab Services.

The Virginians With Disabilities Act has changed the Commonwealth, Mr. President. Its passage, in my judgment, has added a sensitivity to public policymaking. It has sent a message to the disabled that they are welcome and important members of our economic community. And it has sent a message from the coalfields of southwest Virginia to the bustling suburbs of northern Virginia that civil liberties for disabled Virginians should be a priority for all Virginians.

Mr. President, I'm pleased to vote in favor of the Americans With Disabilities Act. I hope my colleagues will join me.

Mr. LIEBERMAN. Mr. President, for too many years, Americans with disabilities have been victims of discrimination. We must, as a nation, dedicate ourselves to eradicating this discrimination and insuring that people with disabilities are able to fully participate in all aspects of American society. The Americans With Disabilities Act is our first step. This legislation will provide the more than 36 million disabled American citizens with the civil rights to which all Americans are entitled. Americans with disabilities will finally have the opportunity to become involved, productive citizens, an opportunity they have long been denied by discrimination in employment, public accommodations, public services, transportation, and telecommunications.

The discrimination faced by people with disabilities is a national disgrace. It is imperative that Congress enact the Americans With Disabilities Act as reported out of committee, without weakening amendments, to insure that the legislation is strong enough and extensive enough to rid this country of discrimination against people with disabilities.

Existing statutes do not protect people with disabilities from discrimination. Instead, people with disabilities are all too often forced into a life of dependency. Discrimination in education, job training, employment, and transportation prevents people with disabilities from fully participating in our society. This discrimination comes in many forms—outright exclusion, segregation, and physical and procedural barriers, intentional and unintentional, which bar access to buildings, programs, and jobs. Only by dismantling the barriers and prohibiting exclusion can we be sure that we will successfully rid this Nation of discrimination.

Two-thirds of Americans with disabilities between the ages of 16 and 64 are not working; however, 66 percent of working-age persons with disabilities say they want to work. Forty percent of adults with disabilities have not graduated from high school. Fifty percent of adults with disabilities have household incomes of $15,000 or less. Discrimination which prevents people from finishing school, from finding jobs, and from earning a livable wage not ony hurts the individuals who are discriminated against, it hurts our entire society. Dependency and nonproductivity is expensive. We are all better off if everyone who wants to work is able to work. With a growing labor shortage in this country, we need the skills and talents of every American in our work force, now more than ever. It is my hope and belief that the Americans With Disabilities Act will insure that people with disabilities can enter the work force, participate fully in our political processes and enjoy all the privileges and burdens of being productive American citizens.

In order for this legislation to be effective, in order for it to protect the rights of people with disabilities, there must be a remedy for those whose rights are denied. As a former Attorney General, I know that without a sufficient remedy, it is difficult to end discrimination. Most Americans will comply with the law; however, there will always be some who will not and they must be sanctioned. The bill does not allow individuals to bring large damage actions. The Attorney General, however, may bring actions where a pattern or practice of discrimination has been found. Those found liable could be assessed a fine of up to $50,000 for the first violation and up to $100,000 for subsequent violations. Only at the Attorney General's request could monetary damages be given to an aggrieved person.

The legislation has been carefully drafted to insure that those who make a good faith effort to comply will not be liable for large damage awards. It also, however, ensures that those who continue to discriminate, those who violate the law, will be sanctioned. The availability of monetary sanctions is the guarantee that the important rights set forth in this legislation will be enforced. Sanctions are the Congress' way of saying we mean business, if you violate this statute you will be punished. I urge my colleagues to support this legislation with the remedy as set forth in the committee bill.

Mr. RUDMAN. Mr. President, I am pleased to join as a cosponsor of the Americans With Disability Act of 1989. This bill, which originated as a recommendation of the National Council on Disability established by President Reagan, will, for the first time, extend to all disabled individuals protection from discrimination based on disability in employment, public services, and public accommodations.

At present, it is legal for non-federally funded entities to deny an individual employment solely on the basis of disability, without regard to whether an individual is qualified to perform a job. This is an unacceptable state of affairs. This legislation will prohibit employers from discriminating against an otherwise qualified individual solely on the basis of disability. It will further require that public entities purchase new buses and rail vehicles to assure that they are accessible to people with disabilities. This bill will also prohibit discrimination on the basis of disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation."

Mr. President, commendable efforts have been made by the administration and the sponsors of this legislation to accommodate the diverse interests that have a stake in this legislation, as reflected by the unanimous committee approval of this legislation. Months of refinement and definition have resulted in a bill that protects the disabled while attempting to balance the legitimate concerns of businesses, nonprofit entities, and governments. Substantial effort has been made to define such terms as "reasonable accommodation" and "undue hardship" so that the obligations and prohibitions imposed by

this legislation can be clearly understood.

Mr. President, the sponsors of the bill have taken steps to satisfy concerns about illegal drug use and alcohol abuse. They have agreed to accept an amendment providing that any job applicant or employee who is a current user of illegal drugs will be expressly excluded from title I's definition of a qualified individual with a disability. Title I also expressly allows employers to prohibit the use of illegal drugs or alcohol in the workplace, and that nothing in the act prohibits or restricts employers from conducting drug testing or from making employment decisions based on such results.

However, with the exceptions just noted, the broad definition of disability would provide protection from discrimination to drug addicts and alcoholics. More generally, the bill could protect individuals from discrimination on the basis of a variety of socially unacceptable, often illegal, behavior if such behavior is considered to be the result of a mental illness. Some examples that come to mind are compulsive gambling, pedophilia, and kleptomania. I have serious problems with this result.

As a matter of law, this country has always granted employers a wide degree of latitude in making employment-related decisions, including the right to make judgments based on non-work related behavior. To limit this right based on the diagnosis of a mental illness or chemical dependency may be opening up a Pandora's box.

First, it strikes me as absurd for Government to write a law making certain behavior illegal and then to write a law limiting the right of employers to take such illegal activity into account in making employment decisions. It is difficult for a person to develop an addiction to illegal drugs without first making a conscious decision to break the law.

Second, I have difficulty with the notion that a psychiatric diagnosis of the cause of improper behavior should affect the legal rights of an employer to take such behavior into account. Do we really want to say that an employer's legal exposure in refusing to hire a person with a record of illegal drug use or theft should depend on whether that person has seen a psychiatrist?

Third, while our knowledge of psychiatry has greatly improved in recent years, the fact remains that a diagnosis of certain types of mental illness is frequently made on the basis of a pattern of socially unacceptable behavior and lacks any physiological basis. In short, we are talking about behavior that is immoral, improper, or illegal and which individuals are engaging in of their own volition, admittedly for reasons we do not fully understand. Where we as a people have through a variety of means, including our legal code, expressed disapproval of certain conduct, I do not understand how Congress can create the possibility that employers are legally liable for taking such conduct into account when making employment-related decisions.

In principle, I agree with the concept that the mentally ill should be protected from infidious discrimination just as the physically handicapped should be. However, people must bear some responsibility for the consequences of their own actions.

In addressing this conflict, we found a few years ago, following the attempted assassination of President Reagan, that the law had been allowed to swing too far away from holding people accountable. Congress had to act to correct that. I am afraid that, in a civil rights context, we may be making the same mistake now. If this problem is not addressed now, we will certainly be debating it again in a few years on the Senate floor.

In sum, Mr. President, I congratulate the sponsors and President Bush for their tireless work in producing this important bill which now enjoys widespread support. However, I believe that the issues regarding the right of employers to take individual behavior into account when making employment decisions have not been adequately addressed, and I hope we will be able to do so during the Senate debate.

Mr. DANFORTH. Mr. President, I was prepared to offer an amendment to S. 933 to make clear that there is no protection from employment discrimination for individuals who continue to use illegal drugs. It appears that my amendment will not be necessary at this time as clarification has been provided in an amendment offered by the authors of S. 933.

First, in section 104(a), the bill now provides that the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of include any employee or applicant who is a current user of illegal drugs. This definition is necessary to make the ADA consistent with the public's outrage regarding the use of illegal drugs.

In 1973, when the Rehabilitation Act was first enacted, Congress was silent on the treatment of drug addicts and alcoholics. By 1978, it was necessary to add language explaining that no protection was intended for an alcoholic or drug addict whose current substance abuse prevented him from doing his job or presented a threat to public safety. This language reflected the prevailing 1970's attitude that "a little illegal drug use" might be OK.

Today, we are experiencing the societal consequences of Congress' earlier ambivalence toward "a little illegal drug use." Today, we understand that illegal drug use simply cannot be tolerated. S. 933 must clearly reflect the current attitude that President Bush aptly noted in his address on Tuesday: "our Nation has zero tolerance" for illegal drug use. This provision makes it clear that an employer has the right to insist that his employees are drug free at all times.

Section 104(b) of the ADA makes it clear that an employer is allowed to take certain actions necessary to achieve and maintain a drug-free workplace. This section indicates the kinds of actions that employers may appropriately take without triggering a claim of discrimination.

Finally, section 104(c) makes it clear that, although this legislation does not take a position on employee drug and alcohol testing, it does protect from litigation under the ADA, employers who choose, or are required by law or regulation, to conduct such testing and take disciplinary actions based upon the results of such testing.

Mr. METZENBAUM. Mr. President, our forthcoming vote on the Americans With Disabilities Act marks a turning point for all Americans.

Our country was founded on the premise—and promise—of inclusion. Our founders intended to take people into the fold—not cast them aside because of differences of creed or color.

It's taken many years and much hard work to make good on that promise. I'm proud to have been on the battle lines as we opened doors to blacks and other minorities and to women. I remain ever vigilant to protect the civil rights we've won. And as a member of the Labor Committee and its Subcommittee on the Handicapped, I'm very proud to be an original cosponsor of Senator HARKIN's bill.

Now, as we prepare to vote on the ADA, we face a decision. We're at a turning point. Do we want to extend civil rights protection to Americans with disabilities? Do we want to build on the great American promise of inclusion, and bring people with disabilities into the fold?

Our failure to do so would be like turning back the clock. It would be tantamount to dredging up a "whites only" sign and hanging it at a nearby lunchcounter.

Mr. President, I don't believe the American people want to turn back the clock on civil rights. They want to move forward. And that's exactly what this bill does, in a thoughtful and comprehensive way.

The ADA will go a long way toward eliminating discrimination against the disabled in the workplace. It's the first step in ensuring that employers see not just a person's disability—what they can't do but what they can do.

The ADA also will go a long way toward improving access to transportation. Many decades ago Rosa Parks said no to the idea that blacks must sit in the back of the bus.

Right now, many disabled people cannot even get on the bus. The ADA will change that.

These provisions also will be key in ensuring that people with disabilities can be full participants in our society and our economy. They'll be able to get to work. Go shopping. Socialize with friends.

For too long, we've shortchanged ourselves by keeping the door shut for Americans who are disabled.

Now, Mr. President, the time is right to pass this important legislation that will welcome these Americans into the mainstream, where they belong.

I commend my good friend, the Senator from Iowa, for his work on this bill. He's done an excellent job bringing together people from the disability community, the business community, the White House.

Mr. President, we owe a debt of gratitude to several others. Chairman KENNEDY of the Labor Committee has provided important leadership. Attorney General Dick Thornburgh and President Bush have held firm on their commitment to civil rights for the disabled. Senator HATCH and Senator DOLE also have been an enormous help. And it should be noted that former Senator Lowell Weicker provided the seed for the bill before us today.

I close by again saluting the distinguished Senator from Iowa for his diligence and determination. Because of TOM HARKIN, we are at an important turning point in our history as a great country. And with passage of the Americans With Disabilities Act, we will move forward and make good on our founders' promise for life, liberty, and the pursuit of happiness for all Americans.

I hope that in the years ahead we will continue to honor Senator HARKIN by calling the ADA the Harkin bill—in recognition of his fine achievement.

Mr. President, might I add that I am happy I was able to help resolve a technical issue concerning the ADA's application to self-insured benefit plans.

As the manager's statement makes clear, we have no intention of disturbing or modifying Supreme Court rulings.

Mr. KERRY. Mr. President I rise in strong support of the Americans With Disabilities Act of 1989. This is a crucial piece of legislation whose time is long overdue. The importance of this legislation cannot be overstated. This act is vital in the fight to end discrimination against the disabled in the areas of transportation, education, communication, and employment.

We as a society have always recognized our obligation to provide for our disabled neighbors, and in many respects we have done so. However most services provided have been in terms of maintenance and subsistence, and not in the area of eliminating the physical barriers and discrimination which are often the greatest difficulties facing disabled Americans. We need to redirect our energies toward enabling the disabled to be self-sufficient, independent citizens with the same opportunities as you and I.

According to a 1986 Harris poll 75 percent of all disabled citizens are not working, and tragically only 15 percent of all disabled citizens work full time. The primary reason for this is not because disabled individuals are incapable of work; it is not because of an individuals disability and it is certainly not because of a lack of desire to work. Mr. President, this survey found that over one-half the disabled respondents cited discrimination as the primary obstacle to employment, and 28 percent cited the lack of accessible transportation.

Mr. President, lack of accessible transportation and mobility are major factors in limiting educational and employment opportunities, which are key to self-sufficiency and independence. Conversely, dependence resulting from limiting access and opportunity, not only strips a measure of dignity from capable individuals, but in terms of social services, lost wages, and wasted human potential, represents an enormous social and economic cost.

It is unconscionable to imagine an able work force languishing at home because there is no access to public transportation. Mr. President, I do not want to minimize the great strides made in urban and rural areas to accommodate travel for disabled Americans. But there is still a long route to travel on this necessary road, and we must pick up the pace. Tragically in the Nation as a whole the majority of our public transportation systems remain inaccessible to the disabled.

This legislation puts us on the right track in reversing this unacceptable performance. I am particularly pleased with the advances this legislation will make in the area of interstate and intrastate travel as well as the breakthroughs in telecommunications for disabled Americans.

Mr. President, it is close to impossible to separate the ability to travel or communicate with both employment and a decent quality of life. For example being able to come and go to meetings, school, the movies, or the restaurant without planning days or weeks in advance is impossible for many disabled citizens. Talking on the telephone, following a sports game on television, or operating a word processor are all activities that most of us take for granted, yet they too are needlessly unavailable to many of the disabled.

I believe that the Americans With Disabilities Act represents true hope for equal opportunity for disabled Americans. The time has come for us to give disabled children a chance to dream of becoming doctors, lawyers, architects, or engineers, and to know that it is not just a dream. As a people we cannot afford to ignore or take pity on our neighbor, when there is no need. As a nation we cannot continue to prosper without the contribution of disabled Americans, when they have so much to offer.

Again I applaud the efforts of the sponsors of this legislation, and hope that my colleagues will join me in supporting this effort to assist our fellow citizens in reaching their full potential.

Mr. JEFFORDS. Mr. President, I want to join my colleagues in expressing my support for the Americans With Disabilities Act. I was proud to be a cosponsor of this legislation in the other body during the last Congress, and am pleased to be a sponsor of this year's bill as it moves forward.

That process is far from complete. The other body will no doubt want to take a careful look at this legislation and its consequences. This is only proper. While the concepts behind this legislation are not new, parts of the legislative language were arrived at only recently. Make no mistake about it, this bill, and the language it contains, will have a tremendous impact on our society. But today we have taken a major step forward, one that I hope will be followed by enactment in the near future.

If I have a regret, it is that this legislation has taken so long to come before us. I suppose it is the nature of our Government to act slowly, but in this case we have waited far too long to do anything in this area. As a result, we are making sweeping changes that give rise to some legitimate concerns among Vermonters who have contacted me.

I think those concerns have been adequately addressed in this legislation. I am not going to argue it is perfect, or written exactly as I would like, but neither do I believe that it will be unmanageable for businesses in my State and elsewhere.

And the burdens of business have to be weighed against the burdens now borne by the disabled individuals throughout our country. Over 40 million Americans must confront physical and attitudinal barriers every day of their lives, from transportation to employment to basic communication.

We all know this. The discrimination faced by the disabled is obvious. But I must say that it did not really register with me to the same degree it might have until I heard some pretty poignant testimony in Burlington, VT, last October.

As a result of cerebral palsy, a husband and wife who testified were confined to electric wheelchairs. One night they rented a van to transport them to a movie theater. They were

dropped off, and went to purchase their tickets, only to be told they could not enter the theater without an attendant.

This sort of ignorant and unnecessary discrimination is what this legislation is designed to address. And once this couple can buy the tickets, they must be guaranteed physical access to its accommodations and they must be given a fair chance at its jobs.

This couple told another story that was perhaps even more troubling. The wife, while confined to a wheelchair, broke her foot and had it set. The doctor removing the cast discovered it was set improperly, but suggested that it made no difference. The doctor was informed that her confinement to a wheelchair did not preclude a fondness for wearing shoes.

The Americans With Disabilities Act is not going to end callous and stupid remarks, or the attitudes behind them. We cannot legislate enlightenment. The ADA will no more end discrimination on the basis of handicap than title VII has been able to eliminate other forms of discrimination.

But the perfect must not be the enemy of the good. The ADA will finally give legal protection to the disabled community. And by living and working alongside of disabled Americans in ever-increasing numbers, I hope the prejudices will fade and disappear. This will not happen overnight, which means that we should get on with the task as soon as possible. I urge my colleagues to give this legislation their support.

Mr. SIMON. Mr. President, the consideration of the Americans With Disabilities Act on the floor of the Senate is an event I have looked forward to for a long time—and one, if we are successful, that millions of Americans with disabilities will mark as a turning point in their lives. I congratulate Senator HARKIN for his unflagging efforts to iron out the controversies and produce a bill that responds to the recognition of both Democrats and Republicans that a civil rights act for Americans with disabilities is long overdue. Senator KENNEDY, Senator HATCH, Senator DURENBERGER and others on the committee have spent many hours in getting us to this point. I'm hopeful the steps remaining before the bill is signed by the President will be short and prompt. We must complete the job the Congress began 25 years ago when they had the vision and courage to pass the Civil Rights Act of 1964. It is time to ensure a guarantee of nondiscrimination for the more than 40 million Americans who must overcome not just a disabling condition, but the superstition, fear and prejudice that accompanies it.

The ADA takes a comprehensive approach to removing barriers that prohibit the full participation of our fellow citizens with disabilities in the economic and social life of our Nation. To those who are concerned about the price tag of this legislation, I ask that they look at the overwhelming costs of not enacting it. That cost is so great that no legislation we could consider today could come close to it. More than $100 billion a year is being spent by Government to sustain people with disabilities in welfare situations. An estimated $200 billion more each year may be lost in taxes and in the expenditures of nonprofit organizations and family members. And as I have said so many times, there is simply no way to put a price tag on the lost dignity and independence of people who want to be contributing members of their families, their communities, and their country.

I will not repeat the full description of the bill given by my colleagues, but would like to point out some of the areas I see as particularly important.

EMPLOYMENT

Despite repeated studies showing the contrary, employers continue to believe today that their hiring of persons with disabilities will cause them great expense, that their insurance rates will skyrocket, their safety records will be jeopardized, and that workers with disabilities will not be accepted by coworkers. Again, the facts show that none of these fears is based on reality. The reality is, as Harold Russell, long-time chair of the President's Committee on Employment of People with Disabilities reminded us, there is no additional cost involved in hiring a majority of those who have disabilities. For many others, the cost of a reasonable accommodation is less than $50. Employers with a record of hiring persons with disabilities have found that these workers are among the most responsible, dedicated, reliable and productive of their employees.

The continuing effect of mistaken stereotypes across the spectrum of employers, in both small and large enterprises, is likely the single greatest factor in keeping most working age adults with disabilities out of the economic mainstream of our Nation. As a nation, we clearly face increasing competition from abroad and must begin to use all of our human resources more effectively. We can simply no longer afford to lose the productivity of this large segment of our population—possibly 8.2 million individuals with disabilities who want to work but cannot find a job. And we should no longer accept the human cost to those who lose dignity and independence as a result of myth and prejudice.

The ADA is designed to ensure that persons with disabilities are treated as individuals and that employment decisions are not made on the basis of stereotypes. Only persons qualified to perform the job in question are protected; employers are not required to employ an unqualified individual simply because he or she has a disability. Drawing on the long successful history of section 504 of the Rehabilitation Act and its regulations, the ADA incorporates the concept of "reasonable accommodation" and provides that discrimination includes not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless the accommodation would impose an undue hardship on the employer.

The list of examples of reasonable accommodations in the ADA is not intended to cover every type of accommodation that will ever be needed, but rather to demonstrate some of the many forms accommodation can take. One kind of accommodation listed is the provision of qualifed readers or interpreters to assist a visually-impaired or hearing-impaired person to overcome communication barriers on the job. To the extent that providing a reader or interpreter is not an undue hardship on the employer, it should not be seen as an undue hardship either to provide an assistant for a physically disabled person who may need help during the day with personal tasks.

Some large firms already covered by section 504 of the Rehabilitation Act have chosen to accommodate a number of deaf employees by purchasing the services of a part of full-time interpreter to be shared among them. Similarly, it might be appropriate for such a firm to purchase personal assistance services for one or more physically disabled persons. It makes no sense for a qualified person with a severe physical disability to stay at home, dependent on a welfare check, when 30 minutes of assistance a day could create a gainfully-employed taxpayer—and one who is contributing valuable work to his or her employer.

I am confident the business community as a whole wants to do what is right in this area. There are many who are already showing that hiring people with disabilities makes good business sense. In many cases, we just need to give more information about what the needs are, what the possible reasonable accommodations are, and then step out of the way. None of us wants to impose unreasonable requirements, and with this act, we are not doing that. We are making sure people with disabilities have a chance to prove they can do the job.

TRANSPORTATION

With all of the good will in the world from employers, with total acceptance of what the Americans with Disabilities Act will require in job accommodation and accessibility, we will still not make major inroads into the unemployment problem of Americans

with disabilities, and will not bring them into the mainstream of society, until we provide reliable, nondiscriminatory public transportation.

The transportation requirements of the ADA are reasonable, and should not prove costly in the long run. Clearly, when all new buses are built with lifts on them, the cost of those lifts is going to decrease. And anyone who has looked at this issue for as many years as I have knows two things: First, that paratransit alone is inherently a discriminatory system. For some it may offer an advantage in being "door to door" service. But it simply can't meet the needs of the disability community in general. And second, paratransit is a far more costly system if it even begins to try to provide a nonrestricted, demand-responsive level of service. An investment in equipment, such as a lift, is a one-time expense, with minimal upkeep. The cost of providing paratransit is a continuing expense, and it keeps getting larger as the cost of fuel and number of riders making demands on the system increases.

I would like to point out to my colleagues an article from the Chicago Tribune of July 5 of this year that illustrates the problems faced by the Chicago Transit Authority in operating a dial-a-ride-service faced with a growing ridership and no existing mainline service. Some rapid calculations indicate the answer is to get as much reliable mainline service in use as quickly as possible—using as much community education as possible to gain acceptance and use of the new service. Here are the figures: The Department of Transportation estimates $15 in public subsidiaries are provided for each one-way paratransit ride. Looking at the costs for a year of work-related trips for one rider—a round trip 5 days a week for 52 weeks—the total cost in subsidies for that one rider is about $7,500. Given the average cost for a mainline bus lift of $10,000 (and that will decrease) and an estimated maintenance cost of $1,000 a year (also, I believe, on the high side), the entire cost of that accessible bus is covered by just one person who uses it instead of paratransit to go to work for a year and a half.

Some people have tried to tell us that cities with cold and snowy weather should not have to comply with the lift-purchase mandate. But people with disabilities in these cities have transit needs that are just as critical as those in warm climates. It is no secret that in snowy weather the paratransit service is the first transportation mode to stop functioning in many cities. And the recent experience of cold northern cities with lift programs has been good. It cannot be too strongly emphasized that the inclement weather is no objective reason for not equipping new buses with lifts.

Experience in New York City, Syracuse, and Johnstown, PA—all of which have significant amounts of snow—bear this out. Through the harsh winter months in these cities, lift-equipped bus service has functioned well. The example of Syracuse is particularly instructive. In this city, accelerated tests were conducted over a 2-year period in which the lifts were kept in virtually non-stop operation under conditions of cold, water, heat, sand, and salt, to approximate what 10 years of harsh operation would do to a lift. The result: The lifts held up well with only minor changes. Now Syracuse is convinced, and has moved forward aggressively with a full accessibility program. The Americans with Disabilities Act would follow this example.

No doubt, someone will come up with an example of a city where lifts have malfunctioned. But there are many possible reasons for this. The main one is that 8 or 10 years ago, when some cities bought early-generation lifts, lift technology was much less sophisticiated. Some northern cities had difficulties with these lifts. But in no area of American society have we stopped our progress because of an early technological problem, especially when the problem has already been solved. Lift technology today is equal to the task.

Other cities may be mentioned with bad lift experience because the city did not follow through on the lift-purchase with good maintenance, good route-planning, good marketing, and good-faith cooperation with the local disability community. But we can all find flaws in the system. Let's look at the best systems. In addition to the cold-weather cities I mentioned, look at the excellent service available to riders in San Francisco, Seattle, and many other cities. Look at the tens of cities over the past 2 years that have made new decisions to buy only accessible buses—because of the clear advantages of a multimodel system of accessible transit. Lifts on new buses is clearly an idea whose time has come.

Some may also argue that the unpaved roads in their areas make the use of lifts impractical. Just a couple of reasons this is not a good argument against lifts: First, the lift on a newly purchased bus is going to last from 10 to 15 years. How many of us are aware of an area as large as a transit system where no unpaved roads have been paved in the last 10 to 15 years? There can't be many. And second, the assumption that people who need accessible transportation won't find a way to get to that bus stop because the road isn't paved is simply wrong.

Several years ago, the Oakland, CA, urban area launched their accessible bus program with a poster depicting people with disabilities at a bus stop. The caption read, "Some people have been waiting for the bus all their lives." That's a long time to wait, but when we pass this bill into law, that bus will finally come into view.

PUBLIC ACCOMMODATIONS

Our former colleague, and leader on this issue of equal rights, Senator Lowell Weicker, reminded us when he testified that people with disabilities spend a lifetime "overcoming not what God wrought, but what man imposed by custom and law." In order to have full participation in and access to all aspects of society, our citizens with disabilities need an environment that does not confront them daily with impossible barriers to the normal activities of their lives. Going to a restaurant, seeing a dentist, catching a movie or shopping for groceries are not the kinds of activities we may think of when we consider the important aspects of our lives. But the inability to engage in these activities—perhaps a fear to try because of degrading experiences in the past—would cast a dismal blanket of isolation over any of us. The ADA will lift that blanket for Americans with disabilities.

Places of public accommodation are required by the act to make modifications in policies, and procedures and to provide auxiliary aids to afford services to individuals with disabilities, if such provision or modification would not impose an undue burden, and to provide services through alternative methods if the removal of architectural barriers in existing facilities is not readily achievable. This carefully crafted language provides a balance between the needs of service provider and consumer. What is mandated are fair and logical changes that will get the job done, sometimes using a little creativity.

For example, if a restaurant is on the second floor of a building with no elevator, a person with a disability who cannot climb the steps should be able to order take-out food, which a restaurant employee would take to the bottom of the flight of steps and hand to the disabled patron. Or if a movie theater has an inaccessible second story with a separate screen, the movies should be rotated between the first floor accessible theater and the inaccessible theater. Or in a stadium where the only accessible level features the most expensive seating, a wheelchair user should be offered tickets at a variety of prices, since a balcony ticket may be all he or she can afford.

Similarly, to overcome communication barriers, hotels of a certain size should have decoders for closed captioned TV viewing, or, where televisions are certainly controlled by the hotel, to have a master decoder. And hotels that offer hearing customers comparable amenities should offer deaf or communication-impaired cus-

tomers a portable TDD (telecommunications device for the deaf).

Another form of discrimination the ADA is designed to prohibit is the denial of the right to use available assistive devices and communications, even if the public accommodation is not required to provide the aid because of the undue burden defense. For example, deaf people who bring their own interpreter to a public event, at their own expense, may not be prohibited from using the interpreter. Similarly, people with disabilities, under the ADA, would be allowed to use any available audio loop, brailler, or similar accommodation.

S. 933 also provides that public accommodations may not apply eligibility criteria that screen out people with disabilities. For example, a store could not have a rule that only people without vision impairments could receive services. It would also be a violation if a public accommodation invaded a person's privacy by trying to identify unnecessarily the existence of a disability, for example, by inquiring whether the person has epilepsy or has ever been hospitalized for a mental illness. In addition, it would be a violation to impose criteria that limited the participation of people with disabilities—for example, by requiring that people with disabilities sit in a certain section of a restaurant.

One form of discrimination faced by thousands of people with disabilities in public accommodations is prohibiting entry by an assistive animal. Part of the problem lies in ignorance. Many members of the public don't understand that, just as blind people often use guide dogs, it is a growing practice for many deaf people to employ the use of signal dogs and for physically disabled people to employ the use of service dogs. Regretfully, many people still don't understand that these animals are well-trained and certified, and don't create public disturbances nor pose any public health risk whatsoever. Generally speaking, any facility where it is safe for a person to go, it is safe for a trained assistive animal to go, including restaurants and other public accommodations. As an auxiliary aid, the use of assistive animals is protected by the Americans with Disabilities Act, in public accommodations as well as public services (including schools).

It should be further understood that a person with a disability using a guide, signal or service dog should not be separated from the dog. Some public accommodations, such as theaters, have required the dog to wait in a separate location. A person with a disability and his or her assistive animal function as a unit and should never be involuntarily separated. Nor is there any need for this separation. To require it would be discriminatory under the Americans with Disabilities Act.

TELECOMMUNICATIONS

One of the most pervasive aspects of our lives, in our personal and business affairs, is the telephone. Not being able to use this communication tool is one of the major barriers to productive, normal life for more than 26 million Americans with hearing or speech impairments. The requirements of the ADA for interstate and intrastate relay systems for these individuals will open a new world of possibilities for millions—a world that includes the ability to schedule an appointment, conclude a business deal, or check on people at home while you are out of town.

Seven States currently operate TDD relay services, and though they vary greatly, we have enough experience with such systems to know they are a good idea with no major drawbacks. Some of the systems are financed in a fashion that other States should consider: imposing a small monthly charge on every telephone subscriber (for example, 5 cents a month.) While this method is specifically disallowed by the act for recovery of interstate costs due to the other means available, it is an excellent way to finance an intrastate system because it avoids the need for a large allocation from any existing budget. It should be noted that the act prohibits such a charge from being "red flagged" on subscribers' bills in a fashion that would unnecessarily stigmatize or create a backlash against the hearing and speech impaired population the system designed to serve.

PROTECTION OF PERSONS WITH AIDS

I am particularly pleased that this bill will extend protection to people with AIDS and people infected with HIV, symptomatic and asymptomatic. People with AIDS and people with asymptomatic HIV infection are covered under the first prong of the definition of disability in S. 993, as people with physical impairments that substantially limit major life activities.

One of the unfortunate hallmarks of the AIDS epidemic has been acts of unwarranted discrimination against those with AIDS and HIV infection, and against their friends, families, and caregivers. This discrimination runs counter to the most basic civil rights tradition of our country, as well as against basic public health. Every commission or report that has addressed the AIDS issue has called for strong federal anti-discrimination protection as a means of encouraging individuals to come forward for testing, counseling, and treatment when available.

S. 933 will finally establish the necessary protections against discrimination for people with AIDS and HIV infection. Such individuals will no longer be unjustly denied jobs or unjustly be prevented from receiving services or benefits. Actions with regard to people with AIDS and HIV infection will no longer be allowed to be governed by myths, stereotypes, and misperceptions, but rather will be governed by objective medical evidence and facts. This is one of the best steps forward that we can take to fight the AIDS epidemic.

USERS OF ILLEGAL DRUGS

In regard to the amendment on users of illegal drugs, I recognize that because of the current emphasis on achieving a drug free environment and on imposing penalties on those who use illegal drugs, we are not trying to protect job applicants or employees who are current illegal drug users in the ADA. We should remember, however, that many of these individuals can be rehabilitated if they are given the opportunity to get help; and I hope employers will continue to use employee assistance programs and help those with drug or alcohol problems overcome them so that they can become and remain valuable employees.

It is important to emphasize that we continue to protect applicants and employees who have overcome or are successfully being treated for drug or alcohol problems. Retaining these crucial protections for persons who have recovered or are in treatment is consistent with our national drug strategy and our longstanding commitment to supporting the treatment of those with drug or alcohol problems and working to ensure the full reintegration of former drug and alcohol abusers into the working world.

Finally, it is important to emphasize that if a person has a disability other than use of or addiction to illegal drugs and is discriminated against on the basis of that other disability, that person remains fully protected under the ADA. In addition, it is also important to emphasize that the definition of illegal drugs in this act does not include controlled substances taken under medical supervision.

Finally, Mr. President, I want to quote two Illinoisans I am proud of who testified before our committee. Illinois Attorney General Neil Hartigan, someone with a long history of sensitivity and responsiveness to disability issues, answered a question about the need for enforcement provisions. Speaking as one who comes from a State with a strong public accommodations law, he explained that the inclusion of penalties and damages is what makes voluntary compliance possible. Illinois law provides punitive damages as well as injunctive relief. He said, "(W)e need teeth in the law * * * We have got a range of weapons we can use if we have to use them. But, the fact that you have them, the fact they know you are serious about it, keeps you from having to use them." His office has had more than 3,000 compli-

ance cases and not once have they had to go to court. I expect most people want to comply with the ADA, but the rights it guarantees are meaningless without effective enforcement provisions.

Mary Linden of Chicago is a lovely and brave lady who at the age of 59 is just beginning to live her own life. Because Mary had a disability that caused her to use a wheelchair, as a child she was sent to segregated schools, and they failed to even teach her how to write her name. She was isolated socially—taken out for shopping and to go to a restaurant just twice a year. No career plans or educational plans were made for Mary because her school and parents thought she was too disabled to compete. At the age of 34, after being kept at home all her life, she was placed in a nursing home. Just recently, in 1987, Mary became aware that even as a person with a disability, she could take control of her own life. She has since completed 2 years of college and wants to get her 4 year degree so she can, as she says, find "the most precious thing in the world, a paying job." But what Mary wants most is a different life for today's children with disabilities. She said, "I beg of you to pass this act, so that other children will not have to go through what I went through, will not be stared at, will not be limited as to how many times they can see things * * * (T)hey should have a chance to work and contribute as much as they can."

I ask my colleagues to support the Americans with Disabilities Act for Mary and for countless other men and women like her who are just beginning to make up for lost years and lost opportunities. Most of all, we should grant Mary's request and pass this bill for our children with disabilities, whose future can still be free from discrimination and open to all of the possibilities they can imagine for themselves. Let us complete the work of 25 years ago and give the promise of the American dream to all of our citizens.

I ask unanimous consent that the article from the Chicago Times of July 5, 1989, be printed in the RECORD.

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

[From the Chicago Tribune, July 5, 1989]

CTA FACES DIAL-A-RIDE PREDICAMENT

(By Gary Washburn)

Chicago Transit Authority officials face the distasteful choice of failing to meet the growing demand for Dial-A-Ride service next year or increasing expenditures for the program by more than 40 percent, according to agency officials.

As it is, heavy ridership has put Dial-A-Ride over budget so far in 1989 and has caused the CTA to turn away scores of disabled people every day who want to use the special door-to-door service.

Would-be patrons now must scramble to reserve a ride for the following day, trying to get through on clogged phone lines beginning at 5 a.m. daily, said Gloria J. Nichols, a board member of American Disabled for Accessible Public Transit, a handicapped rights groups.

"Not too much later than 6 a.m., and they're booked," Nichols said. "It's a game. It's a lousy early-morning game that a lot of people with disabilities have difficulty handling."

"Everybody knows that if you don't call by 6:30 or 7 o'clock [to reserve a ride for the following day] the trips are gone." acknowledged William Mooney, head of the CTA program.

About 300 requests for service are turned down daily, he said. And that "very, very conservative" figure does not count the people who don't bother to call after 7 a.m. because they know the day's limit of trips already has been reached, he said.

Despite attempts to control the number of rides to 15,385 a week, Dial-A-Ride so far this year has slipped above budget by $77,000, and a cutback on the number of rides permitted may be necessary to avoid spending more than the $12.4 million appropriated for 1989, officials said.

The 12.4 million is the highest amount ever allocated for the program and represents nearly twice the sum that the CTA spent for Dial-A-Ride in 1986.

Even so, "the budget is clearly insufficient to provide the funding that is necessary to run even an adequate program," said James Charlton, the CTA board's only disabled member. "The program is under enormous stress because of excess demand. I believe its quality is mediocre and the quantity of rides provided is insufficient."

Officials say that the growth has been caused by a number of factors. They include increased reliability of the system, better on-time performance and the apparent "coming out" of increasing numbers of disabled people who previously seldom ventured from home on the CTA.

Ridership, totaling 475,000 in 1986, is expected to reach 800,000 this year.

And if the transit authority hopes to satisfy estimated demand for Dial-A-Ride service next year—providing nearly 1.1 million rides—it would have to allocate $17.75 million for the program, a 43 percent increase over 1989's outlay.

But there are serious questions whether the CTA board will be willing or able to keep up with the growing demand because of other financial pressures.

One is expected to come as a result of an agreement between the transit authority and disabled activists who recently won a battle to obtain "mainline" buses equipped with wheelchair lifts.

Late this year, the CTA is scheduled to receive the first of an order of about 500 specially equipped vehicles and ultimately could purchase as many as 400 more.

This means more expenditures for such things as driver training and lift maintenance.

Even with the introduction of mainline service that can be used by the disabled, CTA officials see no letup in demand for Dial-A-Ride for at least several years.

"Peoples' transporation modes change slowly and there are still significant numbers of disabled people in Chicago who are just beginning to feel comfortable in taking Dial-A-Ride" let alone regular buses, Charlton said. "Right now there probably are 15,000 people certified to ride and another 15,000 to 20,000 who are eligible but who are not signed up yet."

Charlton estimated that the cost of Dial-A-Ride could hit $50 million annually if the transit authority were to satisfy demand.

"The CTA will never be able to afford to fund it fully," he said.

Mr. CONRAD. Mr. President, most of us in the Senate are fortunate enough that we have the God-given tools to easily accomplish the tasks of the day. We do not think much about climbing the stairs to the office; picking up the phone to talk to a friend, constitutent or colleague; hopping a bus or a cab downtown. We can not truly understand what it feels like to have people do a double take, or avert their eyes, when they see a disfigurement or obvious handicap. We generally don't have to think about being denied a job, or shunned, simply because somebody doesn't understand diabetes, epilepsy, multiple sclerosis, or some other seriously disabling disease.

But 43 million Americans know. They are often frustrated by artificially imposed isolation, or with a feeling that others look on them as different.

I was pleased to join this year as an original cosponsor of the Americans With Disabilities Act. It's time to even the playing field for individuals with a disability.

Some of the greatest limitations for many persons with handicaps arise from such external barriers as discrimination in employment, transportation, and housing.

The ADA establishes a clear, comprehensive prohibition against discrimination on the basis of a handicap. It provides the same enforceable protection against discrimination to persons with disabilities that are currently afforded to persons on the basis of race, sex, national origin and religion under civil rights laws.

The ADA bill specifies that it is discriminatory to establish or fail to remove certain architectural, transportation, or communication barriers that prevent the access or limit the participation of persons with disabilities. It prohibits employers, employment agencies, labor organizations, job training programs, housing administrations, transportation services, States and State agencies, and broadcast and communications services from discriminating against individuals on the basis of disability, or perceived disability.

As parents, we all want to see our children reach their fullest potential. It's exciting to watch them grow—to see them change as they explore the world around them. And it's exciting to watch them as they strike out on their own.

The parents of children with disabilities are no different. And their kids have that same curiosity, the same desire for independence and acceptance by their non-disabled peers. All they ask is a fair chance at the same

opportunity for self reliance. That's what this bill is all about.

And we, ourselves, may be faced with disabilities. We could become disabled as a result of old age, an accident, disease, or some other unforeseeable event. Wouldn't we also hope to receive fair treatment, with a minimum of external obstacles placed in our way?

Mr. President, I have heard from many constituents, both in support and in opposition to this bill. I would like to take a moment to address some of the concerns that have been expressed to me.

While I have yet to hear from anybody opposed to the concept and intent of the ADA, some are afraid that it will place an undue burden on small businesses. Others are concerned about burdens for intercity bus transportation companies.

That skepticism is precisely what kept me from cosponsoring this legislation in the 100th Congress. While I have always supported the concept of this legislation, I believe we must also ensure that we don't place undue burdens on those attempting to comply.

Last year's bill stated that businesses needed to accommodate persons with handicaps unless doing so would threaten bankruptcy. If I were a business person, that would have caught my eye, too. This year's language is much less stringent. It provides that businesses must only undertake changes that are "readily achievable" and do not impose an "undue burden."

According to the committee report in the bill, "readily achievable" means something that is "easily accomplishable and able to be carried out without much difficulty or expense." Factors such as the number of employees, the type of facility, the size of its budget, the type of operation, and the nature and cost of the action needed must be taken into account when determining whether a business meets the test. "Readily achievable" tasks may include adding grab bars, lowering telephones, or ramping a few steps.

While I do not believe that these requirements will place excessive burdens on small businesses, we haven't yet seen how the bureaucracy and the courts will interpret them. It was for this reason that I supported Senator HATCH's tax credit amendment. I see real benefits in not just penalizing those who do not comply with this legislation, but rewarding those who do. The amendment would have provided a small tax credit to help very small businesses comply with the act.

The Hatch amendment would have done nothing to limit the scope of protection for people with disabilities. Instead, it would have provided incentives for small businesses to make their establishments accessible. I am hopeful that the Senate Finance Committee will consider such a proposal during the upcoming debate on budget reconciliation.

Concerning transportation, Mr. President, some intercity bus manufacturers and operators have been concerned about the bill's impact on them. However, the bill has now been altered in an attempt to meet their concerns. The committee version required that within 5 years, 6 years for smaller carriers, every bus purchased by an intercity bus carrier be wheelchair lift equipped. The amendment provides these carriers another year to comply.

Furthermore, a study that was required during the interim period will now also involve input from private operators of over-the-road buses, technical experts, and individuals with disabilities.

The potential impact of a bus transportation service cutback in rural areas like North Dakota should not be minimized. We must ensure that bus transportation is accessible for the rural and urban disabled alike. Nearly 10 percent of North Dakotans are disabled. About 27 percent of all disabled Americans live in areas classified as rural. There are no Federal requirements that intercity bus carriers not discriminate against the disabled. This bill will change that, but must do so in a responsible way. We must strike a balance between the necesssity of preventing unfair burdens on bus carriers and the need to make transportation accessible to the disabled and bring them fully into the mainstream.

Mr. President, this bill provides Americans with disabilities equal access to opportunities and services enjoyed by all Americans. Ensuring the civil rights of these people will help pave the way to their self-sufficiency. And in the process, the Federal Government could save billions of dollars currently spent on dependent care for people who have historically been shut out.

Poverty among Americans with disabilities is staggering. Fifty percent of Americans with disabilities report household incomes of $15,000 or less; 32 percent of people with disabilities who are more than 65 years old report incomes of $7,500 or less. Two-thirds of all Americans with disabilities between 16 and 64 are not working, yet two-thirds of these people say they want to work. By breaking down barriers, we will help insure that many of these people at least have a fair opportunity to become active, contributing members of our society.

Mr. President, I am pleased to be able to support this landmark legislation.

Mr. HEINZ. Mr. President, I rise to commend President Bush and the bipartisan leadership in Congress for crafting the monumental work that is before us today—S. 933, the Americans With Disabilities Act of 1989. I am proud to be an original cosponsor of this legislation.

Our goal in this landmark legislation is to provide a national mandate to end discrimination against the disabled and to bring persons with disabilities into the mainstream of American life. For too long, talented and potentially productive disabled Americans have been segregated to the sidelines unable to cross a myriad of institutional, structural, and psychological barriers. We want to ensure that the 43 million Americans with disabilities have the same opportunities for a productive life that their fellow citizens enjoy.

In my home State of Pennsylvania, over 100,000 disabled individuals receive Federal aid. Like the vast majority of other disabled Americans who are outside the labor force, these individuals don't look to insurance programs and governmental benefits for a free handout. According to a recent Lou Harris poll, 82 percent of people with disabilities said they would give up their Government benefits for a full-time job.

Every day, the disabled face, and overcome, mountains of obstacles that we in the able-bodied community never notice: A street corner that doesn't have a cutaway curb allowing access to stores and merchants; entrances to buildings too narrow to allow passage of a wheelchair-bound individual; employers who see a disability and close their eyes to ability, and much more.

Nevertheless, hundreds of thousands of disabled Americans beat the odds and carry on their lives with extraordinary courage. Just 2 months ago, Mark Wellman, a paraplegic, climbed 3,600 feet in 7 days to reach the top of El Capitan. At a White House ceremony where Wellman presented the flag he carried up the granite monolith, President Bush correctly observed that his courage and determination, and skill had captured the imagination of the whole country.

Mark Wellman's feat is symbolic of the aspirations and talents of all disabled Americans. Mark Wellman is not alone. There are millions of disabled Americans who want and deserve full participation in American life and yearn for the opportunities to be productive.

With the passage of this legislation, we can pave the way for these citizens to overcome the barriers they now face and begin the journey to economic productivity and self-independence.

I urge my colleagues to support this necessary and overdue guarantee of simple fairness and justice.

Mr. HATCH. Mr. President, before the Senate votes on final passage, I want to thank the following staff for their hard work on S. 933. For Senator HAWKINS: Bobby Silverstein, Katie

Bey, Terry Muilenberg; for Senator KENNEDY: Carolyn Osolinik and Michael Iskowitz; for Senator DURENBERGER: Carolyn Boos; for Senator MCCAIN: Mark Buse; and Steve Settle, Chris Lord, Millard Wyatt, Evan Liddiard, Kris Iverson and Mark Disler of my staff.

Their dedication to this bill was important to its success, and of course, I thank all of the Senators for their diligent efforts.

● Mr. MURKOWSKI. Mr. President, I am happy to support and to cosponsor the American's With Disabilities Act of 1989 [ADA]. As the ranking minority member of the Committee on Veterans' Affairs, I applaud the administration and Senators DOLE, KENNEDY, HARKIN, and HATCH for the hard work in reaching an agreement on this important legislation.

I have received many letters of support from various veterans' service organizations for S. 933 and I believe that it is vital to ensure equal rights to disabled veterans who served their country in such an extraordinary manner. I am delighted to see that small businesses are in some ways protected in this bill while still eliminating discriminatory actions against individuals with disabilities.

ADA is a timely and compassionate bill that allows those 43 million disabled Americans to work, live, enjoy life, and contribute to their communities. These are truly the greatest rights any American should have. I wholeheartedly support S. 933.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. 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 clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Texas [Mr. BENTSEN], the Senator from Louisiana [Mr. BREAUX], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. INOUYE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maryland [Ms. MIKULSKI], the Senator from Arkansas [Mr. PRYOR], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

I further announce that, if present and voting, the Senator from Maryland [Ms. MIKULSKI] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Delaware [Mr. ROTH], and the Senator from New Hampshire [Mr. RUDMAN] are necessarily absent.

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

The result was announced—yeas 76, nays 8, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—76

Biden	Fowler	Matsunaga
Bingaman	Gore	McCain
Boren	Gorton	McConnell
Boschwitz	Graham	Mitchell
Bradley	Gramm	Moynihan
Bryan	Grassley	Nickles
Bumpers	Harkin	Nunn
Burdick	Hatch	Packwood
Byrd	Hatfield	Pell
Chafee	Heflin	Pressler
Coats	Heinz	Reid
Cochran	Hollings	Riegle
Cohen	Jeffords	Robb
Conrad	Johnston	Rockefeller
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Shelby
Danforth	Kennedy	Simon
Daschle	Kerrey	Simpson
DeConcini	Kerry	Specter
Dixon	Kohl	Stevens
Dodd	Lautenberg	Thurmond
Dole	Leahy	Warner
Domenici	Levin	Wilson
Durenberger	Lieberman	Wirth
Exon	Lugar	
Ford	Mack	

NAYS—8

Armstrong	Helms	Symms
Bond	Humphrey	Wallop
Garn	McClure	

NOT VOTING—16

Adams	Inouye	Roth
Baucus	Lott	Rudman
Bentsen	Metzenbaum	Sanford
Breaux	Mikulski	Sasser
Burns	Murkowski	
Glenn	Pryor	

So the bill (S. 933), as amended, was passed, as follows:

[NOTE.—The text of S. 933 as passed by the Senate will appear in a subsequent edition of the RECORD.]

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

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein and that the distinguished Senator from Hawaii, Senator MATSUNAGA, be recognized for 5 minutes, that upon the completion of his remarks the Senate return to legislative business to complete the wrapup and concluding statements of the bill just passed and that Senator MATSUNAGA's remarks appear in the RECORD at an appropriate place.

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

AN OCTOGENARIAN FUTURIST

Mr. MATSUNAGA. Mr. President, I rise today to salute an octogenarian futurist whose intellect focuses on the next two centuries while his career as a Hawaiian journalist and broadcaster spans more than six decades. Kiyoshi Okubo of Hilo foresees the fading of ethnic and national distinctions by the 21st century; his vantage point is that of a scholar of ethnic cultures and languages who today continues to publish a Japanese newspaper on the Aloha State's "Big Island" of Hawaii at an age when his contemporaries are content to rock on lanais.

Last May, Okubo, who is 83, was the lone American to be honored by Emperor Akihito among those selected for recognition with the Order of the Rising Sun. He was accorded this honor for his many years of advancing cultural and scientific exchange between Japan and Hawaii, including a joint United States-Japan study to develop a tsunami (tidal wave) barrier for Hilo Bay and contributions from each of Japan's 17 prefectures for Hilo's Queen Liliuokalani Park. He is said to be nearly as conversant in Hawaiian as he is in English and he still broadcasts weekly on Sunday morning radio, publishes a twice-monthly newspaper, and operates a cultural museum on Japanese immigration to Hawaii.

For all his activity, however, Okubo is best known as a "dreamer," one who envisions an era of "The Pacific Man," the evolutionary product of trans-Pacific cultural exchange. As one who shares his dream, Mr. President, I was most interested in a recent newspaper article on Kiyoshi Okubo which appeared in the Honolulu Sunday Star-Bulletin & Advertiser written by Hugh Clark. Because it should be equally interesting to my colleagues and others, I ask unanimous consent that it be printed in the RECORD.

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

[From the Honolulu Sunday Star-Bulletin & Advertiser, July 23, 1989]

HONORS POUR IN FOR HILO'S RENAISSANCE MAN

(By Hugh Clark)

HILO.—Kiyoshi Okubo is what those in his homeland call a living treasure.

The 83-year-old pioneer Hilo newspaper publisher and broadcaster is in his 63rd year of work in Hawaii.

On the one hand, he publishes his twice-monthly Hilo Times—a former weekly Japanese language paper—with a pre-World War II press he brought from Korea.

The press is such an anachronism that a National Geographic researcher told Okubo recently only two remain on Earth. The other is somewhere in mainland China.

On the other hand, Okubo talks about a world in the next two centuries without Japanese, Hawaiians or haoles. Ethnic and national distinctions will fade in a pending era he calls "The Pacific Man."

Hawaii's melting pot—inter-racial marriages, mixed foods and cross-cultural borrowing—is but a beginning of that process, he says.

Okubo also is an author, radio announcer and teacher, but most of all a dreamer.

Walt Southward, who has been in news or public relations work on the Big Island for more than three decades, described Okubo at a recent testimonial as Hilo's original renaissance man.

Much of Okubo's effort has not been for profit, including such cross-cultural ventures as bringing Japanese here in programs ranging from international food shows to teaching English to Tokyo school girls.

Most of it went largely unrecognized until recent months.

Okubo was honored by Emperor Akihito in May when he was the only American in a group of Japanese and other foreigners who received Orders of the Rising Sun.

The Big Island Press Club last weekend sponsored a testimonial luncheon that drew words of praise from the governor, Legislature and Hawaii County Council. Mayor Bernard Akana declared July 15 as Kiyoshi Okubo Day.

Okubo landed in Honolulu in 1924—the year following the great Tokyo earthquake. He studied for a time at Iolani before launching his career as a journalist with a Japanese language daily.

He next went to Kona as a combination language teacher and journalist for the now-defunct Kona Echo, a Japanese newspaper published by a physician.

Following a brief return to Honolulu, Okubo launched his Hilo career and has remained here ever since. He founded and continues to run a little-known museum collecting details of Japanese immigrants—ranging from the first graveyard on the Big Island to lists of immigrants and their home prefectures.

Okubo's contributions have not been fully cataloged, according to business leader Tom Okuyama. For instance, it was Okubo's idea in 1971 that launched a premier collection of taro or stone lanterns located in Queen Liliuokalani Park. They are gifts to the Big Island from each of the 17 prefectures, Okuyama said.

Okubo also was responsible for a joint American-Japanese study to develop a tsunami barrier for Hilo Bay.

He also has served as an unpaid adviser and outspoken critic to several mayors, and played a background role in politics for decades.

Okubo still uses beautifully untarnished hand-set zinc type to produce his newspaper, which he predicts soon "will go make"—die out—because so few Big Islanders still read or write Japanese.

Okubo still does his early-morning Sunday show on KIPA Radio in Hilo, playing old-time Japanese music for his listeners from a hand-cranked phonograph.

Okubo is a sort of belated discovery for Big Islanders.

While the press club was honoring its quiet member of 22 years, the Japanese Community Association announced it will give him a similar tribute Aug. 13 at Hilo Daijingu Hall. The association, with 700 members, is believed to the island's largest single organization.

Okubo beams at the kind words and appreciation, but declines to formally respond beyond a simple "mahalo."

He tends to use Hawaiian phrases and words almost as much as the English he has acquired over the years.

After all, he recalls coming to Hilo when there were two Japanese-language dailies and a strong Hawaiian-language weekly. The only English-language newspapers then were weeklies.

JUSTICE DELAYED

Mr. MATSUNAGA. Mr. President, the judicial axiom "justice delayed is justice denied" acquires a grim poignancy when applied to the appropriations action of this Congress regarding reparations payments to Japanese-Americans unjustly interned in World War II. Although the 100th Congress authorized a maximum of $500 million a fiscal year in reparation payments of $20,000 each to the estimated 55 to 60,000 survivors of the internment still living when the legislation was enacted, the House Appropriations Committee has voted a mere $50 million to fulfill the commitment in the coming fiscal year.

As my Hawaii colleague in the House, Congressman DANIEL AKAKA, pointed out the sum is barely enough to pay former internees who are now over 85 years of age, or only 2,500 of the 60,000 survivors. A recent editorial in the Honolulu Star-Bulletin observed: "Even in a period of budgetary restraint, Congress can do better than this to make amends for a terrible mistake." I heartily agree, Mr. President.

It may interest my colleagues to learn that Canadians of Japanese ancestry who were similarly incarcerated in relocation camps during World War II have already started receiving compensatory payments under comparable legislation enacted over a month after President Reagan signed the Civil Liberties Act of 1988, wherein such reparations were authorized.

The Canadian law, enacted last September, provides for compensatory payments of $21,000 to each of about 14,000 surviving former Japanese Canadian internees. In addition, Canada will pay $12 million to the Japanese Canadian community through the National Association of Japanese Canadians [NAJC] for education, social and cultural programs; $24 million for establishment of a Canadian Race Relations Foundation, and up to $3 million to the NAJC for the administration of the Canadian redress program. Finally, the new Canadian law acknowledges the injustices inflicted on Canadians of Japanese ancestry during World War II and extends to them an official national apology.

Members of the NAJC recently visited the Washington, DC chapter of the Japanese American Citizens League [JACL]. As reported in that organization's newsletter, DC Notes, the Japanese Canadians gave credit to the United States for initiating an effort to compensate citizens of Japanese ancestry who were interned during World War II and found it ironic that they have begun to receive compensatory payments while Americans of Japanese ancestry are still awaiting compensation.

To date, approximately 6,200 Japanese Canadians have received the $21,000 payments. Another 2,000 checks are in the final stages of processing and will be delivered in the very near future. The NAJC reported that when payments began, they were delivered by courier in a tube which contained both a check and an official apology written in English, French and Japanese. With the thought that my colleagues will find it of interest, I ask unanimous consent that a copy of Canada's apology to its citizens of Japanese ancestry be printed in the CONGRESSIONAL RECORD following my remarks. I also ask that the Star-Bulletin editorial also be printed as well.

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

(See exhibit 1.)

Mr. MATSUNAGA. Finally, Mr. President, in closing, I quote the words of Canadian author Joy Kogawa, from her book "Obasan." In explaining why her beloved Aunt Emily and other Japanese Canadians fought for acknowledgement of the injustice done to them during World War II, she said:

> When war struck this country, when neither pride nor belligerence nor grief had availed us anything, when we were uprooted, and scattered to the four winds, I clung desperately to these immortal lines: "This is my own, my native land."
>
> Later still, after our former homes had been sold over our vigorous protests, after having been re-registered, finger-printed, card-indexed, roped and restricted, I cry out the question: "Is this my own, my native land?"
>
> The answer cannot be changed. Yes, it is. For better or worse, I am Canadian.

Mr. President, there still live some 60,000 of our own citizens of Japanese ancestry who cried out 47 years ago "I am American" with the same hope and anguish. Of these, 16,000 are over the age of 70. Indeed, one former internee located by the U.S. Department of

Justice is 106 years of age. Since the enactment of the Civil Liberties Act nearly a year ago, they have been waiting patiently to receive the token compensation our Government approved. It is my fervent hope that at least these oldest former internees will not have to wait much longer. I urge that adequate funding be appropriated in fiscal year 1990 so that payments to these oldest former internees can begin this year.

EXHIBIT 1

ACKNOWLEDGEMENT

As a people, Canadians commit themselves to the creation of a society that ensures equality and justice for all, regardless of race or ethnic origin.

During and after World War II, Canadians of Japanese ancestry, the majority of whom were citizens, suffered unprecedented actions taken by the Government of Canada against their community.

Despite perceived military necessities at the time, the forced removal and internment of Japanese Canadians during World War II and their deportation and expulsion following the war, was unjust. In retrospect, government policies of disenfranchisement, detention, confiscation and sale of private and community property, expulsion, deportation and restriction of movement, which continued after the war, were influenced by discriminatory attitudes. Japanese Canadians who were interned had their property liquidated and the proceeds of sale were used to pay for their own internment.

The acknowledgement of these injustices serves notice to all Canadians that the excesses of the past are condemned and that the principles of justice and equality in Canada are reaffirmed.

Therefore, the Government of Canada, on behalf of all Canadians, does hereby:

(1) acknowledge that the treatment of Japanese Canadians during and after World War II was unjust and violated principles of human rights as they are understood today;

(2) pledge to ensure, to the full extent that its powers allow, that such events will not happen again; and

(3) recognize, with great respect, the fortitude and determination of Japanese Canadians who, despite great stress and hardship, retain their commitment and loyalty to Canada and contribute so richly to the development of the Canadian nation.

CONGRESS STINGY ON REPARATIONS

Congress voted to pay reparations to the Japanese-Americans who were interned unjustly in World War II but it's being stingy about coming across with the money. The House Appropriations Committee has voted $50 million for the reparations, but that is clearly inadequate.

That sum would cover the payment of $20,000 to only 2,500 beneficiaries. There are about 55,000 people eligible for payments.

Hawaii Rep. Daniel Akaka notes that the money is barely enough to pay former internees who are now over age 85.

The law also requires that the payment be accompanied by a written apology by the president, which to some is more important than the money.

Now that the reparations program is law, it would be tragic for former internees to go to their graves before the money reaches them.

Even in a period of budgetary restraint, Congress can do better than this to make amends for a terrible mistake.

CORCORAN OPENS EXHIBIT OF JAPANESE-AMERICAN PHOTOGRAPHY BETWEEN TWO WARS

Mr. MATSUNAGA. Mr. President, I believe that my colleagues will be interested to learn that the Corcoran Gallery of Art recently opened an exhibit of 90 black-and-white photographs taken by gifted Japanese-American artists who lived and worked on the west coast in the 1920's and 1930's. The photographs will be on display until October 1, 1989.

Lost for nearly 40 years, these works of art were rediscovered in the late 1970's by the curator of the Los Angeles Valley College Art Gallery, who was looking for ideas for an exhibit. They represent the work of 30 artists, and they came to the Corcoran with an interesting story, which was recounted in the Washington Post of July 19, 1989.

All 30 photographers represented in the Corcoran exhibit were well known in the 1920's and 1930's and their works were widely exhibited and published in international photography journals. Most of them were native-born American citizens and the others were permanent residents of the United States. Nonetheless, despite the citizenship status and despite their recognized talent, they were all among the 120,000 Japanese-Americans who were removed from their west coast homes in 1942 and incarcerated in so-called relocation camps for nearly 4 years. Stripped of their cameras, their creative lives were snuffed out. Permitted to take to camp what they could carry, their invaluable collections of photographs were lost or destroyed during the war. Only a fraction have been found.

Mr. President, I hope that my colleagues will have a chance to see this important Corcoran exhibit, for it poignantly demonstrates that our mistaken World War II policy of internment not only hurt the Japanese-American community—the United States as a whole suffered an irreparable cultural loss.

Only 2 of the 30 photographers are alive today. Now aged 94 and 91, they are among some 60,000 Americans of Japanese ancestry who are eligible for benefits under the Civil Liberties Act of 1988. As the Post points out, however, Congress has not yet appropriated a penny for the token compensatory payments. The former internees are dying at the rate of about 2,000 per month. Some 16,000 are now over 70 years of age, with the apparent oldest surviving internee being a 106-year-old resident of Seattle, WA. The new law mandates that compensatory payments be made to these oldest surviving internees first. A significant appropriation is needed if these eldest surviving internees are to be paid in 1990—more than the $20 million recommended by the administration.

Mr. President, I ask unanimous consent that the Washington Post article be printed in the RECORD following my remarks, and I further urge my colleagues to support an adequate fiscal year 1990 appropriation for the Civl Liberties Act.

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

SNAPSHOTS FROM A BROKEN LENS

(By Jo Ann Lewis)

A seemingly less controversial, more soft-spoken show than "Japanese Photography in America 1920-1930" could hardly have been found to fill the galleries at the Corcoran, where the canceled Robert Mapplethorpe photo show was to have hung this month.

Ironically, this new show also is about freedom lost and the devastating results. Corcoran Director Christina Orr-Cahall, who doubtless chose it as an easy, last-minute replacement, has inadvertently put the museum in the middle of another debate—this one about the U.S. government's payment of reparations to the Japanese American internees of World War II.

Organized by the Japanese American Cultural and Community Center in Los Angeles, these 90 black-and-white images bring to light the work of 20 West Coast Japanese American photographers, mostly gifted amateurs now all but forgotten, who lived and worked at various jobs and professions in Los Angeles, San Francisco and Seattle between the two world wars. Before they were placed in the camps and their creative lives were snuffed out, their works were widely exhibited in annual salons and published in international photography journals.

Though half were American citizens when the Japanese attacked Pearl Harbor, nearly all were herded off to inland relocation camps and kept in confinement there—stripped of property, possessions and cameras (which were illegal for people of Japanese extraction)—until the war ended.

Few resurfaced after the war; most of their photographs were abandoned, lost or destroyed in the chaos of what is still politely called the "relocation."

The rediscovery of these photographers came accidentally in the late '70s, when curator Dennis Reed, director of the art gallery at Los Angeles Valley College, kept discovering striking—and, in his view, occasionally "stunning"—photographs by unknown Japanese American photographers as he looked through old international photography journals in search of an idea for a show.

One photograph led to another, and before long Reed had his museum-course students manning the phones at night, calling everyone in the Los Angeles, San Francisco and Seattle phone books by the name of Uyeda or Miyataki, Sata or Koike, in hopes of finding either the photographers or their kin and the photographs that might have survived.

He eventually unearthed the names of 180 photographers, most of them members of proliferating West Coast Japanese camera clubs during the '20s and '30s—segregated because Japanese were not permitted to join the Caucasian clubs at the time. Reed has

been piecing together their lives and work ever since.

A group shot of 16 smiling members of the Japanese Camera Pictorialists of California is included in the catalogue, and, for a moment, it brings these aspiring artists vividly to life. Taken during a Sunday outing at Redondo Beach in 1929 by colleague Kentaro Nakamura, it also includes their boxy view cameras, later confiscated, all proudly lined up at their feet.

That photograph is all we know of most of these men, though it is not all we know about Nakamura, the man who took it, and whose silvery, diagonally composed "Evening Wave" is one of the show's highlights. Also pictured, top row, middle, is Kango Takamura (born in 1895), who still lives in California. He is represented here with one of the few figure shots in the show: a tender 1930 wedding portrait of his bride, Setsu, who died last month.

Many images reflect the dominant soft-focus, romantic "Pictorialist" style, which began in the 1890s with Alfred Stieglitz and others, who had originally set out to prove photography was art by emulating painterly subject matter and styles. Here, accurately reflecting the state of popular photography at the time, we see a surfeit of these toned bromides, and fuzzy, nostalgic views of ships, harbors, bridges and pastoral landscapes with sheep. There are technically strong examples of the genre—some look almost like etchings—but innovators like Stieglitz, Steichen and Kasebier these Pictorialists are not.

But there are some surprisingly strong and adventurous modernists here, attesting to the wide reach of international photographic publications and exhibitions at the time. Clear influences run the gamut from the biomorphic, nature-worshipping abstractions of California's Edward Weston (there's even one still-life with peppers on view, which was a Weston signature) to the linear geometric abstractions of the German Bauhaus photographers and Russian Avant-Garde.

Of the show's three galleries, the first is strongest in this respect, and includes what is surely one of the most alluring and inventive images in the show—"The Books," by K. Asaishi, circa 1926. A pale, poetic, cubistic photograph, it is, sadly, his only known print. It was swapped, saved and loaned by fellow photographer Takamura.

Asaishi, like several other young photographers who had no family in the United States, returned to Japan during the harsh days of the Great Depression.

European modernism seems to have dominated the approach of the avantgardists here, including the bold abstractions with light by Los Angeles portrait photographer Toyo Miyatake (who, while interned, constructed his own forbidden camera).

But a startling kinship to the art and photography of New York in the '30s turns up in another striking image—Hisao E. Kimura's 1929 view of pedestrians casting long shadows on the broad sidewalk of a city street. As American as a Martin Lewis print of New York, this photograph like many others also appropriates the diagonal composition and aerial, horizonless point of view of traditional Japanese art. The Oriental attitude toward nature, from the beauty of the single twig to a graceful roll of a crashing wave, also persists throughout the show. One thinks that perhaps influences were being generated, as well as received, by some of these photographers.

There is much earnest, able talent here, along with a few outstanding photographers who deserve to be fed into the mainstream, and doubtless will be, especially by dealers. The show, in this respect, is an important piece of original historical documentation, as well as a slice through time, offering a look at the various international influences surging through the dynamic world of photography in the '20s and '30s. The more you know about photographic history, the more you'll see.

This show, in fact, was stored in the Corcoran display there is October. So perhaps it is just luck—good luck, for a change—that it has turned up now to prod the collective memory, just as the appropriations hearings on the $1.25 billion promised in authorization bills last August to surviving Japanese American internees comes before the Senate.

The question is, how much will actually be appropriated? The Bush budget calls for $20 million to be paid this year—a sum approved this week by the House appropriations subcommittee, and now about to go before the Senate. It is a pittance given the promised $1.25 billion, but the thrust is to get $20,000 to each of the most elderly internees before they die. In another irony, $20,000 is precisely the amount the National Endowment for the Arts gave to fund the present show.

Two of these photographers survive: Takamura, who is 94, and Hawaii-born Hiromu Kira, one of the best known, who is 91. Perhaps Congress could start with them.

Or perhaps both artists would do better just to apply for a grant from the NEA.

"Japanese-American Photographers 1920-30" will continue through Oct. 1.

SENATOR NUNN'S SPEECH BEFORE THE IISS

Mr. WARNER. Mr. President, I rise to congratulate my distinguished colleague, Senator SAM NUNN, the chairman of the Armed Services Committee. Senator NUNN has recently returned from London where he delivered an important speech to the International Institute for Strategic Studies [IISS]. The invitation to speak before this distinguished institute is a highly prestigious honor. Mr. NUNN was invited to deliver the Alastair Buchan Memorial lecture for 1989, an honor which has been extended to only a few Americans. Previous American honorees were Henry Kissinger and Paul Nitze.

This international recognition reflects the high esteem and respect that the IISS and others have for the chairman's impressive and credible comprehension of international security issues. His efforts, past and present, have contributed greatly to United States and Western security.

His speech, which focused on the challenges to NATO in the 1990's, offered many pragmatic insights and suggestions that I strongly concur with and believe are important issues that should be considered by this body during its deliberations of national security programs, now and in the future. While major changes are promised for the Soviet people, which offer the prospect of more peaceful relations with the West, we must remain for the present cautious in our negotiations and current relations with the Soviets. This is the same message President Bush gives to the world. In his speech, the Senator said:

> Thus far, President Gorbachev has performed political miracles and has raised hopes for a more peaceful relationship between the East and West. We should not, however, count on calm seas and smooth sailing * * * Caution and flexibility, together with some thoughtful contingency planning, are in order.

In a colorful way, the Senator described how NATO's policy toward the Soviet Union must distinguish between those areas where we move ahead and those where we stand firm. He outlined many of these policy areas ranging from technology transfer, trade, emigration, to arms control and national security planning.

Senator NUNN's views on Conventional Forces in Europe negotiations and START may be, in some case, somewhat controversial. But there will occur an extensive international debate before the parties reach a timely concurrence of views between our allies first, and then between the Western and Eastern participants. While I agreed, in large part, with the points made by the chairman in his speech, I do, of course, have reservations about some of them. But I recommend that all my colleagues take the opportunity to study his speech. He is one of our most respected colleagues on national security issues. Mr. President, I ask unanimous consent that Senator NUNN's speech be printed in the RECORD.

Again, I congratulate Senator NUNN on his successful appearance before the IISS.

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

CHALLENGES TO NATO IN THE 1990'S: A TIME FOR RESOLVE AND VISION

(By Senator Sam Nunn)

Thank you, Sir Michael. Members of the Council, members of the Institute, and distinguished guests, I am deeply honored to be asked to deliver the Alastair Buchan Memorial Lecture for 1989. It is a privilege to follow in the footsteps of the distinguished statesmen and strategic thinkers who have delivered this address since its inception in 1976.

This annual lecture is a fitting testament to the man who helped create the IISS and served as its first Director. Alastair Buchan was a leader of resolve and vision. "Somewhere between the hawks and the doves," wrote one biographer, "he hoped to find a position that would keep the peace." The strong reputation this institute enjoys for precise, impartial and objective analysis is a tribute to Alastair Buchan's original vision of the IISS and the important role it could play within the international security community.

THE CHANGING EUROPEAN SECURITY ENVIRONMENT

Even for men as far-sighted as Alastair Buchan, the changes we are now witnessing

in the political and security landscape in Europe would have seemed impossible at the time of his death thirteen years ago.

In 1976, who could have imagined that Poland would freely elect a non-communist Catholic Prime Minister or that the leader of the Soviet Union would urge the Polish Communist Party to cooperate with a Solidarity-led coalition in governing the country?

Who could have imagined that Andrey Sakharov would be released from exile in Gorky, be elected a member of the Soviet parliament, and then become co-leader of a parliamentary faction opposed to the official primacy of the Communist Party?

Who could have imagined that the Soviet Union would begin a unilateral withdrawal of six tank divisions from Eastern Europe and would agree in principle in on-going arms control negotiations to reduce Warsaw Pact forces to levels of parity with NATO?

And who in 1976 would have thought that by the end of the 1980's twelve European nations would be on the threshold of realizing the Community's dream of a single market in which the border between France and Germany will be no greater a barrier to economic activity than the border between Georgia and Florida?

If continued, these profound changes will lead to a fundamental restructuring of the European security system. In this new environment, the danger to NATO is not that it will fall apart but that it will be increasingly seen as irrelevant. If NATO is not to become an anachronism, it must demonstrate resolve and vision in serving not only as a force for stability but also as an instrument for change.

The Alliance's first challenge is to develop an appropriate strategy for responding to change in the Soviet Union and Eastern Europe. Neither we—nor probably even President Gorbachev—can predict confidently the future course of reform in the Soviet Union.

We also cannot ignore the fact that Soviet military capabilities remain formidable, and that reductions beyond those announced by President Gorbachev last December are still a matter under negotiation. Equal conventional ceilings are not yet a matter of treaty obligation, let alone treaty implementation.

Moreover, while a return to a more hostile Soviet foreign policy seems unlikely in the near term, one cannot say it is impossible. As the Librarian of Congress, James Billington, has pointed out, there is no more insecure time in the life of an empire than when it is facing the devolution of its power; no more dangerous time in the life of a religion (communism being, after all, a secular religion) than when it has lost its inner faith but retains its outer power.

Thus far, President Gorbachev has performed political miracles and has raised hopes for more peaceful relationship between East and West. We should not, however, count on calm seas and smooth sailing.

In 1904, Lenin wrote a pamphlet about the uneven process of reform in pre-revolutionary Russia which he titled "One Step Forward, Two Steps Back." Whether or not Mr. Gorbachev stays in power, the process of reform in today's Russia will not likely follow an even course. In the most optimistic case I suspect it will be a matter of "two steps forward; one step back." Tianamen Square should remind us that backward steps can turn into a vengeful retreat.

The West cannot be expected to predict the specific circumstances of future reversals in the course of Soviet reform. However, it can anticipate that such backward steps will occur, perhaps with suddenness and violence. As an alliance, we must prepare for such eventualities by beginning now to think through how we will respond. Caution and flexibility, together with some thoughtful contingency planning, are in order.

Caution and flexibility are, however, no substitute for vision. Without a shared appreciation of the opportunities presented by the extraordinary developments in the Soviet Union and Eastern Europe, the Alliance risks an uncoordinated, reactive and ad hoc response that may forfeit unique opportunities for significant advance. Our policy should be to favor those countries that move toward political pluralism, free market economies and respect for human rights.

WESTERN ASSISTANCE TO POLAND AND HUNGARY

In a large sense, the Cold War started because of events in Eastern Europe. Trillions of dollars have been spent on both sides of the Iron Curtain on armaments because of profound differences between communism and our Western values. In the economic, political and ideological sense, communism and central planning have lost, but democracy and the market system have not yet won.

Trends underway in Poland and Hungary and the Soviet Union are still reversible. Pierre Hassner recently said about Poland: "Communism impossible—democracy improbable". The Polish people have now rejected the impossible and they are pursuing the improbable. The bold undertakings in Poland, while heartening, are not irreversible—particularly if the West fails to respond promptly, substantially and constructively.

President Bush's recent visit to Poland and Hungary was a positive step, as was the recent NATO Summit. However, Eastern events have now moved beyond Western plans. We need a higher level of policy coordination among Western nations to be effective. Thus far, the United States has been very generous in offering Poland and Hungary European help. We must all do more.

How do we help? From our experience in the 1970s, we know there is no point in giving large grants and loans to governments that spend large parts of their budgets in subsidizing inefficient and unprofitable industries. Based on several recent Congressional and Parliamentary visits to Poland, it appears that the Solidarity leaders also recognize the Western aid of the past was wasted. They are not asking for a Western hand-out but rather a Western hand. This hand can be extended in many ways.

One would be to establish U.S. branch banks in Poland. The Poles believe these banks would immediately draw deposits of several billion long held U.S. dollars in Poland. They call these "sleeping dollars" because they are now kept in mattresses. This step should be taken as soon as Polish laws permit.

Debt relief is another area where the West can provide immediate and tangible help. Poland and Hungary should move to the top part of the list in terms of a coordinated Western debt relief plan. There are signals from the new Polish government that privatization of industry will be encouraged and Western private investment welcomed. Western companies buying Polish debt and swapping this debt for equity or ownership in Polish industries can relieve debt and also accelerate privatization. This should also be encouraged.

Our most meaningful long-term assistance should be in the form of intellectual capital, Western know-how, management training, economic development, and the free exchange of ideas and people. Educational opportunities in the United States and Western Europe for young Eastern Europeans can be greatly strengthened.

All this suggests Western societies drawing Eastern societies closer, promoting understanding, improving communication, working toward constructive relationships, and assistance conditioned on changing economic structures. This conditional assistance should not be perceived as anti-Soviet, since Gorbachev himself has a stake in pragmatic and successful change.

Most importantly, we must make certain that as Eastern Europe begins to open, Western Europe does not begin to close. The opportunities of access of Eastern goods and people to the West is just as important as Western help to the East. Europe 1992 must not result in an "Economic Curtain" shutting out Eastern Europe—or, for that matter, the United States.

NATO'S POLICY TOWARD THE SOVIET UNION

As for our policy toward the Soviet Union, NATO's strategy must distinguish between those areas where we move ahead and those where we stand firm. We should keep in mind the signals on a traffic light: red, for those Soviet proposals to which we must say "no;" yellow, for those which call for moving slowly with care; and green, for those which we should press forward with vigor.

We should give a red stop light to any reciprocal actions that cannot realistically be reversed by the West as readily as by the Soviet Union. In particular, we should avoid the denuclearization of Europe. The Soviet Union is continuing to modernize its strategic and theater nuclear systems. As far as we can see into the future, I believe nuclear deterrence will remain indispensible to NATO security.

We should give a red light to offering Moscow money or materials which serve merely to defer the hard choices between guns and butter, between muddling through and systemic reform.

We should avoid the transfer of technologies otherwise unavailable to the USSR that could directly enhance Soviet military capabilities that are directed against the West and its allies.

We should give a yellow warning light to Moscow's interest in joining international economic organizations. Soviet participation in these organizations should commence with observer status, *provided* the military sector of the Soviet economy is deemphasized and movement is initiated toward market mechanisms, realistic prices and a rapid privatization. Full Soviet membership should be considered if these domestic trends deepen and become difficult to reverse.

In addition, given the more liberal Soviet emigration practices of recent years, the United States should be prepared to waive the Jackson-Vanik Amendment, which links emigration with most-favored-nation status and government credits. An outright elimination of the amendment would be premature, because the encouraging trends of the past several years have not yet been uniformly applied and firmly institutionalized.

We should give a green light to those measures which might help strengthen the

emerging legislative branch of the Soviet government. Popularly elected Soviet parliamentarians have expressed a keen interest in exercising oversight of the military budget and KGB intelligence activities. They have even refused to confirm party nominees for high government posts. I can personally attest that even U.S. Presidents regard this as the ultimate legislative sacrilege. It is, however, a legislative authority which our Founding Fathers correctly viewed as a crucial limitation on executive power.

We should give a green light to exchange programs that share with Soviet representatives our experience and know-how of management techniques, entrepreneurship and private enterprise. We should also give a green light to intensified collaboration in resolving current regional conflicts as well as in anticipating and averting new regional conflicts. Where the Soviet Union stands ready to strengthen the role of multilateral institutions in dealing with existing regional conflicts and averting future conflicts, we should combine our efforts.

I believe there is a particular value in U.S./Soviet discussions—civilian and military—aimed at anticipating and preventing possible terrorist threats, particularly those involving nuclear, chemical, or biological weapons of mass destruction. Risk reduction steps already taken provide a solid foundation for major new initiatives in this area.

Finally, our traffic light should show a bright green signal for arms reduction agreements that enhance mutual stability and reduce the risk of war. In arms control, our top priorities should be to maintain the momentum toward an early accord on conventional forces in Europe—the so-called CFE talks—and to finish the negotiations on strategic arms reductions, known as START.

Although these negotiations should not be formally linked, they are related and should be pursued in parallel. As Helmut Schmidt, speaking from this same platform, said in his 1977 Alastair Buchan Memorial Lecture:

The more we stabilize strategic nuclear parity between East and West . . . the greater will be the necessity to achieve a conventional equilibrium as well.

MAINTAINING MOMENTUM IN CFE

CFE has shown surprising progress in the six months since negotiations began in Vienna. While the Alliance's target of a completed agreement by next July remains optimistic, there are grounds for believing that a stabilizing agreement can be reached in the early 1990's, provided NATO has a clear vision of its goals and demonstrates resolve in maintaining a credible conventional defense.

There are many ways we can show this resolve: Resolve is shown by the level of sustainability of our conventional forces; Resolve is shown by a willingness to forego redundant national R&D efforts and join together in cooperative programs to develop standardized or interoperable military equipment; Resolve is shown by the level of allied investment in bold and innovative defense technologies; and Resolve is shown by the number of active personnel we keep in uniform until we have reached a mutual agreement on reductions.

In recent months, I have reached disquieting reports that significant unilateral reductions in active duty manpower are being considered by several NATO nations independent of the conventional arms negotiations. It is possible that these cuts exceed the total number of troops the United States would pull out of Europe under a future CFE agreement.

We can predict the effect of such unilateral cuts. NATO's negotiating position in DFE will be eroded. NATO's efforts to improve its conventional defense posture and decreases its reliance on threat of an early use of nuclear weapons to deter aggression will be undercut. And there will be an angry public reaction in the United States which will increase burdensharing tensions.

To forestall these developments, the Senate Armed Services Committee crafted a comprehensive initiative on burdensharing which was incorporated in the defense authorization bill passed by the Senate last month. The initiative addresses the U.S. role in Korea and Japan and includes a provision establishing a ceiling on the percentage of NATO troops in Europe which can be composed of U.S. forces.

The message this amendment is intended to send our allies is clear: if our allies cut their forces, then we will cut ours proportionately. I believe the U.S. Congress is prepared to maintain our current share of NATO's deployed forces in Europe while we are negotiating in CFE—but we are not willing to increase our share of the burden. While we negotiate in hope of reaching East/West common ceilings, NATO must not open holes in our own floor.

In a speech in Brussels two years ago, I proposed that NATO's aims in conventional arms control should be the elimination of the Warsaw Pact's short-warning offensive capability and the establishment of a stable, non-threatening balance of conventional forces. This would require large reductions in tanks, artillery tubes, manuever battalions, and the like, and not just manpower limits. It would also require large, asymmetric and verifiable reductions in the ground forces of both superpowers based on the territory of their respective alliens.

LOOKING BEYOND CFE: SPECIALIZATION THROUGH BUILDDOWN

The current NATO proposal in CFR is largely consistent with this vision and deserves strong support. While striving to complete these negotiations, NATO must think beyond CFR and begin serious consideration of the kind of European political and security system it wants to achieve in the next decade. Once a conventional accord is achieved, the United States will face an overriding political and economic imperative: we *must* reduce the cost of our forward deployments worldwide, including but not limited to cuts in our troops and dependents stationed abroad. This will require changes in the respective roles within NATO of the United States and its allies that go well beyond the reductions in manpower and equipment likely under the first phase of the conventional negotiations.

I believe the time has come to look seriously at the opportunity for specialization through builddown. Each allied country should play the instruments it plays best rather than trying to stage an entire symphony orchestra.

For the United States, increased mission specialization means less emphasis on forward-deployed heavy units. It means more emphasis on rapidly redeployable forces capable of dealing with major regional conflicts or crises outside Europe, many of which may affect Western security interests as well as ours. It also means a U.S. priority on providing major air components if adequate shelters and minimum essential facilities are constructed by NATO. And it clearly means that the United States must continue to underwrite NATO's nuclear deterrence, as we have since NATO was founded.

What does specialization mean for our Canadian and European allies? This question must be carefully considered by the Alliance in the months ahead. In addition, NATO's vision of the future European political and security landscape must address such important questions as:

If we reach equal ceilings with the Warsaw Pact, must NATO's doctrine of forward defense remain synonymous with forward deployments?

Can there be greater reliance on reserves and less emphasis on high states of readiness? What will be the ability of NATO to regenerate forces in a period of crisis, both in terms of reserve mobilization and reinforcement from outside the Atlantic to the Urals region? In Confederate General Nathanial Bedford Forrest's immortal phrase, will we be able to "git thar furstest with the mostest?"

What will be the effect of the consolidation of the European defense industry on trans-Atlantic cooperative efforts? Will "Europe 1992" produce a true "European pillar" or a new "Fortress Europe?"

Finally, as Francois Heisbourg discusses in the current issue of IISS's Survival magazine, what role would British and French nuclear forces play in a strengthened European pillar and how does the planned modernization of those forces relate to progress in CFE and START?

H.L. Menken once said: "For every complicated, complex question there is an answer that is simple or easy, and wrong." The answers to these questions will not be simple or easy; but if NATO's answers are not to be wrong, we must think anew.

FINISHING START

As with the conventional negotiations, finishing the strategic negotiations will require resolve and vision. On the important question of the status of mobile ICBMs under the strategic nuclear negotiations, I believe that there are three things which can be said with near certainty:

First, a START treaty that does not provide for mobility in land-based ICBMs would not likely improve strategic stability and hence would not likely be ratified by the United States Senate;

Second, the current U.S. administration will not likely sign, or the Senate ratify, a START Treaty that allows the Soviet Union to retain mobile ICBMs such as the SS-24 and the SS-25 if there is little or no prospect that the United States will deploy its own mobile ICBMs.

Third, the Midgetman and Rail Garrison MX mobile ICBM programs are currently in a mutual hostage relationship in the United States Congress. United, they stand a chance—a chance—of approval. Divided, they will fall. If we Americans cannot reach a consensus among ourselves, we will not be able to reach an agreement with the Soviets.

In this context, it is clear that the recent votes of the U.S. House of Representatives on the defense authorization bill place the U.S. position in START on the edge of a precipice. Unless we in the Congress can manage to put our ICBM modernization program back on track during the conference on this bill, START faces a very bleak future indeed. Assuming we succeed—and I am cautiously optimistic that we will—I think the United States should propose in START a ban on all mobile multiple warhead ICBMs, such as the Soviet SS-24 and

the Rail Garrison MX. Such a proposal would be enormously helpful in establishing a consensus.

In the long term, a key objective in strategic arms control negotiations should be a complete ban on land-based MIRVed systems, including those in silos and those which are mobile. Our goal should be to prevent any rational military planner from ever concluding during a crisis that by striking first his side's strategic forces could effectively disarm the adversary and thereby reduce any retaliation to acceptable levels. Strategic stability is not enhanced as long as one or two of each side's ICBM warheads can destroy up to ten of its adversary's warheads.

Pursuing a total ban on land-based MIRVs in START would probably overburden and delay these negotiations. Nonetheless, a ban on mobile MIRVed ICBMs would be an important step towards this goal and, based on recent statements by Marshall Akhromeyev, would appear to be negotiable. In addition, START should include counting rules which provide incentives for each side to move away from multiple warhead ICBM forces towards single warhead systems.

A "TWO TIER" APPROACH TO ARMS CONTROL

Looking beyond START, I believe that as long as the window for rapid progress with the Soviet Union in arms control remains open, it is in our interest to move as far and as fast as possible, consistent with the prerequisites of stability and effective verification. This objective could be advanced by establishing an official U.S./Soviet "experts group" which would be asked to develop options which otherwise will most likely have to be reserved for a future phase of CFE, START or some other formal arms control negotiation.

I suggest a "two tier" approach to our arms control talks with the Soviet Union. The first tier is already in place. It includes all the on-going negotiations, such as START, CFE, chemical, etc. The purpose of this tier is to continue to focus on the art of the possible and make important evolutionary advances in arms control. Since this tier would seek to complete agreements which are in most cases already well advanced, it should not be burdened with more ambitious objectives which could delay or even reverse negotiating progress just when the outlines of final agreements are coming into sight.

The second tier would be tasked, in the jargon of design engineers, with "pushing the envelop" in arms control. It would explore possible revolutionary leapfrog advances in arms control but would not attempt to negotiate specific agreements. Should this experts group reach a consensus on a basic conceptual approach on a specific arms control issue, that consensus could then be reviewed by the two sides. If both agree that there is a genuine opportunity for achieving a formal agreement in this area, then—and only then—would this arms control objective be transferred to a formal negotiating forum for the hard work of converting that consensus into the text of an agreement.

I believe the second tier's agenda could conceivably include but not be limited to exploratory discussions on the following topics: One, a ban on *all* land-based multiple warhead missiles. There is no reason why we cannot begin discussing this goal with the Soviets now. Two, a ban or limitations on nuclear sea-launched cruise missiles. Assigning this difficult question to the experts group could make it easier for the Soviets to agree not to hold START hostage to this issue. Three, limitations on anti-satellite systems (ASATs) to include, perhaps, a ban on high-altitude ASATs. In light of the greater U.S. reliance on space for communications and intelligence systems, I believe it is in our interest to explore stabilizing and verifiable limitations on ASATs with the Soviet Union. Four, limitations on nuclear testing beyond those required under the pending Threshold Test Ban and Peaceful Nuclear Explosions treaties. Discussions on such limitations were envisioned in the Reagan-Gorbachev agreement at the 1986 Reykjavik Summit. Five, reductions to equal numbers of short-range nuclear forces (SNF) in Europe to levels below current NATO levels but above zero. NATO's stated reason for not engaging now in such negotiations is the fear that the Soviet Union will insist on a "third zero." Through exploratory discussions along the lines I am suggesting, we can determine whether that concern is well-founded. Such discussions could also defuse inevitable allied discord over the SNF issue should the conventional talks be delayed. Six, the second tier could explore the outlines of deeper cuts in CFE, for example, on the order of 50% of current NATO levels. This very important step would entail profound implications for NATO security and would, of course, require close consultations with our allies in CFE.

The recent developments in the Soviet Union present the West with an unprecedented opportunity for revolutionary advances on arms control. Forward momentum is needed across the board. The Chairman of the U.S. Joint Chiefs of Staff, Admiral Crowe, said recently, "negotiating arms control agreements is like eating horsemeat; the more you chew, the bigger it gets." I would suggest that while we continue to chew the horsemeat in the existing arms control negotiations, we must also be considering a broader menu.

CONCLUSION

On Saturday afternoon I spent several hours at your very impressive Imperial War Museum where I was vividly reminded that 100 million people have died in wars in this century. On Sunday afternoon I stood at Speaker's Corner in Hyde Park and listened to debates between free men and women. This morning I sat in Westminster Hall which has watched over the growth of the English legal system and its profound effect on the spread of freedom under the rule of law. Our responsibility is to preserve, protect and share these freedoms without war.

General George Marshall stated toward the end of his brilliant career: "If mankind does find a solution to world peace, it would be the most revolutionary development in the history of the world." Our task in NATO is clear but awesome. We must reverse the record of history.

EXPLANATION OF NOT VOTING

Mr. ARMSTRONG. Mr. President, earlier this afternoon the Senate voted on an amendment by the Senator from California [Mr. WILSON], the effect of which was to take some money out of congressional mass mailings and put it to the drug abuse program. It so happened that at the time rollcall occurred I was absent from the Hill. In fact, I was on my way downtown for a meeting. My staff thoughtfully tried to call me in the car but, as so often is the case, I was already on the phone. I did not get the call, and did not make the vote.

Just so the record is complete, may I say had I been here I would have voted for the Wilson amendment, and would have done so with great enthusiasm.

I thank the Chair.

LIMITATIONS ON CIVIL CONTEMPT SENTENCES IN THE DISTRICT OF COLUMBIA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 204, S. 1163, the District of Columbia Civil Contempt Imprisonment Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1163) to amend the District of Columbia Code to limit the length of time for which an individual may be incarcerated for civil contempt on a child custody case in the Superior Court of the District of Columbia and to provide for expedited appeal procedures to the District of Columbia Court of Appeals for individuals found in civil contempt in such case.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, 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.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON TERM OF INCARCERATION IMPOSED FOR CONTEMPT IN CHILD CUSTODY CASES.

(a) SUPERIOR COURT.—Section 11-944 of the District of Columbia Code is amended—

(1) by striking "In addition" and inserting "(a) Subject to the limitation described in subsection (b), and in addition"; and

(2) by adding at the end of the following new subsection:

"(b) In any proceeding for custody of a minor child conducted in the Family Division of the Superior Court under section 11-1101(1), no individual may be imprisoned *for civil contempt* for more than 12 months, pursuant to the contempt power described in subsection (a), for **[disobediance]** *disobedience* of an order or for contempt committed in the presence of the court. *This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.*".

(b) DISTRICT OF COLUMBIA COURT OF APPEALS.—Section 11-741 of the District of Columbia Code is amended—

(1) by striking "In addition" and inserting "(a) Subject to the limitation described in subsection (b), and in addition"; and

(2) by adding at the end of the following new subsection:

"(b) In the hearing of an appeal from an order of the Superior Court of the District of Columbia regarding the custody of a minor child, no individual may be imprisoned *for civil contempt* for more than 12 months, pursuant to the contempt power described in subsection (a), for [disobediance] *disobedience* of an order or for contempt committed in the presence of the court. [pursuant to the contempt power described in subsection (a).] *This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.*".

SEC. 2. EXPEDITED APPEALS PROCESS FOR INDIVIDUALS INCARCERATED FOR CONTEMPT IN CHILD CUSTODY CASES.

Section 11-721 of the District of Columbia Code is amended by adding at the end the following new subsection:

"(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this act shall apply with respect to individuals imprisoned for [disobediance] *disobedience* of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals in the course of a case for custody of a minor child on or after January 1, 1987.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to en bloc.

AMENDMENT NO. 725

(Purpose: To make a clarifying amendment)

Mr. MITCHELL. Mr. President, on behalf of Senator SASSER, I send to the desk a technical amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], on behalf of Mr. SASSER, proposes an amendment numbered 725.

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

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

The amendment is as follows:

On page 2, line 15, after "11-1101(1)" insert "and (4)".

Mr. SASSER. Mr. President, the legislation we are considering, S. 1163, would place a limit on the amount of time for which a person may be incarcerated in the District of Columbia for civil contempt.

As I think all of us know, this legislation was prompted by the ongoing case of Dr. Elizabeth Morgan. She has been in prison in the D.C. jail for almost 2 years, without a trial or full benefit of due process. She has been committed there by a D.C. trial judge until she might obey the court's order to disclose the whereabouts of her minor daughter. Dr. Morgan has steadfastly refused to do this because she believes that her ex-husband may molest their daughter if he is allowed visitation rights.

Let me make it absolutely clear that we are not trying to retry the Morgan case. But Dr. Morgan's continued refusal to be coerced by the court raises the central issue, whether a person can be kept in prison indefinitely even after it is clear that the coercive power of civil contempt has failed.

Given this impasse, a legislative solution seems necessary—and it is Congress which must do this—the D.C. Home Rule Act prohibits the D.C. Council from passing legislation concerning the D.C. courts.

On July 21, the Subcommittee on General Services, Federalism, and the District of Columbia, which I chair, held a hearing on S. 1163 and H.R. 2136. We received testimony from our distinguished colleague, Senator HATCH, about his bill, S. 1163.

We heard from an academic authority on the contempt power, Prof. Doug Rendleman of Washington and Lee Law School about the diminishing effect of civil contempt over time and the eventual obligation to afford due process.

We also heard from a distinguished local jurist, the Honorable Peter Messitte from Maryland. He conceded the theoretical need for some limit on civil contempt, while expressing concern that judges not be unduly restrained in their rightful use of contempt sanction.

On July 26, the Governmental Affairs Committee reported out S. 1163, with some modifications. At the hearing, it developed that the original language of S. 1163 might place a cap on imprisonment for all contempt, criminal as well as civil. There was general agreement on the committee that following completion of the maximum 12-month commitment for civil contempt, an individual might continue to be incarcerated. That would be a punitive sanction, however, either for criminal contempt or for some other underlying criminal offense.

The important difference is that one could not be jailed for criminal contempt until after a trial, before a jury if requested, and with full criminal due process. So, we clarified that point and the 12-month cap would be for civil contempt only, and would not affect imprisonment for criminal offenses.

Let me also comment, briefly, on the limitation of the bill to child custody cases. The House-passed bill would apply to all civil contempt cases in the District of Columbia, not just to child custody cases.

In the hearing, Senator HATCH, strongly expressed his preference that any bill be limited to child custody proceedings. It is true, as he noted, that issues of due process and dissipation of coercive power would be present in any long-running civil contempt case. But as he pointed out, we need not legislate with an eye to every hypothetical case.

The issue before us is raised in the context of a child custody case. That is distinguishable from other cases because the welfare of an innocent third party—the child—is always present. That interest is ill served by the idenfinite imprisonment of one parent, and the estrangement from the other.

If and when circumstances arise that suggest we ought to expand the scope of a cap on civil contempt, let us consider them in turn. For the present, the language of S. 1163 strikes the proper balance. It affords a whole year—surely adequate time—for a court to persuade the recalcitrant person, before it becomes obvious that iron bars have lost their persuasive force.

I also want to clarify one question that was raised at the Governmental Affairs Committee markup of this bill. That was whether, under this bill, a person released from imprisonment could be reincarcerated.

I believe it was indicated at the markup that this could indeed be done. With Senator HATCH's concurrence, I offered a technical amendment at the markup which was adopted. That amendment clarifies that S. 1163 only limits civil contempt. The person who was jailed for civil contempt may still be imprisoned for criminal contempt, or any other underlying criminal violation for that matter, so long as they have a trial and full due process.

Now, on the question of whether they can be put right back in jail for civil contempt, after they've completed the 12-month maximum set by this bill, the answer is in the committee report. The committee report states quite clearly that if the alleged civil contempt is for disobeying the same order you were jailed for the first time, then no, you may not be sent back for another 12 months.

The report notes that the terms of the original order might be modified, and then it would be up to the appeals process to determine if a person was disobeying the same order or a new order. But there is no question that if substance of the underlying order hasn't changed, you can't do more than one 12-month term for disobeying it.

I hope that clears up any lingering uncertainty about the issue that was raised at the markup.

The pending amendment is a clarifying amendment which makes a technical correction to S. 1163, which I am offering on behalf of myself and the bill's sponsor, Senator HATCH. The next amendment sunsets the bill after

18 months. I hope the Senate will support both amendments.

Mr. President, I want to thank my colleague from Utah, Senator HATCH, for his initiative and dedication in sponsoring this legislation. He and his staff have been very helpful as we have prepared this legislation for the floor.

I also want to thank Senator GLENN, the chairman of the Governmental Affairs Committee, and Senator ROTH, the ranking member of the committee, as well as Senator HEINZ, the ranking member of my Subcommittee on General Services, Federalism, and the District of Columbia, for their assistance in moving this legislation.

Finally, Mr. President, I want to thank the leadership on both sides of the aisle for scheduling this legislation so promptly.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 725) was agreed to.

AMENDMENT NO. 726

(Purpose: To limit the period of time the amendments made by the bill are effective to 18 months and to authorize a Senate study of civil contempt in child custody cases)

Mr. MITCHELL. Mr. President, on behalf of Senator LEVIN 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 Maine [Mr. MITCHELL] on behalf of Mr. LEVIN proposes an amendment numbered 726.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. 4. APPLICABILITY OF AMENDMENTS AND REPORT.

(a) APPLICABILITY.—The amendments made by this Act shall cease to apply on the date that is 18 months after the date of enactment except that such amendments shall apply to any person incarcerated for civil contempt in a child custody case on or before the date that the amendment ceases to be in effect.

(b) REPORT.—The Senate Committees on Governmental Affairs and the Judiciary shall conduct a study of the current law and procedures with respect to civil contempt in the District of Columbia and the Federal courts, respectively. The committees shall report to the Senate not later than September 1, 1990 the findings of such study and any recommendations for changes to current law.

Mr. LEVIN. Mr. President, I am pleased that we were able to work out with Senator SASSER, the chairman of the General Services, Federalism and District of Columbia Subcommittee, a reasonable sunset provision for this bill to enable the Senate to fully consider the broader issue of civil contempt after further study. The 18-month sunset will serve as an action-enforcing mechanism for us to do that. The bill before the Senate amends the statute governing civil contempt in the District of Columbia only with regard to child custody cases. It may be appropriate, however, to apply similar limitations to all civil contempt proceedings in both the District of Columbia and our Federal court system.

The amendment to which we have agreed would limit the application of S. 1163 to an 18-month period and would require the Senate Judiciary and Governmental Affairs Committees to study the question of civil contempt during that time and report to the Senate on any recommendations for changes to current law by September 1, 1990. We will then have a 6-month period of time in which to consider legislation embodying those recommendations. The amendment makes clear that anyone incarcerated for civil contempt during the 18-month period would be protected by the 12-month cap, even if their incarceration for the 12 months extends beyond the 18-month deadline.

By proceeding in this manner, we will enable ourselves to address what we know now to be a serious problem and at the same time allow us to have the benefit of a comprehensive review of the question to address the broader issues. If unlimited civil contempt is inappropriate for the District of Columbia courts, then it seems logical that it would be inappropriate for our Federal courts. Likewise, if it is appropriate for child custody cases, it may also be appropriate for all types of cases. That is what we need to examine in the next year, and then, based on the recommendations we receive, legislate accordingly.

I only reluctantly voted to report this bill to the full Senate. I was concerned that we didn't devote enough attention and study to this subject. While we have limited this bill's application to only child custody cases, further examination of the issue may have led us to conclude that the 12-month limit should apply in all civil contempt proceedings.

At the same time, Congress has not acted to restrict the length of civil contempt in the Federal court system. We would significantly benefit from the advice and guidance of the Senate Judiciary Committee as to whether a limitation on civil contempt has been considered in that committee and if so, what the committee's conclusions on the subject were.

Mr. President, I appreciate the cooperation and effort of the Senator from Tennessee and my friend from New Hampshire, Senator RUDMAN.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 726) was agreed to.

Mr. BENTSEN. Mr. President, today the Senate considers legislation recently introduced by Senator HATCH, that would amend the District of Columbia Code to limit to 1 year the length of time for which an individual may be incarcerated for contempt of court in a child custody case in the Superior Court of the District of Columbia. Currently, there is no limit. I want to express my support for this legislation, and my hope that we will pass it expeditiously and the House will follow suit.

I realize that the contempt power is an important tool for our courts, one that they need to effectively enforce their orders. Courts need this authority, and it must be maintained. But like any power entrusted to government officials, it can be abused. With this legislation, we can strike a balance, impose some reasonable limits, and prevent abuse of the contempt power. I think that's good policy.

The need for this legislation has been made glaringly apparent by the case of Dr. Elizabeth Morgan. She has resolved to remain behind bars until her daughter, Hilary, is 18, rather than subject here daughter to court-ordered, unsupervised visits with her father, Dr. Erich Foretich. The expert testimony of several physicians have led Dr. Morgan to firmly believe he has sexually abused his 6-year-old daughter during previous such visits. She has been in jail for almost 2 years and has shown no signs of relenting in here decision.

Contempt orders are designed to enforce compliance with a court decree. In cases like this where civil contempt charges are obviously not serving their purpose, the order should not be allowed to linger. This is especially true in child custody disputes where one parent refuses to produce the child as ordered by the court. Incarcerating that parent only deprives that child of both parents and may not result in the appearance of the child. Thus the very issue at stake, the well-being of the child, is harmed by the absence of the loving care provided by parents. Continuing to jail parents in these circumstances is denying them their right to due process and denying their child the right to a normal, happy home life.

Again, I think this legislation strikes a good balance and deserves support. I applaud Senator HATCH for his efforts, and hope that we will pass this bill without delay.

The PRESIDING OFFICER. Are there further amendments?

Mr. MITCHELL. Mr. President, I believe Senators, ARMSTRONG and HATCH have statements to make at this point.

Mr. HATCH. Mr. President, I will not be long.

Earlier this year, I introduced S. 1163, a bill to amend the District of Columbia Code to limit the length of time for which an individual may be incarcerated for civil contempt in a child custody case to 1 year. Currently there is no statutory limit.

I express my gratitude to the senior Senator from Tennessee, Senator JIM SASSER, for his cooperation to the very end in expediting consideration of this legislation; and, of course, to our distinguished majority leader for his kindness in seeing that this came up even though he has qualms about this type of legislation.

As chairman of the Subcommittee on General Services, Federalism and the District of Columbia, Senator SASSER promptly held a hearing on this bill. He then explained and defended it ably and intelligently before the full committee. I thank John Belferman, Bill Hawks, and Rosemary Warren of his staff for their assistance.

I also thank the senior Senator from Ohio, Senator JOHN GLENN, for promptly scheduling this bill for markup in the Committee on Governmental Affairs. I am pleased to report that it passed without dissent.

I also commend Representative FRANK WOLF for his leadership in the House of Representatives. Finally, I wish to thank David Harmer and Darrell Panethiere of my staff, as well as Mark Disler.

Mr. President, this bill is simple, clear, and fair. With the Levin amendment, it now places an 18-month cap on incarcerations for civil contempt in child custody cases in the District of Columbia. Criminal contempt is absolutely unaffected. Civil contempt outside the child custody context is likewise unaffected. This limited application involves minimal disruption of existing law, and it preserves discretion for D.C. judges to address widely disparate civil contemnors in other kinds of cases. We single out custody because the helpless child is the real loser in such cases, deprived indefinitely of both parents. The case for limiting the court's summary contempt power is strongest here.

The purpose of civil contempt is not to punish but to coerce compliance with the court's order. Once it is clear that the civil contempt sanction will not coerce a recalcitrant individual, that sanction must be removed. The failure to do so constitutes a deprivation of liberty or property without due process. That is, the coercive sanction is transmuted into a punitive sanction at the point coercion can no longer fairly be said to be possible and, therefore, the contemnor is entitled to further procedural protections before the sanction can continue.

My bill simply recognizes that after 1 year, continued imprisonment of a protective parent constitutes punishment, not persuasion. If a year in jail hasn't convinced a mother to produce her child, further incarceration offers little hope. Courts need the power to punish for contempt in order to maintain respect and enforce judgments. But this broad power must be exercised with prudence and self-restraint. Like any other governmental power, it can be abused; and abuse of the civil contempt power is especially troublesome, for a civil contemnor may be subject to virtually unlimited fines and indefinite incarceration—all without the fundamental constitutional protections routinely provided to criminal contemnors, such as trial by jury and a hearing before an impartial judge.

The modest reform I propose is an appropriate—indeed, necessary—exercise of congressional power. Under the Home Rule Act, only Congress can regulate the authority of D.C. courts. The D.C. Council is not empowered to consider this matter itself. For that reason D.C. Delegate WALTER FAUNTROY joined many others in cosponsoring H.R. 2136, a similar bill, which passed the House of Representatives on June 28 by the overwhelming margin of 376 to 34.

While the specific need for this bill is illustrated by the plight of Dr. Elizabeth Morgan, and while the bill would free her, it is emphatically not for her benefit alone. This is not a private bill, but a bill of general application. The 12-month cap on civil contempt would apply to all civil contemnors in D.C. child custody cases. I emphasize that I take no position whatsoever on the merits of the underlying case.

On August 21, a panel of the D.C. Court of Appeals voted 2 to 1 to release Dr. Morgan; however, the full court of appeals immediately vacated the judgment preparatory to rehearing the case en banc. Oral arguments are scheduled for September 20, but a ruling could take several months. Of course, no one can predict what their judgment will be, but one can predict that further rehearings and appeals will be sought.

The contempt power is a significant tool for judges seeking to enforce their orders. Many commentators, and some courts, have noted that it is uniquely dangerous, since in civil contempt proceedings a judge has almost unfettered discretion. (See, for example, Martineau, "Contempt of Court: Eliminating the Confusion Between Civil and Criminal Contempt," 50 U. Cin. L. Rev. 677 (1981).

Proceedings for criminal contempt include virtually all the protections extended to other criminal defendants: the contempt must be proven beyond a reasonable doubt; the defendant cannot be required to incriminate himself; double jeopardy is prohibited; the offense is pardonable; the accused is presumed innocent; and so on. (Note, "Modern Discussion of a Venerable Power: Civil Versus Criminal Contempt and its Role in Child Support Enforcement: *Hicks* v. *Feiock*," 22 Creighton L. Rev. 163, 170-71 (1988).) Proceedings for civil contempt, however, lack many of these protections; the standard of proof is lower, for example, and the contemnor has no right to a jury trial. (Id. at 171.)

It is said that the contemnor has the jailhouse keys in his or her own hands (In *re Nevitt*, 117 F. 448, 461 (8th Cir. 1902), cited in In Re Grand Jury Investigation, 600 F.2d 420, 422-23 (3d Cir. 1979).) In other words, the contemnor will be freed as soon as he or she complies with the court's order. However, in one poignant context this truism rings hollow. In a child custody dispute where one parent refuses to produce the child for the other pursuant to a court visitation or custody order, and the court invokes its civil contempt power to incarcerate the recalcitrant parent, the child is deprived of the nurturing, care and love of both parents.

THE MORGAN CASE

There are several examples of this. One of the most publicized examples involves Dr. Elizabeth Morgan. On August 21, 1987, D.C. Superior Court Judge Herbert B. Dixon, Jr., ordered Morgan to deliver her daughter Hilary to her ex-husband, Dr. Eric Foretich, for a 2-week unsupervised visit. Morgan refused, claiming that Foretich had sexually abused Hilary during past visits. During a partly closed hearing on August 26, 1987, Judge Dixon held Morgan in contempt of court for defying the order and imposed a fine of $5,000 of each day she refused to comply. On August 28, 1987, Dr. Morgan began serving an indefinite jail sentence for contempt. She has now spent nearly 2 years in jail and has resolutely asserted that she will stay until Hilary is 18—another 12 years—rather than allow Dr. Foretich access to her. Judge Dixon appears willing to keep Morgan imprisoned until she relents. Hers is a Hobson's choice: either surrender her daughter to someone she believes sexually abused the child or stay in jail indefinitely.

The purpose of civil contempt is not to punish but to coerce compliance with the court's order. Once it is clear that the civil contempt sanction will not coerce a recalcitrant individual, that sanction must be removed. The failure to do so constitutes a deprivation of liberty or property without due process. That is, the coercive sanction is transmuted into a punitive sanction at the point coercion can no longer fairly be said to be possible and; therefore, the contemnor is entitled to further procedural protections before the sanction can continue. (See, for exam-

ple, *Shillitani* v. *United States*, 384 U.S. 364, 371-72 (1966); in re Grand Jury Investigation, 600 F.2d 420, 423-24 (3d Cir. 1979); *Lambert* v. *Montana*, 545 F.2d 87, 89-90 (9th Cir. 1976); Matter of *Thornton*, 560 F. Supp. 183, 184 (1983).)

Dr. Morgan has served longer than many convicted criminals, even though she endangers no one. Each prisoner costs taxpayers tens of thousands of dollars a year. In a jurisdiction perpetually releasing those apprehended on drug busts and sweeps because the jails lack room for them, scarce jail space could be better used. Dr. Morgan's medical practice has disappeared, along with her home and other assets, and she is now the longest residing female prisoner at the DC Detention Center. She has nothing left to lose. She insists that she will never comply with the court order, an assertion to which her adamancy thus far lends credence. There is no indication that continued imprisonment will change her mind. She appears immune to the coercive authority of the court.

After Dr. Morgan has been incarcerated for 16 months, Judge Dixon said, "The coercion has only just begun." (Washington Post, Dec. 16, 1988.) Had she been imprisoned for criminal contempt in Federal court, her initial sentence would have been a definite period, and a jury trial would have been required to incarcerate her for more than 6 months. (See *Cheff* v. *Schnackmenberg*, 384 U.S. 373, 380 (1966). Now, however, she is still serving indefinitely. No one in the District of Columbia has ever served as long a civil contempt charge. During this whole time Hilary has been without benefit of either parent. Surely this result cannot be in the best interest of the child.

On Friday, June 9, 1989, Dr. Morgan's brother, Robert M. Morgan, appeared before Judge Dixon pursuant to subpoena. Mr. Morgan, an assistant U.S. Attorney in the District of Columbia, refused 26 times to comply with the judge's order to disclose Hilary's whereabouts. (Washington Post, June 10, 1989.) Judge Dixon took no action against Mr. Morgan but directed him to report any change of address or employment and noted he could be jailed for contempt. The specter is now raised of the court incarcerating Dr. Morgan's brother for civil contempt as a means of increasing the pressure on Dr. Morgan herself. If this happens, I suppose the judge could feel free to jail Dr. Morgan's relatives seriatim over the next 12 years before determining she will not be coerced. Enough is enough.

I am not taking sides in the Morgan-Foretich dispute. However, a brief comment on Morgan's stated reason for defying the court order may help illustrate the importance of this bill. When Dr. Morgan became concerned about possible sexual abuse, she took Hilary to several different examiners. Most of them diagnosed sexual abuse. One specialist found serious vaginal scarring and other injury indicative of abuse. A psychologist at the Chesapeake Institute saw Hilary for 87 sessions from January 1986 to August 1987. His notes document that in 21 of those visits Hilary described physical or sexual abuse. The psychologist explained that Hilary could not have fabricated the incidents or been coached to recite them because of the explicit detail and authentic emotional state with which she recounted them. (Washingtonian, December 1988.)

In a related case, according to the U.S. Court of Appeals for the Fourth Circuit, Charles I. Shubin, M.D.—a board certified pediatrician, associate professor of pediatrics at the University of Maryland, and cofounder and codirector of the first program in the United States for the training of pediatric health professionals in the diagnosis of child sexual injuries—was prepared to testify that Heather, Foretich's daughter by his second wife (Morgan was his third), exhibited injuries similar to those suffered by Hilary. "[N]umerous other professionals and lay witnesses [were also] prepared to testify that Heather had been sexually abused during visitation periods with [Foretich and his parents]." (*Morgan* v. *Foretich*, 846 F.2d 941, 943-44 (4th Cir. 1988).) Evidence of Heather's injuries were excluded from both the D.C. and Federal court cases. The fourth circuit ruled that the evidence in the Federal case was excluded inappropriately. "The proffered evidence of sexual abuse suffered by Heather * * * was highly relevant," it said. In fact, "this evidence was essential in that it tended to identify the defendants [Foretich and his parents] as the perpetrators of the crime against Hilary since only the defendants had access to both girls. No other piece of evidence could have had a comparable probative impact as to the identity of Hilary's assailants. This evidence also negated several defenses raised by the defendants." (*Morgan* v. *Foretich*, 846 F.2d 941, 944 (4th Cir. 1988).)

Foretich denies ever molesting Hilary. Judge Dixon found the evidence of sexual abuse "in equipoise"—in other words, equally balanced. (Legal Times, Dec. 5, 1988; New York Times, Dec. 15, 1988.) Neither party won suits accusing the other of abuse; the courts cannot determine which party is telling the truth. Under such circumstances, a mother's protectiveness should not be punished forever. My bill makes the 12-month cap on civil contempt in such cases retroactive to January 1, 1987, and thus would free Dr. Morgan.

Elizabeth Morgan is only one of several mothers recently imprisoned under the contempt power for refusing to send their children to court-ordered visitations with ex-husbands accused of sexual abuse. (Note, "Modern Discussion of a Venerable Power: Civil Versus Criminal Contempt and its Role in Child Support Enforcement: *Hicks* v. *Feiock*," 22 Creighton L. Rev. 163, 183 n. 195 (1988).) These cases have prompted reevaluation of the rules surrounding incarceration for contempt. Civil contempt is supposed to be coercive, not punitive; to entice the contemnor to obey the court, not to punish him or her for refusing to do so. Regardless of the merits of the Morgan case—the facts of which are detailed, complex, and partly secret—the present District of Columbia law regarding civil contempt does not take into account unique concerns arising in child custody cases.

THE 12-MONTH CAP

Under rule 42 of the Federal Rules of Criminal Procedure, a criminal contempt may be punished summarily, but it must be prosecuted on notice, with a hearing, and the defendant is entitled to a trial by jury. If the contempt involves disrespect to or criticism of a judge, that judge is disqualified unless the defendant consents. Moreover, if found guilty, the defendant still receives a fixed punishment. (Fed. R. Crim. P. 42.)

Such protections are lacking for most civil contemnors. The Federal recalcitrant witness statute provides that an uncooperative witness before a court or grand jury may be confined until he or she is willing to provide the requested information. The confinement is capped at 18 months. (28 U.S.C.A. 1826.) For ordinary civil contempt, however, there is no cap either in the Federal courts or in those of most States. Notable exceptions are California, with a 12-month limit, and Wisconsin, with a 6-month limit. (For a detailed discussion of the Wisconsin law, see Martineau, "Contempt of Court: Eliminating the Confusion Between Civil and Criminal Contempt," 50 U. Cin. L. Rev. 677 (1981).)

Moreover, if the contemnor has nothing left to lose, or demonstrates an unwillingness ever to be persuaded by the court's action, the imprisonment serves no remedial or potentially coercive purpose. Continued imprisonment under such circumstances is then punitive and is constitutionally impermissible as a deprivation of liberty without due process. (See, for example, *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 442-52 (1911); *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972).)

CONCLUSION

Traditional burdens of proof are unusually difficult to meet in cases of child sexual abuse, especially with respect to very young children. Evidence of abuse insufficient to convince a

court may be sufficient to convince a well-trained physician or therapist. In such a case, when the parent of the abused child refuses to submit to court-ordered demands to allow the alleged abuser access to the child, many courts are sentencing the recalcitrant parent, which is typically the mother, to contempt. Some mothers have gone underground rather than submit to the court, and taken the child with them. Others have gone to prison rather than risk endangering their children.

A 1-year limit on imprisonment for civil contempt in child custody cases before the D.C. Superior Court is a prudent and needed step to protect the interests of the children in these deeply unfortunate cases.

Mr. President, I wish again to thank the distinguished majority leader for calling this up and for doing what he promised me he would do, even though he has qualms about it as a former Federal district judge and a person who is steeped in the law, learned in the law, and one for whom I have an inestimable respect not only because of his position but because of the experience of working with him. I have the same qualms and same concerns.

But there has to be a limit to everything. I think it is time to resolve this problem and this is the only way that I could see to resolve it. I think it is the right thing to do, in spite of the qualms that both the distinguished majority leader and I, and I suppose others, have.

So, with that, I yield the floor.

Mr. ARMSTRONG. Mr. President, on August 21, 1987, D.C. Superior Court Judge Herbert B. Dixon ordered Dr. Elizabeth Morgan to deliver her daughter Hilary to her ex-husband, Dr. Eric Foretich for a 2-week unsupervised visit. Dr. Morgan refused to do so. She claimed that Dr. Foretich had sexually abused Hilary during past visits.

During a partly closed hearing on August 26, 1987, Judge Dixon held Dr. Morgan in contempt of court for defying the order and imposed upon her a fine of $5,000 for each day she refused to comply. On August 28, 1987, more than 2 years ago, Dr. Morgan began serving an indefinite jail sentence for contempt. She has now spent more than 2 years in jail and has resolutely asserted that she will stay until Hilary is legally an adult, another 12 years, rather than allow Dr. Foretich unsupervised access to her daughter Hilary.

Judge Dixon, who made the statement "The coercion has only just begun" after Dr. Morgan had been in jail for 16 months, appears to be quite willing to keep Dr. Morgan imprisoned indefinitely.

I ask you to make the choice. I ask my colleagues to reflect upon the choice that Dr. Morgan was forced to make: Either to give her child to someone who she believed had sexually abused her child, or to stay in jail until the child reached the age of legal majority and was, therefore, beyond the reach of such a court order. I venture to guess that few Senators would wish to be put in such a position.

Mr. President, the purpose of civil contempt is to coerce compliance with a court order. It is not properly used to punish. Once it becomes clear that the court's civil contempt sanction will not coerce a recalcitrant individual, that sanction is inappropriate and should be lifted. Otherwise, it seems to me obvious that we are violating one of the most basic premises of our legal system: That a person should not be deprived of liberty nor punished without due process.

Mr. President, I suppose many Senators know, but perhaps there are some who are not aware of the fact that someone who is held for criminal contempt has far more rights to due process than a person who is held for civil contempt.

Dr. Morgan has been held now for more than 2 years on civil contempt and has none of the rights and protections that someone has if they are brought up on criminal charges.

I appreciate the observations of concern that have been expressed about the seriousness of limiting the powers of the judiciary, and I respect that point of view. But it seems to me that what we have here is a circumstance which is so abusive that it deserves correction, not just the Dr. Morgan case, but the fact that we would have a circumstance in which any person could be held for a prolonged period of time without opportunity for appeal, without due process on civil contempt, when they would not be in that position if the contempt were criminal nature.

Mr. President, anybody who is brought up on charges of criminal contempt would have many more protections than an individual who is jailed indefinitely, as Dr. Morgan has been. Under rule 42 of the Federal Rules of Procedure, a criminal contempt may be punished summarily, but it must be prosecuted on notice with a hearing and the defendant is entitled to a jury trial.

Equally important, Mr. President, if the contempt involved disrespect or criticism of a judge, that judge is disqualified unless the defendant consents.

Moreover, if found guilty, the defendant still receives a term of punishment which is fixed, it is for a definite period of time. All these safeguards of the rights of the accused, or even of the convicted, are in marked contrast to the treatment received by Dr. Elizabeth Morgan.

So we are left here tonight to wonder why those who are held for civil contempt are so vulnerable in a legal system that is scrupulous about protecting the rights of individuals who are accused of a criminal offense.

The Federal recalcitrant witness statute provides that an uncooperative witness before a court or jury may be confined if the witness is willing to provide the requested information. That confinement, however, is limited to no more than 18 months.

For civil contempt there is no cap, and indeed, absent the passage of this statute or something like it, Dr. Morgan or someone else similarly situated might be held in jail not just for 1 year or 18 months or 2 years as Dr. Morgan has, but potentially for a very long period of time.

California is an exception in imposing a 12-month cap. Wisconsin imposes a 6-month time limit for civil contempt. I believe that other States do not have similar limitations. And I hope that the States, and our State legislators, will take notice of the action being taken here tonight by the Senate and consider whether or not in State jurisdictions that similar action would be in order.

This legislation, which is now before us tonight, is occasioned by the tragic case of Dr. Elizabeth Morgan. But I would not want this to pass with somebody thinking this is a private relief bill. It is not anything of the kind. It is a bill of general application, a bill which any of us, I think, could believe in and be in favor of, even if there were not a dramatic and tragic indication like that of Dr. Morgan. But it is certainly unthinkable that we should draft a solution to the overall problem that did not respond to the specific facts of her case.

Mr. President, although the hour is late, to impress upon my colleagues the importance of rectifying her situation, I want to take a moment to explain the background of her situation.

Dr. Morgan's 2-year incarceration began when she was held in contempt and jailed because she refused to comply with a court order dated August 19, 1987, that she send her 5-year-old daughter on a 2-week unsupervised leave with the child's father.

In a letter dated May 27, 1987, Hilary's psychologist sent both Dr. Foretich, her father, and Dr. Morgan her mother, a letter telling them: "Hilary, for the first time, has expressed suicide thoughts." In the same letter Dr. Froning stated, "It is my opinion that Hilary is currently suicidal because she believes she is worthless. This feeling of worthlessness is based on the fact that although she has told many people that she was sexually abused by her father and that she does not want to have visits with her father, she has been continually forced into visits which she considers frightening situations."

On July 16, 1987, Hilary's psychologist, Dr. Mary Froning sent a letter to Dr. Morgan stating: In her role as Hilary's therapist, she must reiterate her position that for Hilary's physical and emotional safety, she should not be continually placed in the jeopardy that these visits place her.

Can anybody wonder, particularly any of us who have daughters, at Dr. Morgan's decision not to send her daughter on such an unsupervised visit?

At this point, Mr. President, I do ask the letters sent by Hilary's psychologist describing her suicidal state and expressing her belief that the child not be sent on unsupervised visits be printed in the RECORD.

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

THE CHESAPEAKE INSTITUTE, INC.,
Kensington, MD, May 27, 1987.

Dr. Eric Foretich,
Great Falls, VA.

DEAR DR. FORETICH: I am writing to you concerning your daughter, Hilary. In recent sessions (5/22/87 and 5/26/87) Hilary for the first time has expressed suicidal thoughts. Because she has considered methods of accomplishing this, I felt it was my duty to warn you of this serious threat to her well-being. I have also so informed her mother, Dr. Morgan, and requested her permission to share this information directly with you.

I know you may find this difficult to believe—I did as well. However, as you may be aware, there have been documented cases of suicide of children as young as Hilary. Therefore, this situation must be taken seriously.

For her safety, I suggest the following in order to ensure that she does not harm herself:

(1) Hilary should be monitored very closely around roads and highways to avoid her darting into the path of an oncoming vehicle.

(2) Hilary should be monitored very closely around bodies of water (I understand you have a pool and lake on or near your property) to avoid drowning.

(3) All sharp knives and razor blades should be secured out of her reach. "Sawing" herself with a knife is one of the ways Hilary has considered.

(4) If there are guns in your house, they should be unloaded and secured out of her reach.

(5) All medicines and drugs should be secured out of her reach.

(6) Hilary should be watched carefully near the tops of stairs. Throwing herself from a high place or down the stairs are other methods she has considered.

It is my opinion that Hilary is currently suicidal because she believes she is worthless. This feeling of worthlessness is based on the fact that although she has told many people that she was sexually abused by her father and that she doesn't want to have visits with her father, she has been continually forced into visits which she considers frightening situations. As you are aware she handles this by dissociating—pushing her memories of the abuse down and concentrating on the positive around her. Thus, she can appear to be happy during the visits with you. However, her defenses are still fragile. Should these defenses collapse under stress, Hilary may act impulsively to harm herself. That is why I am encouraging you and those who take care of her in your absence, to be watchful.

Should you wish to discuss this further, I will be available to speak with you.

Sincerely,

MARY L. FRONING, PSY. D.,
Staff Psychologist.

THE CHESAPEAKE INSTITUTE, INC.,
Kensington, MD, July 1, 1987.

Dr. ELIZABETH MORGAN,
Washington, DC.

DEAR DR. MORGAN: I am writing this because of my concern for the welfare of your daughter, Hilary. For the following reasons, I strongly recommend against your compelling Hilary to attend the scheduled unsupervised visit with her father this coming weekend (7/2-7/5/87):

(1) Her recent abuse, which she described to Metropolitan Police Officer, Detective Williams, on 6/24/87. To expose her to the likelihood of reabuse by her father at this time would be very detrimental to Hilary's mental health. The message she would receive is that the terror she feels is inconsequential, and that therefore she is worthless.

(2) These feelings of worthlessness and/or the stress of possible or actual reabuse likely would trigger her suicidal feelings, thereby putting her life at risk.

If you have any questions, please do not hesitate to call.

Sincerely,

MARY L. FRONING, PSY. D.,
Staff Psychologist.

THE CHESAPEAKE INSTITUTE, INC.,
Kensington, MD, July 16, 1987.

ELIZABETH MORGAN, M.D.,
Washington, DC.

DEAR DR. MORGAN: I am writing to you to express my concern over Hilary's continuing to be compelled to undergo unsupervised visits with her father. I am fully aware of the legal issues that you face should you not comply with Court-ordered visitation. However, in my role as Hilary's therapist, I must reiterate my position that for her physical and emotional safety she should not be continually placed in the jeopardy that these visits place her.

Hilary's emotional health has suffered tremendously in recent weeks, but particularly since her disclosure to Detective Williams of recent abuse. This is understandable given the fact that not only did that not protect her but has now exposed her to even more abuse because of her father's anger for the perceived betrayal. As you will remember I predicted that Eric would respond in this way to Hilary's disclosures as far back as my report of June 1986.

In addition, it seems clear from Hilary's statements that her father's emotional health is deteriorating as well, given his reported choking of her to attempt to keep her from telling of his abusive behavior.

I believe that Hilary is at great risk for continued violent behavior on her father's part and for continued deterioration of her fragile defenses. The potential physical and emotional damage to her is frightening to contemplate.

I understand that you have attempted to remain neutral concerning the visits and Hilary's father's abusive behavior toward her. However, this too is having a bad effect on Hilary, who has become even more hopeless and depressed as her feelings remain unvalidated by you. In particular, she has been unable to comprehend that you ignored the fact that her father spit in her face right in front of you. At the very least, you must respond to stop abuse that occurs in front of you.

I empathize with the dilemma you face to meet both your legal and maternal responsibilities. I just wanted to make clear the risks for Hilary.

Sincerely,

MARY L. FRONING, PSY. D.,
Staff Psychologist.

Mr. ARMSTRONG. The psychologist saw Hilary for 87 sessions, from January 1986 to August 1987. Her notes document that in 21 of these visits Hilary described physical or sexual abuse. Dr. Froning maintains Hilary could not have fabricated the incidents or been coached to cite them because of the explicit detail and the emotional state with which she recounted them. The evaluations of 11 psychologists, gynecologists, pediatricians, and a police officer all diagnosed Hilary as a victim of sexual abuse.

Finally Heather, Dr. Foretich's daughter by his second wife, exhibited injuries similar to those diagnosed in Hilary. Incredibly, the evidence of Heather's injury was excluded from both the D.C. and Federal court case. The 4th circuit has since ruled the evidence in the Federal case was excluded inappropriately.

Specifically the court found, "The proffered evidence of sexual abuse suffered by Heather was highly relevant. This evidence was essential in that it tended to identify the defendants, that is Foretich and his parents, as the perpetrators of the crime against Hilary since only the defendants had access to both girls."

No other piece of evidence could have had a comparable probative impact as to the identity of Hilary's assailant. This also negated several defenses raised by the defense.

Mr. President, whether one that believes that Hilary was abused or not—and I guess it is obvious that there is strong evidence to support such a belief—Dr. Morgan's position was untenable. When asked to describe her state of mind when she defied the court order, Dr. Morgan stated, and I now quote her: "I had to face the fact that for 1 year I sent my child off to her rapist." She made her decision and has, I think understandably, shown no indication of waiver.

In this case, it is very clear that incarceration is punitive rather than coercive. She, as for anyone in her position, should be released and at least given the opportunity of the protections afforded to those who are brought before the bar of justice on criminal charges.

This bill is not a perfect solution to the problem of civil contempt. It does provide an answer for the next 18 months, and I am sorry it has waited

this long for action. Many Senators spent August vacationing. Dr. Elizabeth Morgan spent it rotting in the D.C. jail, and I regret that.

I do not recite these facts, Mr. President, to elicit sympathy for Dr. Morgan. She is a victim. But, far more important, she is a heroine. Out of her suffering and the tragic circumstances of her incarceration, there has come to the attention of the Senate a serious injustice, in my view a gross abuse of judicial discretion, but more important, legislation which needs to be enacted so that this will not happen to someone else.

Let me say again that, for that, we are indebted to Dr. Morgan. She is an example of a person not to be pitied but to be admired for having the courage of her convictions. I do admire her and I again commend to my colleagues in the State Legislature of Colorado and elsewhere, where such legislation is needed, that they consider the action taken tonight by the Senate and consider whether they would like to emulate it in their jurisdictions.

Finally, Mr. President, I would like to take a moment to express my special appreciation to several Senators who have taken a deep a sincere personal interest in this matter, especially Senator SASSER, who rearranged his schedule and that of the committee to hold a prompt hearing, and Senator GLENN, and Senator TED STEVENS expressed special interest in it and helped to move it along. BILL ROTH did. And, of course, ORRIN HATCH has been interested in this for some time.

More, perhaps, than any Member of Congress that I know of, the person who has done the most to bring this to our attention and to make it possible to enact this legislation in a timely manner, though not as promptly as I would have wished, is our colleague from Virginia, FRANK WOLF. Senator HATCH referred to him earlier. While some of us were trying to figure out what to do, he got busy and got a bill passed by the House very promptly. For that I think we all owe him a debt of gratitude.

Last, but not least, I want to join the others who have expressed their appreciation to the leader for bringing this to our attention promptly. I regretted that we could not act on it before the August recess, but in speaking to the leader on the night that we adjourned for 30 days, he explained to me the reasons why it was impossible for us to act on it and promised that he would bring it to our attention very early in the session. As always, he has been as good as his word, and I am grateful to him for that.

Mr. DANFORTH. Mr. President, there is an old legal adage that "hard cases make bad law." S. 1163, the District of Columbia Civil Contempt Incarceration Amendments Act, proves there is wisdom to be gained from that adage. This bill, in attempting to solve a single hard case, threatens the power of the judiciary to enforce its own orders.

The purpose of the bill is to obtain the release of Dr. Elizabeth Morgan. Dr. Morgan has been incarcerated for over 2 years for refusing to comply with a court order by the Superior Court of the District of Columbia. The facts of Dr. Morgan's situation are tragic. I cannot think of a case more compelling or more deserving of sympathy. She has refused to disclose the whereabouts of her minor daughter, despite a court order to do so, out of concern for the child's safety. Nevertheless, she has been held in civil contempt for refusing the court's order and shows no willingness to comply in the near future. This is indeed a hard case.

Mr. President, I sympathize with Dr. Morgan and her plight. I, like many Senators, want to see her released from jail as soon as possible. But I do not believe sapping the power of the court, which the legislation at hand would do, is the way to achieve this goal.

In this country we adhere to a system of law. That system provides for an independent judiciary—a judiciary that stands apart from day-to-day politics. It is absolutely crucial to an independent judiciary that the courts have the power to secure obedience to the orders they issue. That is part and parcel of our system of law. Our courts must have the power to hold a person in contempt, and to imprison that person, when he or she refuses an order. This is our tradition. It works well. And it should not be changed by legislative remedy to accommodate specific cases.

The power to hold people in civil contempt is not absolute. It is tempered by both practical and constitutional limitations on the court's power of forcing compliance. When the action sought by the court is beyond the person's power to perform, the court must release that person. Similarly, if it becomes clear imprisonment will not succeed in forcing compliance, that imprisonment becomes punitive, thereby defeating its purpose. At that point, constitutional principles of due process require that the imprisoned person be released.

Mr. President, these limitations on the court's power are not merely theoretical. In fact, they have already brought Dr. Morgan closer to freedom. Recently, a panel of the District of Columbia Court of Appeals ruled that Dr. Morgan's resolve to protect her child no matter what the cost to her personal freedom would not be overcome by any further time in prison. Unfortunately, the court's order to release her was held up pending a rehearing of the case by the full D.C. Court of Appeals later this month.

The recent action by the D.C. court demonstrates that our court system can prevent a judge from abusing his power to sanction someone for civil contempt. The system is working here, perhaps a bit too slowly to suit the congressional temperament, but it is working nevertheless.

Mr. President, my own review of the bill before us raises certain concerns. Placing a limitation of 1 year on the time an individual may be incarcerated for civil contempt in child custody cases would seem to increase the likelihood of contempt. The prospect of an indeterminate stay in prison is how a judge gains compliance from an unwilling witness. It is the very indeterminacy of imprisonment that enables the court to achieve the behavior it seeks. Eliminate the indeterminacy, and the incentive to comply is weakened. The reluctant witness gains an advantage over the court. I don't think that is what the sponsors of this bill intend. But that's the plain consequence if their bill is enacted.

I understand the sponsors of this bill have agreed to amendments to limit its impact on future cases. Doing so may reduce the chance that this legislation will create bad results in other cases. But it does not remove the danger of the Senate becoming involved in future sympathetic cases. Even if this bill is written to help, in effect, only Elizabeth Morgan, it will set a precedent for helping others. Our sense of fairness will demand as much from us. After passing this law, will we be able to say no to someone else who comes along and has an equally compelling case? I doubt it.

Mr. President, it is inconsistent with the Senate's proper legislative role for it to become a court of appeal for disappointed litigants, whether in the Morgan case or any other. I do not believe Congress has any business acting as the final arbiter of child custody cases in the District of Columbia. To claim this responsibility for ourselves politicizes the judicial system. It means that if there is enough public outcry in response to a given case, we will take over for the courts. That, I submit, is wrong. It compromises the system of law which has guided our country from the beginning.

I want to see Elizabeth Morgan free. But I do not believe that end should be secured by keeping the court from being the court. We should not compromise an established principle of law—the court's power to use contempt to enforce its orders—to settle a particular case or appease public opinion.

Mr. DOLE. Mr. President, I know of no Senator who is not moved by the sad—indeed tragic—case of Dr. Elizabeth Morgan. Dr. Morgan has spent more than 2 years in jail as a result of her continuing defiance of a D.C. Su-

perior Court order requiring her to disclose the whereabouts of her young child, Hilary.

GOOD INTENTIONS

I am convinced that Dr. Morgan's refusal is the product of good intentions: She sincerely believes that disclosing the whereabouts of her child could seriously jeopardize the child's safety. And I deeply respect Dr. Morgan's concerns—concerns that obviously have a firm place in Dr. Morgan's heart.

FAILURE OF THE CIVIL CONTEMPT POWER

But you do not have to be a legal scholar to recognize that the court's use of the civil contempt power has failed in this case. Notwithstanding her continuing incarceration, Dr. Morgan has steadfastly refused to comply with the D.C. Superior Court's order. Coercion, in other words, simply has not done the trick here. And I believe that the time has now come for Dr. Morgan's release from jail. More jail time will simply not result in a change of heart or a change of mind.

THE ROLE OF CONGRESS

But what role should Congress play here? Should Congress directly intervene in the Morgan case? In fact, should Congress amend the District of Columbia Code every time it believes that a single individual is entitled to relief from the sometimes tough requirements imposed by the laws of our Nation's Capital?

I think the answer to these questions is "no." And S. 1163, no matter how well-intentioned, would set a bad precedent—a bad precedent for Congress' relationship with the District of Columbia and a bad precedent for the importance of obeying court orders generally.

RECONSIDERATION OF THE MORGAN CASE

But Dr. Morgan will soon have a second chance. It is my understanding that the D.C. Court of Appeals will reconsider the Morgan case sometime in late September or October. At this time, I hope that court—in its wisdom—will decide that Dr. Morgan's continued incarceration no longer serves any legitimate punitive or administrative purpose and will therefore order her release from jail.

An editorial that recently appeared in the Washington Post makes the point that I have tried to make here today.

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

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

[From the Washington Post, Aug. 30, 1989]

UPDATE ON DR. MORGAN

Three-judge panel of the D.C. Court of Appeals ruled recently that Elizabeth Morgan can no longer be held in jail on civil contempt charges since she has demonstrated that she cannot be coerced into obeying a court order. Any further confinement, a majority of the panel found, is punitive and can only be imposed after trial and conviction on criminal contempt charges. Before the panel's release order took effect, however, the full court announced that it would rehear the case next month. Dr. Morgan remains in D.C. Jail, where she has been for two years and three days longer than anyone has ever been imprisoned for civil contempt in this jurisdiction.

The Morgan-Foretich divorce and child custody case has also set records here. The acrimonious and drawn-out dispute over visiting rights and alleged sexual molestation has been in court since 1983. But the current phase of the litigation is concerned with a question of interest not just to the parties, but to all citizens: How long can a court hold a person without trial in order to force compliance with a court order? We agree with the panel's majority that two years is simply too long and that if Dr. Morgan is to be punished for her recalcitrance, she must be given a trial and be convicted of criminal contempt. Furthermore, we hope the full court upholds the panel without delay because if this does not happen, Congress is likely to respond with legislation that would be troubling in two respects.

In response to concerns about Dr. Morgan, Rep. Frank Wolf (R-Va.) has introduced legislation that would free her and limit imprisonment for civil contempt to 12 months except in cases where criminal contempt charges have been filed. The measure passed the House quickly and is now pending in the Senate. We have serious misgivings about congressional intervention in a court matter of this kind—particularly intervention to overrule a judge—and we question the wisdom of setting blanket statutory limits on the contempt power. Two states have adopted similar limits, and some academics have supported the concept. But neither the D.C. Bar nor the judges of this city were asked for views on the Wolf bill before it was passed. We share the misgiving voiced by the American Civil Liberties Union, which opposes statutory limitations—because they may send a "message that obedience to the court's order is not really required, but is simply an option to be balanced against the alternative option of one year of incarceration"—and which favors instead faster and more thorough appellate review of incarceration cases. At the very least, Congress should think long and hard before limiting the court's sole power to enforce orders, out of concern for a single individual. After two years of defiance, it is no longer reasonable to continue to detain Dr. Morgan. But it would be far better if she were freed by the courts and not by Congress.

Mr. RUDMAN. Mr. President, I rise in support of S. 1163, a bill to amend the District of Columbia Code with regard to civil contempt orders in child custody disputes, otherwise known as the Elizabeth Morgan bill. Although I had misgivings with this bill's overbroad effects on the judiciary, I am pleased to see these concerns addressed with an amendment sun-setting S. 1163 18 months after its enactment.

Dr. Elizabeth Morgan has been incarcerated for more than 2 years for defying a D.C. Superior Court's ruling ordering her to allow her daughter on an unsupervised visit with the father, Morgan's ex-husband, who Morgan claims sexually abused the child. She was cited on a civil contempt charge, and she remains incarcerated today. Civil contempt orders are intended to be coercive, not punitive, in nature. The record is clear that Dr. Morgan has, through her resolve, shown that she will not be coerced on this point, making her incarceration punitive and therefore unjust.

S. 1163 is designed to obtain the release of Dr. Morgan. It would do so by amending the D.C. Code to limit to 12 months the amount of time an individual may be jailed for civil contempt in District of Columbia child custody cases, retroactive to her incarceration.

While I support the underlying intent of this bill to free Dr. Morgan, I am wary of enacting a law on the basis of one exceptional case, especially when that law serves to limit the discretion of the judiciary. I believe judges need to have the flexibility to enforce their orders on a case-by-case basis, and setting an arbitrary 12-month cap on civil contempt authority would severely hamper this.

In light of these concerns, I strongly support the addition of the 18 month sunset provision on the bill, and the direction to the Senate Governmental and Judiciary Committees to study the general issue of incarceration for civil contempt. This amendment ensures the release of Dr. Morgan without permanently intruding on judicial authority, and enables the Senate to more properly study the broader civil contempt issue at a later time.

I also ask unanimous consent to have printed in the RECORD a copy of the additional views I prepared for the Governmental Affairs Committee's report on S. 1163. They refer to the version of the bill as reported from committee, and explain my concerns over the potential unintended and undesirable ramifications this legislation may have on future legal proceedings.

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

ADDITIONAL VIEWS OF SENATOR WARREN B. RUDMAN

S. 1163, as reported by the Committee, would place a twelve month limit on the amount of time an individual may be incarcerated for civil contempt in child custody cases before the District of Columbia Superior Court. However, this limit is not an end unto itself, but rather the means to accomplish another goal: the release of Dr. Elizabeth Morgan. In fact, her release is the driving force behind S. 1163, and it is not inaccurate to call it a de facto private relief bill with Dr. Morgan as its beneficiary. Unfortunately, this measure in its current form would intrude on the legitimate authority of the judicial branch of government, with possible serious negative consequences. Therefore, it is my intention to amend this legislation on the Senate floor to limit its effect to Dr. Morgan.

The history of Dr. Morgan has been well publicized and is fully described in the Committee report, so I shall not recount it here. I agree that Dr. Morgan has been incarcerated long enough under civil contempt and should either be released or, at the very least, given the opportunity of a jury trial. However, I am greatly troubled with S. 1163's mechanism to achieve her release and with the inadequate scrutiny that mechanism has received in the Senate.

While the bill would only limit civil contempt orders in custody disputes before the D.C. Superior Court, it raises a larger issue: the extent to which Congress should intrude upon the ability of the judicial branch of government to enforce legitimate orders issued by the courts.

We are a nation that operates under the rule of law. The defiance of court orders is and must continue to be a serious matter, regardless of the venue, subject, or outcome of the trial. Any legislative effort which, however accidentally, encourages people to disobey the law threatens the fabric of our society.

In recognition of this concern, and in a partial effort to limit this bill's impact to Dr. Morgan, S. 1163 distinguishes between civil contempt orders in custody disputes and civil contempt orders in all other cases. Since it makes no legal sense to assert that judges presiding in custody cases should have less power to enforce their orders than judges in all other cases, the bill is a disturbing precedent in the area of civil contempt.

The civil contempt tool is designed to coerce compliance with a judicial order, not to punish individuals for disobedience. It differs from criminal contempt in two ways. First, the contemnor holds the key to his or her own release by exercising the option to comply with the court order. Second, release is mandatory when no further purpose is served by the contempt order.

This bill would significantly reduce the coercive effect of such incarceration. Under the current practice, judges have considerable success in obtaining compliance with their orders, many times by simply raising the merest possibility of jailing for contempt. This is because individuals must weigh their defiance of the order against the possibility of an extended, even unlimited, stay in jail. The establishment of a ceiling presents the contemnor with a choice where none existed before: whether to comply with the order or remain incarcerated for a specified time. Not only does this signal the potential contemnor that the system provides an avenue for defiance of an order, but it is likely that the enactment of such a cap will lead to witness a steady increase in the number of individuals who opt for the limited incarceration, especially when they consider the court order to be particularly distressing.

It is possible there are problems in the civil contempt process, but no case has been made that they lie in the length of potential incarceration. Extended time in jail is often necessary. An ongoing case in Maryland is demonstrative of this point. In that state, a woman has been jailed since April, 1988, on a civil contempt charge for failing to obey a judge's order to produce her child. Unlike Dr. Morgan, this woman is a convicted child abuser and is suspected of having abused or killed the child. The state wants the child produced to ensure that he is alive and well, and possibly to take custody. Leaving aside the Fifth Amendment issues at stake, here we have a case where the welfare of the child is at issue and coercive incarceration beyond twelve months seems clearly justified. If S. 1163's concept were applied to this woman, she would have been released three months ago and the whereabout and well-being of the child would still remain a mystery. It is irresponsible to point to the Morgan case as indicative of the benefits of this legislation, without pointing to the Maryland case as one of its dangers.

Beyond the substantive problems surrounding this measure, S. 1163 has not been subject to the regular legislative process. This is because, although S. 1163 is a substantive bill, it is being accorded fast-track treatment on the grounds that it has an emergency private relief effect. The bill was the subject of one hearing at which only the bill's sponsor, a family court jurist, and a legal academic were allowed to testify. There were no witnesses from the affected jurisdiction, legal groups such as the American or District of Columbia Bar Association, civil liberties groups, and, most importantly, from the D.C. or federal judiciaries. Moreover, the Committee's markup occurred three workdays after the hearings, before the complete hearing record was available.

This haste has had consequences. There are many practical and policy matters which are unresolved, but which could have been addressed in a more thorough legislative process. For example, does a parent who remains incarcerated for the twelve month period in defiance of a court's order to produce a child still retain custody after the twelve months? Could a judge simply issue a new order requiring the presentation of the child, and confine the parent on a new contempt charge? Are there better reforms to be considered in the civil contempt process, such as de novo appellate review and the right to effective counsel? Is this intended to be a precedent for other common uses of civil contempt, such as to enforce orders in civil rights cases, to require witness to testify under immunity, and to enforce judicial decisions in non-custody civil cases? Does the legislation unconstitutionally interfere with the judge's criminal contempt power? In my opinion, these are questions which deserve answers before such legislation is passed.

To highlight the haste with which this bill has been put together, it appears that S. 1163 as reported would not ensure the release of Dr. Morgan. The Committee will attempt to amend the bill in the Senate floor to address this flaw. While I will not object to such an effort, it illustrates the unintended consequences of overly hasty consideration of substantive legislation.

When the subcommittee Chairman announced his intention to leave the hearing record open for ten days, one sponsor of the bill urged him not to let Dr. Morgan remain in jail any longer. I support the goal of her release. Accordingly, I will offer an amendment which will ensure Elizabeth Morgan's release, but would make no permanent change in law. By doing so, the Senate could work its will in this case without leaving messy footprints in the D.C. Code.

The Senate, if it so desires, can then engage in a reasoned debate over the merits of the civil contempt issue, with the proper deliberative quality for which it is so renown, without the motions surrounding Dr. Morgan's plight steering the debate. There is an old lawyer's saying: "Hard cases make bad law." Let us pass a statute to release Dr. Morgan if that is the will of the body. But it would be a grave mistake to make law on the basis of one extraordinary case.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I have serious reservations about S. 1163, a bill to limit the time in which a person may be held in civil contempt by the Superior Court of the District of Columbia in child custody causes.

This bill arises from a particular set of circumstances and is designed to effect the release of one person from jail.

Dr. Elizabeth Morgan has been held in civil contempt since August 1987 for refusing to comply with an order by a judge of the D.C. Superior Court to produce her 7-year-old daughter for an unsupervised visit with the child's father, Dr. Eric Foretich. Dr. Morgan maintains that Dr. Foretich molested the child, and that she is prepared to remain in jail until the child reaches maturity, rather than comply with the court's order.

The custody fight between Dr. Morgan and Dr. Foretich is difficult, complex, and painful. Much of the record has not been made public. As a result, it is not possible for one not familiar with that record to reach a judgment, or, in my case, even to form an opinion in the matter. I do feel and express deep sorrow and regret for all those caught up in this tangled tragedy, especially a 7-year-old child who was allegedly molested by her father and has not seen either her father or mother for 2 years.

Thus, I cannot and do not express an opinion on the case itself. My concern here is solely with the pending legislation. The bill would limit imprisonment for civil contempt in child custody cases, in the District of Columbia, to 12 months. It would expedite the appeal process, so that a hearing must be held within 60 days if so requested. It is made retroactive to 1987.

Whether a court should have the discretion to imprison a person for such a long time in a civil case is a serious question, subject to responsible disagreement. But, even if warranted, a change in the law to limit the court's authority should not be made so as to apply in effect only to a particular person in the middle of a particular case, especially when a judicial remedy remains available.

This bill has moved through the legislative process quickly. That is understandable, given its purpose. But that has resulted in considerable confusion about the legal situation in the case.

Many of the bill's supporters were, and perhaps many still are, under the impression that Dr. Morgan did not appeal the superior court's order because she has no right of appeal, and that, as a result she could remain in jail indefinitely unless this bill is passed. That impression is incorrect. On August 21, a three-judge panel of the District of Columbia Court of Ap-

peals decided, by a vote of 2 to 1, that Dr. Morgan should be released. At the same time, however, the panel's decision was vacated by the full court of appeals, which has decided to hear the case en banc, and has scheduled oral argument for September 20.

That is one reason why this bill should not be passed. Difficult as this case may be, unfair as the result may seem, it is extremely unwise for the Congress to interfere in this way with the judicial branch of government, especially with a bill to affect a specific case now pending in the courts and right in the middle of litigation.

The court of appeals will be holding a hearing on this matter in less than 2 weeks, and Congress should at least give the court the opportunity to resolve this matter itself. The court is in a far better position than the Congress to decide this case.

Senators should also be aware that in passing this bill, the Senate will be opening itself to a charge of hypocrisy. The Senate itself now possesses the authority to hold a person in civil contempt for an unlimited time. In fact, the Senate is exercising that authority at this very moment.

Under the provisions of 28 United States Code, section 1365, the Senate, or one of its committees or subcommittees, has the authority to obtain enforcement of an order or subpoena by holding a person in contempt for as long as may be necessary.

Indeed, the law contemplates that the Senate may want to hold a person from one Congress to the next, by providing that the Senate need only certify its continuing interest in obtaining the information for the contempt power to remain in effect, despite the fact that the Senate has adjourned sine die. In 1981, the Senate held a witness in civil contempt for almost 18 months, when William Cammissano was held in an effort by the Permanent Subcommittee on Investigations to compel his testimony.

Right now, as we consider this bill, the Senate is holding William Borders in contempt for refusing to answer questions relating to the impeachment of Judge Alcee Hastings. How can the Senate justify telling the courts that they cannot hold a person in civil contempt for more than 12 months while retaining that power for itself? This is another unfortunate and embarrassing example of Congress creating a double standard, to its advantage.

Another problem with this legislation is that we may be unwittingly fostering defiance of the courts, in two ways.

First, by setting a time limit on civil contempt, a person will know in advance how long the potential incarceration will be for contempt, and may be tempted to simply wait it out in jail, rather than to comply with the court's order. Some analysts believe that since the purpose of incarceration is to coerce compliance with an order of the court, uncertainty as to the possible length of incarceration may be an important coercive factor.

That may be one reason why, according to the Congressional Research Service, 48 States have not established such time limits; only the States of California and Wisconsin have established such time limits. And the only current limitation on the length of confinement for civil contempt under Federal law applies only to witnesses who refuse to testify or produce documents in Federal grand jury or court proceedings.

Their confinement is limited by 28 United States Code section 1826 to the life of the proceeding or 18 months, whichever is shorter. The law does not limit the length of confinement for civil contempt for violation of other court orders, nor does it affect others who may be subject to the court's power of contempt, including parties.

Second, Congress may be sending a signal, however inadvertent, that it is possible to defy the orders by appealing to Congress. Persons dissatisfied with the judicial process may come to believe that they can obtain recourse in Congress, without bothering to exhaust their judicial remedies. This attitude can lead not only to disrespect for the courts, but also to an increase in such appeals to Congress. We clearly do not have the time, expertise or political independence to serve as an alternative court of appeals for unhappy litigants.

In pursuing this legislation, the proponents have argued, on the one hand, that it is a private relief bill for Dr. Morgan. But they have also argued, on the other hand, that it is a generic reform of civil contempt in certain cases. If it is effectively a private relief bill, then witnesses for the parties involved should have been allowed to testify. They were not.

If, however, the bill is designed to make a general reform in certain civil contempt cases, the bill should not have been so narrowly drawn as to affect only one person, and should have been considered in the broader context of civil contempt as used by all Federal and District of Columbia courts.

That it is, in reality, a private bill for the relief of Dr. Morgan is demonstrated by the fact that the bill, as amended, contains a sunset provision, effectively terminating itself after 18 months.

In other words, this bill will change the law to permit Dr. Morgan to be released, then the law will revert back to its present form. Use of the legislative process in this way cannot be justified.

Mr. President, I emphasize that my objection to this legislation has nothing to do with the merits of Dr. Morgan's case, on which I have and express no judgment. I object because the bill interferes with a separate branch of government and establishes a bad precedent.

Although I oppose this bill, it is clear that a majority of Senators either favor or are indifferent to it. Therefore, I will not seek to prevent or delay its passage. Nonetheless, I want to place my reservations on the record, in the hope that Congress will not consider legislation of this kind in the future without at least addressing some of the concerns that I have raised.

Mr. HATCH. Mr. President, I know that this has been a long day and we do want to end this, but if I could make just a few remarks about the distinguished majority leader's remarks.

I have a great deal of concern for what the majority leader has said, and as the prime sponsor of this bill I have to say there is much merit in what he said. However, I think we should consider just a few other things.

If I had had my way, this would be a generic child custody bill that would continue on, because I believe that such a bill is necessary in child custody cases. They are considerably different from other civil contempt cases or cases where the Senate had held people in contempt. We are talking about child custody, and we are talking about child custody generically. I have real qualms whether any judge should hold any parent beyond 1 year in a child custody case.

Now, we have accepted an amendment because we have tried to accommodate Senators. That amendment sunsets the Senate provision at 18 months. I would prefer not to have that amendment. But in the interest of trying to accommodate, we agreed to it. But let us understand something. It is true that Morgan, a plastic surgeon who has sat in jail for better than 2 years and who is now in her 3d year, will be released by this. It is also true that she had a right for an appeal, but she has pursued that right and still faces the prospect of additional years in jail.

Her appeal will now be heard en banc. That may take a total of around 6 months, which is what it usually takes. It could take longer. Then I can guarantee you, the way this husband feels on this matter, you can absolutely count on a rehearing of the decision en banc to be sought. That is going to take several more weeks. Then there will be a certiorari petition to the Supreme Court of the United States of America. Whether granted or not, you can count on that taking probably another year. And then there will no doubt be a motion to rehear the ruling on certiorari on that particular question. That will take probably several weeks beyond the ruling on certiorari. So you are talking about, because of

this court's decision in the Elizabeth Morgan case, a plastic surgeon, mother, being kept from her child for another 1 or 2 years just because of the procedures that are involved. No one can say for how long it will be until Dr. Morgan's appeal will finally be determined.

Now, again, I do not want to inject myself into a determination as to who is right and who is wrong in this matter, but it does bother me that one party to this litigation could keep the other party in jail if we do not act on this. It does not appear that the judge involved is going to act on this for up to another 1, 2, or 3 years.

The important thing to remember is that the child is deprived of both parents. That child has neither parent. Hilary is left without a parent. I think it is time for us to do something about it. But I have to say the intent of this Senator was not just to do this for Dr. Morgan. She happens to be the only one that it will affect in the D.C. Superior Court, so far as we know. But the intention was to generically do it forever—at least as long as this statute would stay alive in all civil contempt cases involving child custody. That is considerably different from some of the illustrations given by my friend, the distinguished majority leader.

The fact is that passage of this bill does another thing. It sends a message throughout the country that there really is a limit to how much coercion a judge may bring in child custody cases to enforce the will of the court, especially when coercion and coercive activities are not going to work.

This raises the constitutional issue of depriving a person of his or her liberties without due process of law. In this particular case, after more than 2 years, a time much longer than most convicted felons have to spend in jail, you have to ask the question: Is this going to be permitted to continue?

Well, my purpose is to make sure it does not continue in all civil contempt cases involving child custody, in the D.C. Superior Court. The bill will apply in this single jurisdiction, and we'll see how it works. We will see that for at least 18 months if I have my way. Ideally, we should modify the laws of this country to limit civil contempt in child custody cases to a limited period of time. I would prefer a year. Others have argued for 18 months.

But again, I think the distinguished majority leader has raised serious points, and I agree with much of what he has said. I share his concerns. As a lawyer myself, and as one who does have a great deal of respect for the judiciary, a great deal of respect for the separation of powers, and a great deal of respect for the concerns that the distinguished Senator from Maine, our majority leader, has raised here, I, for one, wanted to acknowledge those concerns.

Last, but not least, I want to personally thank the distinguished majority leader, who, although he feels very deeply about this matter, has still consented to allow this bill to pass because a vast majority of Senators want it to pass. I think people all over this community and all over this country who understand this continuing tragedy would like it to pass as well. It may be that where the law is not acting in an equitable way that sometimes the Congress in very rare occasions should act.

So I personally thank the majority leader for allowing this bill to pass. It means a lot to me personally, because I believe in what we are doing here, under these circumstances, though I do share many of the concerns he has expressed. I thank the Senator.

Mr. MITCHELL. Mr. President, I have deliberately refrained from commenting on the specifics of the custody case out of which this legislation arises, and I will continue to so refrain because neither I nor the distinguished Senator from Utah nor any other Senator has seen the record in the case.

Therefore, while I respect the right of others to form opinions on cases with respect to which they have not seen the record, for myself I choose not to reach an opinion on a case where I have not seen and cannot see the full record. I will say only that I believe virtually everything the distinguished Senator has just said confirms my position that this is plainly a bill for the private relief of a single person and does, in fact, affect the result of a pending case in court right in the middle of that litigation in which the matter is actively under appeal.

I have great respect for my friend and colleague from Utah, Senator HATCH, and the other Senators who have expressed an interest in this matter. And I, having made my statement, perfer to rest upon the arguments made there.

With that, Mr. President, I now ask that we move to third reading for final enactment of the bill.

The bill was ordered to be engrossed for a third reading and read for the third time.

Mr. MITCHELL. Mr. President, I ask unanimous consent that H.R. 2136, the House companion bill, be discharged from the Governmental Affairs Committee, and that the Senate turn to its immediate consideration; that all after the enacting clause be stricken; and the text of S. 1163 as amended be substituted in lieu thereof; that the bill be read a third time and passed; and the motion to reconsider the vote be laid on the table.

I further ask unanimous consent that the Senate insist on its amendment, and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

Mr. HATCH. Mr. President, reserving the right to object——

The PRESIDING OFFICER. Without objection, the requests are agreed to.

Mr. MITCHELL. I ask unanimous consent that S. 1163 be indefinitely postponed.

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

Mr. MITCHELL. I thank my collegue for his usual courtesies.

Mr. HATCH. Reserving the right to object, has the bill been passed?

The PRESIDING OFFICER. The bill has been passed.

The entire request has been agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, 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 11:55 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2696) making appropriations for energy and water development for the fiscal year ending September 30, 1990, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. BEVILL, Mrs. BOGGS, Mr. FAZIO, Mr. WATKINS, Mr. THOMAS of Georgia, Mr. CHAPMAN, Mr. WHITTEN, Mr. MYERS of Indiana, Mrs. SMITH of Nebraska, Mr. PURSELL, and Mr. CONTE as managers of the conference on the part of the House.

The message also announced that the Senate disagrees to the amendments of the Senate to the bill (H.R. 2883) making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1990, and for other purposes; it agrees to the conference asked by the Senate on the disagree votes of the two Houses thereon, and appoints Mr. WHITTEN,

Mr. TRAXLER, Mr. MCHUGH, Mr. NATCHER, Mr. AKAKA, Mr. WATKINS, Mr. DURBIN, Mr. SMITH of Iowa, Mrs. SMITH of Nebraska, Mr. MYERS of Indiana, Mr. SKEEN, Mr. WEBER, and Mr. CONTE as managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2989) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1990, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ROYBAL, Mr. AKAKA, Mr. HOYER, Mr. ALEXANDER, Mr. EARLY, Mr. SABO, Mr. WHITTEN, Mr. SKEEN, Mr. LOWERY of California, Mr. WOLF, and Mr. CONTE as managers of the conference on the part of the House.

The message also announced that pursuant to the provisions of section 403 of Public Law 100-360, and the order of the House of August 4, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on August 11, 1989, appointed on the part of the House Mr. STOKES, to the United States Bipartisan Commission on Comprehensive Health Care to fill the existing vacancy thereon.

The message further announced that pursuant to the provisions of section 204 of Public Law 98-459, and the order of the House of August 4, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on August 11, 1989, reappointed Ms. Tessa Macaulay of Deerfield Beach, FL; and appointed Mr. Raymond Raschko of Spokane, WA, as members from private life to the Federal Council on the Aging on the part of the House.

The message also announced that pursuant to the provision of section 1001 of Public Law 100-297, and the order of the House on August 4, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on August 23, 1989, appointed to the National Commission on Migrant Education the following Members on the part of the House: From the House of Representatives, Mr. FORD of Michigan; and Mr. GOODLING; and from private life: Mrs. Patricia A. Hayes of Austin, TX, and Mrs. Carolina Mata-Woodruff of Petersburg, IL.

The message further announced that pursuant to the provisions of 5(b) of Public Law 93-642, and the order of the House of August 4, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on August 11, 1989, appointed as members of the Board of Trustees of the Harry S. Truman Scholarship Foundation the following Members on the part of the House: Mr. SKELTON, and Mr. COLEMAN of Missouri.

The message also announced that pursuant to the provisions of section 126(b) of Public Law 100-485, and the order of the House of August 4, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker and minority leader on August 11, 1989, jointly appointed the following to the Commission on Interstate Child Support on the part of the House: Mrs. KENNELLY; and Mrs. Frances Rothschild, of Los Angeles, CA, and Mr. Harry L. Tindall, of Houston, TX, from private life.

At 2:40 p.m., a message from the House of Representatives announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 132. Joint resolution designating September 1 through 30, 1989, as "National Alcohol and Drug Treatment Month."

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1472. An act to establish the Grand Island National Recreation Area in the State of Michigan, and for other purposes;

H.R. 1668. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration; and

H.R. 2427. An act to authorize appropriations for certain atmospheric and satellite programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes.

The message further announced that the House has agreed to the following resolutions:

H. Res. 232. Resolution relative to the death of the Honorable Larkin I. Smith, a Representative from the State of Mississippi; and

H. Res. 233. Resolution relative to the death of the Honorable Mickey Leland, a Representative from the State of Texas.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1472. An act to establish the Grand Island National Recreation Area in the State of Michigan, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1668. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration; to the Committee on Commerce, Science, and Transportation.

H.R. 2427. An act to authorize appropriations for certain atmospheric and satellite programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-279. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Appropriations:

"HOUSE JOINT RESOLUTION 36

"Whereas the current federal budget submitted to the Congress by the Office of Management and Budget proposes a ceiling of $100,000,000 on appropriations for the federal aid to wildlife restoration program, known as the Pittman-Robertson program, and for the sport fish restoration program, known as the Dingell-Johnson program; and

"Whereas federal funds for the Pittman-Robertson program and the Dingell-Johnson program are derived from taxes and duties on sporting equipment and fuel paid by sportsmen and other recreational users of wildlife and fish resources; and

"Whereas Pittman-Robertson funds and Dingell-Johnson funds are allocated among the states and can be used only to support specific activities related to wildlife, sport fish, and public access projects; and

"Whereas the proposed ceiling on Pittman-Robertson funds and Dingell-Johnson funds will drastically affect the activities of the divisions of wildlife conservation and sport fish in the Alaska Department of Fish and Game by a 40 percent reduction in funding for research and management on wildlife and sport fish and for acquisition of public access; and

"Whereas the sport hunting and sport fishing industries in the state provide thousands of jobs and generate millions of dollars to the state economy; and

"Whereas subsistence users of the state's wildlife and fish resources annually harvest millions of pounds of these resources for personal use and benefit from the active research and management of wildlife and fish resources supported by the Pittman-Robertson program and the Dingell-Johnson program; and be it

"*Resolved*, That the Alaska State Legislature respectfully expresses its strong opposition to the proposal to place a ceiling on appropriations for the Pittman-Robertson program and the Dingell-Johnson program.

"Copies of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Jim Wright, Speaker of the U.S. House of Representatives; the Honorable George J. Mitchell, U.S. Senate Majority Leader; the Honorable Gerry E. Studds, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the U.S. House Committee on Merchant Marine and Fisheries; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress."

POM-280. A resolution adopted by the Council of the City and County of Honolulu, Hawaii, directing the use of the Oahu Railway and Land Co. Railroad right of way and trains as a new mass transit system to

extend from Ewa to Waipahu; to the Committee on Banking, Housing, and Urban Affairs.

POM-281. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Banking, Housing, and Urban Affairs:

"SENATE JOINT RESOLUTION 8

"Whereas the Legislative Assembly and the people of the State of Oregon find that:

"(1) In recognition of the importance of maintaining employment in local mills, community stability and in the face of timber supply shortages, beginning in 1968 and each year thereafter Congress has enacted restrictions on log exports requiring domestic processing on timber sold and harvested from federal lands in the west;

"(2) In recognition of the importance of maintaining employment in local mills and community stability, in 1961 the Oregon Legislative Assembly passed a bill requiring all timber sold from Board of Forestry and Common School lands to be 'primarily processed' in the United States. In 1963, the law was amended to authorize the Department of Forestry to issue permits allowing the export of unprocessed logs harvested from state-owned lands under certain limited circumstances. This provision was repealed in 1981;

"(3) Oregon's Attorneys General have questioned the constitutionality of state export bans since 1961. The state continued to restrict exports until 1984 when, following a Supreme Court decision finding a state log export ban in Alaska (*South Central Timber Development, Inc.* v. *Wunnicke*) to be unconstitutional, enforcement of Oregon's log export ban stopped;

"(4) Although they remain in state timber sale contracts and in Oregon statutes, Oregon's log export restrictions are not enforced. Log exports of state timber have steadily grown and in 1987 nearly 40 percent of all state timber sold was purchased by log exporting firms;

"(5) In 1988 Congress considered legislation to give states the right to limit exports of state-owned timber consistent with the historic Congressional direction on federal public lands. Despite strong support from western states no final action was taken;

"(6) In the federal budget submitted by President Reagan for fiscal year 1990, removal of log export restrictions from public lands was proposed. Impacts are estimated to be 600 million board feet of additional log exports at a cost of 2,500 direct timber industry jobs;

"(7) Oregon's timber supply is increasingly inadequate to meet current mill capacity; and

"(8) When a state exports logs instead of lumber, it is functioning similar to the developing nations of the world that rely on their unprocessed natural resources as a primary means of generating foreign exchange revenue. By exporting raw material, we lose the value added by manufacturing, the jobs involved directly in the manufacturing process, and the related spin-off jobs that also add to our economy; and

"Whereas in order to assure that timber harvested from state and federal public lands in Oregon is processed in Orgean, the Legislative Assembly, other state-wide officials and state agencies shall use all legal means necessary to:

"(1) Demand that the federal policy continue the existing Congressional prohibition of sales of unprocessed timber from federal lands for export;

"(2) Support and assure passage of federal legislation authorizing states to require in-state processing of timber severed from state-owned lands; and

"(3) Insist that the United States Secretary of the Interior and the United States Secretary of Agriculture vigorously administer and enforce the existing prohibiton of sales of unprocessed timber from federal lands; and

"Whereas within 10 days after the effective date of the amendment proposed by this resolution, the Secretary of State shall transmit copies of this resolution, including the voter referendum results, to the President of the United States, the United States Department of Agriculture, the United States Department of the Interior, the President of the United States Senate, the Speaker of the United States House of Representatives, each member of Congress and the governors and legislature of the other 49 states; now, therefore, be it

"Resolved by the Legislative Assembly of the State of Oregon:

"Paragraph 1. The Oregon Constitution is amended by creating a new section 7 to be added to and made a part of Article VIII and to read:

"Section 7. (1) Notwithstanding subsection (2) of section 5 of this Article or any other provision of this Constitution, the State Land Board shall not authorize the sale or export of timber from lands described in section 2 of this Article unless such timber will be processed in Oregon. The limitation on sale or export in this subsection shall not apply to species, grades or quantities of timber which may be found by the State Land Board to be surplus to domestic needs.

"(2) Notwithstanding any prior agreements or other provisions of law or this Constitution, the Legislative Assembly shall not authorize the sale or export of timber from state lands other than those described in section 2 of this Article unless such timber will be processed in Oregon. The limitation on sale or export in this subsection shall not apply to species, grades or quantities of timber which may be found by the State Forester to be surplus to domestic needs.

"(3) This section first becomes operative when federal law is enacted allowing this state to exercise such authority or when a court or the Attorney General of this state determines that such authority lawfully may be exercised.

"Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held on the same date as the next election as provided by law."

POM-282. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Commerce, Science, and Transportation:

"JOINT RESOLUTION

"Whereas the restoration of passenger rail service between the State of Maine and other states in the northeastern United States is in the economic interest of the State of Maine; and

"Whereas the resumption of this service will help alleviate automobile traffic in the northeast corridor of the nation and will also reduce automobile emissions and resultant air pollution; and

"Whereas increased passenger rail traffic will relieve pressure on Maine's highways and bridges, thereby promoting energy conservation and reducing the consumption of fossil fuels; and

"Whereas there are currently studies conducted on improving passenger rail service within the State, and the development of alternate transportation systems is in the long-range planning interest of the State of Maine; and

"Whereas Amtrak or private rail carriers may be able to provide this service between the State of Maine and other states in the region; and

"Whereas the increased utilization of train travel will improve the economic, cultural and social well-being of the State; now, therefore, be it

"*Resolved*, That We, your Memorialists, recommend and urge the President of the United States, the Congress and the Interstate Commerce Commission to strive to enact measures to restore passenger rail service to the State of Maine; and be it further

"*Resolved*, That duly authenticated copies of this Memorial be submitted by the Secretary of State to the Honorable George H.W. Bush, the President of the United States, the President of the Senate, the Speaker of the House of Representatives and to each Member of the Maine Congressional Delegation."

POM-283. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Commerce, Science, and Transportation:

"HOUSE JOINT RESOLUTION 25

"Whereas the federal government established the Saltonstall-Kennedy seafood industry grants program; and

"Whereas the Saltonstall-Kennedy grants program was established to fund the development and promotion of the United States seafood industry and fisheries products; and

"Whereas the Saltonstall-Kennedy grants program is directed towards strengthening the United States seafood industry in the face of increasing foreign competition and a fluctuating resource base; and

"Whereas the Saltonstall-Kennedy grants program is funded from tariffs on imported seafood and seafood products; and

"Whereas Saltonstall-Kennedy grants program projects receive matching funds and in-kind services from the seafood industry; and

"Whereas the Saltonstall-Kennedy grants program is unique because it sets goals based on industry priorities and works with industry to accomplish projects to achieve those goals; and

"Whereas the primary method that the seafood industry has used to participate in the Saltonstall-Kennedy grants program is through regional fisheries development foundations; and

"Whereas the Alaska Fisheries Development Foundation was established by the Alaska seafood industry to maximize the benefit of the Saltonstall-Kennedy grants program in Alaska; and

"Whereas the Saltonstall-Kennedy grants program has resulted in several projects that have had significant national and regional benefits to the seafood industry; and

"Whereas in Alaska five shore-based and at least 10 vessel-based surimi processing firms have begun operations since the completion of the Alaska Fisheries Development Foundation's surimi demonstration project; and

"Whereas two recent projects of the Alaska Fisheries Development Foundation, flatfish fishery development and by-product

utilization, are having a similar positive effect on the Alaska seafood industry, and

"Whereas this unprecedented level of success in development efforts is directly related to the unique joint industry and foundation participation in the Saltonstall-Kennedy grants program; and

"Whereas through the Saltonstall-Kennedy grants program, the Alaska marine safety education program has developed a volunteer network of marine safety instructors available throughout Alaska to give safety and survival workshops to commercial fishermen and has become a model for marine safety education programs in other regions of the country; and

"Whereas the Alaska Vocational Technical Center in Seward has established a vessel crew member training program with the help of Saltonstall-Kennedy grants funds and offers an intensive course in marine safety; and

"Whereas the cooperative efforts of the Alaska marine safety education program and the Alaska Vocational Technical Center in marine safety training represent a major effort to reduce the number of casualties in the commercial fishing industry; be it

"Resolved that the Alaska State Legislature expresses its appreciation for the results of past Saltonstall-Kennedy grants program projects and gratitude for their support, to the President and Vice-President of the United States, the United States Congress, the United States Department of Commerce, the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, and the many industry organizations, fishery groups, and individuals that contribute to the success of this program; and be it further

"*Resolved*, That the Alaska State Legislature respectfully requests the President and Vice-President of the United States, the United States Congress, the United States Department of Commerce, the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, the seafood industry, and other concerned groups to continue their support for this porgram and the unique joint industry and foundation cooperation that provides such beneficial results from well-directed and efficient projects.

"Copies of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Richard G. Darman, Director of the Office of Management and Budget; the Honorable Robert A. Mosbacher, U.S. Secretary of Commerce; the Honorable William E. Evans, Administrator of the National Oceanic and Atmospheric Administration; the Honorable James W. Brennan, Assistant Administrator for Fisheries, National Marine Fisheries Service; the Honorable George J. Mitchell, U.S. Senate Majority Leader; the Honorable Bob Dole, U.S. Senate Minority Leader; the Honorable Ernest F. Hollings, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation and Chairman of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the U.S. Senate Committee on Appropriations; the Honorable Warren B. Rudman, Ranking Minority Member of the Subcommittee on Commerce, Justice State, the Judiciary, and Related Agencies of the U.S. Senate Committee on Appropriations; the Honorable John C. Danforth, Ranking Minority Member of the U.S. Senate Committee on Commerce, Science, and Transportation; the Honorable John B. Breaux, U.S. Senator; the Honorable Jim Wright, Speaker of the U.S. House of Representatives; the Honorable Thomas S. Foley, U.S. House Majority Leader; the Honorable Robert H. Michel, U.S. House Minority Leader; the Honorable Walter B. Jones, Chairman of the U.S. House Committee on Merchant Marine and Fisheries; the Honorable Robert W. Davis, Ranking Minority Member of the U.S. House Committee on Merchant Marine and Fisheries; the Honorable Gerry E. Studds, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the U.S. House Committee on Merchant Marine and Fisheries; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress."

POM-284. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Energy and Natural Resources:

"SENATE JOINT RESOLUTION 26

"Whereas the stability of the economy and the national defense of the United States are affected by dramatic fluctuations in the supply and price of energy sources; and

"Whereas it is to the benefit of the United States to ensure the security and dependability of its energy supply; and

"Whereas the March 24, 1989, oil spill disaster in Prince William Sound has underscored the need for improved tanker safety, including oil spill prevention and spill response technology; and

"Whereas the State of Alaska is a significant contributor to the nation's fossil fuel supply and is a member of the South-West Energy Council, whose members represent the nation's oil-producing states; and

"Whereas the membership of the South/West Energy Council has adopted a national energy strategy incorporating energy conservation, crude oil, coal, natural gas, renewable energy sources, and electricity; Now be it

"Resolved that the Alaska State Legislature joins with the other members of the South/West Energy Council in urging the President of the United States and the United States Congress to develop a national energy strategy or national energy management plan designed to provide a stable supply of reasonably priced energy in an efficient and environmentally sound manner to meet the needs of the citizens and economy of the United States, and the security interests of the nation; and be it further

"Resolved that the Alaska State Legislature supports the South/West Energy Council's recommendation that an energy strategy include

"(1) promoting energy conservation education and technology research, including research into superconductivity and alternative fuels, particularly for transportation use;

"(2) promoting domestic crude oil production in an environmentally sound manner, which can be accomplished by providing tax and accounting incentives to oil producers for domestic exploration and production efforts and by including specific investment tax credits for research and development; and

"(3) encouraging enhanced oil and gas recovery efforts and the development of a research, demonstration, and commercialization program for unconventional crude sources pursued through a cooperative effort involving industry, higher education, and national laboratories; and be it further

"Resolved that the Alaska State Legislature supports the strategy recommendations regarding management of crude oil imports to the United States, such as diversifying foreign sources of supply, lifting the ban on exportation of Alaskan North Slope crude oil, pursuing a Pan American Energy Alliance, continuing to fill the United States Strategic Petroleum Reserve to its 750,000,000 barrel goal, and eliminating the technological barriers that prevent use of huge unconventional crude petroleum reserves in the Western Hemisphere; and be it further

"Resolved that the Alaska State Legislature supports the strategy recommendations that include greater emphasis on promoting the use and production of natural gas, improving energy conservation efforts such as raising the corporate average fuel efficiency standards for automobiles, providing efficiency provisions in building codes, providing home appliance heating and cooling unit efficiency standards, and developing waste recycling or reduction standards for industrial manufacturing; and be it further

"Resolved that the Alaska State Legislature supports the strategy recommendations that call for responsible management of federal land that would recognize the potential that public land holds, particularly within the State of Alaska, for environmentally sound development of energy resources.

"Copies of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Robert C. Byrd, President Pro Tempore of the U.S. Senate; the Honorable Jim Wright, Speaker of the U.S. House of Representatives; the Honorable James D. Watkins, Secretary of the U.S. Department of Energy; the Honorable J. Bennett Johnston, Chair of the U.S. Senate Committee on Energy and Natural Resources; the Honorable John D. Dingell, Chair of the U.S. House Committee on Energy and Commerce; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in the Congress; and to Patrick Raffaniello, Executive Director of the South/West Energy Council."

POM-285. A concurrent resolution adopted by the Legislature of the State of Ohio; to the Committee on Energy and Natural Resources:

"HOUSE CONCURRENT RESOLUTION NO. 18

"Whereas, defense-related facilities of the United States located in Ohio engage in the handling of radioactive materials and hazardous chemicals used in the fabrication of nuclear fuel assemblies for the nuclear weapons program in the enrichment of uranium for atomic-powered submarines and for the civilian atomic power industry, and in the production of nuclear weapons detonating devices and atomic-fueled power sources for the national defense and space programs and engage in the storage and disposal of radioactive and hazardous chemical wastes associated with those processes and activities; and

"Whereas the improper handling and management of radioactive materials and hazardous chemical wastes at the facilities

have caused the uncontrolled or uncontained disposal or release of over two hundred thousand tons of those materials and wastes; and

"Whereas, the improper handling and management of radioactive materials and wastes and of hazardous chemical wastes poses a potentially serious threat to the public health and to the air, water, and land resources of Ohio; Now therefore be it

"*Resolved,* That we, the members of the 118th General Assembly of Ohio, in adopting this Resolution, memorialize the President and Congress of the United States to immediately undertake whatever actions are necessary to clean up the environmental contamination existing at or caused by defense-related facilities of the United States located in Ohio; to pursue to the fullest extent of the law remedies to hold the parties who caused or contributed to the environmental contamination at the facilities responsible for their actions; to promptly undertake a thorough investigation of the cause of any mismanagement or neglect that resulted in the environmental contamination at or caused by the facilities; to continue with measures already being taken to mitigate the environmental contamination at or caused by these facilities; to undertake whatever additional administrative and legislative actions are necessary to prevent the continuation and reoccurrence of activities at the facilities that cause or contribute to environmental contamination, including, without limitation, the establishment of additional legal remedies; and to undertake all of these actions at no cost to the citizens of the State of Ohio; and be it further

"*Resolved,* That the Legislative Clerk of the House of Representatives transmit duly authenticated copies of this Resolution to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate, and to the Ohio Congressional Delegation.

POM-286. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on Environment and Public Works:

"SENATE CONCURRENT RESOLUTION NO. 8

"Whereas there are numerous inconsistent federal definitions of the term "wetlands"; and

"Whereas the lack of a single consistent definition of "wetlands" for purposes of implementing state and federal laws has caused confusion and uncertainty in the identification and classification of particular land features as wetlands; now, therefore, be it

"*Resolved,* That the 71st Legislature of the State of Texas hereby request the United States Congress to amend the Clean Water Act of 1977 (33 U.S.C. Sections 1311, 1344); the Erodible Land and Wetland Conservation and Reserve Program (16 U.S.C. Sections 3801-3845); the Emergency Wetlands Resources Act of 1986 (16 U.S.C. Sections 3901-3902); the National Environmental Policy Act of 1969 (42 U.S.C. Section 4321 et seq.); all statutory foundation for the Federal Wildlife Service's National Wetlands Inventory mapping, including the Water Bank Program for Wetland Preservation (16 U.S.C. Sections 1301-1311); the Water Resources Research Program (wetland areas) Water Resources Development Act of 1976 (42 U.S.C. Section 1962d-5e); and the Migratory Bird Conservation Act (16 U.S.C. Sections 715-715s), including any amendment or revision thereto, to define the term "wetlands" as follows:

"The definition of the term "wetlands" means an area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation.

"The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

"The term "hydrophtic vegetation" means a plant growing in: (1) water, or (2) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

"The term "wetlands" does not include: (1) irrigated acreage used as farmland; (2) man-made wetlands of less than one acre; or (3) man-made wetlands which were not constructed with wetland creation as a stated objective, including but not limited to impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts; and, be it further

"*Resolved* by the 71st Legislature of the State of Texas, That the legislature strongly support and urge the Texas delegation of the United States Congress to work further to obtain a single consistent definition of wetlands for the purpose of all federal laws and regulations; and, be it further

"*Resolved,* That the Texas Secretary of State forward official copies of this resolution to the President of the United States of America, each member of the Texas delegation to Congress, the Speaker of the House of Representatives, the President of the Senate, each member of the Texas delegation of the Congress, the Chairman of the House Natural Resources Committee, the Chairman of the House Agriculture Committee, the Chairman of the House Energy and Commerce Committee, the Chairman of the House Interior and Insular Affairs Committee, the Chairman of the House Merchant Marine and Fisheries Committee, the Chairman of the Senate Committee on Agriculture, the Chairman of the Senate Energy and Natural Resources Committee, the Chairman of the Senate Environment & Public Works Committee, and the Chairman of the Governmental Affairs Committee as an expression of the sentiment of the Texas Legislature, with the request that this resolution be officially entered into the Congresssional Record as a memorial to the Congress of the United States of America."

POM-287. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Environment and Public Works:

"SENATE JOINT MEMORIAL 17

"Whereas the United States Congress is seeking some effective means of reducing the federal budget deficit in the immediate future; and

"Whereas several proposals being considered for budget reduction purposes would increase the existing federal fuel taxes by various sizable increments; and

"Whereas the U.S. Department of Energy has stated that "a motor fuel tax will create an economic loss which is of far greater magnitude than the possible benefits"; and

"Whereas a gasoline tax for deficit reduction would be a regressive tax affecting the poor to a greater extent than other income levels; and

"Whereas states would receive no direct revenue benefits, while incurring substantial increases in their public assistance costs; and

"Whereas residents of the South, Midwest and West pay more fuel taxes because they must travel greater distances by personal vehicles than residents of other regions and therefore would bear a disproportionate burden of deficit reduction; and

"Whereas current national policy makes no provision for continuing the Federal-Aid Highway Program into the future; and

"Whereas in all recent federal aid highway Acts, Congress has had to include provisions for extending the Highway Trust Fund and the taxes which sustain it; now, therefore, be it

"Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress of the United States is memorialized to make permanent the Highway Trust Fund and the user fees accruing to it, so that a reliable funding source is available for constructing, rehabilitating and otherwise improving the highways and bridges which are so essential to the vigor of the Oregon and the national economies.

"(2) The Congress of the United States is memorialized to protect the Highway Trust Fund from predatory proposals to divert highway user revenues to programs entirely unrelated to the transportation purposes for which the fund was established.

"(3) A copy of this memorial shall be sent to the President of the United States, the Secretary of Transportation, the Cochairmen of the National Economic Commission, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and to each member of the Oregon Congressional Delegation."

POM-288. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Energy and Natural Resources:

"SENATE JOINT MEMORIAL 9

"Whereas Ontario, Oregon, and surrounding Malheur County were classified as a free zone during World War II, and was an area of assemblage by Japanese-Americans which exceeded in population 5,000 at that time; and

"Whereas over 2,000 Japanese-Americans reside in the western Treasure Valley today, making the Ontario area the center of Japanese-American cultural, religious and business activity in the region; and

"Whereas the memory of the hardships endured by these Japanese-Americans during the internment period is deserving of a monument which will not only honor this memory, but will also further the educational function to assure that the rights of the country's citizens never be compromised again; and

"Whereas the campus of the Treasure Valley Community College is located in the center of what was once the free zone, and would be an excellent and appropriate location for such an honorary and educational monument; and

"Whereas the cost to construct the proposed cultural center is $9,314,000 of which federal funding through the Civil Liberties Public Education Fund of the redress bills

before Congress is requested to develop the facility; and

"Whereas additional revenue would come from rental, admission and membership fees as well as through direct staffing and maintenance support from the Treasure Valley Community College; and

"Whereas the Japanese-American Cultural Center, as it would be appropriately named, would officially open on February 19, 1992, exactly 50 years after President Roosevelt signed Executive Order 9066; now, therefore, be it

"Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress of the United States is urged to enact appropriate legislation as may come before it to create a national monument to the Japanese-Americans who were interned during World War II.

"(2) A copy of this memorial shall be sent to the President of the Senate and the Speaker of the House of Representatives of the United States and to each member of the Oregon Congressional Delegation."

POM-289. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Finance:

"SENATE JOINT MEMORIAL 16

"Whereas large-scale rehabilitation, repair and capacity improvements are ongoing necessities of the national highway transportation system; and

"Whereas the highway transportation system is the most critical component of the physical infrastructure of the United States of America; and

"Whereas there is a growing and concentrated national consensus for a program to serve the country's highway transportation needs through the year 2020; and

"Whereas high quality highways are critical to the ability of manufacturers to build and deliver products, and to the ability of states and communities to attract new industry and to sustain economic growth; and

"Whereas the competitive position of states and the nation in international trade is directly related to the quality of access to the interstate highway system and the physical condition of interstate and primary highways; and

"Whereas there continues to exist a great need to rehabilitate and reconstruct the nation's transportation infrastructure, and motor fuel taxes are dedicated to transportation purposes; and

"Whereas the tourism industry, one of the top three employers in 80 percent of the states, would be adversely affected; and

"Whereas the Gross National Product, Consumer Price Index, and the employment all would be severely and negatively affected; and

"Whereas raising the fuel excise tax for deficit reduction purposes would not only undermine the Highway Trust Fund, but would also fail to get to the root of the federal deficit problem; now, therefore, be it

"Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress of the United States is memorialized to oppose the use of federal fuels taxes to reduce the federal deficit.

"(2) A copy of this memorial shall be sent to the President of the United States, the Secretary of Transportation, the Cochairman of the National Economic Commission, to the President of the Senate and the Speaker of the House Representatives of the Congress of the United States, and to each member of the Oregon Congressional Delegation."

POM-290. A joint resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Foreign Relations:

"ASSEMBLY JOINT RESOLUTION 58

"Whereas thousands of Chinese students, teachers and workers have shown the world that they desire basic human freedoms by their peaceful protests and marches in Beijing, Shanghai, and other Chinese cities; and

"Whereas the reporting and television coverage by the international media have demonstrated to the world the breadth and intensity of this longing for democracy and human rights; and

"Whereas the United States treasures the values for which the students and other citizens of Beijing demonstrated—freedom of expression, freedom of assembly, freedom to petition the government for redress of grievances, and freedom to influence and take part in the decision-making process of government; and

"Whereas the demonstrators have explicitly tied their values to ours by erecting a "Statue of Liberty" of their own, which was ruthlessly destroyed by the military in an insult to the United States and its ideals; and

"Whereas the killing of hundreds of unarmed Chinese civilians by military forces, the use of tanks to quell civil disturbances and the resort to massive force in reaction to nonviolent civil protests are repugnant to the United States and the rest of the world; and

"Whereas the use of force to suppress liberty does not work and never will work, is inimical to the development of the potential of the human race and is repulsive to the members of a free and open society; now, therefore, be it

"Resolved by the assembly, the senate concurring, That the Wisconsin legislature supports the actions of the President of the United States to stop military and government-to-government sales between the 2 countries, and to give special consideration to the plight of Chinese students now studying in the United States; and, be it further

"Resolved, That the legislature urges the President of the United States to consider any further actions that may be practical in this situation to help the demonstrators, to make clear the United States' support for democracy and human rights, and to moderate the actions of the Chinese military, including any actions affecting trade, tourism or government relations which he finds practicable in this regard; and, be it further

"Resolved, That the legislature urges the President of the United States, the U.S. senate and the U.S. state department to express in the strongest terms our disapproval of and disgust at the massacre of innocent civilians and our unwillingness to accept such action by any government; and, be it further

"Resolved, That the legislature urges the University of Wisconsin system to aid Chinese students in Wisconsin; and, be it further

"Resolved, That the assembly chief clerk shall immediately transmit copies of this joint resolution to the President of the United States, to the President and Secretary of the Senate of the United States, to the chairperson of the Committee on Foreign Affairs of the House of Representatives of the United States, to the Secretary General of the United Nations, to the Secretary of State of the United States, to each member of the congressional delegation from this state and to the president of the University of Wisconsin system."

POM-291. A joint resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Foreign Relations:

ASSEMBLY JOINT RESOLUTION 58

"Whereas thousands of Chinese students, teachers and workers have shown the world that they desire basic human freedoms by their peaceful protests and marches in Beijing, Shanghai and other Chinese cities; and

"Whereas the reporting and television coverage by the international media have demonstrated to the world the breadth and intensity of this longing for democracy and human rights; and

"Whereas the United States treasures the values for which the students and other citizens of Beijing demonstrated—freedom of expression, freedom of assembly, freedom to petition the government for redress of grievances, and freedom to influence and take part in the decision-making process of government; and

"Whereas the demonstrators have explicitly tied their values to ours by erecting a "Statute of Liberty" of their own, which was ruthlessly destroyed by the military in an insult to the United States and its ideals; and

"Whereas the killing of hundreds of unarmed Chinese civilians by military forces, the use of tanks to quell civil disturbances and the resort to massive force in reaction to nonviolent civil protests are repugnant to the United States and the rest of the world; and

"Whereas the use of force to suppress liberty does not work and never will work, is inimical to the development of the potential of the human race and is repulsive to the members of a free and open society; now, therefore, be it

"Resolved by the assembly, the senate concurring, That the Wisconsin legislature supports the actions of the President of the United States to stop military and government-to-government sales between the 2 countries, and to give special consideration to the plight of Chinese students now studying in the United States; and, be it further

"Resolved, That the legislature urges the President of the United States to consider any further actions that may be practical in this situation to help the demonstrators, to make clear the United States' support for democracy and human rights, and to moderate the actions of the Chinese military, including any actions affecting trade, tourism or government relations which he finds practicable in this regard; and, be it further

"Resolved, That the legislature urges the President of the United States, the U.S. Senate and the U.S. state department to express in the strongest terms our disapproval of and disgust at the massacre of innocent civilians and our unwillingness to accept such action by any government; and, be it further

"Resolved, That the legislature urges the University of Wisconsin system to aid Chinese students studying in Wisconsin; and, be it further

"Resolved, That the assembly chief clerk shall immediately transmit copies of this joint resolution to the President of the United States, to the president and secretary of the senate of the United States, to the chairperson of the committee on foreign affairs of the house of representatives of the United States, to the secretary general of the United Nations, to the secretary of

state of the United States, to each member of the congressional delegation from this state and to the president of the university of Wisconsin system."

POM-292. A concurrent resolution adopted by the Legislature of the State of Ohio; to the Committee on Governmental Affairs:

"HOUSE CONCURRENT RESOLUTION No. 23

"Whereas the members of the 118th General Assembly of Ohio wish to memorialize the United States Congress and Postmaster General of the United States Postal Service to issue a commemorative stamp honoring the late John L. Lewis for his invaluable contribution to the American Labor Movement; and

"Whereas throughout his long and notable career, John L. Lewis distinguished himself as a man of exceptional insight and vision in the support of organized labor. In all his endeavors as president of both the United Mine Workers of America and the Congress of Industrial Organizations, John L. Lewis demonstrated unwavering dedication to performing his duties and fulfilling his responsibilities with utmost efficiency and effectiveness, and, as result of his diligent efforts, he played a dominant role in the transformation of industrial America during the twentieth century; and

"Whereas John L. Lewis was a dynamic advocate for America's mine workers, and he worked tirelessly to ensure safe and healthy working conditions, as well as to achieve compensation and fringe benefits that reflected workers' skills and dedications. The many hours he devoted to union projects and activities had a tremendous impact on the growth and success of the labor movement across America, and throughout a lifetime of dedication to the ideals of unionism, John L. Lewis earned the respect and admiration of all who knew him; and

"Whereas countless individuals throughout our vast labor force have worked together to build this great nation and have contributed to its progress and prosperity over the years. As UMWA celebrates its One Hundredth Anniversary in 1990, it would be only fitting that the United States Congress and the Postmaster General of the United States Postal Service issue a commemorative stamp honoring the late John L. Lewis for his courage and determination, and for his efforts to give working men and women a voice in the economic decision-making process which so greatly affects the quality of life for all; therefore be it

"*Resolved*, That we, the members of the 118th General Assembly of Ohio, in adopting this Resolution, memorialize the United States Congress and the Postmaster General of the United States Postal Service to issue a commemorative stamp honoring the late John L. Lewis for his contributions to the cause of labor; and be it further

"*Resolved*, That the Legislative Clerk of the House of Representatives transmit duly authenticated copies of this Resolution to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Postmaster General, and to the members of the Ohio Congressional Delegation."

POM-293. A resolution adopted by the Board of City Commissioners of Raymondville, Texas, favoring and supporting a constitutional amendment making desecration of the American flag a violation of Federal law; to the Committee on the Judiciary.

POM-294. A resolution adopted by the Emblem Club Sisters of Alaska honoring the flag of the United States of America; to the Committee on the Judiciary.

POM-295. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on the Judiciary:

"JOINT RESOLUTION

"Whereas the American flag is a symbol of national unity; and

"Whereas the American flag provides a beacon of hope and liberty for every nation in the world; and

"Whereas our Armed Forces have defended our country's freedoms under the banner of the Stars and Stripes from the Revolutionary War to the present day; and

"Whereas the American flag is a source of tremendous national pride; and

"Whereas the American flag is cherished as the embodiment of our country's history, traditions and ideals; now, therefore, be it

"*Resolved*, That We, the Members of the One Hundred and Fourteenth Legislature of the State of Maine now assembled in the First Regular Session, respectfully request the Congress of the United States to propose and pass an amendment to the United States Constitution making it a crime to desecrate the American flag; and be it further

"*Resolved*, That a duly authenticated copy of this Memorial be submitted immediately by the Secretary of State to the Honorable George H.W. Bush, the President of the United States, to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States, and to each Member of the Maine Congressional Delegation."

POM-296. A resolution adopted by the Commission of Elmore County, Alabama, favoring legislation designed to support and protect the American flag against any form of desecration; to the Committee on the Judiciary.

POM-297. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 18

"Whereas the United States flag belongs to all Americans and ought not be desecrated by any one individual, even under principles of free expression, any more than we would allow desecration of the Declaration of Independence, Statue of Liberty, Lincoln Memorial, Yellowstone National Park, or any other common inheritance that the people of this land hold dear; and

"Whereas the United States Supreme Court, in contravention of this postulate, has by a narrow decision held to be a First Amendment freedom the license to destroy in protest this cherished symbol of our national heritage; and

"Whereas whatever legal arguments may be offered to support this contention, the incineration or other mutilation of the flag of the United States of America is repugnant to all those who have saluted it, paraded beneath it on the Fourth of July, been saluted by its half-mast configuration, or raised it inspirationally in remote corners of the globe where they have defended the ideals of which it is representative; and

"Whereas the members of the Legislature of the State of Texas, while respectful of dissenting political views, themselves dissent forcefully from the court decision echoing the beliefs of all patriotic Americans that this flag is our flag, and not a private property subject to a private prerogative to maim or despoil in the passion of individual protest; and

"Whereas as stated by Chief Justice William Rehnquist, writing for three of the four justices who comprised the minority in the case, 'Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people—whether it be murder, embezzlement, pollution, or flag burning'; and

"Whereas this legislature concurs with the court minority that the Stars and Stripes is deserving of a unique sanctity, free to wave in perpetuity over the spacious skies where our bald eagles fly, the fruited plain above which our mountain majesties soar, and the venerable heights to which our melting pot of peoples and their posterity aspire; now, therefore, be it

"*Resolved*, That the 71st Legislature of the State of Texas, convened in First Called Session, hereby petition the Congress of the United States of America to propose to the states an amendment to the United States Constitution, protecting the American flag and 50 state flags from willful desecration and exempting such desecration from constitutional construction as a First Amendment right; and, be it further

"*Resolved*, That official copies of this resolution be prepared and forwarded by the Texas secretary of state to the speaker of the house of representatives and president of the senate of the United States Congress and to all members of the Texas delegation to that congress, with the request that it be officially entered in the Congressional Record as a memorial to the Congress of the United States; and, be it further

"*Resolved*, That a copy of the resolution be prepared and forwarded also to President George Bush, asking that he lend his support to the proposal and adoption of a flag-protection constitutional amendment; and, be it finally

"*Resolved*, That official copies likewise be sent to the presiding officers of the legislatures of the several states, inviting them to join with Texas to secure this amendment and to restore this nation's banners to their rightful status of treasured reverence."

POM-298. A resolution adopted by the Alabama Chapter of the Military Order of the Purple Heart supporting a proposed Constitutional amendment that would make it a crime to desecrate the American flag by burning or any other means; to the Committee on the Judiciary.

POM-299. A resolution adopted by the Legislature of the State of Nevada; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 22

"Whereas an amendment to the Constitution of the United States was proposed by resolution of the First Congress of the United States in New York City, New York, on September 25, 1789, which reads in pertinent part as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring*, That the following [Article] be proposed to the Legislatures of the several States, * * * which [Article], when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

"Article the second * * * No law, varying the compensation for the services of the Senators and Representatives, shall take

effect, until an election of Representatives shall have intervened.

"And

"Whereas the Legislature of the State of Nevada acknowledges that this proposed article of amendment to the United States Constitution has already been ratified, respectively, by the Legislatures of Maryland on December 19, 1789; North Carolina on December 22, 1789; South Carolina on January 19, 1790; Delaware on January 28, 1790; Vermont on November 3, 1791; Virginia on December 15, 1791; Ohio on May 6, 1873; Wyoming on March 3, 1978; Maine on April 27, 1983; Colorado on April 18, 1984, South Dakota on February 21, 1985; New Hampshire on March 7, 1985; Arizona on April 3, 1985; Tennessee on May 23, 1985; Oklahoma on July 10, 1985; New Mexico on February 13, 1986; Indiana on February 19, 1986; Utah on February 25, 1986; Arkansas on March 7, 1987; Montana on March 11, 1987; Connecticut on May 13, 1987; Wisconin on June 30, 1987; Georgia on February 2, 1988; West Virginia on March 10, 1988; Louisiana on July 6, 1988; and Iowa on February 7, 1989; and

"Whereas the Legislature of the State of Nevada acknowledges that this article of amendment may still be ratified by state legislatures as a result of the ruling by the United States Supreme Court in the case of *Coleman v. Miller*, 307 U.S. 433 (1939), which held that unless Congress specifies a limit on the time allowed for consideration by the states, then Congress is the final arbiter of the question whether too much time has elapsed between Congress' submission of an amendment and the most recent state legislature's ratification of the amendment; now, therefore, be it

Resolved by the Assembly and Senate of the State of Nevada, jointly, That the proposed amendment to the Constitution of the United States of America is hereby ratified by the Legislature of the State of Nevada; and made it further

Resolved, That a true copy of this resolution be delivered by the Chief Clerk of the Assembly to the Secretary of State for his certification and transmittal to the Archivist of the United States pursuant to 1 U.S.C. §§ 106b and 112; and be it further

Resolved, That the Chief Clerk of the Assembly shall also send a copy of this resolution to the Vice President of the United States, as president of the Senate, and to the Speaker of the House of Representatives with the request that it be printed in full in the *Congressional Record;* and be it further

Resolved, That the Chief Clerk of the Assembly shall also send a copy of this resolution to each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage and approval."

POM-300. A resolution adopted by the City Council of Toledo, Ohio favoring passage of the Americans With Disabilities Act; to the Committee on Labor and Human Resources.

POM-301. A resolution adopted by the Legislation of the Territory of American Samoa; ordered to lie on the table:

"HOUSE RESOLUTION No. 34

"Whereas Democratic Majority Leader, the Honorable Thomas S. Foley, was recently elected Speaker of the House of Representatives, 101st Congress of the United States; and

"Whereas the newly elected Speaker is credited as being a thoughtful and temperate politician and brings to office with him certain valuable assets, including: intellect; experience; worldly sophistication; age; and a host of personal traits that have made him popular and widely respected in Congress. Now, therefore, be it

Resolved by the House of Representatives of the Territory of American Samoa, That, it sends its support and best wishes to the Honorable Thomas S. Foley as newly elected Speaker of the House; and be it further

Resolved, That the Chief Clerk of the House of Representatives is directed to transmit copies of this resolution to: the Honorable Thomas S. Foley, Speaker of the United States of Representatives; Honorable Dan Quayle, Vice President of the United States; Congressman Faleomavaega Eni Hunkin; and to the Honorable Peter T. Coleman, Governor of American Samoa."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LAUTENBERG, from the Committee on Appropriations, with amendments:

H.R. 3015. A bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1990 and for other purposes (Rept. No. 101-121).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1426. A bill to revise and extend the programs of the Domestic Volunteer Service Act of 1973 and for other purposes (Rept. No. 101-122).

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. DODD (for himself and Mr. D'AMATO):

S. 1588. A bill to amend the Internal Revenue Code of 1986 to provide for a credit for contributions to individual retirement plans and a partial exclusion from gross income of dividends and interest received by individuals; to the Committee on finance.

By Mr. METZENBAUM:

S. 1589. A bill to amend the Appalachian Regional Development Act of 1965 to include Columbiana County, OH, as part of the Appalachian region; to the Committee on Environment and Public Works.

By Mr. BINGAMAN:

S. 1590. A bill to transfer certain rights-of-way to the Elephant Butte Irrigation District of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for Mr. DOLE (for himself, Mr. MITCHELL, Mr. HOLLINGS, Mr. DANFORTH, Mr. FORD, Mr. MCCAIN, Mr. GORTON, Mr. GRASSLEY, Mr. HARKIN, Mr. HUMPHREY, Mr. KASTEN, Mr. ARMSTRONG, Mr. COATS, Mr. MATSUNAGA, Mr. HATCH, Mr. PACKWOOD, and Mr. WALLOP)):

S. Res. 174. A resolution comending the crew of United Flight 232 and personnel from the Federal Aviation Administration; considered and agreed to.

By Mrs. KASSEBAUM (for herself, Mr. PELL, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. SIMON, Mr. SANFORD, Mr. MOYNIHAN, Mr. LUGAR, Mr. BOSCHWITZ, Mr. MURKOWSKI, and Mr. MACK):

S. Con. Res. 68. A concurrent resolution authorizing a concert by the American Soviet Youth Orchestra on Capitol grounds; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD (for himself and Mr. D'AMATO):

S. 1588. A bill to amend the Internal Revenue Code of 1986 to provide for a credit for contributions to individual retirement plans and a partial exclusion from gross income of dividends and interest received by individuals; to the Committee on Finance.

SAVINGS AND CAPITAL FORMATION ACT

Mr. DODD. Mr. President, one of our most troubling economic problems continues to be our low saving rate. The United States has one of the lowest personal savings rates in the industralized world—a third that of Germany and a quarter that of Japan.

The implications are important at all levels. It means that too much of our budget deficit is financed by foreign dollars, dollars that investors can choose to withdraw at will. It means that there are insufficient and overly costly funds to invest in new and expanding businesses. And, equally importantly, it means that too many people have insufficient savings to meet emergencies or to plan for their children's education.

This is a problem that we can—and must—do something about. Ironically, the one proven vehicle for increasing saving—individual retirement accounts [IRA's]—was eviscerated by the Tax Reform Act of 1986. A recent study sponsored by Merrill Lynch Consumer Markets, entitled "Save, America," estimated that between 1982 and 1986, $137.8 billion in new savings were generated by IRA's.

In order to take a first step toward increasing our saving rate, today Senator D'AMATO and I are introducing legislation to establish a tax credit for contributions to IRA accounts and to provide for a limited exclusion from gross income of interest and dividends by people of modest means.

More specifically, the legislation provides for a 15-percent tax credit on contributions of up to $2,000 per year. In addition, people with adjusted gross incomes of up to $25,000, who do not have IRA accounts, could exclude

from income up to $100 of interest and dividends a year.

Mr. President, we all understand the importance of saving to capital formation, to assuring our future standard of living and to global competitiveness. As the "Save America" study clearly states, "saving invested in productive assets increases the capital stock, which in turn results in greater amounts of output and income."

Not surprisingly, as a recent Fortune magazine article entitled "How Capital Costs Cripple America" points out, "Like all prices, the price of capital is a matter of supply and demand, with the puny supply of U.S. savings a guarantee that the price will be high." How high? A 1986 study of capital costs by economists B. Douglas Bernheim or Northwestern and John B. Shoven of Stanford reveals that throughout the 1980's the United States has borne the highest cost of capital of the leading industralized nations, nearly twice that of Japan.

Capital formation is particularly important at a time when we still have not tamed the budget tiger. Unfortunately, despite the promises of supply side economics, our saving rate continues to decline: From 8.7 percent of GNP between 1971 and 1975, to 6.2 percent between 1981 and 1985, to 4 percent between 1985 and 1988. The "Save, America" study points out the importance of this decline by noting that "a 2.5-percent increase in the personal saving rate could add roughly 10 percentage points to the GNP or $500 billion in terms of today's economy."

Introduction of this legislation raises several questions. First, "Wasn't the IRA tax deduction in effect during the decline in saving during the 1980's?" The answer is yes, it was, but as Michael Boskin wrote in "a closer look at recent U.S. saving" in 1986, "there is a substantial reason to believe that the saving rate would still be lowered * * * had universal IRA accounts not been instituted." His conclusion is supported by several other recent studies, including one by David Venti and Steven Wise, "The Evidence on IRA's," published in January 1988, which concluded that "IRA's have had a substantial positive net effect on personal savings." The authors found that 80 percent of IRA contributions were new savings; with more than one-half of each marginal IRA dollar coming from reduced consumption and another 20-30 percent from reduced taxes.

A second question often raised is, "Aren't IRA's a rich person's gimmick?" Obviously wealthier people potentially have more money to save; however, the data shows that IRA's were used predominately by moderate and middle income people. IRS statistics show that for 1986, fully two-thirds of all taxpayers claiming an IRA deduction were families with incomes under $50,000. Moreover, those returns accounted for almost 60 percent of the payments to IRA's.

I would add here, Mr. President, that with the change in the tax law in 1986 the IRS reports a roughly 50-percent reduction in the number of people who are taking out individual retirement accounts. So the change in the law in 1986 had a profound and significant impact on the number of people who were actually taking these IRA's.

The changing demographics of our society also create an imperative for increased private retirement savings. Obviously as people live longer they will need more resources. In addition, many baby boomers will be unable to accrue significant benefits under private retirement plans because today's increased job mobility will result in them not staying in pension plans long enough for their benefits to vest.

To address the legitimate objection that a $2,000 deduction is more valuable to someone in the 33-percent tax bracket than someone in the 15-percent bracket, the Dodd-D'Amato bill would replace the deduction with a 15-percent tax credit. This way a person who places $2,000 in an IRA would get a $300 tax credit, regardless of whether the person's income was $10,000 or $1,000,000.

However, many people cannot afford to tie up money until they retire. They have other more immediate concerns, from the potential devastation of a serious illness or loss of job to the need to put money aside for their children's college education. The Dodd-D'Amato legislation recognizes the importance of saving for personal reasons by establishing a $100 exclusion from income for interest or dividends earned by people with less than $25,000 in adjusted gross income who do not have IRA's.

Finally, the logical question of cost arises: Granted that inducements for saving are beneficial to society, how can we afford such a program while the Federal deficit is still out of control? The point is a legitimate one. The Joint Committee on Taxation has estimated that our legislation would cost $6.7 billion over the next 3 fiscal years, if implemented in calendar 1990. It would not be responsible to increase the deficit by that amount. Therefore, I believe that there should be an appropriate offset when the bill goes forward. Given the proposal's objective of encouraging saving, I believe the most appropriate offset would be some form of consumption tax, such as a value added tax. For the moment, however, I think the most important thing is to put a proposal on the table that focuses people's attention on the need to encourage saving, and that is what this legislation does.

I add that the President has indicated that he wants to support an individual retirement account proposal. He has failed yet to offer one specifically. Senator ROTH of Delaware has proposed an individual retirement account bill that has some very good features. Senator D'AMATO and I are not wedded to the specifics of this bill. I see my distinguished colleague from New York, Senator MOYNIHAN, on the floor, who has a deep interest in these matters, and obviously we will be seeking his advice and counsel on how best to move forward with this kind of proposal.

We believe it would give us a significant step forward in the general issue on which everyone agrees without question, and that is the importance of encouraging savings on the part of the American consumer. That must be done. If we depend upon foreign capital to finance our debt we place this Nation in great jeopardy. With an individual retirement account at best we offer the proposal of increasing a savings pool from which that deficit would be financed instead of relying on outside interests in this country who do not have the best interests of the United States at heart.

Mr. President, I urge the Finance Committee to move speedily on this proposal so that we can begin to generate the savings necessary to finance our budget deficit, to provide for capital formation, to increase international competitiveness, and to encourage a saving ethic to provide money for rainy days.

● Mr. D'AMATO. Mr. President, I rise today to introduce, along with my esteemed colleague from Connecticut, Senator DODD, a bill that will begin to address this country's most important long-term economic problem, our low domestic savings rate. As you know, Mr. President, America faces a world of vigorous competition in the global marketplace. During the same time that the economies of the world have become more and more integrated since the end of World War II, the competitive superiority of U.S. technology, productivity and finance has been steadily eroded by the rise of economies in both Asia and Europe.

The military competition of the 19th century and the first half of the 20th century have been replaced, I am happy to report, by competition in the economic arena. However, it is not so pleasing to note that America is not winning that competition. America's standard of living, once the envy of the entire world, has been eclipsed by some countries in Europe. Furthermore, the trend of America's relative standard of living is downward.

Why is this, Mr. President? There are many reasons. The complexity of this issue can be somewhat daunting—perhaps too complex for effective legislative action. However, the high cost of investment capital, a problem which many economists have identified as a

crippling burden on American competitiveness, is a problem which this Congress can address with positive legislation. The solution is to remove part of the bias against savings in our system of personal income taxation.

The American taxpayer's savings are taxed twice; once when money is earned and again each year when the proceeds of savings are realized. When a young family or a retired couple manages to keep $1,000 in a savings account that earns 6 percent per year, they receive $60 a year in interest on that savings. Our Tax Code then takes either 15 or 28 percent of that. The fruits of frugality is then, at best $51 and, more likely, under the 28-percent rate, $43. It is no wonder that Americans choose to spend their wages and rely on credit when they meet an unexpected expense.

America's household savings is approximately 4 percent of GNP. This compares to a rate of 20 percent in Japan and 8 percent in West Germany and in Canada. It is a startling fact that in Japan alone there is an average of $126,000 per household in savings. With so much capital available, is it a surprise that Japanese investment in the United States has increased by 611 percent between 1980 and 1987?

Of course, the Japanese are not alone. Foreign ownership of America's productive assets is increasing at a rate which is not matched by U.S. investment abroad because many foreign concerns have access to cheap investment capital. Once again our low savings rate is our main enemy.

The result to the economy is that our companies pay several percentage points more in interest for the money they need to make the workplace safer, to conduct research, to open new markets, and to expand or improve production. The result of this trend is a decline in America's competitiveness and in its standard of living.

As we all know, our trade deficit remains enormous and American exports are in decline once again. This is only another aspect of an ominous trend that will haunt many future generations of Americans unless we correct it.

Mr. President, I do not intend to cry doom. To the contrary, I believe our market economy is inherently resilient and can weather many a misguided Federal policy. But action is needed to impede these ominous trends now.

This low savings trend also harms the individual citizen because it represents an erosion of the security that only personal savings can provide.

We, the Congress, must act to improve our rate of savings. This is why Senator DODD and I are proposing a new individual retirement account which resembles the individual retirement account which was all but eliminated in 1986. I continue to believe that Senator DODD and I fought the good fight to save the IRA in 1986. We lost to the delicate consensus that had formed around the Tax Reform Act of 1986 and to arguments that have since been discredited. The IRA faced two persistent arguments. Both of these arguments have been thoroughly refuted by the facts. Furthermore our new IRA and savings bill is designed to assure that the benefits of deferred taxation are available on an equal basis to all taxpayers regardless of income.

The economics of the IRA are now clear. Between 1981 and 1986 the IRA generated enormous new savings. By the calculations of the Institute for Research on the Economics of Taxation, the IRA brought about $135 billion in new savings. Many other economists have reviewed this question and all have concluded that the IRA promotes savings rather than merely the shifting of funds from one form of savings to another.

It is also clear that two-thirds of all IRA's were held by taxpayers who earned less than $50,000 per year. The IRA is not a tax shelter for the rich. It is a retirement savings vehicle for the middle class and it is a mistake to repeal it in the face of this unfounded argument.

The bill we are introducing today nonetheless addresses these two concerns. First, the tax benefit will be equal for all taxpayers—a straight 15 percent credit against tax for every dollar of contribution regardless of tax bracket. Those who argued that the old IRA which allowed a deduction rather than a credit was an unequal tax break should be satisfied. Regardless of how much income one has or how much tax shelter they seek, all taxpayers get the same $300 maximum tax credit.

Second, we offer a savings incentive for taxpayers who lack the resources to fund an IRA. For those who make no IRA or some other personal retirement fund contribution, there is an exclusion of the first $100 of income from taxation. This amount is $200 for joint returns. While a $100/200 exclusion is not a great amount of tax benefit, it will make the entire proceeds of a $1,600 savings account earning 6 percent annually tax free. And for a low income taxpayer that means $15 to $28 a year staying in that savings account and earning interest rather than going to Uncle Sam's double taxation. I think that is a bit of fairness for the little guy and an incentive to save as well.

This bill also addresses the nonearning spouse as well. Couples who file joint returns can contribute up to $3,000 and claim a credit of $450. This would establish a spousal IRA of $1,000 compared to the current limit of $250.

We all agree that our savings rate is too low. I urge my colleagues to seize the moment and join Senator DODD and me in sponsoring this legislation. The country's future economic well-being is at stake and we are offering a good program for restoring America's competitive position through improved savings.●

By Mr. METZENBAUM:

S. 1589. A bill to amend the Appalachian Regional Development Act of 1965 to include Columbiana County, OH, as part of the Appalachian region; to the Committee on Environment and Public Works.

INCLUSION OF COLUMBIANA COUNTY, OH, IN THE APPALACHIAN REGION

● Mr. METZENBAUM. Mr. President, in 1965, Congress created the Appalachian Regional Commission, an agency dedicated to ending decades of social, cultural and economic isolation within Appalachia. Over the course of the past 25 years, the ARC has been an unqualified success. Schools have been built, roads constructed, water and sewer lines needed to attract industry have been laid. Head Start, senior programs, community recreation centers, and many other programs have helped to improve the lives of millions of people who live in the region.

I am today introducing legislation to correct an oversight that occurred when the ARC legislation was enacted 25 years ago. At that time, Columbiana County, OH, was supposed to be included in the group of Appalachian counties that made up the region. Unfortunately, local officials in Columbiana County who feared being labeled socially and economically backward, therefore declined to join the commission. As a result the county has been unable to benefit from ARC programs ever since.

Since 1965, the economic position of Columbiana County has deteriorated. Through much of the 1980's, the county has had a double digit unemployment rate. Per capita income has fallen from 89 percent of Ohio's rate to 79 percent, and the area population is predicted to fall by more than 10 percent during the next 20 years. The county needs help.

This bill would put Columbiana County back in the designated Appalachian region. The county shares many of the social and cultural characteristics of the region, and therefore I believe it is only fair that we help these folks obtain the same benefits that are available to others throughout this section of the country.●

By Mr. BINGAMAN:

S. 1590. A bill to transfer certain rights-of-way to the Elephant Butte Irrigation District of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

ELEPHANT BUTTE IRRIGATION DISTRICT

● Mr. BINGAMAN. Mr. President, I rise today to introduce legislation to transfer certain rights-of-way to the Elephant Butte Irrigation District of New Mexico, and for other purposes.

The Elephant Butte Irrigation District [EBID] is a quasi-municipal corporation formed in cooperation with the United States Bureau of Reclamation under the laws of the State of New Mexico. The EBID is a successor to the Elephant Butte Water Users Association. It was established in 1905 as a preliminary component for the Rio Grande project that was authorized in 1906. The EBID, through various repayment contracts with the Bureau of Reclamation, made its final payment for the construction of the project in September 1971.

On February 15, 1979, the Bureau transferred the operation and maintenance of the New Mexico portion of the Rio Grande project to the EBID. This year the EBID marks its 10th anniversary operating the Rio Grande project, and over these past 10 years they have had the opportunity to evaluate and recommend improvements to the project.

Over the last decade, the costs to EBID for the annual operation and maintenance charges by the Bureau of Reclamation have increased 141 percent, while the duties and responsibilities of the Bureau have continued to decrease. In an effort to halt the spiraling costs of the annual operation and maintenance budget, EBID assumed operation and maintenance responsibilities over the three diversion dams within the EBID boundaries. Within 2 years, the Bureau of Reclamation's budget again outstripped the savings that had been achieved with the district assumed greater responsibilities.

The district has also had a continuing problem with encroachment on their rights-of-way and easements which severely impacts the project's operations. There have also been delays in processing and issuing permits to cross these easements and rights-of-way which undermines the efficiency of the various utilities and water companies that work hand-in-hand with the district.

Several years ago the Bureau of Reclamation established a policy of transferring single-purpose and many multi-purpose facilities to local water organizations for operation and maintenance. In an effort to implement that plan, the district has initiated this legislation for the return of the remaining district works so that it may assume complete operation and maintenance control over them. Part of a contract entered into between the Bureau and the district in 1979 provided that "upon the execution of this contract, the United States shall transfer to the Elephant Butte Irrigation District, and the district shall assume the operation and maintenance of the transferred district works." The term "transferred district works" in the contract refers to the distribution and drainage systems for the operation and maintenance of the irrigation district.

In addition to this contract language transferring the balance of the district works, statutory language found in 43 U.S.C. 498 also provides that when repayment to the Government has been made, the title to, and the management and operation of the irrigation works should pass to the owners of the land irrigated by the project. This statute was section 6 of the original 1902 Reclamation Act.

This legislation provides the Secretary of the Interior with the necessary authority to transfer back to EBID all those district works covered by the 1979 contract and 43 U.S.C. 498. The EBID has demonstrated clearly its ability to govern, control, maintain, and operate its portion of the project in an efficient manner. Since the district assumed greater responsibility for the project, costs for operation and maintenance have been reduced substantially. The result is a net savings for the Federal Government and lower water rates for members of the district. In this time of tight budgets and fiscal restraint, this transfer serves the best interest of all parties involved.

This measure is identical to H.R. 3196, sponsored by Representative JOE SKEEN. I urge the Senate to approve this legislation.

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

S. 1590

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSFER.

The Secretary of the Interior is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation Distict upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the Elephant Butte Irrigation District assumes the responsibility for operating and maintaining that portion of such projects. Title to, and management and operation of, the reservoirs and the works necessary for their protection and operation shall remain in the United States until otherwise provided by an Act of Congress.●

ADDITIONAL COSPONSORS

S. 470

At the request of Mr. EXON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 470, a bill to provide better bus transportation services for residents of rural areas, and for other purposes.

S. 495

At the request of Mr. HEINZ, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 495, a bill to amend title 10, United States Code, to encourage increased utilization of domestic firms in the performance of Department of Defense contracts.

S. 501

At the request of Mr. D'AMATO, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 501, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase the amount of, the exclusion for amounts received under qualified group legal services plans.

S. 519

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 519, a bill to prohibit smoking on any scheduled airline flight in intrastate, interstate, or overseas air transportation.

S. 543

At the request of Mr. SIMON, the names of the Senator from Utah [Mr. HATCH], the Senator from South Carolina [Mr. THURMOND], the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 543, a bill to amend the Job Training Partnership Act to strengthen the program of employment and training assistance under that act, and for other purposes.

S. 563

At the request of Mr. MATSUNAGA, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 563, a bill to amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive retired pay concurrently with disability compensation after a reduction in the amount of retired pay.

S. 564

At the request of Mr. MATSUNAGA, the name of the Senator from Alabama [Mr. HEFLIN] was added as a co-

sponsor of S. 564, a bill to provide for an Assistant Secretary of Veterans Affairs to be responsible for monitoring and promoting the access of members of minority groups, including women, to service and benefits furnished by the Department of Veterans Affairs.

S. 714

At the request of Mr. McCLURE, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 714, a bill to extend the authorization of the Water Resources Research Act of 1984 through the end of fiscal year 1993.

S. 741

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 741, a bill to require the Secretary of Labor to identify labor shortages and develop a plan to reduce such shortages, and for other purposes.

S. 814

At the request of Mr. DOMENICI, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 814, a bill to provide for the minting and circulation of one-dollar coins, and for other purposes.

S. 1007

At the request of Mr. CHAFEE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1007, a bill to amend title 23, United States Code, regarding the reduction in apportionment of Federal-aid highway funds to certain States, and for other purposes.

S. 1010

At the request of Mr. WILSON, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1010, a bill to encourage further cooperation between Federal, State, and local law-enforcement agencies in their efforts against drug trafficking and other serious criminal activities.

S. 1088

At the request of Mr. EXON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1088, a bill to amend title XIX of the Social Security Act to improve the provision and quality of services to individuals with mental retardation or related condition.

S. 1091

At the request of Mr. GRAHAM, the names of the Senator from Maine [Mr. COHEN], the Senator from Maryland [Mr. SARBANES], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. DIXON], the Senator from Wisconsin [Mr. KASTEN], the Senator from Iowa [Mr. HARKIN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from North Carolina [Mr. HELMS], the Senator from North Carolina [Mr. SANFORD], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1091, a bill to provide for the striking of medals in commemoration of the bicentennial of the U.S. Coast Guard.

S. 1107

At the request of Mr. SIMON, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1107, a bill to provide education, training, employment, and related services to displaced homemakers, and for other purposes.

S. 1115

At the request of Mr. EXON, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1115, a bill to amend the Rural Electrification Act of 1936 to permit the prepayment and refinancing of Federal Financing Bank loans made to rural electrification and telephone systems, and for other purposes.

S. 1207

At the request of Mr. PACKWOOD, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 1207, a bill to amend the Communications Act of 1934 to reform the radio broadcast license renewal process and for other purposes.

S. 1338

At the request of Mr. BIDEN, the names of the Senator from West Virginia [Mr. BYRD] and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 1338, a bill to amend title 18, United States Code, to protect the physical integrity of the flag of the United States.

S. 1472

At the request of Mr. WILSON, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1472, a bill to provide equity for consumers by allowing them to receive refunds for certain payments to public utilities made excess by the Tax Reform Act of 1986.

S. 1480

At the request of Mr. CRANSTON, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1480, a bill to ensure economic equity for American women and their families by providing equitable pay and employee benefits and enhanced opportunities in business procurement; providing economic and retirement security for women as workers and as divorced or surviving spouses; making quality and affordable dependent care available to all working families; enhancing the long-term health of women and their families through prevention services and assistance to victims of domestic violence.

S. 1547

At the request of Mr. BUMPERS, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from North Dakota [Mr. BURDICK], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 1547, a bill to provide special rules for health insurance costs of self-employed individuals.

S. 1552

At the request of Mr. MATSUNAGA, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1552, a bill to amend title VII of the Public Health Service Act to increase the support provided to programs for the training of medical rehabilitation health personnel, to establish a Division of Allied Health Professions within the Health Resources and Services Administration, to initiate a pilot program concerning allied health research, and for other purposes.

S. 1560

At the request of Mr. BURNS, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 1560, a bill to suspend the enforcement of certain regulations relating to underground storage tanks; and for other purposes.

SENATE JOINT RESOLUTION 48

At the request of Mr. HOLLINGS, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of Senate Joint Resolution 48, a joint resolution proposing an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect congressional and Presidential elections.

SENATE JOINT RESOLUTION 102

At the request of Mr. D'AMATO, the names of the Senator from Arkansas [Mr. PRYOR] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Joint Resolution 102, a joint resolution designating September 1989 as "National Library Card Sign-Up Month."

SENATE JOINT RESOLUTION 111

At the request of Mr. CRANSTON, the names of the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Nevada [Mr. REID], the Senator from Georgia [Mr. NUNN], the Senator from Michigan [Mr. LEVIN], the Senator from Wisconsin [Mr. KASTEN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from California [Mr. WILSON], the Senator from Utah [Mr. GARN], the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of Senate Joint Resolution 111, a joint resolution to designate the week of October 8 through 14, 1989, as "National Week of Commitment to Helping the Homeless."

SENATE JOINT RESOLUTION 164

At the request of Mr. NICKLES, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Nebraska [Mr. EXON], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Louisi-

ana [Mr. JOHNSTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Delaware [Mr. ROTH], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], the Senator from Missouri [Mr. BOND], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 164, a joint resolution designating 1990 as the "International Year of Bible Reading."

SENATE JOINT RESOLUTION 175

At the request of Mr. D'AMATO, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Colorado [Mr. ARMSTRONG], the Senator from Rhode Island [Mr. PELL], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Wyoming [Mr. SIMPSON], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 175, a joint resolution designating the week beginning September 17, 1989, as "Emergency Medical Services Week".

SENATE JOINT RESOLUTION 176

At the request of Mr. D'AMATO, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Utah [Mr. GARN], the Senator from Virginia [Mr. ROBB], the Senator from Hawaii [Mr. INOUYE], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate September 29, 1989, as "National Siblings of Disabled Persons Day."

SENATE JOINT RESOLUTION 182

At the request of Mr. DOLE, the names of the Senator from Connecticut [Mr. DODD], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Virginia [Mr. ROBB], the Senator from North Carolina [Mr. SANFORD], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to commemorate the 50th anniversary of Little League Baseball.

SENATE JOINT RESOLUTION 188

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 188, a joint resolution designating the week of October 23, 1989, through October 29, 1989, as "Eating Disorders Awareness Week."

SENATE JOINT RESOLUTION 194

At the request of Mr. LAUTENBERG, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Joint Resolution 194, a joint resolution designating November 12-18, 1989, as "National Glaucoma Awareness Week."

AMENDMENT NO. 698

At the request of Mr. WILSON, the names of the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of amendment No. 698 proposed to H.R. 3014, a bill making appropriations for the legislative branch for the fiscal year ending September 30, 1990, and for other purposes.

AMENDMENT NO. 709

At the request of Mr. HATCH, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Arizona [Mr. MCCAIN], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of amendment No. 709 proposed to S. 933, a bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

SENATE CONCURRENT RESOLUTION 68—AUTHORIZING A CONCERT ON THE CAPITOL GROUNDS

Mrs. KASSEBAUM (for herself, Mr. PELL, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. SIMON, Mr. SANFORD, Mr. MOYNIHAN, Mr. LUGAR, Mr. BOSCHWITZ, Mr. MURKOWSKI, and Mr. MACK) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 68

Resolved by the Senate (the House of Representatives concurring), That the National Park Service shall be permitted to sponsor a concert by the American Soviet Youth Orchestra on the Capitol grounds on Tuesday, August 28, 1990, such concert to be free to the public and arranged not to interfere with the needs of Congress, under conditions to be provided by the Architect of the Capitol.

● Mrs. KASSEBAUM. Mr. President, the American Soviet Youth Orchestra performed brilliantly last summer at the Kennedy Center under the direction of Zubin Mehta. It was a moving and unforgettable evening not only for these fine young musicians from the United States and the Soviet Union but also for the audience.

The nationwide competition for the 1990 American Soviet Youth Orchestra is in its final stages. In July 1990, the 50 United States winners will join with their 50 Soviet counterparts in rehearsals at the Moscow State Conservatory, to be followed by the Moscow performance and a tour of the Soviet Union and five cities in Europe. The orchestra will then travel to the United States where plans call for a performance on the Capitol grounds and public concerts in major U.S. cities.

In this country, the Oberlin College Conservatory of Music is sponsoring the orchestra, and in the Soviet Union the sponsors are the Ministry of Culture and the Moscow State Conservatory. First Lady Mrs. George Bush is the American honorary chairman. Mrs. Raisa Gorbachev has recently been invited to be the Soviet honorary chairman.

The orchestra needs the permission of Congress to perform on the Capitol grounds. The enclosed concurrent resolution simply provides that permission and does not have funding as an objective. The orchestra is supported primarily by donations from individuals, corporations, and foundations.

Senator CLAIBORNE PELL, chairman of the Committee on Foreign Relations, and I are pleased to submit this concurrent resolution. We would like to thank our colleagues on the committee who are cosponsoring the concurrent resolution.●

SENATE RESOLUTION 174 COMMENDING THE CREW OF UNITED FLIGHT 232 AND PERSONNEL FROM THE FEDERAL AVIATION ADMINISTRATION

Mr. DOLE (for himself, Mr. MITCHELL, Mr. HOLLINGS, Mr. DANFORTH, Mr. FORD, Mr. MCCAIN, Mr. GORTON, Mr. GRASSLEY, Mr. HARKIN, Mr. HUMPHREY, Mr. KASTEN, Mr. ARMSTRONG, Mr. COATS, Mr. HATCH, Mr. PACKWOOD, and Mr. WALLOP) submitted the following resolution; which was considered and agreed to:

S. RES. 174

Whereas, on July 19, 1989, the lives of 184 people on board United Flight 232 were saved, in large part, because of the heroic actions of the crew;

Whereas, the flight's cockpit crew, Captain Alfred Haynes, First Officer William Records, Second Officer Dudley Dvorak and Flight Instructor Dennis Fitch, performed with poise and courage in communicating with Sioux City, Iowa, airport personnel and in attempting a difficult emergency landing at the airport;

Whereas, the flight's cabin crew, Janice T. Brown, Georgeann Delcastillo, Barbara Gillaspie, Rene Louise LeBeau, Donna McGrady, Virginia J. Murray, Timothy Owens, Kathy Yeoung Shen and Susan White, performed with poise and courage in advising passengers prior to the crash and then assisting them in exiting the aircraft;

Whereas, Federal Aviation Administration (FAA) Air Traffic Control personnel, William K. Bachman and Mark W. Zielezinski, and FAA Airway Facilities personnel, Samuel N. Gochenour, Timothy Norton and Randy Youngberg, performed with poise and courage in assisting United Airlines Flight 232 make an emergency landing at Sioux City, Iowa: Now, therefore, be it

Resolved, That the United States wishes to commend the crew members of the United flight 232 and the Federal Aviation Administration personnel involved with United flight 232 for their exemplary efforts on behalf of the passengers of that flight.

AMENDMENTS SUBMITTED

AMERICANS WITH DISABILITIES ACT

HARKIN AMENDMENTS NOS. 711 AND 712

Mr. HARKIN proposed two amendments to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, as follows:

AMENDMENT No. 711

On page 92, line 18, insert a comma after "agent".

AMENDMENT No. 712

On page 86, line 22, strike "2" and insert "3".

BOSCHWITZ AMENDMENT NO. 713

Mr. BOSCHWITZ proposed an amendment to the bill S. 933, supra, as follows:

On page 84, between lines 7 and 8, insert the following new paragraph:

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

HOLLINGS (AND CHAFEE) AMENDMENT NO. 714

Mr. HOLLINGS (for himself and Mr. CHAFEE) proposed an amendment to the bill S. 933, supra, as follows:

(1) Amend section 304(b)(4) by inserting "except as provided in section 305(d)," immediately after "other providers,"; by striking "6 years" and inserting in lieu thereof "7 years"; and by striking "5 years" and inserting in lieu thereof "6 years".

(2) Amend section 305(a) by striking "Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792)" and inserting in lieu thereof "Office of Technology Assessment".

(3) Amend section 305(c) to read as follows:

"(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

"(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

"(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

"(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).".

(4) Amend section 305(d) by striking "Board," and all that follows and inserting in lieu thereof "Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year.".

(5) Amend section 305 by adding at the end the following new subsection:

"(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).".

HELMS AMENDMENT NO. 715

Mr. HELMS proposed an amendment, which was subsequently modified, to the bill S. 933, supra, as follows:

At the appropriate place in title I, insert the following new section:

SEC. . AMENDMENTS TO THE REHABILITATION ACT.

(a) HANDICAPPED INDIVIDUAL.—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions."

(D) For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of federal law.".

HELMS AMENDMENT NO. 716

Mr. HELMS proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place in the bill, add the following:

"For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.".

HARKIN AMENDMENTS NOS. 717 AND 718

Mr. HARKIN proposed two amendments to the bill S. 933, supra, as follows:

AMENDMENT No. 717

Page 92, line 24, strike "or" before "observing", and add "or administering" after "observing".

Page 93, lines 3-4: Strike lines 3-4 and insert the following:

"(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance."

"Provided that paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

AMENDMENT No. 718

On page 50, strike line 21 and all that follows through page 51, line 21.

On page 51, line 22, strike "(d)" and insert "(c)".

On page 52, between lines 9 and 10, insert the following new section:

SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protection of this Act if such individual also uses or is also addicted to drugs.

(b) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of

Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

On page 52, line 10, strike "104" and insert "105".

On page 52, line 17, strike "105" and insert "106".

On page 52, line 22, strike "106" and insert "107".

On page 53, line 4, strike "105" and insert "106".

On page 53, line 6, strike "107" and insert "108".

On page 93, line 20, strike "106" and insert "107".

DOLE (AND OTHERS) AMENDMENT NO. 719

Mr. DOLE (for himself, Mr. DOMENICI, and Mr. GRASSLEY) proposed an amendment to the bill S. 933, supra; as follows:

On page 95, strike lines 4 through 14 and insert the following new subsections:

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of the other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportaton shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

GRASSLEY (AND OTHERS) AMENDMENT NO. 720

Mr. GRASSLEY (for himself, Mr. DOLE, Mr. SPECTER, Mr. HUMPHREY, and Mr. NUNN) proposed an amendment to the bill S 933, supra, as follows:

At the appropriate place add the following:

Notwithstanding any other provision of this Act or of Law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

HUMPHREY AMENDMENT NO. 721

Mr. HUMPHREY proposed an amendment to the bill S. 933, supra, as follows:

At the end of the bill, add the following:

For purposes of this Act, an individual with a "disability" shall not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

ARMSTRONG (AND HATCH) AMENDMENT NO. 722

Mr. ARMSTRONG (for himself and Mr. HATCH) proposed an amendment to the bill S. 933, supra, as follows:

At the end of the bill, add the following:

Under this act the term "disability" does not include "homosexuality," "bisexuality," "transvestism," "pedophilia," "transsexualism," "exhibitionism," "voyeurism," "compulsive gambling," "kleptomania," or "pyromania," "gender identity disorders," current "psychoactive substance use disorders," current "psychoactive substance-induced organic mental disorders," as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders."

DOLE AMENDMENT NO. 723

Mr. DOLE proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . EXPENSING OF CERTAIN CAPITAL EXPENDITURES TO ASSIST DISABLED.

(a) ADDITIONAL ITEMS ELIGIBLE FOR EXPENSING.—Section 196(b) of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ITEMS INCLUDED.—The term 'qualified architectural and transportation barrier removal expense' shall include any of the following expenses in connection with a trade or business which are chargeable to capital account:

"(A) Expenses for auxiliary aids and services (as defined in section 3(1) of the Americans With Disabilities Act of 1989).

"(B) Expenses in connection with providing reasonable accommodations (as defined in section 3(8) of such Act) to individuals with disabilities."

(b) DECREASE IN MAXIMUM AMOUNT WHICH MAY BE EXPENDED.—Section 190(c) of the Internal Revenue Code of 1986 is amended by striking "$35,000" and inserting "$25,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

HARKIN AMENDMENT NO. 724

Mr. HARKIN proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place insert the following:

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

LIMITATIONS OF CIVIL CONTEMPT SENTENCES IN THE DISTRICT OF COLUMBIA

SASSER (AND HATCH) AMENDMENT NO. 725

Mr. MITCHELL (for Mr. SASSER, for himself and Mr. HATCH) proposed an amendment to the bill (S. 1163) to amend the D.C. Code to limit the

length of time for which an individual may be incarcerated for civil contempt in a child custody case in the Superior Court of the District of Columbia and to provide for expedited appeal procedures to the D.C. Court of Appeals for individuals found in civil contempt in such a case, as follows:

On page 2, line 15, after "11-1101(1)" insert "and (4)".

LEVIN AMENDMENT NO. 726

Mr. MITCHELL (for Mr. LEVIN) proposed an amendment to the bill S. 1163, supra, as follows:

At the end of the bill, add the following:

SEC. 4. APPLICABILITY OF AMENDMENTS AND REPORT.

(a) APPLICABILITY.—The amendments made by this Act shall cease to apply on the date that is 18 months after the date of enactment except that such amendments shall apply to any person incarcerated for civil contempt in a child custody case on or before the date that the amendment ceases to be in effect.

(b) REPORT.—The Senate Committees on Governmental Affairs and the Judiciary shall conduct a study of the current law and procedures with respect to civil contempt in the District of Columbia and the Federal courts, respectively. The Committees shall report to the Senate not later than September 1, 1990 the findings of such study and any recommendations for changes to current law.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings on the structure of international drug cartels.

These hearings will take place on Tuesday, September 12, 1989, at 9:30 a.m., in room 106 of the Dirksen Senate Office Building and Wednesday, September 13, 1989, at 9:30 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel Rinzel of the subcommittee's minority staff at 224-9157.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

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 of the Committee on Energy and Natural Resources to receive testimony on S.11, a bill to provide for the protection of the public lands in the California desert.

The hearing will take place on October 2, 1989, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, SD-364, Washington, DC 20510.

For further information regarding the hearing, please contact Beth Norcross of the subcommittee staff at (202) 224-7933.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GLENN. Mr. President, I would like to announce that the Governmental Affairs Committee will hold a hearing on Monday, September 11, 9:30 a.m., on the subject: Threat of terrorism and government responses to terrorism. For further information, please call Len Weiss, staff director, at 224-4751.

Mr. President, I would like to announce that the Governmental Affairs Committee will hold a hearing on S. 1165 and S. 272, legislation designed to eliminate congressional exemptions in certain laws passed by the Congress, on Thursday, September 14, 1989, at 9:30 a.m.

For further information please call Len Weiss, staff director, at 224-4751.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on Thursday, September 21, 1989, to examine the impact of enterprise zones on small business growth and development. The hearing will be held in room 428A of the Russell Senate Office Building and will commence at 1:30 p.m. For further information please call Marja Maddrie, at 224-5175.

COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON. Mr. President, I announce, for the information of Senators, that the Committee on Veterans' Affairs, which I am privileged to chair, is scheduled to hold a hearing on Wednesday, September 13, 1989, in SR-418 at 9:30 a.m. on the nominations of Kenneth B. Kramer and John J. Farley III, to be associate judges of the U.S. Court of Veterans Appeals.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 7, 1989, at 10 a.m. to mark up legislation to restructure the Medicare Catastrophic Coverage Program enacted last year.

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

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, September 7, 1989, at 9:30 a.m. in open session to consider the nominations of Anne Newman Foreman to be Under Secretary of the Air Force and Antonio Lopez to be Associate Director of the Federal Emergency Management Agency. The nominees will be present.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 7, at 10 a.m., to hold a hearing on State Department nominations.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, September 7, 1989, 9 a.m., to hold a hearing to review the national drug strategy.

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

SUBCOMMITTEE ON GOVERNMENT CONTRACTING AND PAPERWORK REDUCTION

Mr. REID. Mr. President, I ask unanimous consent that the Small Business Committee's Subcommittee on Government Contracting and Paperwork Reduction be authorized to meet during the session of the Senate on September 7, 1989, at 9:30 a.m. The committee will hold a hearing on the implementation of the Paperwork Reduction Act of 1980, and its impact on small business.

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

SUBCOMMITTEE ON CONSUMERS

Mr. REID. Mr. President, I ask unanimous consent that the Consumer Subcommittee, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on September 7, 1989, at 9:30 a.m. to hold a hearing on S. 1224, the Motor Vehicle Fuel Efficiency Act of 1989.

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

ADDITIONAL STATEMENTS

THE SECOND ANNUAL FESTIVAL OF THE ARTS AND HERITAGE OF AFRICAN AMERICANS

● Mr. BRADLEY. Mr. President, on September 16 the Second Annual Festival of the Arts and Heritage of African Americans will be celebrated at the Garden State Arts Center in Holmdel, NJ. This festival honors the rich and extensive African-American culture as well as its unique heritage.

New Jerseyans from across the State are coming together to observe and enjoy African-American art, music, cuisine, and sporting events.

Artists, exhibitors, and entertainers from America, Africa, and the West Indies will provide New Jersey citizens with an opportunity to further their understanding and appreciation of African-American culture. In addition, the festival will help to support the Garden State Cultural Fund which provides free programs to the handicapped, senior citizens, children, and disabled veterans.

I am especially proud to recognize the Festival of the Arts and Heritage of African Americans because this celebration allows all citizens a chance to learn and admire an extraordinary culture which is an integral part of our collective society. This festival encourages a greater understanding of our diverse society and a sense of pride in our community.

Mr. President, today I ask my colleagues to join me in recognizing The Festival of the Arts and Heritage of African Americans for its continued contributions to our society.●

TOM VAUGHAN IS HISTORY

● Mr. HATFIELD. Mr. President, I am pleased to rise today to recognize the lifetime achievement of my good friend, Mr. Thomas Vaughan, director of the Oregon Historical Society.

The Oregon Historical Society, founded in 1898, now boasts an annual budget of more than $3 million. The organization has the highest per capita membership of any State and is considered to be among the finest regional societies in the United States. After 35 years of dedicated service, Tom Vaughan retired as the Oregon director on August 12, 1989.

During his tenure, the Oregon Historical Society grew at a phenomenal rate and now includes a museum, a publishing house with nearly 150 titles, and a research library. Over 25,000 schoolchildren visit the museum each year.

Tom's outstanding achievements were recently featured in the Oregonian. It is an honor to include in the RECORD the following article entitled "Tom Vaughan is History," and the editorial entitled "Tom Vaughan, a Character." I applaud Tom for his many years of wonderful service to the State of Oregon and the country.

The article follows:

TOM VAUGHAN IS HISTORY

(By Jann Mitchell)

The dusty boxes were piled higgledy-piggledy, as the new director put it, at the Oregon Historical Society on the second floor of the Portland Public Auditorium.

It was 1954, and 29-year-old Tom Vaughan was determined to create order of the musty, dusty elk antlers, yellowing papers and American Indian baskets stashed on stairs. From one box he palmed a small silver seal, its face tarnished by time.

Polishing revealed a tiny beaver gnawing at an immense tree and a single word: perseverance. It was the seal and motto of the Northwest Company, the fur traders who helped open this region.

"It was meant to be that I should find this—it will be my motto," vowed Vaughan with typical drama.

Thirty-five years later, the tree has toppled, damming a precious pool of the past in the nation's premier historical society.

Vaughan found the Oregon Historical Society "in serious trouble—no home, no property, no nothing. We were on the verge of collapse—difficult but exciting. I was the forlorn hope, so no one was jumping in my way, breathing on me. I felt I'd found my great calling."

The society now spills over a city block worth $10 million, housing a museum, a publishing house with nearly 150 titles and a research library boasting nearly 100,000 books, 22 million manuscripts, nearly 3 million photographs, 15,000 maps and 7 million feet of film. The society also bought a Meier & Frank warehouse in Northwest Portland to store its collection.

The society writes the historical plaques throughout the state, owns the exhibits in the state Capitol and the furniture in the governor's mansion, supports local museums and is host to 25,000 schoolchildren yearly.

Chartered in 1898, the society has grown from a staff of five, an annual budget of $38,000 and a membership of 1,500 in 1954 to a staff of 95, budget of more than $3 million and membership of 8,500. Some states have larger historical societies, but Oregon's has the highest per capita membership, whose dues pay 13 percent of its budget. The society receives 33 percent of its money from the state, 33 percent from endowments, 20 percent from private gifts and 1 percent from sales.

"To have interested actively that many people is a major accomplishment," said W. Kaye Lamb of Vancouver, B.C., Canada's chief archivist from 1948-68. He ranks the Oregon Historical Society among the highest regional societies on this continent.

To Vaughan, history is "this incredible, endlessly moving picture. Our mission is to excite a person to say, 'I'm part of all that. Life didn't begin when I was born.' "

The industrious beaver has earned his rest. His directorship becomes history Aug. 12.

At 64, Vaughan has earned the title of Historian Laureate from the Oregon Legislature and Commander of the Most Excellent Order of the British Empire from Queen Elizabeth II. He has edited and/or written 16 books and made five films. He has traveled Russia's Trans-Siberian Railroad in quest of material on Siberian explorers and logged 600,000 miles by car in Oregon—getting only one ticket, and that on a road he designed. Many applaud him as Oregon's top fundraiser; some venture he's also its best politician.

"That's not true, but I just love politicians—they can't be successful without discipline. I'm proudest of my discipline," Vaughan demurred in the deliberate, elongated tones his familiars call "the T-o-m V-a-u-g-h-a-n voice."

The pace is as slow as a dull history text before Friday's final bell. But the content is richly detailed, resonant with the color of yesteryear. How many men refer to themselves as lads or describe themselves as vexed? Vaughan chooses his words with the deliberation most people reserve for the dessert tray. He's not the kind of man to whom one says "Yo, Tom."

Tom Vaughan could intimidate people. His great, shaggy brows play Lewis and Clark across his forehead, scouting out the best routes to a goal. Grand arm flourishes accompany his conversation, which is punctuated with quotes from the famous (he tactfully adds, "Francis Bacon, whom you know is the English philosopher . . ." lest ignorance embarrass a listener). Yet, his enthusiasm saves the phrases from becoming benedictions; he beguiles the small-town resident and big-city legislator equally.

"He is as at home in Buckingham Palace or the White House as he is in Condon or Fossil," said Elizabeth Johnson of Redmond, longtime board member who, along with her late husband, Sam, is also a longtime friend. "He can adapt his attitude and attire to mesh with the local people."

Vaughan's costumes help. He doesn't blush at appearing publicly in a kilt, cowboy duds or 1887 tails.

He has donned medieval robes for the Magna Carta exhibition, worn 1930s garb and a bowler to the state Capitol's 50th anniversary, sported a straw boater and white suit for the rededication of Vista House. He recently wore to an annual meeting the same suit he was interviewed in 35 years ago; told then he looked like an Anglican bishop, he decided he'd keep it.

Friends recall the events Vaughan has staged, from a promotional picnic in Condon that featured a stuffed buffalo, to an armed ambush when board members and supporters took a train to the Pendleton Round-Up, to standing on the beachheads of France dramatically reading aloud the memoirs of World War II servicemen.

Sporting such flair on his own, Vaughan has little reason to leap into another man's shoes. But he would have "loved to trail along as the partner of Marco Polo—and I'd cherish chatting with Newton. George Washington is my favorite hero. I still think he's not yet truly understood."

All people—famous and unknown—energize him because "we're all in this together." Never bored on his backroad visits, he found "simple values—the real thing. I'll miss that."

The Dale Carnegie of Oregon plucks rather than pries money from supporters' hands. Vaughan believes in his cause and inspires others to.

"That's my skill—I somehow am able to convey a sense of excitement about something that is not tangible," he said. "I have a total obligation, or we wouldn't have flourished. I believe so deeply in what we're doing and how we spend the money."

He also believes in building slowly. The society's square block was purchased during 16 deals over 29 years. He never has held a membership drive.

"Never in 35 years have I said, 'Think how we have done all this!' People want a challenge, or some of the best would be off in another place where they were needed more," Vaughan reasons. "You've got to plan in such a way that the first response is not 'no.' "

"I don't know how many boards I've sat on where people said, 'What we need is another Tom Vaughan,' " said Brian Booth, Portland attorney and community leader in the arts.

Booth and others say Vaughan epitomizes the strengths of a chief executive; the highest professional standards and a strong record of accomplishment in fund raising,

public relations and working with the Legislature.

Vaughan passes the hat with such finesse that Oregon legislative officers have announced his appearances before the Ways and Means Committee so legislators could catch his act.

"People understand his mission," said former Gov. Vic Atiyeh. Giving becomes "a desire on people's part to be a part of the successful mission the society's been on. I've seen other groups apply inordinate pressure. With Tom and his network of friends, it's all done in the manner of a good cause, not twisting arms."

"People come from all over the country and say, 'Tell us the secret,'" said Vaughan. "I tell them it's hard work and methodical, slogging discipline. Their eyes glaze over at the notion.

"People think I have a tree I won't let other people near, that I shake it and casually pick the money up. I've worried about money every hour of every day for the last 35 years. It's a gnawing, erosive concern."

Concern about money is not surprising to find in man who was one of seven children raised by a father working in the Vancouver shipyards. Vaughan was born in Seattle, but spent his boyhood in the Cowlitz Valley 50 miles north of Portland.

His parents' love of history, their large library and inspiring teachers prompted Vaughan's passion for the past. He creates a canvas from the air and paints word pictures of a childhood with rivers choked with logs, salmon and steamboats: "Such plentitude! Everyone thought it would last forever," Vaughan said wistfully.

World War II interrupted college, but after serving in the Marines, Vaughan graduated from Yale University and knocked about. He worked with a survey crew for an airfield in Anchorage, Alaska, and toiled in the oil fields of Texas and Alberta, Canada. At 23, he enrolled in the University of Wisconsin to get a master's degree in American history.

He was doing pre-doctoral work when he hired as his research assistant Elizabeth Crownhart, dubbed "Sherry" at age 9 when a family friend noted that her hair was the color of the wine. They eventually married and raised four children, becoming worldwide travelers and professional collaborators—working together on several books and translations of Siberian explorers of the Northwest, for which Crownhart-Vaughan learned Russian. She is director of the society's North Pacific Studies Center; many call the husband-wife scholars a team.

She was attracted by Vaughan's "aura of excitement about everything he does and thinks."

"Women of my generation were brought up to hold back, not to be too obviously bright. It was very exciting to find someone who was so brilliant himself and certain of who he was that I never had to hold back. Just the opposite; it was a challenge to be my very best. It was true with our children, as well as with his staff."

Tom Vaughan fans say he is the proverbial tough act to top.

"I almost feel sorry for the new director," Atiyeh said. "Tom is that very unique person who just doesn't come along. He gives credit to a lot of other people, but he's the genius of it. Some people think it's the Tom Vaughan Historical Society."

James Thayer Sr., immediate past board president, said that his toughest job was searching for Vaughan's successor.

He is comfortable with the selection of William J. Tramposch, director of the Colonial Williamsburg Foundation in Williamsburg, Va., "because I had the total backing of Tom and Sherry. They thought we made a great selection—the greatest reward I had for something I didn't want to do."

Vaughan, the dedicated beaver, may be finishing gnawing, but he'll never stop knowing.

TOM VAUGHAN, A CHARACTER

Is history shaped by the impersonal forces of economics and geography or by the deeds of men and women? The career of Tom Vaughan argues that the force of an individual personality can have a powerful effect.

Much has been appropriately said elsewhere about the growth of the Oregon Historical Society under the leadership of Thomas J.G. Vaughan, who retired Saturday from 35 years as its executive director.

What needs to be remembered along with that record is the flavor of Tom Vaughan, the man. He has character and he is one. These are some of his ingredients:

Presence. His typical greeting, "Hello. I'm Tom Vaughan," somehow combines warmth with just a touch of a blessing.

Understanding. Vaughan knows about all kinds of people because he has seen a good bit of life. He went to Yale, and he holds a medal from Queen Elizabeth II, but he also was a Marine and an oil-field roustabout.

Diligence. Many people have marveled at his ability to win ever-increasing appropriations from the Oregon Legislature (although he always points out that the state provides only about one-third of the historical society's financial support). What the envious may not know is the amount of time Vaughan has spent, months ahead of every legislative session, talking with legislators and the governor's budget-makers about the society's needs and its potential.

Daring. His slightly reckless courage launched him, for example, on his spectacularly successful explorations of the historical archives of Soviet Siberia—not by the obvious but dead-end approach through the bureaucracy of Moscow, but by way of the back door. He boarded the trans-Siberian railroad from the east and got off at stops in Central Asia to meet librarians who had never heard of him.

Scope. Some regional historians limit themselves to pioneer diaries and wagon tracks. Important as that is, Vaughan has seen more. He relates the history of Oregon to the clashes of empires, and has made the Oregon Historical Society a center for information about the ambitions and defeats of British fleets and Spanish friars, Russian czars and Chinese mandarins.

Improvisation. Not even Tom Vaughan wins 'em all, but he has an uncanny talent for making an apparent setback seem to be what he intended all along, and to turn it into something for the historical society's advantage.

He has had the support his fellow-historian wife, Elizabeth, and of a staff capable of filling in details within the outlines he has sketched. But he chose the staff and inspired it.

The Oregon Historical Society's charter directs it to hold its materials "in trust for the people of the state of Oregon." Tom Vaughan has been faithful to that trust.●

SOUTH AFRICAN MINISTER URGES MORE SANCTIONS TO END APARTHEID

● Mr. SIMON. Mr. President, recently, the Illinois Times ran an article and quoted a South African Lutheran minister, Zwoitwaho Nevhutalu, saying what I have sensed overwhelmingly in talking to blacks in South Africa and from South Africa.

There is a notion that is much too widespread that most blacks in South Africa are opposed to economic sanctions.

The opposite is clearly the case.

I urge my colleagues in the House and Senate to read this article. At this point, I ask that it be printed in the RECORD.

The article follows:

SOUTH AFRICAN MINISTER URGES MORE SANCTIONS TO END APARTHEID

Zwoitwaho Nevhutalu believes black South Africans face a choice between competing evils. The lesser evil, says the Lutheran minister from Venda, a city in northern South Africa, is the loss of jobs as a result of economic sanctions by western countries and businesses against the South African government. The greater evil, says Nevhutalu, is the government, which ignores human rights, represses individual freedoms, illegally imprisons its citizens, and kills innocent men, women, and children who disagree with its policies. He says it will take more of the lesser evil, the bitter pill of economic sanctions, to eradicate the greater evil.

The United States and European nations have employed economic sanctions—such as embargoes on coal and manufactured goods—to pressure the white minority South African government to abolish its system of apartheid, the separation of the races and repression of majority blacks. Blacks, who cannot vote under apartheid, are segregated from whites in housing, schooling, and other social contact and have limited freedom of movement within their own country. Many Western businesses also are "disinvesting" from South Africa, shutting down operations and withdrawing investments in the country.

"The government derives its oppressive power from the economy," says Nevhutalu, who was in Springfield last week to encourage church congregations, public officials, and private individuals to support pending federal legislation to increase economic sanctions against South Africa. Opponents of such economic pressure contend that black South Africans suffer the greatest hardships from a worldwide attempt to force the white ruling government of P.W. Botha to recognize the rights of blacks. They note, for example, that nearly 10,000 black miners have lost their jobs since foreign investors began moving their businesses out of the country five years ago. And it has been estimated that sanctions and disinvestment by foreign corporations could cost nearly 2 million jobs by the year 2000, most of them unskilled labor positions filed by black South Africans.

But Nevhutalu says that, for blacks, losing a job is preferable to living under a repressive regime. "What is the point of a job when you are dead?" he asks. "People are dying with jobs because of apartheid. Whatever good foreign investors do cannot outweigh the suffering, pain, and death in black communities."

Moreover, he says, job security for blacks has never existed in South Africa. Blacks, particularly miners, have never had permanent employment, he says. Workers can be

laid off at the least provocation, such as disagreeing with company rules or seeking higher wages, because there is a large pool of unemployed laborers. The South African government publicly claims that sanctions have not done the economy much harm, but Nevhutalu disagrees. He says sanctions are causing major rifts between white politicans and business people in his country. Members of the white business community recently met with members of the outlawed African National Congress to discuss a peaceful resolution to apartheid, without the approval of the government. "We think sanctions are effective," says Nevhutalu. "Although the politicians say sanctions can't hurt them, anyone who calls for sanctions can be tried for treason and put to death. So the government and the business people are very worried about sanctions."

Nevhutalu discredits a recent poll commissioned by the Chamber of Mines, a private association of South African mining companies, which has gained worldwide attention. The poll reported that 82 percent of the 1,400 black South Africans interviewed said they opposed sanctions and 85 percent opposed disinvestment by foreign companies. Nevhutalu says black churches and trade unions have rejected the results of the poll. If blacks had the freedom to discuss and support sanctions, the overwhelming majority of them would, he says. "If you say you favor sanctions—you are breaking the law. You can only speak openly against sanctions. Some organizations, such as the South African Council of Churches and the Congress of South African Trade Unions, openly defy the law and ask foreign governments for more sanctions.

Nevhutalu says Americans can help end apartheid by putting increased pressure on the South African government. He says an important part of his mission to Illinois, Iowa, and Indiana is to educate Midwesterners on the role they can play. "There are many things people can do as individuals, groups, or a city," he says. "People need to be informed about what's happening in South Africa—then they can participate." The Springfield City Council will be voting on a resolution to support federal legislation to increase sanctions. Ward 2 Alderman Frank McNeil also has introduced an ordinance that would prevent the city from purchasing materials or equipment from companies doing business with South Africa. Nevhutalu suggests individuals write letters urging an end to apartheid to South African consulates in the U.S., and to the prime minister and minister of police in South Africa. Groups can demonstrate against apartheid outside of South African embassies and consulates, such as the one in Chicago, and boycott companies doing business in South Africa.

Because laws to suppress individual freedoms are being passed almost daily, Nevhutalu is concerned that it will be many years before blacks will be able to overthrow apartheid. "I can't talk about a peaceful resolution—it's already bloody," he says. "There is no peace in South Africa. People are dying right now as I sit here."●

● Mr. LEVIN. Mr. President, I am pleased that we were able to work out with Senator SASSER, the chairman of the General Services, Federalism and District of Columbia Subcommittee, a reasonable sunset provision for this bill to enable the Senate to fully consider the broader issue of civil contempt after further study. The 18-month sunset will serve as an action-enforcing mechanism for us to do that. The bill before the Senate amends the statute governing civil contempt in the District of Columbia only with regard to child custody cases. It may be appropriate, however, to apply similar limitations to all civil contempt proceedings in both the District of Columbia and our Federal court system.

The amendment to which we have agreed would limit the application of S. 1163 to an 18-month period and would require the Senate Judiciary and Governmental Affairs Committees to study the question of civil contempt during that time and report to the Senate on any recommendations for changes to current law by September 1, 1990. We will then have a 6-month period to time in which to consider legislation embodying those recommendations. The amendment makes clear that anyone incarcerated for civil contempt during the 18-month period would be protected by the 12-month cap, even if their incarceration for the 12 months extends beyond the 18-month deadline.

By proceeding in this manner, we will enable ourselves to address what we know now to be a serious problem and at the same time allow us to have the benefit of a comprehensive review of the question to address the broader issues. If unlimited civil contempt is inappropriate for the District of Columbia courts, then it seems logical that it would be inappropriate for our Federal courts. Likewise, if it is appropriate for child custody cases, it may also be appropriate for all types of cases. That is what we need to examine in the next year, and then, based on the recommendations we receive, legislate accordingly.

I only reluctantly voted to report this bill to the full Senate. I was concerned that we didn't devote enough attention and study to this subject. While we have limited this bill's application to only child custody cases, further examination of the issue may have led us to conclude that the 12-month limit should apply in all civil contempt proceedings.

At the same time, Congress has not acted to restrict the length of civil contempt in the Federal court system. We would significantly benefit from the advice and guidance of the Senate Judiciary Committee as to whether a limitation on civil contempt has been considered in that committee and if so, what the committee's conclusions on the subject were.

Mr. President, I appreciate the cooperation and effort of the Senator from Tennessee and my friend from New Hampshire, Senator RUDMAN.●

HONORING THE 25TH EVACUATION HOSPITAL

● Mr. SIMON. Mr. President, I rise today to give recognition and honor to the physicians and nurses who served in the 25th Evacuation Hospital during World War II. Originally organized as an evacuation hospital, the 25th Evacuation Hospital unit actually served the command as a combined station, evacuation, and general hospital, rendering surgery, treatment, and evacuation during a 2½-year period to more than 20,000 resident patients, 36,000 outpatients, and 68,000 treatment cases not requiring hospitalization or out-patient services.

The 25th Evacuation Hospital was staffed mostly by physicians and nurses drawn from West Suburban Hospital, as it was then known, the majority of whom were living in Oak Park and River Forest, IL.

The 25th Evacuation Hospital began limited operations as a field hospital in Espiritu Santo, New Hebrides, on February 8, 1943, despite torrential rains, intense heat, tropical diseases, and enemy bombardment.

On September 5, 1951, the Secretary of the Army, under General Orders No. 77, awarded the 25th Evacuation Hospital the meritorious unit commendation for exceptionally meritorious conduct in the performance of outstanding service in the Asiatic-Pacific Theater during the period of November 20, 1942, and November 30, 1945. Hundreds of American lives were saved through the persistent and industrious application to duty by the members of the 25th Evacuation Hospital.

I ask my colleagues of the Congress to join me in recognizing the outstanding contributions of these individuals in providing the needed care for our Armed Forces. I believe their contribution to the war effort was critical to the victory of the United States and Allied Forces in the Pacific.

Although the 25th Evacuation Hospital created a depletion of physicians and nurses in the Oak Park and River Forest communities, I am proud of their efforts and pleased to know they will be remembered by the dedication of a Memorial Plaque on September 13, 1989 at the West Suburban Hospital Medical Center in Oak Park, IL.●

SENATE CONSIDERATION OF S. 1163

● Mr. GLENN. Mr. President, I want to commend Senator SASSER for the hard work he and his subcommittee staff have performed in the Governmental Affairs Committee in fashioning this compromise approach to a very difficult issue.

S. 1163 limits to 12 months the time an individual may be jailed in the District of Columbia for civil contempt.

The bill is limited to imprisonment for civil contempt arising from child custody cases.

S. 1163 was reported out of the Governmental Affairs Committee on July 26, 1989. All of the Governmental Affairs Committee members deserve praise for working to bring this bill to the floor so quickly.

A court uses the civil contempt power to compel parties before the court to obey its orders. Sanctions for civil contempt—sanctions such as imprisonment—are the court's only means to ensure compliance with and respect for the decisions it makes.

This power to coerce is vital to the judiciary's enforcement of the rule of law. However, over time, coercive sanctions lose their effect. The person imprisoned or fined becomes resigned to defying the court no matter what the consequences. At that point, sanctions, turn into punishments for obstinate behavior—severe punishments which are imposed without normal due process protections.

S. 1163 simply states Congress' belief that, after 12 months, the sanction of imprisonment for civil contempt arising from a child custody case can no longer be coercive. After that amount of time, an individual jailed for civil contempt must be charged and accorded full due process protections if he or she is to be kept in jail.

The problem of long-term incarceration for civil contempt was brought to the Governmental Affairs Committee's attention by the case of Morgan versus Foretich. The Superior Court of the District of Columbia has kept Dr. Elizabeth Morgan jailed for almost 2 years in an attempt to compel her to turn over her child to Dr. Foretich for visitation. Without judging the merits of Drs. Morgan and Foretich's various claims and counterclaims in their drawn-out custody battle, I believe that Dr. Morgan's situation is a clear demonstration of the injustice of long-term indefinite incarceration.

S. 1163 addresses this injustice only in limited circumstances: civil contempt arising from child custody cases in the District of Columbia. There is good reason for this. Beyond the Morgan case, the Governmental Affairs Committee heard no evidence that District of Columbia Courts—the only courts in the committee's jurisdiction—have relied on lengthy imprisonment for civil contempt. We also had no evidence before us detailing the effect that generally restricting the courts' civil contempt power might have on the administration of justice in cases other than child custody. We in Congress bear the burden of proof when we seek to limit an inherent and essential power of the courts. As of now, that burden has been satisfied only for the power to incarcerate for civil contempt arising out of custody cases.

Furthermore, the limitation S. 1163 places on the D.C. courts is only on their punitive power—not on their coercive power. And even that limitation is in accordance with accepted legal principles. S. 1163 simply affirms the long accepted rule that punitive imprisonment be preceded by constitutionally guaranteed due process.●

DR. LEROY HERRON

● Mr. LEVIN. Mr. President, after 27 years of dedicated service to Roseville and the people of the Roseville Community School District, Dr. Leroy Herron is retiring.

Dr. Herron is a Michigan native, a product of Michigan schools, who has given a career to young people and families. In recognition of his accomplishments, the board of education in Roseville has passed a resolution of tribute to this outstanding educator. I join them in congratulating Dr. Herron for serving students and his community so ably and I wish him success and enjoyment in the years to come. I ask that the board's tribute be printed in the RECORD.

The tribute follows:

Whereas it is the greatest achievement in a lifetime of accomplishments to be of service; and

Whereas such service is given as personal and selfless sacrifice to country, state, community and home; and

Whereas Dr. Leroy Herron has dedicated a lifetime of such service to providing a better education and improved quality of life for all; and

Whereas Dr. Leroy Herron has retired after 27 years of serving the community as teacher, coach, counselor, assistant principal and assistant superintendent; and

Whereas during his career Dr. Leroy Herron has provided support and counsel to the at-risk student, and has faithfully worked in the community supporting the Arts in the Schools, working for charities, and promoting programs that would benefit the parents and students of the community; and

Whereas Dr. Leroy Herron has sought always to comfort the ill, the bereaved and the aged by working for causes that benefitted them and visiting and ministering to their needs where he could; and

Whereas Dr. Leroy Herron has remained a loving husband to his wife, Ethel, and has shared the joys of parenthood in raising a daughter, and a niece and subsequently reaped the joy of a granddaughter; and

Whereas Dr. Leroy Herron is highly regarded and commended by his peers and friends: Therefore, be it

Resolved, that this honored expression of gratitude and appreciation for his impressive lifetime accomplishments is presented with hearty wishes for continued success in all of his future endeavors, given this night, Thursday, September 14, 1989.●

THE SEC HAS MADE A MISTAKE

● Mr. DIXON. Mr. President, I rise to express my deep disappointment and sense of frustration that the Securities and Exchange Commission does not intend to require Sir James Goldsmith and his fellow foreign financiers to make the required filings under the Securities Act of 1933 with respect to their highly leveraged, noncash offer for B.A.T. Industries. In a letter to our congressional colleagues, outgoing Chairman Ruder indicated that his agency would closely monitor the bid but would not now assert jurisdiction over the Goldsmith Group's offer.

Mr. President, timeliness is critical. Given the substantial effect the offer will have on U.S. investors, I am hard-pressed to understand why the Commission would not assert jurisdiction. The Commission's position is particularly surprising because the offer includes $6 billion in dollar-denominated junk bonds to be marketed by Drexel Burnham that ultimately are likely to come to rest in the United States. I am quite surprised the Chairman did not even address this issue in his letter.

As my colleagues no doubt are aware, the Goldsmith Group appears to have carefully crafted their bid for B.A.T. to avoid the reach of our securities laws. They must be thrilled to think that their gambit has worked. I hope they have not broken out the champagne bottles, because this issue is far from settled. If Congress does not step in, I am concerned that the SEC will have set a precedent for others to follow to avoid U.S. jurisdiction, further fueling the use of junk bonds and other forms of debt.

Mr. President, I must admit that I have closely followed this bid because it would lead to the bustup of BATUS Inc., which owns Marshall Field's, one of the great retail institutions in the city of Chicago. Among my colleagues, the chairman of the Ways and Means Committee has a similar affection for this important institution, as does my good friend Mr. SIMON. We believe it is important that Congress carefully assess all aspects of the proposed bid. As Chairman ROSTENKOWSKI said in an August 9 letter to the Secretary of the Treasury, "[t]he magnitude of this takeover attempt, the tax policy issues raised by the proposed form of the takeover, and the potential significant negative impact on communities across the Nation render this transaction worthy of review by the Congress and the administration."

Now that we have the position of the outgoing Chairman of the Commission, it seems to me we need to discuss with the President's nominee the importance we in Congress attach to having the SEC step in to ensure that U.S. shareholder interests are adequately protected.

Mr. President, I ask that the correspondence I referenced above be included in the RECORD at this point.

The correspondence follows:

COMMITTEE ON WAYS AND MEANS,
Washington, DC, August 9, 1989.

Hon. NICHOLAS F. BRADY,
Secretary of the Treasury, Department of the Treasury, Washington, DC.

DEAR SECRETARY BRADY: As you are aware, Sir James Goldsmith and other foreign investors have announced their intention to acquire B.A.T. Industries in a highly leveraged transaction. B.A.T. Industries is the largest company in the United Kingdom outside of the utility and oil industries. Its U.S. subsidiary, BATUS, Inc. ("BATUS") holds a network of businesses in the tobacco, paper, retailing and insurance industries, including such well known companies as Marshall Field's, Saks Fifth Avenue and Farmers Insurance Group. According to information I have received from parties interested in this transaction, it is the intention of Sir Goldsmith and his partners to break-up BATUS and sell the non-tobacco businesses in order to repay the acquisition debt.

The magnitude of this takeover attempt, the tax policy issues raised by the proposed form of the takeover, and the potential significant negative impact on communities across the nation render this transaction worthy of review by the Congress and the Administration. Within the United States, corporations held through BATUS have combined assets of $11.5 billion, gross revenues for the year ended 1988 of approximately $7.4 billion, more than 55,000 employees and operations in all 50 states. In addition, I have a particular interest in this transaction as a Member of Congress representing the Chicago area. BATUS has recently demonstrated its commitment to Chicago with a $110 million renovation of Marshall Field's downtown flagship store. Obviously, this retail chain is important to the economic well-being of the Chicago area. Moreover, of the 15,000 sales agents and district managers associated with Farmers Insurance Group, over 1,300 employees, agents and managers reside in Illinois.

Mr. Secretary, I know that we share concerns regarding the proliferation of hostile takeovers and related transactions which cause an increase in aggregate levels of corporate debt. The Committee on Ways and Means held seven days of hearings on these issues earlier this year. As a result of these hearings, the Committee has tentatively agreed to several provisions as part of its fiscal year 1990 reconciliation measure, including a 'loophole closer' recommended by the Administration revising the treatment of certain bonds containing original issue discount ("OID").

The proposed takeover and break-up of BATUS raises several concerns which the tentative decisions made by the Committee would seek to rectify. It is my understanding that the acquisition transaction has been structured so that the foreign investors would utilize a Bermuda corporation as the acquiring corporation. The ability of foreign acquirers, directly or through foreign entities, to obtain a competitive advantage in leveraged acquisitions and dispositions of interests in domestic entities was a specific concern raised during the Ways and Means Committee's hearings. This concern was one basis for the Committee's adoption of provisions affecting the sale of domestic stock held by foreigners and the treatment of so-called 'earnings stripping' transactions. In addition, it is my understanding that a significant portion of the transaction will be financed by dollar-denominated junk bonds issued through the Bermuda corporation and marketed by Drexel Burnham Lambert Inc. The OID proposal sponsored by the Administration and subsequently adopted by the Committee seeks to restrain unintended subsidies for excessive rates of corporate debt.

I believe it is very important that we review these decisions of the Committee in light of the BATUS transaction. My staff has preliminarily informed me that, based upon the information available on the transaction to date, it is unclear what impact the Administration's proposal and decision of the Committee would have on the tax consequences of the transaction. It is my further understanding that in the near future more information regarding the details of the transaction will be available in accordance with United Kingdom securities rules. Accordingly, I propose that our staffs meet as quickly as possible after reviewing further information on the transaction.

The purpose of the meeting of our staffs would be to review the details of the BATUS takeover transaction and to assess the potential impact of the Committee's decisions on the tax consequences of the transaction. In addition, the staffs would discuss the important issues of tax policy raised by this transaction and consider any possible further legislative options, if appropriate, for review by the Committee when it resumes its reconciliation deliberations in September. In this regard, I would like the staffs to consider several tax policy issues, including whether the use of U.S. assets of a foreign target as the principal source of funds for repayment of the acquisition debt would constitute a sufficient diversion from corporate purposes to require the imposition of U.S. income tax on any built-in gains in such assets.

Because of Congressional recess schedules, I would ask that the staff meeting be held as soon as possible. Please contact the Committee's Chief Counsel, Robert J. Leonard (225-3628) to schedule the staff meeting. Thank you for your prompt attention to this important issue.

Sincerely yours,
DAN ROSTENKOWSKI,
Chairman.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, September 6, 1989.

Hon. HAROLD ROGERS,
Ranking Minority Member, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, House of Representatives, Washington, DC.

DEAR CONGRESSMAN ROGERS: This letter responds to your letter of July 25, 1989, regarding the proposed tender offer and related activities by Hoylake Investments Ltd. ("Hoylake") undertaken to acquire B.A.T. Industries p.l.c. ("B.A.T."). The Commission has taken an active interest in this transaction and will continue to monitor compliance by the parties with all applicable U.S. securities laws and regulations.

Foreign issuers making an exchange offer of this kind frequently do not extend offers to holders in the United States because they are unwilling to bear the costs and other burdens of registering securities in the United States. The Commission is unable to require that Hoylake extend its offer to U.S. shareholders of B.A.T. since the U.S. securities laws and the principles of international comity would not permit the Commission to force a foreign issuer to enter the U.S. securities markets against its will.

SECURITIES ACT REGISTRATION

The Commission's staff has examined the offering materials, discussed the offer's exclusionary procedures with the British Takeover Panel, and considered submissions made by counsel for B.A.T. and Hoylake. The staff has concluded that the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act") have not been triggered by the offer. Section 5 provides that, unless a registration statement is in effect, it is unlawful to use any means or instruments of transportation or communication in interstate commerce or the mails to offer or sell a security. Counsel for Hoylake has represented that, as a result of strict limitations imposed by Hoylake on the use of the U.S. jurisdictional means, holders in the United States are "effectively precluded" from participating in the proposed exchange offer and from receiving the securities being offered by Hoylake. At present, it appears that the means of interstate commerce have not been used and that no securities have been offered to persons in the United States (whether they hold B.A.T. shares directly or through American Depositary Receipts ("ADRs")), and that the transaction is therefore not subject to the registration provisions of the Securities Act.

EXCHANGE ACT

The filing and disclosure requirements of the Williams Act, which as you know govern the conduct of tender offers subject to the Act's provisions, do not apply to the tender offer because B.A.T.'s securities are not registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), and are not required to be registered. B.A.T.'s common stock is traded in the form of ADRs on the American Stock Exchange, but has unlisted trading privileges on that exchange rather than being listed. For that reason, it is exempt from registration under the Exchange Act pursuant to the "grandfather" provisions of Section 12(f)(1)(A). While Section 14(e) of the Exchange Act, and rules promulgated thereunder, apply to all tender offers, whether or not the securities are registered under the Exchange Act, jurisdiction to enforce those provisions, as well as the antifraud provisions generally, would not be available where, as here, the shares are not registered and no other U.S. jurisdictional means appear to have been triggered. Thus, absent circumstances directly or indirectly involving U.S. jurisdiction, the Commission has no authority to challenge the conduct of the offer.

We appreciate the concerns that have been raised about the effect of the proposed transaction on the employees and business of the companies owned in the United States by B.A.T. However, the Commission's authority in the area of tender offers does not extend to a determination of whether a transaction is in the interests of the target company's employees. The Commission's statutory function is to ensure that tender offers are made on the basis of full disclosure, but the Commission is required to be strictly neutral as between bidder and subject company and is not permitted to make any determination of the merits of a tender offer. Thus, even if the jurisdiction of the Williams Act had been triggered, the Commission would not have authority to review the effects of the offer on U.S. employees and operations.

Your letter also mentioned that U.S. Journalists had been excluded from press conferences relating to the transaction. In proposing Regulation 8, which would clarify the extraterritorial application of the Securities Act registration provisions, the Commission noted that:

. . . the proposed rule is not intended to limit or interfere with news stories or other bona fide journalistic activities, or otherwise hinder the flow of normal corporate news regarding foreign issuers. Access by American journalists to offshore press conferences, press releases and company press spokesmen in which an offshore offering is discussed need not be limited where the information is made available to the foreign and U.S. press generally and is not specifically intended to induce purchases of securities in the United States (Release No. 33-6779 (June 10, 1988) [53 FR 22662]).

This view also would apply with regard to the extraterritorial application of the Williams Act.

Thus, to summarize, in answer to your specific questions:

1. There appears to be no jurisdictional basis for applying Securities Act registration requirements;

2. There appears to be no jurisdictional basis for applying Exchange Act antifraud provisions, including Section 14(e); and

3. Investors in the United States will be treated differently than other B.A.T. shareholders because the offer is not being made to them, but the Commission does not have authority to cause such an offer to be made.

As stated above, the Commission is continuing to monitor the proposed transaction. If the staff's understanding of the facts as stated above should change, particularly with regard to jurisdiction, appropriate action will be taken promptly to enforce U.S. registration, tender offer, and antifraud laws where applicable.

Sincerely,

DAVID S. RUDER,
Chairman.●

HIGHWAY SAFETY

● Mr. SIMON. Mr. President, the Chicago Sun-Times recently had a fascinating story about the large number of accidents involving tractor-trailer trucks. Every year between 4,000 to 5,000 people are killed in accidents involving these vehicles.

But what struck me was the record of the United Parcel Service [UPS].

The Chicago Sun-Times has a brief story, as part of the larger story, by Leon Pitt and Roger Flaherty entitled "UPS Drivers Deliver Highway Safety Record." It shows what a responsible company can do that both protects public lives and, at the same time, I am sure, is good business for the UPS.

I commend the United Parcel Service, and I ask that the story be printed in the RECORD.

The story follows:

UPS DRIVERS DELIVER HIGHWAY SAFETY RECORD

United Parcel Service dresses most of its workers in unfashionable brown, and paints its parcel trucks and truck tractors the same dull color.

But the huge parcel handler flashes a sparkling road safety record—one-tenth the national average of accidents—according to the Congressional Office of Technology Assessment.

Its study, "Gearing Up for Safety," published last summer, noted the record was no accident, but the result of long-established safety practices.

In an office inside the cavernous UPS hub in Addison, regional safety manager Stan Wysocki recently discussed some of the procedures for tractor-trailer drivers. They start with setting reasonable driving times, including rest periods, for drivers to reach a relay point no farther than 150 miles away.

A UPS driver coming out of Chicago with an East Coast shipment might go to the Indiana-Ohio border where he will meet a driver with an eastbound load, Wysocki said. They switch trucks and each returns home in the same shift.

UPS drivers, unlike many in the industry, are salaried, not paid by the mileage they cover in a work week.

"We do a time study of each area, looking at speed limits, lights, traffic, road conditions," Wysocki said. This, he said, allows drivers to stay well within the federal 10-hour-a-day driving limit.

Drivers are kept on the same route for six months at a time, which allows regular work hours, another safety factor. And a supervisor checks for signs of fatigue before a driver's run begins.

UPS semitrailer drivers undergo an 80-hour program of classroom instruction and driving with a trainer. All drivers are accompanied by supervisors on four runs a year to check performance.

Drivers are assigned the same vehicle for long periods of time, a policy the company believes develops more careful observance of its mechanical needs as well as pride in its appearance. Trucks are checked about every 20 days, supervisor Larry Flaherty said.—Leon Pitt and Roger Flaherty.●

SPARKY ANDERSON

● Mr. LEVIN. Mr. President, Michigan loves Sparky Anderson. His 10 years at the helm of our Tigers have been filled with excitement and only the occasional disappointment. They were years that saw one of the longest streaks of winning seasons in the majors. The Tigers posted second three times, took two divisional titles, and took it all with a World Series win in 1984.

One key to this success has been the unique character of Sparky Anderson and his ability to bring out the best in the players around him. In most careers you wouldn't have to look past the more than 800 wins of a manager to make a judgment of greatness. But in Sparky's case, the Tiger tally is added to a string of 863 wins in Cincinnati that together have landed him in the record books as the first manager to collect more than 800 wins in two different leagues. He is also the first manager to win 100 or more games in a season with two different teams.

Now, it's one thing to manage success, but entirely another thing to hold the reins during disappointment. Sparky has done both with a great deal of class.

One day last week, the Tigers had the dubious distinction of being the first team in the East Division of the American League to be mathematically eliminated from this year's playoffs. On that same day, the Tigers broke a 2-2 fourth inning tie with six runs, including two triples, and later added two more runs toward their 10-4 shellacking of the Cleveland Indians. Sparky's only comment in the Detroit Free Press on the day's events spoke volumes. "I don't remember the last time I had that much fun watching a game," he said.

To Tigers fans, the Anderson attitude means we've got the confidence to "get 'em next year." Like the ancient Phoenix—or maybe the modern Baltimore Orioles—the team will rise again. But Sparky's genius goes beyond the peaks and valleys of the scores. He's shown us, as we honor his 10th anniversary with a reception in Detroit hosted by Gov. Jim Blanchard, that you're never really down, you've never really lost, as long as you never quit, as long as you stay in the game with a smile.●

ORDERS FOR FRIDAY, SEPTEMBER 8, 1989, AND TUESDAY, SEPTEMBER 11, 1989

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 12 noon Friday, September 8, and that on Friday, the Senate meet in a pro forma session only with no business conducted.

I further ask unanimous consent that on Friday, September 8, at the close of the pro forma session, the Senate stand in recess until 9:30 a.m., Tuesday, September 12, and that following the time reserved for the two leaders, there be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

I further ask unanimous consent that at 10 a.m. the Senate proceed to the consideration of H.R. 3015, the fiscal year 1990 Transportation Appropriations bill.

I ask unanimous consent that the Senate stand in recess from 12:30 to 2:15, in order to accommodate the party conferences, on next Tuesday.

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

As if in executive session, I ask unanimous consent that at 2:15 p.m. on Tuesday, September 12, the Senate go into executive session to consider the nomination of Donald P. Gregg to be Ambassador to the Republic of South Korea. I further ask unanimous consent that there be 4 hours of debate on the nomination, equally divided between the Senator from California, Mr. CRANSTON, and the ranking minority member of the Foreign Relations Committee, or their designees, that at 6:15 p.m. a vote occur on the

nomination, without any intervening action, that following the vote the motion to reconsider be tabled, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, the unanimous consent requests are agreed to.

RECESS

Mr. MITCHELL. Mr. President, if the distinguished Senator from Utah has no further business, and if no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order until 12 noon, Friday, September 8.

There being no objection, the Senate, at 11:52 p.m., recessed until Friday, September 8, 1989, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate September 7, 1989:

THE JUDICIARY

VAUGHN R. WALKER, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, VICE SPENCER M. WILLIAMS, RETIRED.

DEPARTMENT OF JUSTICE

OTTO G. OBERMAIER, OF NEW YORK, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF 4 YEARS VICE RUDOLPH W. GIULIANA, RESIGNED.

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

LT. GEN. MICHAEL P. C. CARNS, xxx-xx-xxxx U.S. AIR FORCE.

SECURITIES AND EXCHANGE COMMISSION

RICHARD C. BREEDEN, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM EXPIRING JUNE 5, 1993, VICE CHARLES C. COX, TERM EXPIRED.