SENATE—*Tuesday, June 26, 1990*

(Legislative day of Monday, June 11, 1990)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

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

Let us pray:

Thus saith the Lord, Let not the wise man glory in his wisdom, neither let the mighty man glory in his might, let not the rich man glory in his riches: But let him that glorieth glory in this, that he understandeth and knoweth me, that I am the Lord which exercise lovingkindness, judgment, and righteousness, in the earth: for in these things I delight, saith the Lord.—Jeremiah 9:23, 24.

God of all comfort who knows when a sparrow falls to the ground, Thou knowest those in this large Senate family who have needs today. Wherever there is hurt or discouragement or frustration, wherever there is alienation between husband and wife, parent and child, wherever there is physical suffering or emotional trauma, we commend to Thy loving care all who need healing and renewal. Touch each life with Thy love and grace today so that any who have need may know that God is near, that He loves unconditionally. Comfort and strengthen Thy servants, O Lord.

In the name of Him whose love is incarnate. 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, June 26, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. BRYAN. Thank you very much, Mr. President.

SCHEDULE

Mr. BRYAN. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business not to extend beyond 10:40 a.m. with Senators permitted to speak therein for up to 10 minutes each. The Senate will recess at 10:40 and remain in recess until 2:15 p.m.

At 10:40 this morning the Senate will assemble as a body and proceed to the House Chamber for a joint meeting to hear an address by Mr. Nelson Mandela. Following the joint meeting, each party will hold their respective conference lunches.

Upon reconvening at 2:15 p.m. this afternoon, the Senate will resume consideration of Senate Joint Resolution 332, a proposed constitutional amendment on flag desecration, with 40 minutes for debate on each of the four amendments in order to the joint resolution, and 40 minutes equally divided between the two leaders prior to final passage of the joint resolution.

RESERVATION OF LEADER TIME

Mr. BRYAN. Mr. President, I ask unanimous consent that the time for the majority and minority leaders be reserved for their use later in the day.

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for transaction of morning business not to extend beyond the hour of 10:40 a.m. with statements therein limited to 10 minutes each.

The Senator from Idaho is recognized.

Mr. SYMMS. I thank the Chair.

(The remarks of Mr. SYMMS pertaining to the introduction of S. 2783 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

TEST PROGRAM FOR COMPANYWIDE SUBCONTRACT PLANS: ENHANCING SMALL DISADVANTAGED BUSINESS PARTICIPATION IN DOD SUBCONTRACTING

Mr. NUNN. Mr. President, as part of the National Defense Authorization Act for fiscal years 1990 and 1991, Congress established a test program to determine if we can streamline the defense acquisition process by authorizing negotiation of subcontracting plans on a companywide, rather than on a contract-by-contract, basis. The test is authorized to begin on October 1, 1990, and will run through September 30, 1993. Because the Department of Defense is developing implementation rules, I would like to take this opportunity to review the background for this test program and to suggest factors to be considered in administering and evaluating its implementation.

BACKGROUND

Under section 8(d) of the Small Business Act, which applies to all Federal agencies, small businesses and small disadvantaged businesses must be afforded the "maximum practicable opportunity" to participate as subcontractors and suppliers to firms awarded contracts by the Federal Government. To implement this policy, section 8(d) requires the negotiation of subcontracting plans with specific goals for small business and small disadvantaged business participation if the value of a contract or a subcontract for construction exceeds $1 million, or $500,000 for other procurements. The law requires that goals be negotiated on a contract-by-contract basis, and that contractors make a good faith effort toward meeting their goals.

Under current law, the prime contractor must set separate goals for subcontract participation by small businesses and small disadvantaged businesses. In 1989, small businesses received 39.3 percent or $22 billion of all DOD subcontract dollars awarded in fiscal year 1989, and small disadvantaged businesses received 2.3 percent or $1.3 billion. The test program has the potential to enhance those figures, especially the participation of small disadvantaged businesses in defense subcontracting.

STREAMLINING THE ACQUISITION SYSTEM

In general, the law has required negotiation of subcontracting plans on a contract-by-contract basis. In 1988, the Department of Defense expressed con-

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

cern that the requirement for a prime contractor to negotiate a different subcontracting plan for each DOD contract held by the prime contractor imposed an undue administrative burden that adversely affected efforts to streamline the acquisition system. The Department, with significant support from the defense industry, requested authority to permit each prime contractor to negotiate a single, companywide subcontracting plan that would encompass its entire business activity, both governmental and nongovernmental.

In acting on this request last year, the Senate Armed Services Committee recognized that there were differing perceptions of the impact that the proposed legislation might have on the opportunities for small businesses and small disadvantaged business. The Department of Defense anticipated that negotiating companywide subcontracting plans would increase subcontracting with small businesses and small disadvantaged businesses by firms holding multiple contracts with the Government. The Department also contended that companywide plans would also encourage firms to seek small businesses and small disadvantaged business participation in contracts that support the overall corporate or divisional operation, not just those directly related to the performance of a particular Government contract.

Others, however, expressed concern that separation of the subcontracting goals from individual contracts might diminish the commitment of prime contractors to meet their negotiated subcontracting goals. There was also a concern that companywide plans might encourage prime contractors to place undue emphasis on subcontracting for routine services rather than expanding the opportunities for small businesses and small disadvantaged businesses to participate in high technology opportunities.

In order to determine whether use of companywide programs would streamline the acquisition process without adversely affecting the purposes of the subcontracting goals program, the Senate Armed Services Committee developed a test program authorizing the negotiation of companywide subcontracting plans. As modified in conference, it was enacted as section 834 of the National Defense Authorization Act for fiscal years 1990 and 1991.

Section 834 was included in the act after consultation with the House and Senate Small Business Committees and was intended to help streamline the defense acquisition process. The conferees recognized that in addition to improving the efficiency of the acquisition process, it was also important to address the special concerns of small disadvantaged businesses about opportunities for subcontracting with DOD prime contractors. Therefore, the conferees developed detailed report language expressing their intent in authorizing this program:

The conferees direct that in the implementation of this test program, the subcontracting opportunities made available to small and small disadvantaged businesses from the prime contractor's company-wide base not be concentrated in narrow, nontechnical work (e.g., janitorial services) in order to meet the subcontract goals and thereby miss the opportunity to expand available participation in a broader range of subcontracting business opportunities, especially in the technical area. The subcontract shall set forth actions by the prime contractor to publicize prospective subcontracting opportunities for small businesses and small disadvantaged businesses.

The conferees further direct the Department to negotiate plans that include separate specific goals and timetables for the awarding of subcontracts in industry categories which, based on available information, have not historically been made available to small and small disadvantaged businesses.

The conferees will assess the success of the program on the basis of whether small and small disadvantaged businesses' participation in the prime contractors' companywide operations results in an increase in business opportunities currently afforded small and small disadvantaged businesses and whether prime contractors are providing significantly more work in areas that traditionally have not been made available to small and small disadvantaged businesses in the companywide base.

The Department of Defense, in its implementation of the test program, should be mindful of the conference report language and of the questions that Congress will be asking when assessing the program:

Has the test program improved the quality of subcontracting opportunities (e.g., by providing increased opportunities in manufacturing, professional and technical services, or other high-tech areas) for small businesses and small disadvantaged businesses when compared to those offered when the subcontract plans are negotiated on a contract-by-contract basis?

Has the test program increased the number of subcontracting opportunities for small businesses and small disadvantaged businesses in the manufacturing and technology oriented areas that have had historically low rates of participation?

Has the test program resulted in subcontracting opportunities for small businesses and small disadvantaged businesses being fairly apportioned between those requiring advanced technical and management skills and those of a more routine nature?

Has the test program resulted in increased participation by small businesses and small disadvantaged businesses in activities that support overall companywide operations in addition to matters directly related to DOD contracts?

Has the test program resulted in an increase in aggregate participation levels of small businesses and small disadvantaged businesses over the levels attained on a contract-by-contract basis?

Has the test program affected the ability to impose liquidated damages on a prime contractor who has failed to make a good-faith effort to attain its subcontract participation goals?

The test program is premised upon the expectation that it will increase small business and small disadvantaged business participation in the DOD acquisition process and the industrial base supporting national defense. I encourage industry to work aggressively with DOD, small businesses, and small disadvantaged businesses to ensure its success.

JUNE IS "TURKEY LOVERS' MONTH" AND NORTH CAROLINA REMAINS NATION'S NO. 1 PRODUCER

Mr. HELMS. Mr. President, I join Gov. James G. Martin in congratulating the turkey industry of North Carolina. Furthermore, in turkey production, North Carolina remains No. 1 in the Nation.

The U.S. Department of Agriculture reports that in 1989 more than 52 million turkeys were raised in North Carolina—the largest number ever produced by one State in a calendar year. This represents nearly 20 percent of the total U.S. annual turkey production, and is responsible for pumping more than $338 million into the State's economy in employment opportunities.

Mr. President, not only is North Carolina a leader in production, but it also is the leader of the industry. Five North Carolinians have served as presidents of the National Turkey Federation: Wyatt Upchurch, 1990; John Hendrix, 1984; Bill Prestige, 1982; Billy Shepard, 1974; and Marvin Johnson, 1968.

The turkey industry has been, and remains, a vital part of our national economy. Last year it generated more than $5 billion in product sales. Because of its convenience and nutritional benefits, turkey is no longer just for holidays. Thirty years ago, 90 percent of turkey consumed in this country was in the form of the whole bird during the last two months of the year. Today, it is a popular year-round, nutritional and delicious food—and only 17 percent of turkey is consumed during the Thanksgiving and Christmas seasons.

Mr. President, Governor Martin has declared June 1990 as "Turkey Lovers' Month in North Carolina" and the National Turkey Federation is celebrating "June is Turkey Lovers' Month." I am proud to join in recognizing a remarkable industry which is enormously important to the economy and the agricultural community.

A TRIBUTE TO SENATOR QUENTIN BURDICK

Mr. KOHL. Mr. President, I rise today to commend our friend and dis-

tinguished colleague QUENTIN BURDICK on his 30 years of outstanding service to the State of North Dakota and to the U.S. Senate.

Senator BURDICK sets a fine example for all Members of this body. He fights for his constituents, but he does not allow petty politics to interfere with his values and beliefs. Having been privileged to serve with him on the Aging Committee, I am impressed with his commitment to older Americans. He has also been a tireless advocate for the American farmer, as well as a driving force behind Senate efforts to improve the quality of our Nation's environment. As a longstanding Member and current chairman of the Committee on Environment and Public Works, he has worked to advance numerous environmental bills which have been signed into law. I am particularly pleased to be a cosponsor of the National Environmental Education Act, legislation which Senator BURDICK has introduced to help make our Nation's students better stewards of the Earth.

It has been an honor to serve with Senator BURDICK for the past year and a half, and I look forward to working with him for many more years to come.

TRIBUTE TO COL. JOSEPH WHITEHORN III

Mr. LEAHY. Mr. President, Col. Joseph Whitehorn III, was a special friend of mine and my family. He enriched my life and the lives of many Vermonters who mourn his passing. I would like to tell Americans about his rich and rewarding life. It should serve as an inspiration to us all.

After a distinguished Army career that included action in the Philippines and Okinawa in World War II and a stint at the Pentagon, Colonel Whitehorn settled in Middlebury, where he turned his efforts to making that community a better place to live.

He served on commissions and boards, and as a grand juror. He founded the Festival on the Green, served on the board of the Addison County Humane Society. This list goes on and so also, the honors bestowed and expressions of appreciation for his community service.

The people of Middlebury will miss this extraordinary gentleman who served our Vermont so well.

Mr. President, in appreciation of this wonderful and fascinating man who gave so much to us, I ask that an editorial which appeared in the Addision County Independent—May 17—commemorating Colonel Whitehorn's life, be reprinted for posterity in the CONGRESSIONAL RECORD, for more Americans to read and enjoy.

My family and I cherish the friendship we have had with Joe and his wife Emily. We join in her sorrow but we stand with pride for her, her family, and Colonel Whitehorn.

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

[From the Addison County Independent, May 17, 1990]

COL. JOE WHITEHORN: AN ASTONISHING LIFE; A FASCINATING MAN

Col. Joseph Whitehorn III, a Middlebury resident since his retirement in 1967, was a remarkable man because of his absolute service to community above self. Whitehorn, 73, died Monday at Porter Medical Center.

A brief resume hints of his astonishing life.

After a distinguished military career in the Army, during which he commanded a company of the 113th infantry and served in the Philippines and Okinawa campaigns in WWII, he served as an exchange officer with the British Army in London on the general staff at the Pentagon. He later served as battalion and regiment commander of infantry units in Alaska and Fort Lewis, Washington. He was an advisor to the Saudi Arabian Army in Saudi Arabia, and a professor of military science at Dartmouth College. Before retiring he served in the office of the Secretary of Defense.

Upon retiring, he didn't. Instead he substituted his devotion to country to his devotion to Middlebury. He served as town grand juror, planning commission member, and member and chairman of the board of civil authority—a post he held for many years. He was honored in the Middlebury Town Report in 1987 for his exemplary community service.

He also worked on special projects not associated with government. He was a founding member of the Festival on the Green committee and was active year after year. He served on the Addison County Humane Society board, the Sheldon Museum board, and was an active promoter and official of Green Up. In June 1989, he was awarded the Freeman Rotary Distinguished Citizen Award presented by the Middlebury Rotary Club.

What was extraordinary about Colonel Whitehorn was not only the number of activities in which he was involved, but the enthusiasm, energy and commitment he gave to each. He was a fascinating person and he brought a sense of fascination and interest to each endeavor he undertook.

He was a true patriot, and a companion of those he worked with in Middlebury. He represents those leaders of others who work mightily to hold the social fabric of a vibrant community together. He, and those few like him, are the chorus that make community life sing.

The rewards were always ample for him. He gave his love to Middlebury and the country, and his love was returned many fold in respect and admiration. That's as good a model as any to live by.

BIG BROTHERS-BIG SISTERS OF AMERICA

Mr. DIXON. Mr. President, I believe most of my colleagues would agree that it is harder to be a kid today than it was in our time. Children today are confronted with a variety of problems unique to this day and age. Fortunately, volunteer organizations in this country provide some relief to the youth of America.

Since 1967, the Big Brothers-Big Sisters of America have lent a guiding hand to children between the ages of 7 and 17 years from single parent families. The adult volunteers who serve as Big Brothers and Big Sisters provide an invaluable assistance to young Americans facing the everyday problems of the world today. Whether they are taking youngsters to ballgames, parks, or the movies, these volunteers give their charges the adult guidance they need while assisting parents faced with the task of raising children on their own.

In a day and age where the number of single parent families has increased markedly, the role of the Big Brothers-Big Sisters is more important than ever in molding the futures of young Americans.

For all their achievements, I am proud to honor the Big Brothers-Big Sisters of metropolitan Chicago on the occasion of their "Party at the Pier" charity benefit. They have made a tremendous difference in thousands of youngsters' lives, helping them to make the right decisions in a difficult world. I salute them and all Big Brothers-Big Sisters volunteers across the country.

MRS. CHRISTINA FEWELL, SKOKIE, IL, MOTHER OF THE YEAR

Mr. DIXON. Mr. President, the National Multiple Sclerosis Society recently announced the results of its 39th annual Mother of the Year Contest. Each of the society's 95 chapters made its nominations, and the national selection committee picked the winner.

I am proud to report that the winner chosen is Mrs. Christina Fewell, of Skokie, IL. This mother of two was first diagnosed with multiple sclerosis [MS] in 1985.

At first, Christina went through a period of denial, but a hospitalization in 1987 brought her face to face with her disease. She soon discovered that the hardest part about having MS was trying to explain the disease, and the unique problems it causes, to her children. She contacted the National Multiple Sclerosis Society for help, which provided her and her family with support and information.

Christina, a clinical social worker, wanted to give something in turn to the children of others stricken with this disease, to help both victims and their children learn to cope with MS. In coordination with the Chicago-Northern Illinois Chapter of the Society, she organized and led a family awareness day for parents with MS and their children. She plans to visit other society chapters and to hold

more family oriented programs. Christina is also active, despite her illness and corresponding disabilities, in Boy Scout and Girl Scout activities with her children.

A quarter of a million Americans have multiple sclerosis, and another 200 people come down with the disease each week. For the most part, MS affects people between the ages of 20 and 40, twice as many women as men are afflicted. Brave men and women such as Christina Fewell help others who have the disease learn to live with it.

Illinois is proud to have Christina Fewell as a citizen. She will be honored by President Bush at the White House on June 28, and I join him in recognizing her achievement in the face of adversity in viewing her disease as an opportunity to help others.

S. 2754—VIOLENCE AGAINST WOMEN ACT

Mr. COHEN. Mr. President, I am very pleased to join Senator BIDEN in introducing the Violence Against Women Act. This measure is the first comprehensive legislation designed specifically to combat violent crime against women.

Violence against women in this country has been rising at an alarming rate. Increases in the rate of rape, assaults, and murder of women are significantly higher than increases in the national crime rate or the rate of assaults and murder of men.

Nationally, a woman is raped every 6 minutes and every 18 seconds a woman is beaten. In my own State of Maine a woman is raped every 38 hours and a domestic assault occurs every 3 hours.

While the statistics are shocking, the reality is even worse. It is estimated that less than half of all rapes and even fewer domestic assaults are ever reported. These crimes are not limited to the streets of our inner cities or to those few highly publicized cases that we read about in the newspapers or see on the evening news.

Women throughout the country, in our Nation's urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbors, and coworkers who are being victimized; and, in many cases, they are being victimized by family members, friends, and acquaintances.

Even those women who have not been touched directly by violent crimes are not unaffected. How many women can walk home at night from the bus or subway without some thought of what is the safest route to take, or without pausing when they hear footseps behind them. Regrettably, all women are victims of fear—the fear generated by the pervasiveness of violence directed against women not because of who they are or what they are doing or where they live but simply because they are women.

The Violence Against Women Act is not a cure to the growing incidence of violence but it is an important step in the right direction. The bill has three major titles: Safe Streets for Women; Safe Homes for Women; and Civil Rights for Women. I ask unanimous consent that a copy of an outline of the bill be included in the RECORD.

I urge my colleagues to join in supporting this important legislation.

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

VIOLENCE AGAINST WOMEN—BILL OUTLINE

TITLE I—SAFE STREETS FOR WOMEN

Federal sex crime legislation

1. Doubles penalties for rape and aggravated rape;

2. Creates new penalties for repeat sex offenders;

3. Requires and expands victim restitution in sex crime cases.

B. High intensity violence areas

1. Authorizes $300 million in law enforcement grants—$200 million to the 40 most dangerous areas in the country for women and $100 million to all 50 states;

2. Grants include funds to increase prosecution rates (notoriously low) by training police and prosecutors; setting up special units of police prosecutors; and victim advocates to target violent crimes against women.

C. Public transit: Lights & cameras

Earmarks capital improvement grants from mass transit funding to increase lighting and camera surveillance at bus stops, stations, and adjacent parking lots.

D. National Commission on Violent Crime Against Women

Modeled on the AIDS Commission, this group will help focus attention on increasing crime rates against women.

TITLE II—SAFE HOMES FOR WOMEN

A. Interstate enforcement

1. Creates federal penalties for spouse abusers who cross state lines to continue abuse or to violate an existing "stay away" order;

2. Requires states to enforce the "stay away" orders that other states issue, as long as the order meets certain minimum criteria.

B. Arrest

1. Bars grants to states and localities that discriminate against spouse abuse by having a policy that discourages or prohibits arrest of abusing spouses.

2. Provides grants to states and localities, encouraging arrests of abusing spouses.

C. Funding/grants

1. Doubles funding for battered women's shelters;

2. Authorizes $25 million in law enforcement grants including funds for prosecutors and courts to develop special units devoted to spouse abuse.

TITLE III——CIVIL RIGHTS FOR WOMEN

A. Sex crimes as "bias" or "hate" crimes

1. Defines gender-motivated crimes, like rape, as "bias" crimes, depriving victims of equal rights.

B. Civil rights

1. Creates a civil rights remedy, allowing victims of sex crimes to bring a civil rights case and, if gender-based animus is proven, recover compensatory and punitive damages;

2. Modeled on longstanding civil rights laws (42 U.S.C. secs. 1981-1985) protecting blacks from race-based attacks;

3. Rectifies inequity in current law that provides a civil rights remedy for gender crimes committed in the workplace, but not if committed on the street or in the home;

4. Limited to gender-motivated crimes.

SENATOR QUENTIN BURDICK

Mr. FORD. Mr. President, I rise to add my voice to many others in paying tribute to Senator QUENTIN BURDICK, who soon will become one of only 36 Members to have completed 30 years of service in this body. This is a remarkable achievement for a leader who continues to serve North Dakota and this entire Nation with exceptional strength, skill, and determination. These qualities run deep in the Burdick family. Senator BURDICK and his father, the late U.S. Representative Usher L. Burdick, have a combined record of more than 50 years of distinguished service in the U.S. Congress.

The qualities of which I speak were plain to see many years ago when QUENTIN BURDICK was president of his high school class and captain of its undefeated football team. They were plain to see when he took to the college football field as a hard-charging blocker for Bronko Nagurski and when he overcame early political setbacks to win election to the House in 1958. He was letting actions speak louder than words then, and he is letting actions speak louder than words now. He was getting the job done without a lot of fanfare then, and he is getting the job done with just as little fanfare today.

I have been fortunate enough to have worked with Senator BURDICK ever since I came to the Senate in 1974. I know him as a leader of a State with much in common with my own State of Kentucky—a State with economic interests and family values still very closely associated with the land. I know him as a Senator who has been through the changing political tides of seven Presidencies without losing his own sense of priorities. I know him as a leader who has never stopped pushing for progressive farm and rural development legislation, much needed public works projects, and other crucial programs for the hardest working and most neglected citizens of his State and our Nation.

Mr. President, I am among those who have benefited from a long association with the senior Senator from North Dakota, and I want to put myself on record as being among those who look forward to a continuation of this very productive and rewarding as-

sociation in the months and years ahead.

SENATOR QUENTIN BURDICK

Mr. WILSON. Mr. President, it is with great respect and admiration for my colleague from North Dakota that I rise today to convey warmest congratulations from the people of California to U.S. Senator QUENTIN BURDICK as his 30th anniversary in the U.S. Senate is celebrated this year.

Since he was first elected to the Senate on June 28, 1960, Senator BURDICK has served his nation, his fellow Americans, and the people of North Dakota with uncommon dedication, and has created a living legacy of public service which has and will continue to long enrich the United States of America.

I salute his remarkable record, his able statesmanship, and his constant vigilance over our Nation's legislative process. He has earned the admiration of his fellow Senators and the gratitude of an entire Nation.

HONORING QUENTIN BURDICK

Mr. KASTEN. Mr. President, I rise today to honor one of the most distinguished senior Members of this body.

June 28 marks an important milestone in the career of our friend and colleague QUENTIN BURDICK. On that day, the senior Senator from North Dakota will mark the 30th anniversary of his first election to the Senate.

It has been my great pleasure to work with QUENTIN on the Appropriations Agriculture Subcommittee, of which he is the chairman. He's been a help to me, a good friend, and a truly esteemed colleague.

For these reasons, I'd like to congratulate today not only the Senator himself, but also the people of North Dakota, for the three decades of statesmanship with which they have endowed the Senate in the person of QUENTIN BURDICK.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 1,928th day that Terry Anderson has been held in captivity in Beirut.

TRIBUTE TO ELLIOTT GALKIN

Mr. SARBANES. Mr. President, I join with the family and many friends of Dr. Elliott Galkin in mourning his recent death. Dr. Galkin moved to Baltimore in 1956 and immediately began to change profoundly the music and academic life of Maryland. As a conductor, educator, administrator, author and critic, Dr. Galkin strove to promote high standards of musical training and performance. His energy and passion for musical excellence will be missed.

Dr. Galkin began his musical education under the tutelage of his great-uncle Rudolph Heifetz, father of violinist Jascha Heifetz. After graduating from Brooklyn College, he attended the Paris Conservatory on a grant from the French Government. He then earned a master's degree and a doctorate in musicology at Cornell University before returning to Europe on a Fulbright fellowship for studies in Vienna.

Dr. Galkin came to Baltimore in 1956 to serve on the faculty at Goucher College, becoming the music department's chair in 1960. At the same time he also taught at the Peabody Conservatory, serving as its ninth director from 1977 to 1982. He then founded at the Peabody the Nation's first and only graduate music criticism program.

Dr. Galkin also taught through his musical criticism, which appeared in the Baltimore Sun from 1962 to 1977. Widely respected as a critic not only in Baltimore but throughout the Nation, Dr. Galkin served as president of the national Music Critics Association for 2 years and twice won the ASCAP-Deems Taylor Award, one of the highest awards for music journalism. His recently published book, "A History of Orchestral Conducting in Theory and Practice," is considered by many to be the most important study of conducting ever written.

Perhaps no person has contributed so much to music in Maryland as Dr. Galkin. He was instrumental in establishing both the Kraushaar Auditorium at Goucher, used by many of Baltimore's fine musical organizations, and the Meyerhoff Symphony Hall, home of the Baltimore Symphony Orchestra. As a visiting conductor of the Baltimore Symphony, he introduced Maryland to violinist Nadja Salerno-Sonnenberg, who performed with Dr. Galkin and the orchestra every summer from the age of 9 to 19.

Mr. President, I join with all Marylanders in extending my deepest sympathies to Dr. Galkin's wife Ruth and his brother Benjamin. I would also ask that the article from the May 29 Evening Sun be printed in the RECORD.

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

[From the Baltimore Evening Sun, May 29, 1990]

ELLIOTT GALKIN WAS INSTRUMENTAL IN SHAPING THE CITY'S MUSIC

(By Scott Duncan)

Elliott W. Galkin was a critic from the old school, the one which taught that those who dare to write about music should know what they are talking about.

Galkin died last Thursday at 69, bringing to an end a versatile career that touched nearly every avenue of music and some of its most prominent names in this century.

Growing up in Brooklyn, N.Y., Galkin learned the violin from his great-uncle, Ruvin Heifetz, who had a son who became a pretty good fiddler. His name was Jascha.

Galkin studied at the Paris Conservatory, was tutored in theory and composition by the legendary Nadia Boulanger. He learned conducting from Jean Morel, Jean Fournet and Eugene Bigot; orchestration from Arthur Honegger and Ralph Vaughan Williams.

He took his master's degree and doctorate at Cornell University, studying with one of America's most respected musicologists, Donald Jay Grout. A Fulbright Fellowship led to further study in Vienna.

During his 35-year career in Baltimore, Galkin was one of the city's most influential musical figures. He was a conductor, educator, administrator, author and founder of musical organizations. He came to Baltimore in 1956, joining the faculty of Peabody Conservatory a year later. Galkin later served as chairman of Goucher's music department and was director of the Peabody from 1977 to 1982.

But Galkin was in his element in the role of music critic, dispensing musical justice from the pulpit of The Sun's music pages from 1962 to 1977. He won the ASCAP-Deems Taylor Award, one of the highest prizes in music journalism, twice.

"He was very worldly, and terribly knowledgeable," said Harold Schonberg, the former senior chief music critic of the New York Times and longtime friend. "But Elliott wore it lightly."

Galkin wrote in an aristocratic, musically informed style that one does not often encounter in today's criticism. Galkin never underestimated his readers' ability to grasp sophisticated musical concepts.

The first night Galkin reviewed a concert for The Sun, the wizened chief of the copy desk in The Sun's newsroom told the rookie Galkin, "I'll give you $5 for every word I don't understand."

After Galkin had turned in his copy, the green-shaded editor told him: "I owe you ten bucks."

But Galkin was no Ivory Tower critic; he firmly believed the critic must perform his role while actively engaged in the musical affairs of the community. Galkin was a critic/advocate in a tradition that traces its lineage to the criticism of composers such as Robert Schumann and Claude Debussy.

In fact, Galkin often penned musical commentary under the pen name Florestan Croche, amamalgam of two fictitous names with which Schumann and Debussy used to sign their criticisms. Galkin would fondly recall angry letters to The Sun which asked why the newspaper didn't print more responsible music criticism," like that of Mr. Croche."

As a key figure in Baltimore's music scene, Galkin was instrumental in shaping the city's musical future. He played a role in persuading philanthropist Otto Kraushaar to donate funds for the excellent Kraushaar Auditorium at Goucher College, where most of the city's mid-sized musical organizations perform today.

And Galkin was an early proponent in the 1970s of a project that would become Meyerhoff Hall.

Galkin also has an eye for talent. While visiting a nephew in New Jersey, Galkin heard a tape recording of an unknown 9-year-old violinist who had performed at a local PTA meeting. He immediately demanded to meet the young girl and invited her down to Baltimore to perform with the

BSO, which he used to conduct during the summers.

The young girl performed with Galkin and the BSO every summer from age 9 to 19. Her name was Nadja Salerno-Sonnenberg.

As president of the national Music Critics Association (MCA) for two years in the '70s, Galkin had a national profile. "He was very generous with offering help to his colleagues, which unfortunately is often not done today, and he cared very deeply about the standards of criticism and its future," says Richard Freed, a respected critic for national publications and a longtime executive director of the MCA.

Galkin stepped down as The Sun's music critic in 1977 when be became director of Peabody. When he retired from that position five years later, he founded the nation's only graduate music criticism program at Peabody.

A number of Galkin's students in his criticism program have recently graduated and become music critics at other newspapers, including the Virginian-Pilot Ledger-Star in Norfolk, the Toledo (Ohio) Blade, and the Charlotte (N.C.) Observer.

"He took a risk in starting a program to turn raw musicians into writers," says Natalie Shelpuk, a former Galkin student who is now music critic at the Charlotte Observer.

"He nutured us and demanded that we fulfill a certain aesthetic, which seems to be dying out with him and only a few other critics. His students are the living legacies, I guess."

Only last year, Galkin published an 893-page book which he labored on for many years," A History of Orchestral Conducting in Theory and Practice." Many reviewers said it was the most complete study of the art ever published.

About someone else, Galkin once wrote:

"Some men are less mortal than others; they create and leave legacies not only of words but of deeds."

Elliott Galkin was such a man.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Nevada.

THE JOURNAL

Mr. REID. I ask unanimous consent that the Journal of the proceedings be approved to date.

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

THE KOREAN CONFLICT

Mr. REID. Mr. President, 40 years ago yesterday, June 25, 1950, almost 100,000 North Korean troops surged across the 38th parallel, starting the Korean conflict. The U.S. Government called our involvement a police action. But, of course, to those involved, it was a war. It was the beginning of a 3-year war that led to the deaths of 54,000 American servicemen, over 3,000 troops from 14 of our allies, and the South Korean military deaths numbered 225,000.

The United States' missing in action from that conflict stands today at some 8,200. There are Members of this body who served in the Korean conflict—Senators CHAFEE, WARNER, and RUDMAN. In fact, Mr. President, 1,500,000 Americans served during the Korean war.

There have been scores of recent articles on this matter. Last Friday I had a conversation with WARREN RUDMAN, who served in combat in Korea. He described an article that was going to appear in the Parade magazine written by James Brady. Brady wrote about the involvement of Senator CHAFEE in that conflict. As Senator RUDMAN related to me, the article in Parade magazine depicted a battle, and it told a story of one individual involved in that battle. Senator RUDMAN recounted that there, of course, were numerous instances like it, and he proceeded to tell me, in a private fashion, some of the involvement that he had during that war.

Mr. President, we all have had experiences where friends and relatives recounted their involvement in the Korean conflict. I had the pleasure of serving as Lieutenant Governor of the State of Nevada. During that time the Governor was Michael O'Callaghan, a Korean combat veteran, a veteran who, in fact, lost a leg in that conflict.

Yesterday, in a Las Vegas newspaper, a front-page column appeared by Michael O'Callaghan—it was actually a repeat of a story or a column that appeared in the newspaper 5 years after he returned from Korea—after having been very severely wounded some 35 years prior to that time.

I ask unanimous consent that the entire column by Michael O'Callaghan be printed in the RECORD.

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

WHERE I STAND

(By Mike O'Callaghan

(Forty years ago today North Korea invaded South Korea and the ensuing three-year conflict resulted in close to five million military and civilian deaths, including more than 54,000 American servicemen. The Sun's Mike O'Callaghan was an infantryman with the Second "Indianhead" Division which had 7,094 men killed in combat. Five years ago he returned to Korea to write the following column).

The syrupy female voice echoed across the valley that runs in front of Old Baldy, Pork Chop and T-Bone hills. It has the same sweetness and luring qualities of the voices heard long ago, only this time the message was in Korean and not English as it was in the 1950s.

Republic of Korea combat leader Colonel Jeung only grunted "propaganda" when I asked what she was telling his troops dug in on the hills facing North Korea.

I couldn't understand what the luring voice was saying in August 1985, but 33 years ago a similar voice told us to come over and join her and her friends. Sometimes the loudspeaker would suddenly break the deadly silence of night with music and then the voice would tell one of us she had our mail from home. Other nights she would be more threatening and tell us it was a shame that we were going to die for a useless cause. This was usually followed by mortar shelling and sometimes by an infantry probe of our outpost.

Standing with the ROK soldiers looking directly down on the hill we called Pork Chop was irritating because it is now held by the North Koreans. The outline of a North Korean soldier was easily picked up as I gazed through the binoculars. Old Baldy and T-Bone, other hills where barrels of American blood were shed in the 1950s, are also in the hands of the enemy. One thing remains the same; the South Korean troops know that the men across from them are still the enemy. It is not a peaceful place for either Americans of the U.S. Second Division or their ROK comrades.

The steep hills are now covered with green foliage and most of the war's scars are covered with trees and brush. However, the slopes running off the hills are scraped bare so the troops can watch for possible infiltrators, and if fighting breaks out, they will have clear fields for firing their automatic weapons. During the winter months the snow-covered hills are easy to scan for tracks of enemy infiltrators.

The north sides of the hills held by the Americans and ROK soldiers are covered with razor-sharp wire and a deep ditch runs along the forward slope. Also powerful spotlights, which flash on sporadically at night, face the North Koreans. The reverse slopes of the outposts have large orange panels to warn our airplanes not to fly north or they will come under fire. Also snuggled comfortably in pits by the orange panels are mortars in case they are needed.

Early in the morning Carolyn, my wife, neighbor George Brookman, cousin Bill Biesanz and I had met with U.S. Army Major Ernie Comer and ROK Col. Han Doo Sik at Camp Red Cloud near Uijongbu. Both men are key members of the ROK-U.S. Combined Field Army who agreed to escort us to the demilitarized zone (DMZ) better known as "The Z" by Second Division troops. We were joined by Capt. Cynthia Kaywell and Lt. Col. Ken Okimoto, both reservists from Hawaii on active duty.

Camp Red Cloud is close to the 43rd MASH where I was patched up one time. It became known to world television viewers as the 4077th MASH. Probably the only realistic thing about the television series is the gap in the mountains the helicopter flies through at the beginning of every show. The gap in the mountains is still there, but the old MASH is now home for an ROK army unit.

It was the first day of school for Korean youngsters and they waved to us as we headed for the DMZ in a military van. We stopped in a small village for a highly spiced Korean lunch at a small house we entered from an alley.

The road out of the village took us through military activities which included live heavy artillery fire landing in the mountains. We soon left the paved road at a bridge where babies were being bathed in the river and people were working the fields. The rice fields, to be harvested in about four more weeks, should produce bumper crops. The already harvested red peppers were drying on the side of the dusty road.

Then we were on the road winding behind the DMZ and it was necessary to transfer into ROK jeeps for the climb up to the outpost overlooking Pork Chop. Yes, the hills and mountains of Korea are just as steep as I remembered from the months spent climbing them during hot and steamy monsoon rains and bitter cold winter months.

Standing on the towering hill and looking down at the North Korean on Pork Chop made me wonder if all of the bloodshed for these hills was worth the end results. The names Estrada, Skipper, Vennecucci, King, Cunninghan and Brown flashed through my mind. They are all dead and the North Koreans are sitting on the hills where these men died more than 30 years ago.

Then I recalled the happy children on their way to school, the little babies being bathed in the river, rice paddies ready to be harvested, red peppers drying by the roadside and the people working the fields. It's a damn shame it took so many good lives to prove a point in an imperfect world which as a whole really hasn't changed that much.

I am happy that I had the opportunity to be in Korea when it counted. My return visit has convinced me that at least one small part of the world benefitted from the presence of Americans more than 30 years ago. If only Estrada, Skipper, Vennecucci, King, Cunningham, Brown and the other thousands who died could still be here to enjoy the fruits of their work and suffering.

Mr. REID. Mr. President, what I want to do at this time is relate the last part of his column, which I think is quite illustrative.

Camp Red Cloud is close to the 43rd MASH where I was patched up one time. It became known to world television viewers as the 4077th MASH. Probably the only realistic thing about the television series is the gap in the mountains the helicopter flies through at the beginning of every show. The gap in the mountains is still there, but the old MASH is now home for an ROK army unit.

It was the first day of school for Korean youngsters and they waved to us as we headed for the DMZ in a military van. We stopped in a small village for a highly spiced Korean lunch at a small house we entered from an alley.

The road out of the village took us through military activities which included live heavy artillery fire landing in the mountains. We soon left the paved road at a bridge where babies were being bathed in the river and people were working the fields. The rice fields, to be harvested in about four more weeks, should produce bumper crops. The already harvested red peppers were drying on the side of the dusty road.

Then we were on the road winding behind the DMZ and it was necessary to transfer into ROK jeeps for the climb up to the outpost overlooking Pork Chop. Yes, the hills and mountains of Korea are just as steep as I remembered from the months spent climbing them during hot and steamy monsoon rains and bitter cold winter months.

Standing on the towering hill and looking down at the North Koreans on Pork Chop made me wonder if all of the bloodshed for these hills was worth the end results. The names Estrada, Skipper, Vennecucci, King, Cunningham and Brown flashed through my mind. They are all dead and the North Koreans are sitting on the hills where these men died more than 30 years ago.

Then I recalled the happy children on their way to school, the little babies being bathed in the river, rice paddies ready to be harvested, red peppers drying by the roadside and the people working the fields. It's a damn shame it took so many good lives to prove a point in an imperfect world which as a whole really hasn't changed that much.

I am happy that I had the opportunity to be in Korea when it counted. My return visit has convinced me that at least one small part of the world benefitted from the presence of Americans more than 30 years ago. If only Estrada, Skipper, Vennecucci, King, Cunningham, Brown and the other thousands who died could still be here to enjoy the fruits of their work and suffering.

Mr. President, Senators RUDMAN, WARNER, CHAFEE, and my friend Governor O'Callaghan certainly sacrificed and made this a better place in which to live.

I yield the floor and 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. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FLAG VOTE

Mr. METZENBAUM. Mr. President, today the Senate will dispose of an issue that has taken up more time than perhaps any other issue we have faced during this Congress.

From the beginning, I have taken the position that it is unnecessary, unworkable and unwise for Congess to take any action to prevent flag desecration. I voted against a resolution condemning the Court's flag-burning decisions, a statute designed to overturn its decision, and a constitutional amendment barring flag desecration. In each case, I thought legislative action was unnecessary.

But what an absurdity is the vote today. The House has killed the constitutional amendment and so there is no chance that there is going to be a constitutional amendment. What we find is that for political purposes, some are insisting that there be a vote today on the issue. This Senator has no problem about a vote. I have made my position clear time and time again.

The House has killled the constitutional amendment. So why are we going to vote on a constitutional amendment that cannot posssibly be enacted this year? The answer can be summed up in a few words. There are those who would politicize the flag issue. There are those who are anxious to find the material for a 30-second TV spot.

It seems there are a number of politicians who want to exploit the emotions stirred by a few highly publicized incidents of flag burning. So today we will take a meaningless vote so that some campaign operatives can try to bludgeon Senators who are willing to stand up for the Bill of Rights and vote against this amendment.

I think these operatives are shamefully exploiting the strong feelings which are stirred by flag burning. I think it is proof positive of the excesses to which these so-called political strategists go in order to find another way to win an election.

I understand the anger the people feel when the flag is burned by a couple of media-hungry kids who are out to test the limits of our tolerance. I share that anger. I understand the impulse to pass a law or change the Constitution in order to prevent the flag from being burned.

I want my colleagues to understand that there are other ways that the flag, in my opinion, is defamed. And the honor with which all of us hold is tarnished when it is sewed on the bottom of a pair of pants, or when some automobile dealer has a tremendous lot of cars and he gets the biggest flag that he can possibly find so that it will fly over his place of business on the highest pole that he can obtain, not because he is a super patriot, but because that is the way of attracting attention to all of the cars that are sitting below that flag. I think there is some kind of desecration in the flag in that respect and I resent that.

But I must say that I am not prepared to pass a law nor change the Constitution in order to prevent the flag from being burned or to prevent the automobile dealer from exploiting the use of the flag nor to prevent the clothing manufacturers from selling their clothes with a flag on it.

We do not need to pass a law to protect the flag from destruction by the citizens of this country. The flag is well protected by the affection and reverence felt by the millions of Americans who freely and voluntarily choose to fly the flag every single day. There are millions of Americans who put the flag out every day and take it down every night and they are proud of it. They do so because it represents to them everything that is great and good about this country.

We do not promote respect for the flag by jailing those who disrespect it. Most importantly, we do not protect the flag by diminishing the liberties for which it stands.

The fact is we cannot pass a law to protect the flag without attacking the core of the first amendment. Flag burning, though contemptible, is a form of political expression. The fundamental principle of the first amendment is that political expression cannot be restricted simply because the Government deems it offensive or outrageous. Protecting expression that we hate—that we abhor, that we resent, that we would like to slap down, but the individual has the right to make that expression—goes to the heart of the first amendment.

This amendment is unnecessary. It is unworkable and it is unwise. It is unnecessary because we do not need to amend the Constitution in order to put a couple of flag burners in jail. It

is unworkable, because the language is so vague, overbroad and open-ended.

If this amendment were to become law—and it cannot become law in view of the House action—our citizens would have no idea whether they might go to jail for wearing that flag on their clothing, throwing away a picture of the flag drawn by their children, or eating barbecue off a paper plate decorated with the flag.

Finally, this amendment is unwise because we should not, should not after 200 years, retreat from the first amendment's principle that political expression should not be restricted simply because it is offensive and outrageous.

The United States is special because it is the only country in the world which—throughout its entire history—has always prohibited the Government from jailing people simply because they are political dissenters. I do not think we should retreat from that principal.

Obviously, not everyone shares my view. Some people have such strong feelings about the flag that they are willing to retreat from that principle just this one time in order to protect the flag.

I believe that if we start fiddling with the Bill of Rights to outlaw offensive expression, it will be difficult for us to stop. I believe that if we pass this constitutional amendment, then we will start seeing constitutional amendments proposed every time the polls show that 60 percent of the people do not like a particular form of expression.

Anyone who thinks I am exaggerating should just look at the way the flag issue has been played up in recent weeks here in Washington. It is obvious there are those who are far more interested in the politics of the issue than they are in the substance of the issue, in the freedoms for which this country stands.

Whatever merit there might be on the other side of this issue, frankly, has been drowned out by the chorus of smears and threats directed at those of us who dare to oppose this amendment.

I am frank to say, Mr. President, that my position has been very consistent on this subject ever since the issue first arose. I indicated early and strongly that I was opposed to a change in the law, and particularly opposed to a change in the Constitution.

According to all the consultants and advisers and the political people who are supposed to be experts in this area, my phones were supposed to ring off the hook, and I was supposed to be attacked, not physically, but verbally, every time I moved around the State of Ohio. That has not happened. As a matter of fact, my phone calls have been more supportive than they have been critical. And I do not think Ohio is different. I think Ohio is a typical State in this country. It has all kinds of people, agriculture workers, workers in plants. It is a mix of 11 million people.

And I recognize what the pollsters say, but I think sometimes it depends on how you phrase the question in the poll as to how you get the answer. Suffice it to say the American people are not calling for a constitutional amendment.

Media advisers and campaign consultants here in Washington have poisoned the debate on this issue. They want Americans to think that anyone who believes that it is wrong to jail unpopular protesters is unpatriotic and out of touch with "real people."

Mr. President, that is not a distortion. The distinguished leader of the other party stated a vote against the flag amendment would make a good 30-second spot. He also was quoted as saying that a vote against the flag amendment could perhaps be explained at a bar association meeting, but not before real people. I disagree.

I wonder what the minority leader would say to the nursing student from Arlington, TX, who, even though she believes it is morally wrong to burn the flag, believes with equal conviction that we should not amend the Constitution. Is she not a real person?

Or what about James Warner, a former prisoner of war in Vietnam, who last year testified eloquently in opposition to the flag amendment. Is he not a real person?

To say that those who oppose shrinking the Bill of Rights are not real people, is shameful political demagoguery. It besmirches the flag. The Bill of Rights, and the millions of Americans who oppose this amendment. But it is typical of the way that this issue has been approached by political operatives here in Washington. Just listen to some of the comments made by some of the campaign advisers in the other party.

According to last week's National Journal, the chairman of the National Republican Congressional Committee has stated that "we'll be able to demagoge well on flag burning in a lot of" congressional districts.

Another Republican consultant advises legislators to support the flag amendment because, he says, "people don't read the Constitution every day. They do see the flag every day."

Talk about cynicism. Here's a campaign consultant who is advising politicians to shrink the Bill of Rights because he thinks the voters do not understand the Constitution. His campaign strategy is premised on the belief that the people of this country do not understand the Bill of Rights.

But the prize for cynicism goes to the Republican media consultant who described the flag issue in this way: "It's sweaty, it's ugly, it's cliched, it's trivial, but it's a way to put some hits on people," he says.

The most popular television show is about fat people falling off horses filmed by their neighbors. And the number one issue might be flag burning.

I think a statement like that demeans the flag, degrades the Constitution and displays a contempt for the American people.

Listen to the crass way in which the campaign operatives hope to exploit the flag issue and then ask yourself this: If we cave in to these cynical operatives today, will this be the last time they try to plunder the Constitution for political advantage?

I think everyone realizes that the answer is "No." I think everyone realizes that if we aimed the Constitution once in order to avoid being wrongly smeared as unpatriotic, then we will have to amend it many more times.

The American people deserve better than this. They deserve better than to be regarded with scorn by campaign consultants who think that they do not understand how the Constitution works. They deserve to be shown that there is a limit to just how shallow our politics can be. They deserve to be shown that our votes on issues are not dictated by fears of 30-second TV spots which distort issues and smear reputations. They deserve to be shown that the flag and the Bill of Rights are not just political pawns which can be dragged through the mud whenever some campaign consultant thinks it might be worth a few points in the polls.

Mr. President, look at the admiration which Americans hold for Nelson Mandela, Lech Walesea, Vaclav Havel, and the students in Tiananmen Square. Perhaps we do not agree with everything they do, but we deeply respect and admire their willingness to risk their careers—and indeed their lives—in order to stand up for principle.

The people of this country are looking for a little political courage from their leaders. They are looking for us to stand up for principle. They deserve a better brand of politics than they have been getting. And we can begin giving it to them by rejecting this amendment.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. HOLLINGS].

THE FLAG

Mr. HOLLINGS. Mr. President, as soon as the decision was handed down last year concerning the right to burn the flag, I joined immediately in efforts to pass a statute or constitutional amendment to ban this dispicable activity. I did not want to wait for a poll. I did not, frankly, consider it necessary to navel-gaze or reflect at length

on the subject, because on a gut issue of this kind I want the people of the State of South Carolina to know the mind and the character of the individual who represents them as a Senator.

Now, having listened last week and early this week to debate on this issue, I am virtually made to appear as a demagog or scoundrel for daring to speak out in defense of the flag. Such is the peer pressure here inside the Beltway. We are just totally out of touch with the deeply felt feelings and values of the country on this matter.

I remember back in 1938 we had a tornado in Charleston that lifted the beams off the city market, one of which went straight through the roof of the revered and austere of St. Michael's Church. Standing on the corner at Meeting and Broad Streets immediately afterward, looking at the beam coming out of the corner side of the church, a spectator said that those people over there had gotten so highfalutin that the Lord Almighty Himself had to bust a hole in the wall to get into the church. I hope we do not have to bust a hole in this roof to get some feeling for the flag that other Congresses and other generations have felt for 200 years. There has been an amendment alright, an amendment by the Court.

The Court talks now of a preposterous and humiliating amendment, but until June 11, 1990, it was not preposterous, it was not humiliating. The best of liberal legal minds—Justice Black, who considered himself an absolutist on the first amendment, Abe Fortas, former Chief Justice Earl Warren—all thought it was constitutional and in accord with the first amendment to protect the flag. Of course, on June 11 and still today, Chief Justice Rehnquist, Justices Stevens, White, and O'Connor all feel that the flag can be protected under the first amendment.

There is no doubt, I think, going right to the heart of the matter that when you look at United States versus Eichman, the majority opinion said:

> The brief of the United States Government invites us to reconsideration or rejection in Johnson of the claim that flag burning as a mode of expression, like obscenity or fighting words, does not enjoy the full protection of the first amendment. This we decline to do.

Well, I share no such inhibitions. Agreeing with me are four of the current Justices plus the law of the land for some 200 years. I wish some of these Justices and other speakers who condescendingly dismiss this issue could have gotten out of Washington and into the heartland for some of the recent Memorial Day exercises, certainly anywhere in my State of South Carolina. Let them start burning a flag and see whether it does not amount to fighting words. It will be the equivalent. I can tell my colleagues that. This is no threat. It is just an observation of a fact of life. At Mount Suribachi, Americans did not carry with them a Constitution, but they found a pipe and they had a flag and they raised it. And everyone knows the thrill, the world over, as traveling citizens or Senators, to come upon your embassy or your flag in these foreign lands and what a thrill it is to see. And why, when someone burns it—"a little political message that means nothing"—on the contrary, it means everything to this country.

So it is that there are commonsense exemptions to that first amendment: of course, with respect to libel, with respect to obscenity, with respect to fighting words—words tending to terrorize, like shouting fire in a theater, using a bullhorn at night.

Speech in the Senate here, Mr. President, is restricted. We amend, under our rules, the first amendment to preserve the decorum of the body.

I noticed my good colleague from Missouri last week, who said he could not understand the uproar. He said:

> In the 200-year history of our country, the Bill of Rights has never been amended, never been changed, not a word, not a comma in the Bill of Rights has been changed.

Then the distinguished Senator went on to talk about the 15th amendment, which amended the Bill of Rights. We had nothing but Mandelas in this land, without the rights of citizenship, until the 15th amendment nearly a century after we were founded.

The distinguished Senator from Maryland [Ms. MIKULSKI]; the distinguished Senator from Kansas [Mrs. KASSEBAUM]; they could not have full freedom of speech for 130 years under that first amendment. By the 19th amendment, we allowed these women to speak about who they would vote for, or to come into this Chamber and say "aye" or say "no." They had no freedom of speech. We had to amend that first amendment to give the Senator from Maryland and the Senator from Kansas a right to speak freely.

So, let us not get so sanctimonious in our ignorance of the Constitution, and let us not wrap ourselves in the first amendment, theorizing about what they call expressive conduct. The first amendment itself says the Congress shall pass no law abridging the freedom of speech. It says nothing about abridging the freedom of conduct. And, yes, the courts down through the years have elaborated a notion of expressive conduct and now we have political conduct. I tell my colleagues, if you can burn a flag and engage in that kind of violent conduct, then you can continue to do anything without regard to commonsense or common decency.

I think we ought to return the issue to where it was for some 200 years. We ought to have some reverence in the country. The flag is the fabric of our society, of our body politic, as President Bush has said.

So I think what we need, if necessary, I say to my colleagues, is perhaps a statute. I would introduce it as the Flag Product and Protection Act. We can manufacture the flag, produce it, issue it, somewhat like currency. Or somewhat like mailboxes. I remember kids used to put a cherrybomb in the mailbox, blow it up and see if the FBI were smart enough to catch them. We have a law against that. Or consider the paper rack outside the Chamber here. I might have every resentment of what the Washington Post writes, but I cannot under the guise of political expression tear off the newspaper rack and destroy it. We have laws to prohibit that.

If we can protect newspaper racks and mailboxes, heavens above, we ought to be able to protect the country's banner. We have passed laws regarding the flag, how you raise it, how you lower it; we have legislated the pledge and the national anthem. Then comes this Congress, and we have become so sophisticated that it is seen as a waste of time to even talk about protecting the flag. Or your defense of the flag is dismissed, in the words of Samuel Johnson, as the last refuge of a scoundrel.

We have to get a feel for this country, and we have to get a feel for that flag, I can tell my colleagues. That is the kind of State I represent; the first thing they do in the morning when they wake up is salute the flag and they are ready to fight for it. I am proud to echo and represent that sentiment. I hope I never get so sophisticated that I lose that gut feeling, or that I need a political poll to tell me which way to stand on this particular issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. BOSCHWITZ].

IMMIGRATION

Mr. BOSCHWITZ. Mr. President, in his State of the Union Address back in January, President Bush stated,

> Our Nation is the enduring dream of every immigrant who ever set foot on these shores—and the millions still struggling to be free. This Nation—this idea called America—was and always will be—a new world. Our new world.

Millions throughout the world still envision the United States as the land of opportunity, as I do. I was only 5 years old when my family and I set foot in the United States, fleeing Nazi Germany. I have a deep concern for the plight of refugees and immigrants. During my time in the Senate, I have worked hard to give others the same

chance I had—to find refuge and opportunity within the United States.

I am firmly convinced that our country's heritage has been enriched by the flow of immigrants into our Nation. If there is one thing that distinguishes us from other countries, it is that virtually all of us are immigrants—sons and daughters of immigrants, grandsons and granddaughters of immigrants, immigrants who help energize the United States culturally and intellectually and help fuel the economy.

Recently, several experts have been outspoken in calling for an increase in the flow of immigrants into our country. For instance, Ben Wattenberg and Karl Zinsmeister, of the American Enterprise Institute, call for increasing the number of immigrants flowing into our Nation. They emphasize the education, skills and in some cases, investment capability, of immigrants which help enrich our country.

Not so long ago, Mr. President, there was a two-page spread in the USA Today about young people as they were leaving high school and going into college. It pictured them and gave their names in the event they were not pictured. A disproportionate number of those names indicated that there was a recent immigrant connection or that they themselves were immigrants. It is not unlike Boston in this past year. Of its 17 high schools, 13 of the valedictorians were immigrants.

So for that and many other reasons, I support the idea of increased immigration into this country in order to continue to enrich and strengthen it.

Wattenberg and Zinsmeister were quoted in a Washington Post column by William Raspberry:

> The simplest question to ask when considering what kind of immigration policy this country needs is this: Is America done—a finished product—or is it a constantly improving, searching, expanding enterprise? We would argue the latter.

I would argue the latter as well.

When immigrants arrive in the United States, they often have nothing but ambition. That is why our economy expanded fastest when immigration was highest. Immigrants spur growth through their commitment to work and their driving desire to gain a better life for themselves and their families. They show us again and again what promise and opportunity is available to all Americans—if we are just willing to work at it.

I see it happening with new immigrants. Go to the schools of areas where many immigrants have resettled—for example, St. Paul and Minneapolis, in my home State of Minnesota—and ask their teachers and principals. Look at the faces of the valedictorians, the scientists, and the entrepreneurs. Will some of our new immigrants take menial jobs, or even go on welfare? Sure—but others will win Nobel prizes, or start new businesses, or move into professions that are in short supply.

Today perhaps 700,000 immigrants and refugees come to our country annually. That's one-third of 1 percent—or less—of our Nation's population. Yet in the years when the Scandinavians, Germans, Irish, Italians, and others were streaming into our country, the flow as a percentage of our population was almost 10 times as large as today. Indeed, back in 1907, when immigration peaked, about 1.3 million individuals entered our Nation as immigrants.

Unfortunately, some in our country harbor resentment toward immigrants. They feel we are already being too generous in our admissions and that America will reach some mythical saturation point. They seem to forget that if there parents were not immigrants, then their grandparents or great-grandparents most likely were. Some claim that immigrants take jobs and put other Americans out of work. When the grandparents and great-grandparents of most Americans arrived here, people said the same thing. However, our ancestors—like the immigrants of today—created more jobs than they took.

An article printed in Inc. last October—"Open the Gates, Immigration Just Might Be the Most Effective Way We Have To Give Our Economy a Boost"—makes the same point. The author of this article indicates that a report done by the National Bureau of Economic Research Inc. found no evidence that immigrants take jobs from native-born Americans.

In a recent column in the Washington Times, Warren Brookes reinforces that viewpoint. He says:

> Both Census Bureau and Labor Department data confirm that legal immigrants quickly earn as much or more than native-born workers of the same age, work more and tend to be better-educated and better-trained, are more likely to start new businesses and contribute far more in taxes than they collect in social benefits.

I am pleased to see the increased attention by the media regarding U.S. immigration policy. Economist Julian Simon was quoted in a recent article in Fortune. Because he is convinced that immigrants are a windfall for our country, he is calling for substantial increases in the number of individuals admitted as immigrants. I have also noted that at least two editorials in the Wall Street Journal have advocated higher admissions of immigrants.

On a final note, I must add that I am always amazed that here in the United States we debate how many people to let in. Were we to close our doors to immigrants and refugees we would diminish ourselves and do injustice to our proud history and heritage.

Mr. President, I ask unanimous consent that the articles I mentioned be printed in the RECORD.

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

[From the Washington Post, Dec. 18, 1989]

WHY WE MAY NEED MORE IMMIGRANTS

(By William Raspberry)

Some of us have been looking past the immigration center stage, where Nadia Comaneci is the reigning star, and focusing on the offstage tragedies: the Vietnamese boat people being sent back from Hong Kong to God knows what fate, the hard-pressed Latin American "illegals," and, above all, the Haitians who risk death and jail for a chance at the American dream.

We hear the distinctions our government makes between political refugees and the merely economically ambitious, but we don't believe them. Comaneci is fleeing oppression for her political views? Be serious, we say. The most reliable clue to whether immigrants will be accepted here is not their politics but their skin. Europeans (white) are fine. Asians (yellow) are problematic. Hispanics (brown) are virtually the definition of unwanted "illegals." Haitians and Ethiopians (black) are at the top of the government's least-wanted list.

We note the contrast in treatment of Comaneci, who has been handed the keys to the city of Miami, and the nameless Haitians who have been left to languish in American prisons until they can be sent packing, and we wonder why no one wants to tell the truth about the difference.

Well, two men are telling it. Ben Wattenberg and Karl Zinmeister, both of the American Enterprise Institute, content that America is—and ought to be—the world's first "universal nation," and that we ought to work actively to increase the flow of immigrants to this country.

There proposal, presented earlier this month at AEI's annual policy conference at Georgetown University, devotes only one of its 29 pages to the question of human rights refugees. What they offer is pure pragmatism.

Americans are maleducated, undermotivated and underskilled, they argue, and the aging of the Baby Boom generation will create a drain on resources, causing further deterioration in the country's competitive position in the world.

"Immigration, properly shaped, can help provide us with whatever skills we may be lacking," they contend. "Immigration can diminish labor shortages that may be coming our way. Immigration can help keep America from aging precipitously and help support the dependent aged. Immigration can play a salutary role in our financial situation."

And these advantages are peculiarly available to America, not to our global competitors, because "we are a pluralist nation [and] most of them are not."

Wattenberg and Zinmeister's emphasis here is on the education, skills and, yes, money the immigrants have. America no longer has gold deposits to mine, or frontiers to settle, or prairies to turn into farmland.

"The real competition in world markets today is for creative human beings. And this is one area where America has a comparative advantage that overwhelms any competitor. . . . When they come, they come at little cost to us. Many immigrants have al-

ready had their educations completed, and paid for, elsewhere."

The payoff: vastly more of what America already is attracting. Some 11,000 immigrant engineers, scientists and computer specialists in any given year as well as youngsters with the potential for economic contributions.

"Of the 40 1988 finalists in the Westinghouse high school science competition, 22 were foreign-born or children of foreign-born parents: from Tiawan, China, Korea, India, Guyana, Poland, Trinidad, Canada, Peru, Iran, Vietnam and Honduras. In San Diego, one of those cities 'overrun' by immigrants, one of every four valedictorians and salutatorians has recently been Vietnamese. In Boston, 13 of the 17 public high school valedictorians in the class of 1989 were foreign born."

And, yes, money matters too. "In addition to the well-educated, America should welcome individuals with proven finanical skills and capital. . . . Bringing in foreign investors as immigrants can pay off twice—America gets both the capital and, even more important, in the long run, the talent. We don't nationalize investments; we can make it easier to nationalize investors."

But it isn't economics and competitiveness alone that move Wattenberg and Zinmeister. "The simplest question to ask when considering what kind of immigration policy this country needs is this: Is America done—a finished product—or is it a constantly improving, searching, expanding enterprise? We would argue the latter."

And they would argue most vociferously that America can improve and expand most successfully if it pays careful attention to the intellectual and financial resources of those it lets in.

Their notion may do violence to Emma Lazarus's ideal of America as a harbor for the world's "tired, poor, huddled masses yearning to breathe free."

But at least it's honest.

[From Inc., October 1989]

OPEN THE GATES

(By Joel Kotkin)

Let me tell you about my friend Rod Hosilyk. The founder of Computer Products Plus Inc., a computer accessories marketing and service firm, he's the type of guy who never met a regulation he liked. So you can imagine my reaction when he mentioned recently that he was thinking of setting up an affirmative-action program at his new company.

"Well, I have to do something," he said, smiling. "I need to find a technician somewhere whose first language isn't Vietnamese."

In his own way, Hosilyk was acknowledging the enormous debt he and other entrepreneurs owe to the refugees who have flooded into southern California over the past 15 years. According to one estimate, there are more than 60,000 Southeast Asian immigrants in Orange County alone. At virtually every technology company in the area, these newcomers have become the mainstays of the assembly and technical areas. "Without the influx of Asians, particularly Vietnamese," says Robert Kelley Jr., president of SO/CAL/TEN, an association of some 200 southern California high-tech businesses, "we would not have had the entrepreneurial explosion we've seen in places like Orange County."

This is a fact that seems to escape many leading members of the Senate, who have been pushing plans to limit the immigration flow. No matter that more than 46,000 people—terrified by recent events in China—have applied for visas to emigrate from Hong Kong to the United States. Influential politicians from both ends of the political spectrum argue that we are better off restricting the number we let in.

Sen. Edward M. Kennedy (D-Massachusetts), for one, favors a system whereby certain categories of applicants for immigration would receive extra points for proficiency in the English language. Proponents of the plan say it would encourage immigration of those more ready to contribute to our society. Yet as Sen. Paul Simon (D-Illinois) points out, 13 of the valedictorians of Boston's 17 public high schools are foreign born, and most of them spoke no English when they got here. Nor is Boston an exception.

Sen. Alan K. Simpson (R-Wyoming) takes a more direct approach than Kennedy, citing polls showing public opposition to immigration. Of course, such attitudes are hardly new. If you had polled the Indians, they would no doubt have favored cutting off the flow of Pilgrims. Polls aside, Simpson sees a risk in opening our doors. If we're not careful, he warns, we may experience a kind of "compassion fatigue." He also argues that the burden of immigration falls heaviest on less fortunate Americans, particularly poor blacks.

But this widely held belief is refuted by a new report from the National Bureau of Economic Research Inc., in Cambridge, Mass. The study's authors surveyed cities around the country to assess the impact of immigration and found no evidence that immigrants take jobs from native-born Americans, including the poor and unskilled. In some industries, employment of native-born Americans actually increases in areas where immigrants settle. "Economically, America benefits from immigration—I don't think a serious economist in the country disputes that," says the report's editor, Harvard University economics professor Richard B. Freeman. "They produce more than they consume, and that benefits everyone."

Nowhere is this effect more evident than in southern Florida, where refugees from Cuba, El Salvador, and Nicaragua have transformed Miami from a sleepy resort town into a major international business center. By 1980, more than one-third of Miami's population was foreign born, an increase of 46% since 1970. As a group, the Cuban-Americans have become "entrepreneurs par excellence," creating 25,000 business in the past two decades according to Robert Coords, president of Sun Bank/Miami, a leading middle-market lender in the Miami area. Before the great influx of refugees, Coords notes, Miami had one significant industry: resorts. Now, thanks largely to immigrant workers, capital, and entrepreneurship, new industries are flourishing.

Congress should keep this experience in mind as it ponders what to do about immigration from Hong Kong. If ever there were immigrants who could boost our economy, it is the people of that extraordinary city. Consider that Hong Kong, with a population of 5.6 million, has one business establishment for every 20 people—a rate of entrepreneurship twice that of the United States. Its economy, moreover, is heavily industrialized. Indeed, Hong Kong has almost as many manufacturing jobs as Los Angeles County, America's top industral center—and L.A. has nearly 3 million more people. I challenge you to find a American manufacturer who could not use some of Hong Kong's expert machinists, assemblers, technicians, and industrial designers.

To be sure, there are humanitarian reasons for welcoming the citizens of Hong Kong to our shores. After all, they face the grim prospect of becoming citizens of the People's Republic of China in less than 10 years. But let's not talk about compassion here. Let's talk about America's self-interest. Let talk about our declining industrial base, our trade deficit, our lack of international competitiveness. Many people—including some of those who favor restrictive immigration policies—propose that we solve these problems with national industrial policies, subsidies, and protectionist quotas. I submit that our own history offers a simpler, more efficient, and eminently more American solution: open the gates.

[From the Washington Times, May 28, 1990]

IMMIGRANTS AND ECONOMICS

(By Warren Brookes)

As we celebrate Memorial Day, it is good to remember how much immigrant blood has been shed in both war and peace to make the American dream of democracy a growing worldwide reality.

To its credit, Congress apparently is rising above chauvinism in a heated but mostly unreported debate over something that really matters—U.S. immigration policy for the decade to come.

On one side are those who believe that significantly expanding immigration would represent a serious threat to both our national economy and our cultural heritage.

On the other side are those who believe that expanding immigration would be a reaffirmation of our country's greatness and an essential ingredient in maintaining U.S. competitiveness.

As Congress moves toward the first serious restructuring of legal immigration policy in 25 years, the latter view is winning, and that is a tribute to economic scholarship and statesmanship.

There is not much doubt where the political safety lies. Although we pride ourselves on being a nation of immigrants, the overwhelming majority of us would like to "pull up the ladder" just a little and slow down the influx of newcomers. One reason: Currently, the United States has one of the lowest percentages of foreign-born citizens (only 6 percent) among major nations. (See Table.)

A NATION OF IMMIGRANTS?

[Foreign born percentage of total population]

Australia	20.0
Switzerland	17.2
New Zealand	16.2
Canada	16.2
South Africa	11.8
France	10.5
England	8.7
United States	6.0
Sweden	4.8

Sources: Alexis de Tocqueville Institute—U.S. Census Bureau.

Despite our history of owing most of our economic development to the flood of immigrants "yearning to breathe free," we have steadily reduced that flood to a mere trickle. At the turn of the century, new immigrant arrivals were an average of 2 percent of our civilian labor force. Today they represent only 0.2 percent. While this drop-off has coincided with falling U.S. economic leader-

ship, every poll shows Americans think even that trickle is too much.

That's why the bill (S. 356) of Republican Sen. Alan Simpson of Wyoming and Democratic Sen. Edward M. Kennedy of Massachusetts, which passed last fall, allows an increase in U.S. immigration of only 130,000 a year from a projected annual average of 610,000 over the coming decade. While it substantially increases the percentage of skills-based immigrants from 7 percent to 15 percent, that does little to solve the nation's impending skilled-labor shortage.

During the 1990s, without major immigration expansion, the U.S. working-age population will grow only 8.3 percent, down sharply from the 12.4 percent growth of the 1980s. At the same time, skills demands are already far outracing skills supply.

Amazingly, the House Subcommittee on Immigration, led by Rep. Bruce Morrison, Connecticut Democrat, recently approved a bill to expand to an average of 963,000 a year, a major 58 percent increase over current law.

What makes this all the more remarkable is that Mr. Morrison has been a forthright defender of big labor, which has never been a fan of expanded immigration. Equally interesting, Mr. Morrison's chief antagonist, Rep. Lamar Smith, Republican from San Antonio, Texas, is one of the bright and rising stars of the Republican right with a solid free-market, pro-growth voting record.

But on immigration, Mr. Smith has parted company with populists on both sides of the aisle who see more immigration as a litmus test of America's commitment to "an opportunity society."

That view is solidly supported by a formidable, growing body of evidence developed by economists and demographers from left to right that demonstrates that immigration, especially skills-based immigration, is very good for the United States and Americans.

University of Maryland free-market economist Julian Simon has documented exhaustively the net positive benefits of immigration in his scholarly book, "The Economic Consequences of Immigration" (1989). He has recently been joined by liberal economist George Borjas of the University of California at Santa Barbara.

In his book, "Friends or Strangers: The Impact of Immigrants on the U.S. Economy," Mr. Borjas found that even with a 10 percent increase in immigrant labor, overall unemployment rates are not affected.

Mr. Borjas is supported by a new analysis for the Alexis de Tocqueville Institute by Ohio University economists Richard Vedder and Lowell Galloway, which found higher rates of immigration actually coincide with lower rates of unemployment.

New York Times economics writer Peter Passell recently concluded, "The conventional economic wisdom pitting American poor against the immigrant poor is crumbling. So too will the conventional wisdom pitting labor against the outsiders."

Both Census Bureau and Labor Department data confirm that legal immigrants quickly earn as much or more than native-born workers of the same age, work more and tend to be better-educated and better-trained, are more likely to start new businesses and contribute far more in taxes than they collect in social benefits.

Based on this evidence, Alexis de Tocqueville Institute analyst Stephen Moore contends in a new study that Mr. Morrison's bill would actually reduce the total government deficit by $75 billion to $110 billion over 10 years and increase Social Security funding by $72 billion over 25 years. That makes immigration expansion irresistibly good policy.

LOTS MORE IMMIGRATION WOULD BE A WINDFALL

(By Julian Simon)

There are lots of painful antidotes to the demographic pressures American society will experience in the decade ahead. But increasing immigration is the only painless one. As the average age of the work force rises and the proportion of workers to the population of elderly retirees shrinks, America risks losing the flexible edge that has always been its competitive advantage. Because the immigrants who come are less attached with respect to geography, occupation, or institution, they will restore that crucial flexibility.

Immigrants are a windfall for any society. They use fewer social programs than the native born, and they contribute more in taxes. Because immigrants tend to arrive as young adults, by the time they reach pensionable age most have contributed toward their own retirement and parented productive, tax-paying children.

We can never know in advance how new immigrants will benefit the society and the economy, but that's the best argument for letting more of them in. They enrich the fertile mix of ideas that has always been the contribution of immigration to America. Given the speed of economic and social change in our modern technology-driven society, we will need that contribution even more in the future than we did in the past.

Many people worry that encouraging immigration skims the cream from the societies whence they come—the so-called brain drain. But the brain drain is a myth. If anything, immigration creates a "brain bonanza." As migrants gain experience and income, they typically return some of those gains—both intellectually and through the repatriation of wealth—to the countries that they left behind.

Freedom is spreading everywhere in the world. The only important barrier left is the barrier to the free movement of people. Now with the revolution in Eastern Europe, even barriers to the freedom of people to leave have crumbled. Such obstacles that still exist are on the receiving end—among those nations, including the United States, that have historically upheld the principles of economic and political freedom.

During the 1980s America admitted an average of 583,000 new legal immigrants a year—the highest level since the beginning of the century. I would recommend that we double that number in the decade ahead. If we do, we will be the richer for it, both economically and spiritually.

(Simon, 58, teaches business administration at the University of Maryland and is the author of a new book, "The Economic Consequences of Immigration." He talked to Louis S. Richman.)

TROPICAL FOREST LOSSES—EVEN WORSE THAN WE THOUGHT

Mr. BOSCHWITZ. Mr. President, we all know that the world's forest resources, particularly in the tropics, are fast disappearing. At the recent Interparliamentary Conference on the Global Environment, I cochaired the working group on deforestation and desertification. I said there, quoting the Food and Agricultural Organization, that the world was losing 54 acres of tropical forests per minute, that those acres were being cleared for agriculture, grazing, fuelwood, human settlement, for export and for other purposes, and that those lost trees and other forest resources were not being replaced.

Now, just 2 months after our conference, I find that I must revise what I said there about the extent of the damage to our forests. Unfortunately, it is even worse than we thought. According to a recent report by the World Resources Institute, whose work I rely on a lot for keeping myself abreast of the world forestry situation, we are losing our tropical forests at an average rate of 85 acres a minute. That is very depressing.

This forest destruction forever denies to humankind the benefits derived from species of animals and plants that disappear in this process, including especially plant species which may be essential for improved food crops, as well as those which may form the basis for biotechnological application, medicine, and other scientific uses.

Land cleared through deforestation is in many regions unsuitable for ongoing agriculture and exhausted within a few years. So cutting down trees in the tropics often leads to no permanent gain, but rather to a cycle of floods, disruption of hydrological cycles, soil erosion, and, ultimately, in some instances, desertification.

Very importantly—and this is the area in which I am particularly concerned—deforestation, especially from burning, also results in significant release of carbon dioxide into the atmosphere, thus contributing to the greenhouse effect that causes global warming.

The reasons for these forest losses are, as we know, very complex. They have to do, in part, with world trade, international debt, and other macroeconomic causes. But these losses also stem from poverty, from population growth, from pollution pressures, and from inequities in land distribution. These factors lead to precipitate and usually counterproductive landclearing for marginal agriculture. It is counterproductive because, after a few years of crops, the cleared land loses its nutrients and becomes barren and useless.

We are talking about lots and lots of very poor people who have to work very hard for their daily bread, and who, understandably most likely never heard of biodiversity or global warming, and, if they did, would most likely say they have more important things to think about.

So what is the right balance between the long-term income of the whole

nation and the short-term needs of the poor for food and fuelwood, for which chopping down rainforests often seems to be the only recourse?

In coming weeks, some of us plan to introduce possible legislative solutions explored at the Interparliamentary Conference on the Global Environment. Answers on deforestation, specifically, seem to lie at several levels. First, we need to devise better forest conservation and management techniques. Second, we have to better address the larger economic problems of population pressures, extreme poverty, large-scale national indebtedness, and a wide range of often shortsighted economic measures that undervalue forest products and make it too tempting to cut down forests indiscriminately.

Last, what kinds of international activities might be effective in reversing the current trends leading to denuded forests and rangelands. I will be working on a new international convention to protect all the world's forests, along the lines of the International Whaling Convention—a convention which would recognize the need for protecting both temperate and tropical forests, and establish specific targets for reducing deforestation and achieving deforestation.

Mr. President, such a convention is just one of the legislative matters I will be pursuing to try to address deforestation. In view of these latest statistics on the rate of forest loss, we're already dangerously behind the curve of events. Both developed and developing countries have to look very carefully at how we help poverty-stricken people to survive and, at the same time, search for better ways to better protect and manage our forest resources. I will need the help of each of my Senate colleagues. I look forward to their support.

Mr. President, I ask unanimous consent that the articles be printed in the RECORD.

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

[From the New York Times, June 8, 1990]

LOSS OF TROPICAL FORESTS IS FOUND MUCH WORSE THAN WAS THOUGHT

(By Philip Shabecoff)

WASHINGTON, June 7.—Tropical forests, which play a vital role in regulating the global climate, are disappearing much more rapidly than previously estimated, an international research group said today.

Each year recently, 40 million to 50 million acres of tropical forest, an area the size of Washington State, has been vanishing as trees are cut for timber and to clear land for agriculture and other development, the World Resources Institute said in a report. The group said 1.9 billion acres of tropical forest remained.

The report, "World Resources 1990-91," prepared in collaboration with the United Nations, was described by its authors as the first comprehensive estimate in a decade of tropical-forest losses around the world.

The rate of loss, measured in most countries in 1987, was nearly 50 percent greater than the last global estimate, prepared by the United Nations Food and Agricultural Organization in 1980, according to the Institute.

"We were startled to uncover this rate of global deforestation," said James Gustave Speth, president of the institute, a Washington-based research and policy organization. "We were saying we were losing the forests at an acre a second, but it is much closer to an acre and a half a second."

The disappearance of tropical forests is regarded by environmental experts as one of the most serious global environmental problems. Through photosynthesis, the forests absorb huge quantities of carbon dioxide, the most important of the gases that are accumulating in the atmosphere. Many scientists believe that carbon dioxide, if not kept in check, will cause a significant warming of the earth in the next century, through a process known as the greenhouse effect.

The report on forests was based on remote sensing data from National Oceanic and Atmospheric Administration and Landsat satellites that were originally analyzed by each of the affected tropical countries. Dr. Allen L. Hammond, editor in chief of "World Resources 1990-91," said at a news conference here that for most of the countries the satellite data covered 1987, but for Brazil it covered 1988, since newer data were available for that country.

RATE SLOWS IN BRAZIL

He said the estimates of actual forest loss were "very conservative," and that the actual losses probably were considerably higher.

The group's report said that in nine major tropical countries, the estimates of total annual losses of tropical-forest acreage were about four times as high as estimates from the years 1981 to 1985. The nine countries were Brazil, India, Indonesia, Vietnam, Thailand, the Philippines, Costa Rica, Cameroon and Myanmar (formerly Burma). Dr. Hammond said, however, that in Brazil, the rate of deforestation declined in 1988 from 1987, largely because the levels from the latter year were the highest on record for that country.

As the tropical forests shrink, their capacity to absorb carbon dioxide declines, thereby hastening the onset and increasing the magnitude of the warming phenomenon. Moreover, as the vegetation from the cut forests decays or is burned, it emits more carbon dioxide into the atmosphere.

The tropical forests also contain the largest and most diverse populations of plant and animal species of any habitat in the world. As the forests vanish, so do many of these species, many before they ever have been discovered, named and analyzed for possible use by human beings.

Tropical forests generally have infertile soil because most of the nutrients are in the vegetation, not the soil. Thus, when these forests are cleared they tend to regenerate very slowly, if at all.

"AN UNPARALLELED TRAGEDY"

"Tropical deforestation is an unparalleled tragedy," said Mr. Speth. "If we don't reverse the trend soon, it will be too late."

Senator Patrick Leahy, Democrat of Vermont and chairman of the Senate Agriculture Committee, said in a statement: "This is the first reliable data we've had on tropical deforestation in 10 years. A situation we knew was bleak is now shown to be truly horrendous."

The World Resources report was prepared in collaboration with the United Nations Environment Program and the United Nations Development Program. Joan Martin Brown, special adviser to the executive director of the United Nations Environment Program, said at the news conference that her organization did not have its own capacity to do the kind of research contained in the report. She said the information would be "very important" as the international community moves to respond to the global environmental threats.

Since preagricultural times, the report said, the world has lost about one-fifth of all its forests, from more than 12 billion acres to under 10 billion acres. In the past, most of the losses were in the temperate forests of Europe, Asia and North America. In recent years, however, it is the tropical forests of the developing countries of Latin America, Asia and Africa that have been disappearing most rapidly.

FORESTS WITHOUT TREES

Brazil, with the largest remaining tropical forest area, is also experiencing the worst losses—between 12.5 million and 22.5 million acres a year, the report found. Myanamar is losing 1.7 million acres a year, more than 500 times the 1980 estimate by the Food and Agricultural Organization.

India, according to the data, is losing its forests at a rate of 3.7 million acres a year. Large areas legally designated as forest land "are already virtually treeless," the report said.

Indonesia is losing 2.2 million acres a year, and Costa Rica 300,000 acres, both substantially more than the 1980 estimate.

The problem of deforestation in developing countries "has been exacerbated by government economic, land tenure and agricultural policies as well as population pressures, poverty and debt," the report said. It added that the rapidly increasing populations in developing countries will put even more pressure on the forests.

The World Resources report also contains a new index of countries that are the greatest net contributors to the atmosphere of carbon dioxide, chlorofluorocarbons and methane, the major gases contributing to global warning.

SURPRISES ON LIST

The United States and the Soviet Union are the first and second-largest net producers of these greenhouse gases, the report found. It added that if the European Community were considered a single country, it would rank second behind the United States.

But the next three countries on the index, surprisingly, were developing nations, Brazil, China and India.

It has been widely believed that the industrialized countries are the main producers of greenhouse gases. But the research grant found that the developing countries already account for 45 percent of emissions of these gases, and that their contribution is likely to rise sharply as they consume more energy for industrial development.

While there is still scientific uncertainty about the timing and magnitude of global warming, Mr. Speth said, the overwhelming scientific consensues is that "the risks of global climate change are very real and it would be very shortsighted to conclude otherwise."

"The conclusion of the great bulk of credible scientists is that enough is known to act now" to deal with global warming, said Mr. Speth, who was chairman of the Council on

Environmental Quality in the Carter Administration. "It is our view that it is already late."

[From the Washington Post, June 18, 1990]

ESTIMATES OF LOSS OF TROPICAL FORESTS ARE CALLED TOO LOW

The earth's tropical forests are vanishing 50 percent faster than previously estimated, raising concerns about global warming, a private environmental research group said yesterday.

"Every year the world loses an area of tropical forests almost as big as the state of Washington," said James Gustave Speth, president of World Resources Institute.

The report by the Washington-based organization said data from satellites and ground sensors, along with reports from individual governments, indicates that official estimates of tropical forest losses are far too low.

The report suggested from an analysis of 1987 data that 40 million to 50 million acres of tropical forests are stripped each year, compared with the official estimate of about 28 million acres—based on 1980 data—that is still used by the United Nations and many governments.

Deforestation is a major concern to scientists and environmentalists because tropical forests absorb carbon dioxide and therefore, serve as "sink" for the manmade gas, which contributes to global warming. As forests disappear, more carbon dioxide is free to drift into the atmosphere, where it and other manmade pollutants act much like a greenhouse and cause the earth to warm.

Some scientists believe such warming, if not checked, will cause severe changes in weather patterns, coastal flooding and economic disruptions by the mid-21st century.

BOSCHWITZ ALARMED BY DEFORESTATION REPORT

Senator Rudy Boschwitz today said he is "alarmed and saddened" by reports that worldwide deforestation is taking place at a greater pace than was previously believed.

A report by World Resources Institute says that between 40 and 50 million acres of tropical forests are being stripped away each year, compared to previous estimates of about 28 million acres per year.

Boschwitz, who chaired the Deforestation and Desertification committee at the recent Interparliamentary Conference on the Global Environment, said that committee's debates were based on the smaller figure.

"We were searching for answers to a problem that now appears to be even worse than we thought," Boschwitz said. "If the higher figures are correct, it is even more imperative that we work quickly to slow the pace of forest destruction."

During the Environment Conference, Boschwitz's group proposed solutions that included an international convention on deforestation, and international economic aid to nations that reduce their deforestation.

"The loss of forests around the world is a loss for all of us," Boschwitz said. "Trees help with a wide variety of environmental ills, and it is in everyone's best interests that we halt the deforestation process."

THE POPULATION-ENVIRONMENT LINK

Mr. BOSCHWITZ. Mr. President, as you know, this year is an election year, and as part of the political process, I've met with several interest groups regarding their endorsements. Last week, I had the opportunity to meet with representatives of several environmental groups as part of the League of Conservation Voters Endorsement Process.

In this time when we are increasingly concerned about the state of our planet, everyone feels that he or she is an environmentalist. I, too, consider myself an environmentalist. Unfortunately, I feel that the environmental groups often choose narrow issues in determining who is and who is not an environmentalist—and I told them that in our meeting last week. With the health of our planet being threatened the way it is, I don't think it is productive to rate people on relatively peripheral issues like billboards and energy assistance.

Much more important, in my mind, are some larger, more global concerns. During my meeting with the environmental groups last week, one issue that came up in relation to global warming was the link between the world population explosion and environmental degradation. I was quite surprised when these environmental leaders told me that not many people here in the Senate emphasize this issue or make that connection.

I believe that the population problem lies at the heart of almost all of our environmental problems. When I was born, there were 2 billion people on our planet. Now there are 5.4 billion people, and by the year 2000 that number will certainly be well over 6 billion.

Since 1950, the world's population has doubled, and its urban population has tripled. In developing countries, the urban population has increased fourfold since 1950.

What do these huge numbers mean for the environment? If we think about all the linkages for a few moments, I think the answers become clear. And they cause me a great deal of personal concern.

In the overpopulated Third World, people live surrounded by denuded lands, waste dumps, and squatter settlements. The rural populations are usually worse off, with even less likelihood of clean water or sanitation. The exploding populations of these countries demand more and more food, water, electrical energy, and cars. Their needs and appetites are infinite, but our natural resources are mostly finite. And the more fuel that is consumed, the more pollution that is emitted into the air.

The pressures of escalating populations in the Third World and the poverty resulting from such pressures compel poor landless farmers—some 250 million of them I'm told—into the rain forest to clear trees from the land in order to plant crops. This land, more often than not, can only support a few years of decreasing production before it becomes arid and useless because the trees, not the land, held the nutrients. The poor farmer then has to move further into the forest in order to find fuelwood and fuel.

As a result, the world loses 40 to 50 million acres of tropical forests as well as 26 billion tons of topsoil each year from erosion and flooding. In addition, vast amounts of carbon dioxide, the primary greenhouse gas, are released into the atmosphere due to slash and burn forest clearing methods.

While the United States can afford to clean our air and properly manage our forests, developing countries often cannot, simply because they have too many mouths to feed. That's mainly due to the increasing pressures of population growth.

Although I have been a strong supporter of foreign aid, I am concerned that in many of the countries that we help, population growth more than cancels out increases in agricultural and industrial production brought about through transfers of our resources and technology.

Right now I'm trying to sort through some of the possible legislative actions that flowed out of the recent interparliamentary conference for the global environment, where I was one of the seven host U.S. Senators. I am promoting an international convention on forest protection, as well as some other initiatives aimed at stemming deforestation.

I can assure you, however, that all the international conventions in the world and all the aid programs to increase food production and grow trees are not, in the end, going to solve world development and environment problems unless we address the problem of the population explosion.

Unfortunately, the issue of population control has been so intertwined with the issue of abortion that the United States hasn't done enough to help developing countries with their population problems.

I am opposed to abortion, but I am a strong supporter of voluntary family planning, including effective programs of education and counseling on birth control. At the recent Global Environment Conference, I had a long discussion with Senator WIRTH—who was also a host of the conference—and we agreed that we must separate the issues of abortion and international family planning. Senator WIRTH and I plan to work together to realize this goal.

Once we are able to separate these two issues, as I believe should and can be done, I will work to engender additional financial support for international family planning efforts. I believe that we will need to come up with several hundred million dollars more for such programs, and that such money should go not only to our bilat-

eral population assistance programs, but to multilateral programs as well.

Mr. President, if we want to conserve our precious natural resources and protect our planet's environment, I believe we will have to do more to support international family planning. I hope that my colleagues look carefully at the connection between population and the environment. If they do, I think they will join me in this effort.

REDUCING DEFENSE DEPARTMENT REPORTS TO CONGRESS

Mr. BOSCHWITZ. Mr. President, last week the House of Representatives took an action which holds great promise. The House agreed that it is time to bring some much-needed relief to the Department of Defense. It did this by calling for the elimination of 59 recurring reports that the Pentagon must submit to Congress and the modification of the reporting frequency of an additional 11 reports.

The House legislation, introduced by Representative ASPIN, the chairman of the House Armed Services Committee, along with a similar effort being prepared by the Senate Armed Services Committee and its chairman, Senator NUNN, is truly welcome news.

For years, the Defense Department has been forced to respond to the excessive attempts of Congress to micromanage its affairs. We on Capitol Hill have saddled the Pentagon with so many reporting requirements and rules that its operations have come to resemble a maze of almost Byzantine complexity.

The 59 reports which the House would eliminate have been judged to have neither continuing value nor necessity. I agree that Congress could conduct its business without knowing about the disposition of all excess supplies tranferred by the Pentagon to the Department of State, or by having a report on reports submitted by State adjutant generals, or, indeed, by most of the information contained in the 57 other reports.

Mr. President, the seemingly endless congressional requirement for reports is only one area which we make the job of the Pentagon much more difficult than it needs to be. For example, the laws and regulations covering just the Defense Department's procurement activities fill almost 1,200 linear feet of shelf space—more than twice the size of the Washington Monument. In addition, every year we require the Pentagon to submit a budgetary justification document that fills literally tens of thousands of pages.

Five times within the past 2 years, I have spoken in the Senate on the need to restore an effective working relationship between Congress and the Pentagon. Last year, in an effort to bring about constructive change, I introduced the Defense Reports Reduction Act as an amendment to the Defense Department's 1990 authorization bill. My amendment would have terminated all current Defense Department reporting requirements as of January 1, 1991, and set down guidelines for future reports, which could be requested only on a case-by-case basis.

Because of an agreement limiting amendments to last year's authorization bill, I withdrew my amendment. However, the need for Congress to show restraint when it comes to mandating reports from the Pentagon has not gone away. And the fact that legislation is now in the works on this very issue shows that there is recognition that action is more urgently required than ever before.

Only once since 1982 has Congress ordered fewer reports from the Defense Department than in the preceding year. Indeed, compelling the Pentagon to produce hundreds upon hundreds of reports annually is one of Washington's premier growth industries.

Last year, the Pentagon's "White Paper on the Department of Defense and the Congress" stated, and I quote:

> In 1970, at the height of the Vietnam war, the annual funding bill required only 36 reports from DOD. In 1988, 719 were required, an increase of almost exactly 2,000 percent.

This year, the situation is even worse. During fiscal year 1990, 861 new report requirements were imposed on the Pentagon by Congress. This is an increase of nearly 2,400 percent since 1970.

If I were to stack merely the unclassified reports in front of me the pile would be almost as high as I am—and I'm over 6 feet tall. If I could include the classified reports, the stack would be about twice as tall as I am.

The cost of all of these reports, both in time and money, is astounding. The 661 reports required in fiscal year 1989 took about 370 man-years to produce at an estimated cost to the American taxpayer of $6 million. The average report cost $54,000, almost twice the income of an average family. One report by itself cost nearly $2 million.

Mr. President, both the House action in deciding that fewer Pentagon reports are needed and the similar legislation being prepared by the Senate Armed Services Committee mean there are realistic prospects for decreased congressional micromanagement of the Defense Department. I commend both Representative ASPIN and Senator NUNN for their work in aiming to reduce the reporting burden we inflict on the Pentagon.

The time came years ago for Congress to show self-control when it comes to mandating reports from the Defense Department. The legislative process now underway shows that we are going from being part of the problem to being part of the solution.

Mr. BOSCHWITZ. I yield the floor.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE DEPUTY PRESIDENT OF THE AFRICAN NATIONAL CONGRESS

The PRESIDING OFFICER. Under the previous order, the hour of 10:40 a.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 10:40 a.m., recessed until 2:15 p.m., and the Senate, preceded by, the Secretary of the Senate, Walter J. Stewart, the Sergeant at Arms, Henry K. Giugni, and the President pro tempore, ROBERT C. BYRD, proceeded to the Hall of the House of Representatives to hear the address by the deputy president of the African National Congress.

(The address delivered by the deputy president of the African National Congress to the joint session of the two Houses of Congress, is printed in the proceedings of the House of Representatives in today's RECORD.)

At 2:15 p.m., the Senate having returned to its Chamber, reassembled, and was called to order by the Presiding Officer [Mr. SANFORD].

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order morning business is closed.

BUDGET NEGOTIATIONS

Mr. DOLE. Mr. President, President Bush today took the next logical step in budget negotiations when he called for a package that contains entitlement reform, growth incentives, discretionary spending reductions, defense cuts, budget reform, and yes—tax revenue increases. His remarks are consistent with the original summit ground rules to put everything on the table with no preconditions.

Now comes the really hard part: Getting down to specific spending and revenue proposals. If we are going to make any progress on this difficult task, everyone is going to have to work together—Republicans and Democrats, House and Senate, Congress and the administration.

After this morning's meeting we have a tacit understanding to reach agreement on a budget package by mid-July. We are now on the 20-yard line, only 80 yards left to go.

I do not understand some of the frenzy I understand in the media that President Bush has broken his pledge about tax revenues. He has not said anymore today than he said initially—no preconditions, everything is on the table.

What we have done this morning is refine that a bit and further define it,

but specifics are yet to come, and the hard work is yet to come.

I urge my colleagues on both sides to deal with the deficit. As the distinguished Presiding Officer said many times before, this is the most serious problem we face in America, and it is up to us in Congress to deal with it.

Mr. President, I reserve the remainder of my time.

PROPOSED CONSTITUTIONAL AMENDMENT RELATIVE TO DESECRATION OF THE FLAG OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of Senate Joint Resolution 332, which the clerk will report.

The assistant legislative clerk read as follows.

A joint resolution (S.J. Res. 332), proposing an amendment to the Constitution of the United States authorizing the Congress and the States to prohibit the physical desecration of the flag of the United States.

The Senate resumed consideration of the joint resolution.

AMENDMENT NO. 2066

(Purpose: To prohibit the desecration of the flag of the United States in a manner that is likely to lead to a breach of the peace)

Mr. BUMPERS. 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 Arkansas [Mr. BUMPERS] proposes an amendment numbered 2066.

Strike all after "assembled" and insert the following:

That section 700 of title 18, United States Code, is amended to read as follows:

"§ 700. Desecration of the Flag of the United States; Penalties

"(a) Whoever purposely or knowingly desecrates the Flag of the United States shall be fined under this title or imprisoned for not more than one year, or both

"(b) For purposes of this section, the term 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows is likely to lead to a breach of the peace.".

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, and 810.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The nominations, considered and confirmed en bloc, are as follows:

DEPARTMENT OF STATE

Paul C. Lambert, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador.

E.U. Curtis Bohlen, of Maine, to be Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Don Melvin Newman, of Indiana, for the rank of Minister during his tenure of service as the Representative of the United States of America on the Council of the International Civil Aviation Organization.

Dane Farnsworth Smith, Jr., of New Mexico, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea.

Charles H. Thomas, of Maryland, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

Alan Philip Larson, of Virginia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be the Representative of the United States of America to the Organization for Economic Cooperation and Development, with the rank of Ambassador.

James Keough Bishop, of New York, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Somali Democratic Republic.

Steven E. Steiner, of Maryland, a career member of the Senior Foreign Service, class of Minister-Counselor, for the rank of Ambassador during his tenure of service as U.S. Representative to the Special Verification Commission.

Peter Jon de Vos, of Florida, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Liberia.

BOARD FOR INTERNATIONAL BROADCASTING

Malcolm S. Forbes, Jr., of New Jersey, to be a member of the Board of International Broadcasting for a term expiring April 28, 1992. (Reappointment.)

INTER-AMERICAN FOUNDATION

The following-named person to be a member of the Board of Directors of the Inter-American Foundation for a term of 6 years.

Norton Stevens, of New York (New Position.)

The following-named person to be a member of the Board of Directors of the Inter-American Foundation for a term of 6 years.

Frank D. Yturria, of Texas. (New Position.)

DANE FARNSWORTH SMITH

Mr. DOMENICI. Mr. President, I rise to congratulate Mr. Dane Farnsworth Smith on his confirmation as Ambassador to the Republic of Guinea.

His notable experience and numerous accomplishments during his career will prove, this Senator is certain, a great contribution to our relations with the people and the Government of Guinea.

Dane Smith was born in 1940 in Albuquerque, NM. He received his B.A. magna cum laude, from Harvard College in 1962. After attending Union Theological Seminary, he completed his graduate studies at the Fletcher School of Law and Diplomacy of Tufts University, earning a M.A. in 1966, an M.A.L.D. in 1972, and a Ph.D. in 1973.

Mr. Smith was a Peace Corps volunteer from 1963 to 1965 in Asmara, Ethiopia. Two years later he entered the Foreign Service, and has had a most distinguished career at State. His initial assignment was as the assistant Nigerian desk officer (1967-69), followed by his initial overseas assignment when he served as a consular officer in Dakar, Senegal (1969-71), and as the charge d'affaires for Banjul, the Gambia.

Dane Smith became the economic-commercial officer in Islamabad, Pakistan, from 1972 through 1974, before returning to the Department of State as the senior economist for the Office of Japanese Affairs (1975-77).

Mr. Smith became the AID liaison officer of the Africa bureau economic staff (1977-79), and chief of the Food Policy Division of the Office of Food Policy (1979-81). He then attended the National War College for 1 year.

In 1982, Mr. Smith was selected to serve as the economic counselor in Monrovia, Liberia. He then served twice as deputy chief of mission, first in Gaborone, Botswana, and then in Khartoum, Sudan.

Most recently, he was the Director of the Economic Policy Staff of the State Department's Africa Bureau.

Mr. Smith is a man of many talents. For example, his language abilities include fluency in French, Arabic, German, Spanish, Urdu, and Italian.

And I would point out that he has received a number of important awards for his service to our Nation. In 1979, he received the State Department Meritorious Honor Award, and in 1989, he won the Presidential Meritorious Service Award. He is a member of the African Studies Association, the Middle East Institute, the American Foreign Service Association, the Harvard Club, and the Society for International Development.

Dane Smith married Judith Armayor in 1963. They are the parents of three children: Jennifer L., Dane F., III, and Juinita C. Smith. While he retains a legal address in New Mexico, he presently resides in Washington, DC.

Mr. President, I wish to commend Dane Smith and his family, and to wish them every success in this exciting new assignment.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PROPOSED CONSTITUTIONAL AMENDMENT RELATIVE TO DESECRATION OF THE FLAG OF THE UNITED STATES

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2066

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I want to say to my colleagues, No. 1, that two statutes have been struck down as unconstitutional on the issue of flag desecration. The first was a Texas statute, which provided that if somebody who happened to watch a flag burning was offended, or somebody who discovered that a flag had been burned was offended, that that created an offense. And the court held that the fact that somebody may be offended by your conduct is not a sufficient ground for eroding the first amendment.

Then we passed a statute here earlier this year and provided for the Supreme Court to deal with it on an expedited basis. My personal opinion was—even though I voted for it, and I voted for it because I will vote for any legislative proposal that has the remotest chance of addressing what is a legitimate concern about preserving our national symbol, the flag—that I would vote for almost anything to keep from tinkering with the Bill of Rights and, especially, the first amendment of those 10 amendments that constitute the Bill of Rights.

We have never in this body address the problem in the way the Supreme Court did in the Johnson decision, which ruled the Texas statute unconstitutional; we have never dealt with a statutory remedy that we were literally invited to use in the Johnson decision and, that is, using the flag, our national symbol, in such a way that it is calculated to incite a breach of the peace.

Mr. President, we are considering a constitutional amendment, and my amendment is a legislative remedy, not a constitutional remedy. It is a legislative remedy that simply says in two sentences: Anybody who knowingly and purposely desecrates the flag may be, upon conviction, fined or imprisoned for 1 year, or both. But then it defines desecration as an act calculated to create a breach of the peace. You cannot get simpler. You cannot get any plainer. You cannot get any narrower.

In the Johnson decision, the Supreme Court said, we have not been presented with a very narrow case of somebody going beyond expressing an opinion under the first amendment and actually trying to create a breach of the peace. I do not know why we have not done it.

I did not like the way that the previous statute was drafted. Frankly, I thought it was almost crafted to invite being stricken as unconstitutional by the Supreme Court, which it was in the Eichman decision. In Feiner versus New York, a Supreme Court decision, the Court quoted another case, which they refer to as Cantwell—I do not have the citation—and the Supreme Court said:

> Nobody would suggest that the principle of freedom of speech sanctions incitement to riot or the religious liberty cannotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public street or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.

Mr. President, the Speaker of the House has said there will be no more flag votes in the House this year. They have already killed the constitutional amendment. If all 100 Senators vote aye on this resolution, it is not going anywhere, the House will never consider it again. It is tempting, considering the volatility of this issue, for everybody to vote aye on it. There will be no 30-second spots, if you are up for reelection this fall. You can say, "I voted for a constitutional amendment." That takes your opponent right out of the action. No explanation, no accountability. Yet, no constitutional amendment. You talk about the best of all worlds, that is it.

Mr. President, I have said many times on this floor, when you start talking about amending the Constitution for any purpose, I belong to the "wait-just-a-minute club." I am not saying that the Constitution should never be tinkered with; what I am saying is that, in my opinion it is the legal bible for this Nation; it is the organic law that has made us the oldest living democracy on Earth.

What part of the Constitution has done that? Why, the Bill of Rights, the first 10 amendments. What part of the Bill of Rights do we reserve the most? The first amendment.

So, colleagues, ask yourselves, just because some lunatic in Dallas, TX, in 1984 decided to burn the flag, is that reason for tinkering with the most precious segment of the Constitution that gives us religious freedom, freedom of speech, freedom of press? I say, no.

I cannot vote for a constitutional amendment, but I will vote—and I hope my colleagues will—for a very narrow legislative remedy that will not stop all desecration of the flag but will deal with the most egregious cases, the ones that make your blood boil.

Mr. President, this does not have anything to do with patriotism. There are men who have fought courageously in wars to defend this country who are going to be voting "no." There are some who are equally courageous who will be voting "yes."

So nobody ought to be trying to get any patriotic kudos out of this. But nobody ought to be trying to get any political enhancement out of it, either. And I must say, completely aside from the debate here, it troubles me greatly to hear people talking about what kind of a 30-second spot they can use on this issue this fall.

Somebody may have misjudged this. Mr. President, did you know that my mail is running 2 to 1 against a constitutional amendment? It tells me that if you really want to get the attention of the people of this country, you start talking about tinkering with the Constitution. They love the flag. They think it ought to be protected, but not necessarily by amending the first amendment.

Mr. President, I personally believe that morale is the lowest in Congress since I have been here. I have been in the Senate 15½ years and I can tell you that in my opinion morale is at an all-time low in the Cloakroom. I am not sure why, but I think one of the reasons is because we are being distracted from the issues of this country. And that is not to diminish the debate here or to suggest that people who are concerned about the great flag, our national symbol, are responsible for the low morale. But we are constantly being distracted from the real problems that beset this Nation.

I never will forget when my party's nominee in Atlanta in 1988 said this campaign will not be about philosophy, but it will be about competence. Mr. President, every election is about philosophy. Every election is about what we believe. Every election is about our national values and how we cherish them. There is something cold and calculating and elitist about the word "competence." And so these symbols are important.

But I think morale is low because we know that most creative thought around here is designed for a 30-second spot rather than how to save a debt-ridden Nation in decline, in decline because of our profligacy, because of our distractions and our politicizing every single issue no matter its worth or vitality.

We have a $3-trillion debt, $350 billion deficit just for 1991 alone, and yet we have to stop and pause and deal with a symbol.

Mr. President, another reason that I cannot support a constitutional

amendment is that the Eichman case is a 5-to-4 decision. To rush to judgment when we may have another Supreme Court Justice before the end of the year and certainly before the end of next year, to start amending the Constitution on a 5-to-4 decision would be the height of folly.

Mr. President, I am in a minority, and I know that the constitutional amendment will get a majority vote, but it will not get the necessary two-thirds. Sometimes I say, why cannot everybody agree with me? Well, that is exactly what the first amendment is all about. They do not have to agree with me. But what is even more beautiful, I do not have to agree with them. And it is all because of what James Madison said in 1789, which was adopted in 1791, and which we have not changed in 200 years.

I am concerned that if we adopt an amendment to the first amendment this time, the next time it will be a little easier to do it on another issue and the next time it will be a little easier to do it on something else.

My amendment, Mr. President, says that you could go out in front of this Capitol and you could burn a flag. The Supreme Court in the Johnson case said as long as your burning of that flag is simply an expression of protest, it is protected under the first amendment.

But they also suggested in the Johnson case that if your action is not an expressive conduct, not an expression of protest, or if you go beyond honest dissent and protest to the point that your state of mind is that you are likely to create a breach of the peace, then you can be fined and imprisoned. It is just that simple.

Make no mistake about it, while I think my amendment has an excellent chance of standing constitutional tests, it will also not stop all flag burning. A jury would have to find that there was an intention to create a breach of the peace.

Mr. President, the eighth circuit in St. Louis upheld a conviction of a man who, after demonstrators protesting the sending of troops to Honduras in 1988 burned about five flags. The protesters ended up in front of the U.S. recruitment center in Minneapolis, and people started knocking out windows. And some guy takes a roman candle and starts firing roman candles through those broken windows. Then Carey, the defendant in this case, comes up with a flag over his shoulders, with a slit in it so he could put it over his head to use it as a poncho. And while all this is going on, somebody comes up with a flag and said "Light this." Carey lit it. And then he goes and he throws it into an alcove of the recruitment center. And the Court of Appeals in the Eighth Circuit said, obviously, he testified the situation was violent, he testified the situation was dangerous, a jury would have a right to conclude that he was going way beyond just protesting. He was actually pouring kerosene on the fire and trying to provoke a lot more violence.

In the Johnson case, which ruled the Texas statute unconstitutional, the Court said, "An interest in preventing breaches of the peace is not implicated on this record."

In short, that was not at issue. And almost every time the Court has ever addressed the issue, they said you cannot do those things. They said it in New Hampshire. They said it in other cases. And here is another thing they said in the Johnson case as to the State's goal of preventing breaches of the peace. The Court concluded that the flag desecration statute was not drawn narrowly enough to encompass only those flag burnings that were likely to result in a serious disturbance of the peace. That is what the Supreme Court said last year in this decision.

Now, Mr. President, my amendment is narrowly drawn. It deals with breach of the peace. It is a legislative remedy that the Supreme Court itself has literally invited us to consider. And I hope my colleagues, who cherish the Constitution as I do, and who also believe that there is a national legitimate concern about protecting our flag, will support my amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, how much time have we?

The PRESIDING OFFICER. The Senator has 16 minutes and 20 seconds.

Mr. THURMOND. What is it, 20 minutes to a side?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. I rise today in opposition to the substitute amendment offered by my good friend from Arkansas, Senator BUMPERS.

While I appreciate his efforts to have the Senate pass a statute that is constitutionally sound, I believe we should not support his statutory approach in lieu of our proposed constitutional amendment.

The Senator's amendment would provide penalties against those who desecrate the flag in a manner that the actor knows is likely to lead to a breach of the peace.

In Brandenburg versus Ohio, the Supreme Court addressed the issue of regulating expression that will provoke violence. While the Brandenburg decision gives the States flexibility to prevent activity which is directed to produce or incite imminent lawless action, the Johnson decision through dicta may have shed some new light on this ruling. Justice Brennan, writing for the majority in Texas versus Johnson, stated:

> It would be odd indeed to conclude both that if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection and that the Government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence.

Brennan went on to state:

> Thus, we have not permitted the Government to assume that every expression of a provocative idea will incite a riot but have instead required careful consideration of the actual circumstances surrounding such expression asking whether the expression is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

I assume the distinguished Senator from Arkansas is attempting to have our Federal Code comport with the Brandenburg decision. It should be noted that the State of Texas argued that Johnson's conviction was partly based on their interest in preventing breaches of the peace. However, the Supreme Court declined to allow Brandenburg to uphold this proposition and summarily dismissed the argument proferred by the State of Texas. Brennan stated, "To accept Texas' arguments * * * would be to eviscerate our holding in Brandenburg."

Based on the language asserted by the Court in Brandenburg and Johnson, there is considerable doubt whether the Bumpers amendment would be constitutional. I would like to believe it is. However, we have been down this road before trying to craft a statute protecting the flag that this particular Supreme Court will uphold.

It is my firm belief that we should move forward and pass this proposed constitutional amendment and send it to the States and allow the American people to decide.

In light of the Supreme Court ruling in Johnson and Eichman, our task is clear. We must adopt our proposed constitutional amendment authorizing the Congress and States power to prohibit the physical desecration of the American flag.

At this point, Mr. President, I would like to make a parliamentary inquiry. Under the unanimous-consent agreement governing consideration of Senate Joint Resolution 332, would, adoption of the Bumpers amendment, require a simple majority of the Senate or a two-thirds vote as would the underlying measure?

The PRESIDING OFFICER. A simple majority is adequate.

Mr. THURMOND. A further parliamentary inquiry, Mr. President. Under the unanimous-consent agreement, if the Bumpers amendment is adopted, would this displace or prevent a vote on final passage on the underlying measure, Senate Joint Resolution 332,

our proposed constitutional amendment?

The PRESIDING OFFICER. The answer essentially is yes. If the amendment is adopted, it would displace it.

Mr. THURMOND. In other words, if it were adopted there would not be any chance to vote on this constitutional amendment?

The PRESIDING OFFICER. The Senate would then have the option of voting on the next three amendments.

I answered the question, that, yes, if the statutory amendment is voted on by 51 percent, then it becomes the amendment, Senate Joint Resolution 332 as amended.

Mr. THURMOND. And the Senate would not have a chance to vote on this constitutional amendment?

The PRESIDING OFFICER. Not on the present Senate Joint Resolution 332. That is correct; the constitutional amendment.

Mr. BUMPERS. Will the Senator yield for a moment?

Mr. THURMOND. I was going to suggest maybe we vote on the constitutional amendment first. If this does not pass, then the Senator could, if it is proper parliamentary procedure to do so, offer his statute, because a number of people would probably vote for his statute if this fails. But we are hoping the Senate will vote this constitutional amendment. In fact, I would not object if they both pass.

Mr. BUMPERS. If the Senator will yield, let me make two observations, the first being, if my amendment is adopted there will still be a constitutional amendment in order that will be offered by the Senator from Delaware [Mr. BIDEN].

Second, let me say that I asked the distinguished Republican leader to vote on the constitutional amendment first, and agree, if it were defeated, to allow mine as a freestanding bill. But he chose not to do that for reasons best known to him.

Mr. THURMOND. Mr. President, our amendment is up now. It will be voted on first. If it passes, that takes care of the situation.

The Biden amendment was just handed me about 10 minutes ago, and nobody has had a chance to study that amendment. Furthermore, the amendment I have offered is the one that President Bush recommends. It is the one the Attorney General has approved, and we feel that is a sound amendment and should be passed.

We ought to get a vote on that first. If for any reason that does not pass, then any other statute or other amendment they wish to offer could follow. So I raise that point so the Senator from Arkansas will understand that. If this passes, the others will not be considered at all.

Mr. BUMPERS. Mr. President, if I may just make this observation? If my amendment is adopted, the next amendment to be offered will be one by the Senator from North Carolina, which we commonly refer to as the court stripping amendment. If it is passed, it takes my amendment down. If it is not passed, my amendment is still the pending business, and the next in order under the unanimous-consent agreement will be a constitutional amendment by the Senator from Delaware, Mr. BIDEN.

Mr. THURMOND. But we want our amendment voted on before the one of the distinguished Senator from Delaware. We have offered this before.

Mr. BUMPERS. That is what I want, too.

Mr. THURMOND. So we will go ahead and vote on this first. I just went ahead and made the suggestion to the Senator that if he can devise some way to come in after this, he might want to consider it.

Mr. BUMPERS. We have to get both leaders, I think, to agree with that, because they have worked long and hard on this UC.

The PRESIDING OFFICER. I might point out to the Senator from South Carolina, if the amendment by the Senator from Arkansas fails, then the vote will, indeed, be on the constitutional amendment as introduced by the Senator from South Carolina.

Mr. THURMOND. That is correct. We understand that.

The PRESIDING OFFICER. That is in keeping with the unanimous-consent agreement.

Mr. THURMOND. I thank the Chair.

Mr. President, I do not want to deny the Senate an opportunity to vote on our proposed constitutional amendment. I ask my distinguished colleagues from Delaware and Arkansas if they would agree to having a final rollcall vote on Senate Joint Resolution 332, regardless of the outcome of the vote on the Bumpers amendment?

I hear no response. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. How much time do both parties have?

The PRESIDING OFFICER. The Senator from Arkansas has 3 minutes 23 seconds; the Senator from South Carolina has 6 minutes and 42 seconds.

Mr. BUMPERS. Mr. President, I want to read a statement to my colleagues from the footnotes of the Johnson decision which created this whole furor. Texas versus Johnson. Here is what they said:

> Because we find that the States' interest in preventing breaches of peace is not implicated on these facts, however, we need not venture into this area.

You cannot find in Johnson or Eichman, either one, where the Supreme Court ever dealt with this very specific question. What you can find is, especially in Johnson, that if a very narrowly crafted statute were offered to the Court, going way beyond, the expression of a freedom of speech into conduct that is obviously calculated to create a breach of the peace, they indicated, and a court in the eighth circuit in St. Louis has so held, that the statute would stand constitutional muster.

What we have done here with the previous statute we passed was almost invite the Supreme Court to declare that statute unconstitutional.

My amendment says that if somebody who is desecrating the flag goes beyond freedom of expression to the point that it is obvious that they are trying to incite a riot or breach of the peace, that is not protected speech. And that is what my amendment goes to.

One can do either of two things. As long as someone is demonstrating to protest, and even burns a flag, this amendment does not stop that. If one goes out and burns a flag in front of the American Legion parade, I think it is fair to say that the mens rea is present, or at least the actor knows that he is likely to create a breach of the peace, and the courts have consistently said that is not protected. They said it in the Chaplinsky case in New Hampshire; they said it in the O'Brien case, where kids were burning draft cards.

I think this is an excellent amendment, and it will deal with the most egregious cases. It is as far as we can go legislatively and, perhaps, it may be even as far as we need to go because we all know that if you preserve every flag in the country, you will solve the landfill problem. You cannot buy a coke without a reproduction of the flag on the side of the cup. Panty hose, napkins, swizzle sticks, everything. Used car dealers have them all over their lots for commercialization. I must say, I am as offended by the use of the flag for commercial purposes as I am by some other acts that desecrate the flag, too.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. I thank the Chair.

Mr. GRASSLEY. Mr. President, I rise in opposition to the amendment by our colleague from Arkansas, Senator BUMPERS.

The amendment is nothing more than a figleaf to provide political cover to those who are against the one, real solution to protecting the flag: A constitutional amendment.

In two instances, five Justices of the Supreme Court have told the American people that they cannot protect their flag by mere statutory enactment.

Adoption of the Bumpers' amendment would be the third strike against the flag and the vast majority of the American people who want to see it protected.

Last year, the Judiciary Committee, of which I am a member, spent 3 months and 4 hearings attempting to draw up a means by which the flag can be protected.

We came up with two ways.

One, the Flag Protection Act of 1989, has been rejected out-of-hand by the Supreme Court.

The Congress did not vote in sufficient numbers in order to submit the other remedy—the real remedy, a constitutional amendment—to the people and their State legislatures for their consideration under article five of the Constitution.

The Bumpers' amendment has not had the exhaustive review accorded the Flag Protection Act of 1989. It has not been referred to any Senate Committee, including the Judiciary Committee, which has a subcommittee devoted entirely to constitutional issues.

So, its consideration at this time troubles me.

At the very least, we need to consider this amendment's future before the Supreme Court.

As Senator DOLE, Senator HATCH, and I—who voted against the Flag Protection Act of 1989 because we wanted to provide real protection for the flag—reminded our colleagues: We cannot attempt to overturn a Supreme Court decision, grounded in the Constitution, by a mere statute.

The amendment is a political cop-out. It is a figleaf for those who are against the proposed constitutional amendment that I have cosponsored with 45 of my colleagues.

I urge the Senate to reject the Bumpers amendment.

Mr. LAUTENBERG. Mr. President, consideration of an amendment to the Constitution and the Bill of Rights, to prevent future desecration or burning of our flag, has focused attention on this issue in every community across the country. After a long review, and deep soul searching, I conclude that I will not support amending the first amendment of the Constitution. To do so would modify the first amendment for the first time in our 200 year history. I will continue to support legislation consistent with the first amendment to protect our flag. I am pledged to the protection of our flag and the freedoms we enjoy.

The Supreme Court's decision striking down the Flag Protection Act of 1989, legislation which I supported, was received with considerable regret and brings this difficult and emotional issue back before the Congress. Individual Senators, in making their decisions, have to deal with very fundamental questions and values.

For me, it has been very difficult. I am not a lawyer, Mr. President. But, as a private citizen and a Senator, I have always been vigilant about restrictions on the basic freedoms that make America unique in the world. That is because I am the son of immigrant parents whose families fled tyranny for the promise of freedom in America. The Constitution and Bill of Rights are not abstractions to me. I was raised to respect them, as sacred promises of freedom; promises compelling enough to convince my family to travel half way across the globe to live under their protections. They are protections that have drawn millions to our shores.

This country has been good to me and my family beyond my wildest boyhood dreams. It's been that way for millions of us. For that reason, I volunteered to fight in World War II. For that reason, although successful in the private sector, I sought public office as a U.S. Senator. I wanted to give something back to my country, the country which continues to serve as a beacon of hope for millions seeking freedom around the world. And, for that reason, just as I revere the Constitution and Bill of Rights, I love the flag which embodies our ideals, our liberties, our history and our sacrifices. In that, I stand with virtually all Americans.

And in that, Mr. President, lies the greatest conflict surrounding this issue for me. In my mind I contrast the image of the flag burner, whom I detest, with the images of thousands of patriotic Americans I know who have been touched by the tragedy of war or sacrifice for country. The flag is a unique national symbol. I have a special, personal affection for the flag along with all Americans. It's the one great symbol that unifies our Nation. The flag represents over 200 years of our history and culture.

The flag I look at most often is not the typical cloth flag. The flag I look at most often is a giant painting of a flag on the wall of my office, opposite my desk. I hung it in my office because I was so taken by its beauty and its power. That flag is unfurled, majestic, rippling in the wind. It is painted in vibrant colors, on a bright background. It represents for me the strength and optimism of our people and the promise of America. It inspires me. It nourishes my love of country and my patriotism, and binds me even closer with those I represent, to my oath of office, and to all Americans and those who seek freedom from oppression. It strengthens my resolve to serve my country and is a constant reminder of my responsibilities to serve New Jersey and the Nation as a U.S. Senator. It fills me with pride. It reminds me of the good fortune that befell me when my grandparents chose to come to these shores, carrying my infant parents to this land of liberty.

Mr. President, as a veteran, as a Senator, and as an American son of immigrants, the flag represents all things noble to me. Flag burning is an ugly, despicable and cowardly act. It sickens me. It saddens me. Those who burn the flag are ingrates. They lack the courage and the character to fight for change through a fair and just process. They simply want to infuriate, enrage and to achieve their goals through attacks on our precious heritage. They are misguided and deserve the contempt of every American.

Last year I supported a statute to protect the flag from desecration. I am disappointed that the Supreme Court struck it down as unconstitutional. I still hope we can provide protections to the flag through new legislation which will not conflict with the first amendment. Expert testimony before the Senate Judiciary Committee last week expressed the dangers of supporting the constitutional amendments before the Senate.

Mr. President, I am unwilling to risk, for the first time in our history, narrowing the freedoms expressed in the first amendment. This is a hard decision, because of the foul, outrageous character of flag-burning incidents. My anger at these events makes me want to seek vengeance, to strike back, and to punish those who commit these acts. However, as I searched for the means to choke off this offensive dissent, I concluded that, in the process, I ran the risk of trampling on a fundamental right within our beloved democracy, the right to disagree, to speak out freely, to be able to exercise dissent, no matter how disagreeable.

Mr. President, there is no right more basic to our democracy than the right of free speech, the right to assembly, and the right to express ourselves on issues of importance to us as citizens, including the most basic questions about our society and government. We see how true that is when we look at the startling developments over the past year. The power of speech, of expression, has spread freedom throughout Eastern Europe.

That is why the first step of the despot is to squelch speech. Silence the people and you cut at the throat of democracy.

The first amendment protects our right to speak out, and protects democracy itself. It is the citizens' shield against tyranny, and their sword of action. It is what makes America special. It is what makes America great. It is what makes America the model for those aspiring to be free around the world.

Mr. President, just because a crackpot violates the flag, no matter how angry that makes us, no matter how offended we are, we should not violate the first amendment in response.

We are strong. We are resilient. Our strength comes from the vigorous exercise of our freedom. Our resilience comes from the testing, time and time again, of one challenge after another

that asks us each time who we are and what we stand for.

In the face of those who tear at the flag, and sneer at what it stands for, let us turn ultimately, not to a constitutional amendment, but to our confidence in ourselves, and in the values that the flag represents. That, Mr. President, is our most powerful weapon of all.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, how much time do I have remaining on leader's time.

The PRESIDING OFFICER. The Senator has 8 minutes, 32 seconds.

Mr. DOLE. Can I use part of that time?

The PRESIDING OFFICER. Yes.

Mr. DOLE. Mr. President, here we go again debating yet another quick fix. We have more quick fixes to provide more cover for more people. I think we ought to vote on the real amendment. Some people will vote no; some people will vote yes.

We have already tried the statutory approach, and it has failed miserably—not once, not twice, but three times—and most recently, before the Supreme Court.

Now my distinguished colleague from Arkansas proposes that we try the statutory approach once more, without an expedited review provision and without any expectation that this statute will ever be upheld by the Supreme Court.

This statute proposed by this amendment adopts the figleaf, "the flagleaf" approach.

It would prohibit only those acts of flag desecration that "the desecrator knows are likely to lead to a breach of the peace."

As a result, the statute would not cover the act of flag desecration that occurred in Texas versus Johnson. It would not cover the flag desecration that occurred in United States versus Eichman. It would not cover the flag desecration that occurred in United States versus Haggerty.

This statute, in other words, would not prohibit those acts of flag desecration that were the subject of the two flag decisions recently rendered by the Supreme Court.

These acts of flag desecration did not provoke violence, there were no breaches of the peace, but these acts deeply offended the American people nonetheless. You can count on that.

So, in my view, the statute proposed by this amendment is not only constitutionally flawed, it is also woefully narrow in scope and it should be rejected by the Senate today.

Mr. President, as I read it, this statute would encourage violence. It would encourage breaches of the peace. It would encourage flag-desecrator bashing.

For if a breach of peace did not occur, the Bumpers statute would simply not apply, and the flag burning could continue as scheduled.

So what my distinguished colleague from Arkansas seems to be saying to the American people is simply this: When you see a flag desecrator, you ought to riot. You ought to run wild in the streets! You ought to attack the flag burners! For if you stand on the sidelines, and keep the peace, the flag desecrators will get away with their despicable act.

Mr. President, this just does not make sense.

Finally, Mr. President, the American people should have no false assumptions about the purpose of this amendment. This amendment is not about protecting the flag, or preventing riots in the streets.

This amendment is really about giving political cover to those Senators who intend to vote against the constitutional amendment today. It is that simple.

The American people know that politics is a way of life in this town, and here is just the latest example.

Mr. President, at the end of the debate on the Bumpers amendment, I understand the distinguished Senator from California will make a point of order on the grounds that it violates the Constitution of the United States.

If the Supreme Court has taught us anything, it has taught us that flag desecration laws just will not work, particularly since the Court views these laws as suppressing speech that others may consider offensive.

I happen to disagree with this view, but it happens to be the law of the land.

I wish I could support an amendment like this or something else if it were properly drawn.

Mr. President, the only way to remedy what we are trying to do today—maybe we do not have the votes; I assume we do not have the votes—is through a constitutional amendment. I reserve the remainder of my leader time.

Mr. THURMOND. I yield to the distinguished Senator from California 3 minutes.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mr. WILSON. Mr. President, what the Senator from Arkansas is attempting to do, we have already attempted to do and failed. His is an effort to criminalize conduct which would, for the first time, really provide that the fighting words "sufficient to incite to violence" can, in fact, be held as an act that will justify Congress in protecting the flag against the kind of desecration which last year many of us sought to achieve by a constitutional amendment, as indeed we are today.

Mr. President, if we go back to the words of the Supreme Court early in our rebuttal, in a landmark decision of Marbury versus Madison, it was made clear that the Constitution, in contrast to the ordinary statute passed by Congress, has remained, to quote the words of that decision "are superior paramount law, superior to ordinary legislative acts, unchangeable by ordinary means."

What we are about today is an effort to undertake those extraordinary means, first of amending the Constitution and then submitting it to the States for ratification in a narrowly focused effort to protect the flag of the United States from physical desecration.

The holding of the Supreme Court, first in the Johnson case, and now last month in the case of the statute by which we attempted to overcome their holding in Johnson, made it clear that virtually any conduct which expresses even inarticulate contempt for the symbolic value of the flag of the United States, will be honored by the Supreme Court, honored in a way that I do not believe that it should, but it will be treated by that Court as speech deserving of protection under the first amendment.

I think that goes too far, Mr. President, It seems to me that extending that logic would protect the conduct of a kind that we find outrageous, not just unpopular, not just legitimate dissent. It would protect someone who not only speaks ill of the dead but goes into a cemetery and defaces headstones, who throws paint on them or chips off the epitaph from a headstone.

It could even say that treason, an act betraying the United States, is legitimate political dissent because it expresses a means of speaking a grievance, real or imagined. Mr. President, I think that goes too far, and yet that is the holding of the U.S. Supreme Court, and we are bound by it. We have but one course, and that is to amend the Constitution. My friend from Arkansas, by his statute, cannot achieve the protection that he seeks to achieve.

Mr. President, good intentions, I think, are not enough. This is a special case.

This is a flag which, in the words of Chief Justice Rehnquist, evokes a nearly mystical response from millions of Americans—those who fought under it, those who are the survivors of those fighters buried under it. It is a symbol of our nationhood. It is something special.

The inarticulate expression of contempt on the part of flag burners, or those who would otherwise physically defile the flag, does not amount to speech, in my mind, Mr. President, but it does, Mr. President in the judgment

of the Supreme Court. I therefore raise the point of order that the statute proposed by the Senator from Arkansas would be unconstitutional and is out of order.

Mr. BUMPERS. Mr. President, will the Senator withhold that for 2 minutes?

The PRESIDING OFFICER. The point of order is out of order at this time for the reason that time remains on the amendment. The point of order is not timely at this point.

Mr. BUMPERS addressed the Chair.

Mr. WILSON. Excuse me, Mr. President.

The PRESIDING OFFICER. The Senator from South Carolina has remaining time.

Mr. WILSON. I beg your pardon. I thought all time had expired.

The PRESIDING OFFICER. The time given to the Senator had expired.

Mr. THURMOND. Mr. President, in order for the Chair to rule on this subject, I am willing to yield back my time.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I ask unanimous consent that I be granted 2 minutes off the majority leader's time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I want simply to make this point. First of all, the Senator from California is saying that my amendment is unconstitutional. That is not really a decision at this point of this amendment for us to make.

Sometimes, I must say, I feel that I am the only person around here who has read all the court decisions. The Eichman case, the Johnson case, the Carey case, the Barnette case, the O'Brien case, the Chaplinsky case, every one of them is replete with language that sets out specifically that this kind of an amendment will withstand constitutional muster. I say again, in the Johnson case the Supreme Court literally invited us to craft a narrow amendment.

Let me tell you, before you start voting, where you are. We have a constitutional amendment resolution pending. Mine is a first-degree amendment, a legislative remedy that only requires a simple majority vote. The constitutional amendment is not going to pass. The Helms amendment is not going to pass. The Biden amendment is not going to pass. The only thing in the world you have a chance of getting before the Supreme Court is the Bumpers amendment. If you vote no on that, you are saying I hate it, but I do not want to address it.

What you do when you vote no on the Bumpers amendment is say I do not want to do anything. I do not believe there are many people here—maybe 10 people—who are of that mind.

I am offering this amendment because it probably will—I cannot tell you categorically—withstand constitutional muster. But if you read the decisions, you will think it will. It is an opportunity to deal with this problem in a way that will take care of the most egregious, offensive cases.

I can tell you that if the Bumpers amendment does not pass, kiss this whole thing goodbye at least until next year. So I plead with you to do something responsible and deal with this problem by voting for my amendment. I am convinced that this is about as far as you can go legislatively and have any hope of it withstanding constitutional muster.

I yield back such time as I may have.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WILSON. Mr. President, if all time is yielded back, I then make the point of order that the amendment by the Senator from Arkansas is out of order because it proposes a statute whose enactment would violate the Constitution of the States.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Under the precedents of the Senate, constitutional points of order are not decided by the Chair but by the entire Senate. So the question is, Is the point of order well taken?

Mr. WILSON. I ask, Mr. President, 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 legislative clerk called the roll.

Mr. HELMS (when his name was called). Mr. President, I am about to vote "present" because I do not think any Member of the Senate knows whether this amendment is constitutional or not.

So I vote "present."

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—51

Akaka	Garn	McConnell
Armstrong	Gorton	Metzenbaum
Bingaman	Gramm	Murkowski
Bond	Grassley	Nickles
Boschwitz	Harkin	Pressler
Bryan	Hatch	Reid
Burdick	Heflin	Roth
Burns	Heinz	Rudman
Chafee	Humphrey	Shelby
Coats	Johnston	Simpson
Cochran	Kassebaum	Specter
Cohen	Kasten	Stevens
D'Amato	Lott	Symms
Danforth	Lugar	Thurmond
Dole	Mack	Wallop
Domenici	McCain	Warner
Durenberger	McClure	Wilson

NAYS—48

Adams	Ford	Lieberman
Baucus	Fowler	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Boren	Graham	Nunn
Bradley	Hatfield	Packwood
Breaux	Hollings	Pell
Bumpers	Inouye	Pryor
Byrd	Jeffords	Riegle
Conrad	Kennedy	Robb
Cranston	Kerrey	Rockefeller
Daschle	Kerry	Sanford
DeConcini	Kohl	Sarbanes
Dixon	Lautenberg	Sasser
Dodd	Leahy	Simon
Exon	Levin	Wirth

ANSWERED "PRESENT"—1

Helms

The PRESIDING OFFICER (Mr. BRYAN). The rollcall on the point of order is 51 yeas, 48 nays, one present; the point of order is well taken. The Bumpers amendment falls.

Under the previous order, the Senator from North Carolina [Mr. HELMS] is recognized for the purpose of offering an amendment.

Mr. HELMS. Mr. President, momentarily I shall offer a second proposal that can quietly lead us out of the legislative thicket in which Congress has been led by the Supreme Court.

The PRESIDING OFFICER. The Senate is not in order.

The Senator may proceed.

Mr. HELMS. Let me emphasize, Mr. President, that it is my intent to vote for the proposed constitutional amendment. I am a cosponsor of it. I intend to support it, and I hope that we can reach the 67-vote necessity on it. I do not think that is going to happen, and I do not think any other Senator thinks it is going to happen.

On the previous amendment, I voted "present" because I do not think one Senator in this Chamber knows whether the Bumpers amendment was constitutional. So you were voting for Bumpers or against Bumpers, and I was unwilling to do that because the question before the Senate was, Is this amendment constitutional? I could not answer the question honestly, so I voted "present."

My amendment will put an end to all of the rhetoric, much of it bordering on the absurd, about how the first amendment will be destroyed if the Constitution is amended to outlaw the desecration of the American flag by protesters who publicly burn that flag to mock and degrade the Republic for which it stands.

An overwhelming majority of Americans wants this sorry business of desecrating the flag stopped. They want it outlawed. And they expect Congress to get about the business of representing the well-justified will of the majority. They do not accept the nonsense that forbidding the public burning of flags by unbalanced, publicity seeking extremists is in any way a denial of the right of free speech.

AMENDMENT NO. 2067

(Purpose: To restore the American flag to its place of honor as the symbol of the United States of America)

Mr. HELMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 2067.

Strike all after the resolving clause and insert in lieu thereof the following:

SEC. . AMERICAN FLAG PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the "American Flag Protection Act".

(b) COURT OF APPEALS JURISDICTION.—

(1) IN GENERAL.—Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1260. Appellate jurisdiction: limitations

"(a) Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter and in accordance with section 2 of Article III of the Constitution, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any part thereof, or arising out of any act interpreting, applying, enforcing, or effecting any State statute, ordinance, rule, regulation, or practice, which relates to the public mutilation, defilement, incineration, or other physical abuse of any flag of the United States.

"(b) For purposes of this section, the term 'flag of the United States' has the same meaning as in section 700(b) of title 18.".

(2) SECTION ANALYSIS.—The section analysis of chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1260. Appellate jurisdiction: limitation.".

(c) DISTRICT COURT JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1367. Limitations on jurisdiction

"Notwithstanding any other provision of law and in accordance with section 2 of Article III of the Constitution, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1260 of this title.".

(2) SECTION ANALYSIS.—The section analysis at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1367. Limitations on jurisdiction.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this section, except that such amendments shall not apply to any case which, on such date of enactment, was pending in any court of the United States.

Mr. HELMS. Mr. President, as I understand it, each side has 20 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Will the Chair please advise me when I have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will do so.

Mr. HELMS. Mr. President, the pending amendment invokes the authority given explicitly to Congress in article III of the Constitution, the authority to regulate the general jurisdiction of the lower Federal courts and the appellate jurisdiction of the Supreme Court. The amendment curtails such jurisdiction so that the Federal courts no longer have the power to hear cases involving the public mutilation, defilement, incineration, or other physical abuse of any flag of the United States.

Let me read the relevant part of article III section 2.

The Supreme Court shall have appellate Jurisdiction, both as Law and Fact, with such Exemptions, and under such Regulations as the Congress shall make.

That is pretty simple.

The Helms amendment uses the power given to us by the framers. Adopt the Helms amendment and the result is that such cases—in this case flag burning—become exclusively a matter for the States to handle as they see fit. Prior to the 1989 case, Texas versus Johnson, 48 States and the Federal Government made it a crime to mutilate or defile the flag. The Helms amendment would return to the States their power to outlaw flag desecration.

During the long debate on the flag issue, speaker after speaker invoked the sanctity of the Bill of Rights, while at the same time condemning the act of flag burning. They abhored the act, but declared that they would never support amending the Constitution. In other words, they were telling their constituents that they wished there were some way to stop this flag burning, but they just could not bear the thought of amending the Constitution. A real copout. Well, here's their chance to put up or shut up.

Prior to the 1989 Supreme Court decision, 48 States had laws against flag desecration. Only Alaska and Wyoming did not. The pending amendment will allow those 48 States, if they wish, to renew enforcement of their laws—or, if they so choose, not enforce them.

Mr. President, our Founding Fathers, who wrote this remarkable Constitution of ours, feared the concentration of power in the Federal Government, and in the Supreme Court. That is why they carefully included article III, section 2. They intended that Congress, which is supposed to represent "We the People," have the very explicit power to remedy a run-a-way Supreme Court. So the Founding Fathers gave Congress the means to protect the people, assuming that Congress would have the guts to use it.

We shall, this day, discover whether the Senate does, in fact, have the guts to use it.

Our late distinguished colleague, and my friend Senator Sam J. Ervin, Jr., was recognized as an astute constitutional scholar. Shortly before his death, he told me that he had counted 57 occasions when Congress denied jurisdiction to the Federal courts and the Supreme Court—a number of times at the request of the Supreme Court. So let us hear no more of this nonsense about court stripping—and certainly nothing about endangering the first amendment.

So let me read again, article III, section 2:

The Supreme Court shall have appellate Jurisdiction, both as Law and Fact, with such Exemptions, and under such Regulations as the Congress shall make.

As for suggestions about "court stripping" and "threats to the independence of the judiciary," the framers of the Constitution had far different concepts in mind. In Federalist No. 80, Alexander Hamilton wrote about the judicial powers conferred in the Constitution. He said:

If some partial inconvenience should appear to be connected with the incorporation of any of them (judicial powers) into the plan, it ought to be recollected that the national legislature will have ample authority to make such exceptions and to prescribe such regulations as will be calculated to obviate or remove these inconveniences.

The great John Marshall, in the Virginia ratifying convention, said:

Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people. 3 Debates on the Federal Constitution 560 (J. Elliot 2d ed. 1888).

In addressing congressional checks on the judiciary, Hamilton and Marshall point directly to article III, section 2. Their commentaries, along with other legislative history, affirm what a reading of the provision plainly indicates.

For these reasons I have advocated and will continue to advocate legislation to withdraw jurisdiction from the Supreme Court in those areas where it has clearly distorted the meaning of freedom and all of the good and decent things that America stands for.

In 1979 and 1982 the Senate passed amendments which I offered taking jurisdiction away from the court in the area of school prayer. In each instance the majority party in the House refused to let the legislation come to a vote.

In short, Mr. President, the fundamental question is: What is wrong with using the power clearly given to Congress by the Founding Fathers, to let the American people decide whether their Nation's flag is worthy of honor and respect. We have the opportunity, we have the duty, to remedy the damage done by five of the nine members of the Supreme Court.

Mr. President, I want to conclude with two sets of remarks authored by Mr. John O'Sullivan, editor of Bill Buckley's National Review, from the June 11 and July 9 editions of that periodical. On June 11, Mr. O'Sullivan said:

Article III, section 2 of the Constitution, however, gives Congress the power by single majority vote, to remove any matter from the jurisdiction of the Court. At some point, Congress is going to have to reassert the "deliberate sense of the people 'against a Court acting on abstract' rights." This would be a good occasion to recover self-government.

From the soon to be released July 9 edition he added:

The flag, however, is the sort of unique national symbol by which a nation is held together and might be thought to deserve unique legal protection. If that could be accomplished without too much trouble, by the simple passage of legislation, there would be a strong case for doing so. If Congress can under article III, section 2, of the Constitution deprive the Court of jurisdiction on laws protecting the flag, it should seriously consider doing so.

Mr. President, I reserve the remainder of my time and I thank the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. How much time is under my control?

The PRESIDING OFFICER. The Senator has the full 20 minutes.

Mr. BIDEN. I yield at this time, Mr. President, 3 minutes to my colleague from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

Mr. SPECTER. Mr. President, I thank my colleague from Delaware for yielding me time.

I oppose the pending amendment, Mr. President, because I believe that it is plain under our constitutional structure that the Congress cannot take away the jurisdiction of the Supreme Court of the United States to decide constitutional issues. The language which the distinguished Senator from North Carolina has cited in the Constitution does not stand for the proposition he claims.

This issue was laid to rest in the case of Marbury versus Madison in 1803. Since that time, it has been rockbed constitutional law in this country that the Supreme Court of the United States was the final aribiter on constitutional issues. To say that the Congress by statute can take away the jurisdiction of the Supreme Court to define and decide a constitutional issue lies squarely in the face of Marbury versus Madison, which is followed repeatedly in all of our constitutional doctrine.

Mr. President, although not necessary to do so, I think an answer by Chief Justice Rehnquist in his confirmation hearings is further support for the proposition that you cannot take the jurisdiction from the Supreme Court to decide a constitutional issue, especially the first amendment. This Senator engaged Chief Justice Rehnquist in extended colloquy on the subject.

This question was asked:

Well, the statute could be enacted which would say the Court shall not have jurisdiction over first amendment cases involving freedom of speech, press, or religion. This is my area of concern specifically stated, and I take it from your answer you think that the Court would not have that authority.

Justice REHNQUIST: That is correct.

A flat statement by Chief Justice Rehnquist, who asserted that the Congress might have authority to take jurisdiction from the Court on other constitutional issues.

This Senator then questioned Justice Rehnquist further about why he said that the first amendment was totally outside of the ambit of the Congress to take away jurisdiction. Chief Justice Rehnquist replied as follows:

Well, perhaps the distinction isn't as clear as I would like it to be but I think there is some distinction. The Court has often referred to the first amendment as the preferred freedom of the indispensable matrix of a democratic society. I think that is really the guts, probably the thing that is the necessary prerequisite for effective democratic government.

So, Mr. President, I submit that in the context of our Constitution, Marbury versus Madison, there has never been a shred of doubt about the ultimate authority of the Supreme Court to decide all constitutional questions so that you could not possibly undercut that authority by the argument advanced by the distinguished Senator from North Carolina. Even one Justice, the Chief Justice, who raised the question as to some areas of congressional authority to take away the jurisdiction of the Court emphatically says that the first amendment is so special, such a special matrix as not to be within the purview of congressional action.

Mr. President, I am filing a separate floor statement articulating the reasons for my support of the constitutional amendment to protect the flag so that I believe we should act to protect the flag, but I do not think it conceivable to accomplish that purpose by this route, which is clearly unconstitutional and in direct violation with the most fundamental precepts of our constitutional Government. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. On my time, could I ask the Senator a couple of questions?

Mr. SPECTER. I would be delighted.

Mr. HELMS. How did Mr. Chief Justice Rehnquist vote on this flag burning issue?

Mr. SPECTER. He voted with those who wanted to protect the flag, as do I.

Mr. HELMS. Exactly, so he does not think it is a first amendment proposition, does he?

Mr. SPECTER. I would not say that he does not think it is a first amendment proposition. I believe he thinks that you cannot prohibit flag burning because the first amendment does not cover it, but it is like the doctrine of fighting words in the Chaplinsky case or like obscenity, or like crying, for example, fire in a crowded theater. In those cases, the Court took the question to be under the first amendment but said freedom of speech does not cover this conduct. I believe a fair reading of Chief Justice Rehnquist's opinion would be that it is a first amendment issue but that it goes too far. That is my basic contention.

Mr. HELMS. Has the Senator read what Chief Justice Rehnquist said?

Mr. SPECTER. Yes, I have.

Mr. HELMS. He said that flag burning is outside the ambit of the first amendment. He therefore rejects the argument that this is a free speech issue. I thank the Chair.

Mr. McCLURE. Will the Senator yield me 2 minutes?

Mr. HELMS. I certainly will.

Mr. McCLURE. I thank the Senator from yielding his time.

The PRESIDING OFFICER. The Senator from Idaho [Mr. McCLURE].

Mr. McCLURE. Mr. President, I rise in support of the amendment of the Senator from North Carolina. I do so for two reasons. I think the last point made by the Senator from North Carolina is a very telling point, that if Justice Rehnquist does not think that is under the first amendment then he does not with respect to this amendment either. I think the point is well made.

Those people who believe the proposed amendment to the Constitution of the United States is an amendment to the Bill of Rights, and that we are somehow tampering with the Bill of Rights, missed the point that it was the Court that tampered with the Bill of Rights. It is the Court that created the condition which we are trying to correct today.

A year ago, we were told we could do it by statute; do not worry about amending the Constitution. That would be a terrible thing to do. Do it with a statute. We tried that. The Court again said, no, you cannot do that.

We have an opportunity here by this means to do it short of a constitutional amendment. There are those who say you cannot do it this way either.

As a matter of fact, if you cannot do it this way either, then indeed an amendment to the Constitution is the only means by which you can correct a misjudgment made by the Supreme Court of the United States. That, I submit, is provided for by the Consti-

tution itself. It is a check which free people have against judicial tyranny in terms of the arbitrary judgment of a majority of nine men and women who by themselves decide what our Constitution is.

If we do not agree with what they say, and it is a constitutional question, then you either do it by this method or you do it by a constitutional amendment. I, therefore, strongly support the pending amendment. I also strongly support the amendment of the Constitution to the United States upon which we are debating.

Mr. HELMS. I thank the Senator from Idaho very much.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask to make a rhetorical statement of the Senator from Idaho. He understands he cannot do both. He cannot support the Helms amendment and support the President at the same time. He can support either one or the other.

If he supports Helms, then the President's amendment is dead. It is done, gone, over, finished, defeated. And if Helms loses, then the President has a possibility. Just so we understand on this vote: A vote for Helms is a vote against the President's amendment.

Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Delaware has 9 minutes 17 seconds remaining.

Mr. BIDEN. Mr. President, quite frankly, we have been through this exercise a number of times before on court stripping. If the Helms amendment were adopted, none of the laws, indeed, no flag burning law at all, could ever be reviewed by the Supreme Court.

Yesterday, I gave several examples of the kinds of law I believe the President's proposed amendment would authorize. None of them would be able to be reviewed by the Supreme Court of the United States. I guess folks might say, well, what difference does that make?

Let me tell you what it means. It means that we will have entered waters in this country that have never been entered. If the Helms amendment is adopted, a State could pass a law prohibiting blacks from buying or waving American flags or a city council could do the same. Any local jurisdiction could do it. There would be no challenging that law in the court and once passed, it is unreviewable, unchallengeable by anyone in a Federal court.

A State could pass a law saying that only veterans had the right to wave the flag or pin the flag on their lapel or do anything at all with the flag. Nothing could be done about that. The city of Berkeley could pass a law saying that only veterans cannot wave the flag, and it would not be reviewable by the Federal court.

The Senator asked a rhetorical question earlier. He said he is not asking for a constitutional amendment. What is he asking to eliminate? What are we so worried about? I think it might be appropriate—based on the number of items that the Senator from North Carolina and others feel distasteful based on Supreme Court decisions, why not just eliminate the Court? Why not, since we do not seem to like its makeup, we do not seem to like the way it votes on a number of issues, just pass a law and eliminate the Court? In effect, you do that if you continue to just whittle away at major chunks of its jurisdiction.

Mr. President, I will cease here because I know my colleague from Pennsylvania wants another minute. I want to try to accommodate him as best as I can. As well, I was told my colleague from Massachusetts wishes to speak.

I hope we would overwhelmingly reject this amendment. It certainly will satisfy no one.

By the way, if this amendment passes, then Gregory Johnson will be able to go back and do under the Texas statute exactly what he did before, and it would still be protected unless Texas changed that law. You could burn the flag in Texas but not Oklahoma. That may cause some interesting dilemmas. But at any rate, I will not go into all the bizarre examples that could in fact arise as a consequence of stripping the court of jurisdiction over the first amendment and particularly flag burning.

I yield to my colleague from Pennsylvania, who said earlier he would like 1 minute.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Delaware.

Mr. President, I had made an argument a few moments ago that under Marbury versus Madison, the Supreme Court was the final arbiter of constitutional decisions, and then I had referred to an extended discussion I had with Chief Justice Rehnquist in the confirmation proceedings where he raised the issue there might be some power in Congress to withhold some jurisdiction, but Chief Justice Rehnquist said that that power could not apply under any circumstance to the first amendment.

The distinguished Senator from North Carolina then came to the floor and asked this Senator if I had read the opinions by Chief Justice Rehnquist, and I said I had. I would like at this time to refer specifically to Chief Justice Rehnquist's opinion in Texas versus Johnson where at page 9 the Chief Justice says this:

> But the Court insists that the Texas statute prohibiting the public burning of the American Flag infringes on respondent Johnson's freedom of expression. Such freedom, of course, is not absolute.

So here conclusively and categorically Chief Justice Rehnquist deals with the first amendment issue and says that the first amendment does not cover flag burning. And Chief Justice Rehnquist then goes on to discuss the Chaplinsky case, which I had referred to earlier and the Schenk case, so that there is no question but what Chief Justice Rehnquist regarded Texas versus Johnson, a flag-burning case, as one which was arguably under the first amendment. But the Chief Justice said the first amendment did not go that far.

We are referring again to the question raised by Senator HELMS as to whether I had read the Chief Justice's opinion. He did not write an opinion in U.S. versus Eichman. That opinion was written instead by one of his colleagues.

The opinion was written by Justice Stevens and, at page 5 of U.S. versus Eichman, Justice Stevens again considers the flag burning in terms of "freedom of expression protected by the first amendment embraces not only the freedom to communicate particular ideas but also the right to communicate them effectively. That right, however, is not absolute."

So there is no doubt that the Stevens opinion, joined in by Chief Justice Rehnquist, again considers flag burning within the context of the first amendment. So it is abundantly clear even with the question raised by the distinguished Senator from North Carolina that this is a first amendment issue; that you cannot take away the jurisdiction of the Supreme Court on first amendment issues.

But again I say, for other reasons in a floor statement which I have made, I support the amendment to protect the flag, and certainly strongly disagree with taking away the jurisdiction of the Supreme Court on such a fundamental matter.

I again thank my colleague from Delaware.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. How much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Delaware has 2 minutes and 10 seconds remaining; the Senator from North Carolina has 6 minutes and 37 seconds.

Mr. BIDEN. Mr. President, obviously the Senator from North Carolina has done this more often.

Mr. President, may I ask a question? Does a quorum call come out of the time of the Senator who places the quorum call?

The PRESIDING OFFICER. The Senator is correct.

Mr. BIDEN. That is what I thought the Chair would say.

Mr. President, the Helms amendment is, it seems to me, an attempt that will satisfy absolutely no one except possibly Senator HELMS. There is no prospect of the Helms amendment passing. The Helms amendment will eliminate the prospect of there being any vote on the President's amendment and the Helms amendment quite frankly will, as a practical matter, eliminate the prospect of there being a vote on the Biden amendment.

It will not accomplish the purpose that is stated, and that is to provide for the ability of the American flag to be protected. If in fact the Federal Government were to move to remove jurisdiction, leaving aside the legal arguments of whether or not they can as it relates to the first amendment, then it seems to me only a short step before the States would move to remove the jurisdiction of the courts on matters related.

I can imagine the statute that says you cannot prosecute someone who physically abuses a flag burner or who murders a flag burner; the bizarre notion that you have a situation where under the Helms amendment, were it to pass and become law, you would find yourself in the position where the Court would lose all ability to review even the most bizarre and crazy amendments that could and might be drafted.

Mr. President, I strongly urge that we reject the Helms amendment. If the Senator from North Carolina is prepared, I am ready to yield the remainder of my time.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. All time allocated to the Senator from Delaware has expired.

Mr. BIDEN. Does the Senator from North Carolina have 6 minutes?

The PRESIDING OFFICER. The Senator from North Carolina has 6 minutes and 37 seconds.

Mr. HELMS. Mr. President, I will yield back the remainder of my time.

Mr. President, Senator BIDEN is a source of great amazement to me. I just do not known where the Senator gets the fantasies that he talks about on the Senate floor, and all the bizarre things that he dreams up. How in the world did the Senator conjure up the notion that the States in any way could deprive the U.S. Supreme Court of its jurisdiction? I just do not understand it.

Mr. President, the question has been raised by some about the practical effect this legislation would have on the two Supreme Court decisions on flag burning.

Unlike a constitutional amendment, the withdrawal of jurisdiction under my amendment would not reverse the Supreme Court's rulings on the flag. According to the distinguished professor of constitutional law at Stanford University, Gerald Gunther, the decisions of the court would remain on the books as influential precedents. State courts would have greater independence as a practical matter as the constitutional issues before them moved further from the core of existing Supreme Court holdings.

State courts would be free to continue their strict adherence to those decisions as the last authoritative pronouncements on the subject. Indeed, the State courts could extend, for example, the rationale supporting the Supreme Court decisions permitting flag burning if they chose to.

However, Mr. President, it is more likely that the justices of the highest State courts—who, unlike their brethren on the Supreme Court, are accountable to the people for the decisions which they render—would be more prudent on the subject of flag burning. It would therefore be expected that the majority of the State courts would openly disregard the Supreme Court precedents and decide in favor of the people and outlaw this despicable practice. As I said at the outset of my remarks, prior to the 1989 Supreme Court ruling in Texas versus Johnson, 48 States and the Federal Government outlawed flag burning.

Vote for the Helms amendment and put your faith in the judgment of the American people and their elected local representatives, after all that is the way the system was designed in the first place.

Mr. President, let me say categorically that shifting jurisdiction to the State courts for the determination of an issue is wholly permissable under the plain reading of the Constitution and Supreme Court precedent.

In challenging the constitutionality of my measure, opponents usually refer to the case of *United States* v. *Klein*, 80 U.S. 128 (1871). The interpretation of that case used by opponents of the use of article III section 2 is that the Court decided that the Congress did not have the power to remove the jurisdiction of the judiciary. That is an erroneous interpretation.

In Klein, the Court held that the Congress could not enact legislation to eliminate an area of jurisdiction in order to control the results in a particular case. Following the Civil War, Klein sued in the Court of Claims under a statute that allowed for the recovery of land captured or abandoned during the war, provided that an individual could prove that he had not assisted the Confederacy. Relying on an earlier decision that a presidential pardon proved conclusively that the recipient of the pardon had not aided the South, Klein prevailed in the lower court. However, while the Government appealed the case, the Congress passed a law which said that a pardon would not support a claim for captured property.

The Court held that the act of Congress was unconstitutional because it subverted the judicial process by prescribing a rule for the decision of a case in a particular way as well as infringing on the constitutional power of the executive by negating the power of the Presidential pardon.

It is clear then that Klein has no application to my legislation. Klein involved a congressional attempt to forbid the Court from giving the effect to evidence which, in the Court's judgment, such evidence should have been given. The Congress thus directed the Court to give the evidence an effect precisely to the contrary. Congress sought to curtail the Court's appellate jurisdiction to obtain a particular result in a specific case; by doing so Congress, in the words of Chief Justice Salmon Chase, "inadvertently passed the limit which separates the legislative from the judicial power."

As I said earlier Congress' action in Klein is all together different from Congressional contractions of the Court's jurisdiction that seek merely to shift the determination of any result to the lower Federal courts, or as in the case of the Helms legislation, to the State courts.

Chief Justice Chase said that the shifting of responsibility to the lower State courts is in keeping with the spirit of the Constitution. Chase summed up the spirit of the legislation before us acknowledging that:

> * * * if this Act did nothing more * * * [than] simply deny the right of appeal in particular cases, there can be no doubt that that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.

Mr. President, the terms of article III are phrased so clearly that no doubt exists as to the intent of the Framers. They have given us the power to rectify the mistakes of the Supreme Court. We should get about using the instrument they have presented us.

Mr. President, finally, there are also those who say that my measure is unconstitutional because it violates the principle of separation of powers. However, when examined closely, it becomes apparent that the criticism relies on an inadequate understanding of the framework of checks and balances embodied in the Constitution.

Professor Gunther, of the Stanford Law School, states that:

> [A]rticle III does provide for an independent judiciary, but independence does not mean total insulation of the judicial branch any more than it does for the other branches.

The framers' goal was not to create a government of separated powers, rather what they sought was a balance among "separated institutions sharing

powers." The Founders recognized that power by its nature is encroaching, whether it be legislative, executive, or judicial. Therefore, they assigned powers so that each branch of Government could effectively check, but not control, the other two.

It is beyond doubt that the framers refused to exempt the judiciary from the braking power of checks and balances. The executive checks the judiciary by using the power of appointment. Congress has the power—and I believe the duty—under article III of the constitution to check the judiciary by limiting the Supreme Court's jurisdiction when that court has in the judgment of the Congress exceeded its purview.

Mr. President, I reiterate: the framers did not mean for the judiciary to be completely independent—which appears to be the assumptions my friends from Delaware and Pennsylvania are making. Just as they provided checks on the executive and legislative branches of the Government, they included mechanisms to restrain the judiciary. The exceptions clause in article III, section 2 is one of those mechanisms. I fail to see how the exercise of a power explicitly granted by the Constitution can be construed as a violation of that same document.

Let me just summarize one more time. This does not involve the first amendment—not at all. The distinguished Senator from Pennsylvania talked about Chief Justice Rehnquist. Then I asked him how did Mr. Chief Justice Rehnquist vote on this flag-burning amendment. Of course he voted with BOB DOLE and JESSE HELMS, and all the rest who say that there should be a constitutional amendment if we cannot do it any other way.

But we can do it another way. We do not have to go through the agony of a two-thirds vote in the Senate and a two-thirds vote in the House and a three-fourths vote by the States in ratification. No. All we have to do is implement the Constitution of the United States. Just for emphasis, let me read it again:

2. In all cases affecting Ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.

There is no question about that.

In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact—

And here is where the cheese binds on Senator BIDEN's argument, because it says—

with such exceptions and under such regulations as the Congress—

As who?

as the Congress shall make.

So Senators can do as they please. We can put an end to all of this flag burning talk right now as far as the Senate is concerned; send it over to the House and see what they do about it statutorily with the majority vote in both Houses, and that is the end of it.

I will say again this is not only an authority given to the Congress of the United States by the Founding Fathers but in this instance I think it is the duty of Congress to respond to the vast majority of the American people who resent these kooks, these loonies, who run around burning flags. If we are going to call that free speech, how about mooning? Is that free speech? Somewhere society has to get hold of itself. I think the time is now.

I yield the remainder of my time.

Mr. BIDEN addressed the Chair.

Mr. HELMS. I yield the remainder of my time.

The PRESIDING OFFICER. All time is expired.

The question is on agreeing to the amendment of the Senator from North Carolina [Mr. HELMS] No. 2067.

Mr. HELMS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 10, nays 90, as follows:

[Rollcall Vote No. 126 Leg.]

YEAS—10

Armstrong	McClure	Symms
Garn	McConnell	Thurmond
Helms	Nickles	
Lott	Pressler	

NAYS—90

Adams	Durenberger	Lugar
Akaka	Exon	Mack
Baucus	Ford	McCain
Bentsen	Fowler	Metzenbaum
Biden	Glenn	Mikulski
Bingaman	Gore	Mitchell
Bond	Gorton	Moynihan
Boren	Graham	Murkowski
Boschwitz	Gramm	Nunn
Bradley	Grassley	Packwood
Breaux	Harkin	Pell
Bryan	Hatch	Pryor
Bumpers	Hatfield	Reid
Burdick	Heflin	Riegle
Burns	Heinz	Robb
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Coats	Inouye	Rudman
Cochran	Jeffords	Sanford
Cohen	Johnston	Sarbanes
Conrad	Kassebaum	Sasser
Cranston	Kasten	Shelby
D'Amato	Kennedy	Simon
Danforth	Kerrey	Simpson
Daschle	Kerry	Specter
DeConcini	Kohl	Stevens
Dixon	Lautenberg	Wallop
Dodd	Leahy	Warner
Dole	Levin	Wilson
Domenici	Lieberman	Wirth

So, the amendment (No. 2067) was rejected.

The PRESIDING OFFICER. Under the previous order the Senator from South Carolina [Mr. THURMOND] is recognized for the purpose of offering an amendment.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I believe I am in order for the next amendment, am I not?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. I have been talking to the distinguished chairman of the committee and we have decided instead of my offering an amendment, that we just take 20 minutes a side on the bill and that will save a rollcall later, too, and save that much time. I ask unanimous consent that that be approved.

Mr. BIDEN. Mr. President, reserving the right to object, and I will not object, the unanimous-consent agreement is meant to give the managers control of 20 minutes each on the bill, which I assume can be used at any time between now and the time of final vote on the legislation.

The PRESIDING OFFICER. The Parliamentarian advised me the previous order provided for 40 minutes equally divided between the two leaders prior to the vote on disposition.

Mr. THURMOND. This is not intended to affect the leaders at all. If we took up this amendment it would take 40 minutes. The distinguished chairman of the committee and I just decided we would take 20 minutes apiece and speak on the bill, and that would eliminate a rollcall on my amendment if I offered it. I ask unanimous consent that that be approved.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Reserving the right to object, I would like to have at least 5 minutes.

Mr. BIDEN. Mr. President, I will be delighted to yield the Senator 5 minutes. I want to make it clear to him he would not get any time if the request was not made and we moved forward as planned. I hope Senators will not start popping up here. I am delighted to yield the Senator 5 minutes off the 40 minutes.

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

Mr. THURMOND. Mr. President, in view of that, I shall not offer an amendment.

The PRESIDING OFFICER. The Senator from South Carolina will have 20 minutes under his control and the Senator from Delaware will have 20 minutes under his control for the purpose of discussing the bill.

Mr. THURMOND. Mr. President, soon we will be voting on our proposed amendment to grant power to the Congress and States which we all be-

lieved they had prior to the Supreme Court ruling in Texas versus Johnson.

The Congress and 48 States believed they had constitutional authority to protect the American flag and our proposed amendment would merely restore this authority.

Opponents of this proposal have, in a very deft manner, blended this issue with the Bill of Rights—particularly the first amendment. As I have stated repeatedly, our proposed amendment does not rewrite the first amendment. We are intent on correcting a Supreme Court decision which I believe misinterpreted the free speech clause of the first amendment. The first amendment speaks to the freedom of speech and over the years the Supreme Court has applied its protection to some types of expressive conduct. Now, five members of the Supreme Court have extended this protection further to the highly offensive conduct of burning the American flag. The Supreme Court has put a gloss on the first amendment that now protects conduct which I believe goes beyond reasonable and acceptable expression.

The ruling by the Supreme Court has left us with little recourse other than adopting our proposed constutitional amendment to protect the flag. Power should be restored to the Congress and the States through a constitutional amendment.

Former Chief Justice Warren, Justices Black and Fortas are known for their defense of first amendment principles. These three liberal Justices were very forceful in their comments that the first amendment did not protect the physical desecration of the American flag.

As I mentioned earlier and I believe worth repeating, in Street versus New York, Chief Justice Warren wrote:

> I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace.

Mr. President, what does that say? That is Chief Justice Warren, a very liberal Chief Justice. He said he believed the States and the Federal Government have the power to protect the flag.

In this same case, Justice Black, who described himself as a first amendment "absolutist", stated:

> It passes my belief that anything in the Constitution bars a State from making the deliberate burning of the American flag an offense.

Also in the Street decision, Justice Fortas made clear his views on this issue when he wrote:

> The States and Federal Government have the power to protect the flag from acts of desecration committed in public.

Mr. President, that is the position we have taken. We thought they had that power until these two decisions by the Supreme Court recently.

Mr. President, on June 22, 1989, the Senate voted on Senate Resolution 151 expressing our profound disappointment with the Johnson decision. This resolution was overwhelmingly adopted by a 97 to 3 vote. I want to remind my colleagues of our resolve by adopting that measure. It stated:

> Whereas, the flag of the United States is the most profound symbol of our ideals, aspirations, and indeed our identity as a Nation;
>
> Whereas, the flag stands for our very being, including our commitments to freedom, justice, equal opportunity, and peace;
>
> Whereas, Americans have always displayed the flag as a living symbol of our Nation and the values for which it stands;
>
> Whereas, the burning of the American flag is an affront to our American heritage and an affront to the American people;
>
> Whereas, millions of Americans have fought valiantly, and many thousands have died, to protect this sacred symbol of nationhood, from the beginning of the Republic, through the two World Wars, the Korean Conflict, the Vietnam Conflict, to the present, and that those who risked and gave their lives for our country are profoundly offended by the desecration of this sacred emblem;
>
> Whereas, the Congress and forty-eight States have enacted laws to protect against desecration of the flag;
>
> Whereas, the Senate expressed its respect for the flag as recently as March 16, 1989, when on a vote of 97-0, it passed S. 607, prohibiting the displaying of the flag on the floor or ground;
>
> Whereas, throughout the history of our Nation, the Supreme Court has properly defended and protected the First Amendment rights of our Nation's citizens;
>
> Whereas, the United States Supreme Court yesterday rendered a decision in the case of Texas v. Johnson, No. 88-155, finding unconstitutional a Texas statute prohibiting the desecration of the flag, determining that this conduct was an act of "symbolic speech" protected by the First Amendment;
>
> Whereas, the Congress has believed that the act of desecrating the flag is clearly not "speech" as protected by the First Amendment; and that analogous acts, such as desecrating a public monument such as the Lincoln Memorial, would never be tolerated as speech; and
>
> Whereas, it appears that yesterday's decision may invalidate the Federal and State laws prohibiting desecration of the flag: Now, therefore, be it
>
> *Resolved,* That the Senate hereby—
>
> (1) expresses its profound disappointment that the Texas statute prohibiting the desecration of the flag was found to be unconstitutional;

That is what this body did, expressed its profound disappointment that the Texas statute prohibiting the desecration of the flag was found to be unconstitutional.

> (2) expresses its continued commitment to preserving the honor and integrity of the flag as a living symbol of our Nation and its aspirations and ideals;
>
> (3) intends to make an immediate study of the impact of yesterday's Supreme Court decision on Federal and State laws prohibiting the desecration of the flag, and to seek ways to restore sanctions against such reprehensible conduct; and
>
> (4) urges the American people to continue to display proudly the American flag as a symbol of our Nation and the values for which it stands.

Mr. President, that is a joint resolution passed by this body. Now, the Supreme Court has declared this second statute unconstitutional, this Federal statute passed by Congress.

Now, if we believe we should protect the flag and not allow it to be desecrated, and if the Supreme Court held that statutes cannot do it, the only recourse left is a constitutional amendment. And that is what we are advocating. We are advocating that amendment, approved by the President, approved by the Attorney General, and advocated strongly by the Republican leader, Senator DOLE, and others on our side. We feel that is the action that should be taken to protect the flag.

Mr. President, our vote on Senate Resolution 151 endorsed efforts to "seek ways to restore sanctions against such reprehensible conduct" as desecrating the flag. If we are sincere in our efforts, then we must adopt the proposed constitutional amendment.

If we really believe in protecting the flag, and statutes cannot do it—and that is what the Supreme Court has held—then the only recourse is to pass the constitutional amendment.

The Johnson and Eichman decisions were very close—5 to 4. If only one Justice had gone the other way we would not be faced with this situation. The Supreme Court has created a firestorm of debate on this issue in the Congress and across this Nation. Statutes and proposed constitutional amendments were introduced to remedy the decision. The President of the United States found it compelling enough to transmit language to the Congress on a proposed constitutional amendment.

I firmly believe that this issue is so important that it should be sent to the States where the American people can decide if they want to protect the flag.

Mr. President, I urge my colleagues to vote their convictions on this proposal as they were expressed when we adopted the sense-of-the-Senate resolution. We should allow the American people to be the final arbiter on whether the flag is worthy of protection.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from South Carolina has 10 minutes remaining.

Mr. THURMOND. Mr. President, this decision was 5 to 4. One judge going the other way would have carried it in our favor—a 5-to-4 decision. If it is that close and if the sentiment is divided at all in the Congress, which it seems to be, then why not let the people of the Nation settle it?

39-059 O-91-16 (Pt. 11)

Let us submit this amendment to the people. We have to do it by two-thirds vote of both Houses and if we in the Senate pass it, I have a feeling the House will pass it, in spite of the vote they took recently.

Then, three-fourths of the States will have to approve it. If three-fourths of the States approve it, then it takes effect.

Mr. President, if we submit it to the people and let them vote on it, is that not truly a true democracy and is that not the way it ought to be done? If we cannot decide things here in the Congress, if we are so confused or so at odds with each other on these important questions—and this is an important question—then submit it to the people. That is what we are asking be done. Let the people vote on it. If they want to protect the flag—and I am sure they do—they will vote accordingly.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Delaware.

Mr. BIDEN. Mr. President, may I ask how much time is remaining on both sides?

The PRESIDING OFFICER. The Senator from Delaware has 20 minutes remaining. The Senator from South Carolina, 8 minutes and 20 seconds.

Mr. BIDEN. Mr. President, I would like to ask the Senator from South Carolina—since almost all the people seeking recognition wish to speak against the position of the Senator from Delaware—whether or not he is prepared to give any of his 8 minutes to the people who wish to speak? I will give all of my 20 minutes, if need be, to those.

Is my colleague prepared to give any time?

Mr. THURMOND. I promised the senior Senator from Idaho 5 minutes. I will be pleased to yield 3 minutes to the distinguished Senator from Alabama. I will be glad to do it. He is a very able Senator, a very sound Senator, and I am sure he will take the right position.

The PRESIDING OFFICER. The Senator from Alabama is recognized, yielded 3 minutes by the Senator from South Carolina.

Mr. HEFLIN. Mr. President, I rise today in support of Senate Joint Resolution 332, proposing an amendment to the Constitution to prohibit the physical desecration of the American flag.

On June 21, 1989, the Supreme Court handed down its decision in Texas versus Johnson. There, the Court held that the burning of the American flag, as a form of political expression, is protected free speech under the first amendment.

Congress answered with the Flag Protection Act of 1989. The act criminalized the conduct of anyone who knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon a U.S. flag, except conduct related to the disposal of a worn or soiled flag.

On June 11, 1990 in United States versus Eichman, the Supreme Court struck down the Flag Protection Act of 1989 as unconstitutional. In observing the Supreme Court in a 5 to 4 decision, rarely does a sitting member of the Court change his mind. When the legislation came up I supported it, but I said it was an exercise in futility and I did not think it would do the job. I felt that a constitutional amendment was necessary, and I think we have now seen the proof in that prediction.

Senate Joint Resolution 332 would reverse these decisions of the Supreme Court. It simply states:

> The Congress and the States shall have power to prohibit the physical desecration of the flag of the United States.

As a practical matter, an amendment would simply validate the flag desecration statutes currently on the books. It would not, as some skeptics suggest, result in a bombardment of new, and more onerous, State and Federal flag desecration statutes.

The text of Senate Joint Resolution 332 has been approved by the Justice Department, by numerous academics, by most of the major veterans' groups, and by innumerable other concerned Americans. It has also been the subject of comprehensive hearings before the Senate Judiciary Committee. Furthermore, popular support for a constitutional amendment remains as strong as ever.

I do not want to let personal invective get into this issue. People have different opinions and views. To a large degree, my view comes down to symbolism, and symbolism is an important consideration. There are certain things that stand as symbols which we as a free people revere. The Pledge of Allegiance illustrates this point. In the Pledge of Allegiance, we pledge allegiance to the flag and to the Republic for which it stands. The flag is symbolic of the Republic. It does not say "to the Nation for which it stands," but it says, "to the Republic." Our Republic is different from other nations, in fact, different from any other nation.

There is nationalism and there is Americanism. Every country has nationalism under which its citizens support their country and their flag. Americanism is more than nationalism, but Americanism cannot survive unless it has nationalism. Americanism is bottomed on nationalism. Nationalism must have sacred symbols. Americanism must have sacred symbols.

The "Star-Spangled Banner" speaks of the land of the free and the home of the brave. I think that both of these together describe Americanism. I feel the flag is sacred to the home of the brave and Americanism. If the flag cannot be protected, then no sacred symbol can be protected. I think the flag is sacred to this Nation and Americanism, and we ought to protect it, and I strongly support a constitutional amendment to prevent its physical desecration.

The PRESIDING OFFICER. Who yields time? Will the Senator from South Carolina yield time to the Senator from Idaho?

Mr. THURMOND. I yield 4 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for up to 4 minutes.

Mr. SYMMS. Mr. President, I think Senator HEFLIN and Senator THURMOND have made it very clear here that what we are talking about is symbolism. In this day and age, when there is no much negativism in America, there is absolutely nothing wrong with having the American flag as a positive symbol people can be proud of.

Mr. President, yesterday our flags around the Capitol were flying at half mast in commemoration of those who fought and those who died in the Korean war, and appropriately, yesterday the Senate began its debate on the President's proposed constitutional amendment to protect the flag with which we honor those war heroes.

I heard a number of my colleagues yesterday and on previous occasions decry the fact that the Senate is spending these several hours debating the flag amendment when there are so many other important issues on which we could be spending our time. Let me put it simply: protecting the American flag is an important, not a trivial, issue, particularly so for those who have fought and the survivors of those who have died fighting under the red, white, and blue banner. We can spare those millions of Americans a few hours of debate on this important amendment.

In an article printed last week in the Washington Times, Pat Buchanan argues persuasively that the Supreme Court's decision in the flag burning cases is a misapplication of the first amendment that should be—must be—overturned. Burning the flag is to convey something about one's view of America and, according to the Court, is therefore protected political speech. But Buchanan observes that "mooning a candidate is also political expression. Is that, too, now protected?" he wonders.

I believe that is the logical extension of the Court's majority opinion in these flag burning cases, and it points out the illogic of their view of the noble language comprising the first amendment. It brings to mind, as Bu-

chanan suggests, George Orwell's observation:

Only an intellectual would make a statement like that; no ordinary man could be such a fool.

I am pleased to be a cosponsor of the President's proposed constitutional amendment allowing States and the Federal Government to protect the American flag. This amendment is so important to honor the millions of Americans who have fought and died to protect that flag and all that it represents. I hope the vote on final passage will show that the Senate is comprised of ordinary men and women who refuse to let the tortuous intellectual trail blazed by five jurists lead them off the straight, well-trodden path of common sense.

I ask unanimous consent that the article by Pat Buchanan be printed in the RECORD following my remarks.

On the same subject, I ask unanimous consent that a commentary by Ron Rankin of Coeur d'Alene, ID, be printed in the RECORD. Mr. Rankin's commentary was broadcast recently on KCDA-FM radio in Coeur d'Alene, and according to the president of that radio station, the commentary prompted an overwhelmingly supportive response from listeners.

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

[From the Washington Times, June 18, 1990]

STRATEGY FOR RECAPTURE

(By Patrick Buchanan)

Last Monday, in a 5-4 decision, the Supreme Court basically said that American citizens, who have pledged their "allegiance to the flag of the United States," may not interfere with its mutilation.

The man who burns the flag exercises a constitutional right, says octogenarian Justice William Brennan. But, the man, or policeman, who rushes into a mob to stop its desecration is a scofflaw, who doesn't understand the First Amendment.

George Orwell's observation comes to mind: Only an intellectual would make a statement like that; no ordinary man could be such a fool.

Burning the flag is saying, "I hate America," says one justice. Like it or not, this is protected political speech. But, "mooning" a candidate is also political expression. Is that, too, now protected?

Flag burning may be political expression; but, it is more than speech; it is conduct. To burn the flag of people whose fathers fought under it, whose uncles and brothers lie buried beneath it, is a provocation, an act of aggression. If burning the American flag does not constitute "fighting words," what the devil does?

During the War Between the States, Yankee and Confederate soldiers, some still boys, died retrieving fallen battle flags. They were honored in memory, decorated for bravery. How can it be a badge of honor to have died, picking a fallen flag up out of the mud, and at the same time it is the constitutional thing to do to let someone spit on it, rip it and burn it?

The court's ruling contradicts common sense.

Freedom of speech was never an absolute right. Men have been sued, and punished, for slander, libel, false advertising, inciting riot, obscenity, panhandling. All these are more purely speech than pouring kerosene on a flag and putting a match to it.

Until 1989, flag burning was outlawed in 48 states. Were we less free before Bill Brennan struck down those state laws?

It is time Americans recaptured their hijacked Constitution from the unelected ideologues who have distorted it for 30 years. Behaving like sheep before black-robed shepherds, we have let this country be driven to where the Ten Commandments cannot be posted in a public school, or a manger placed in a public park at Christmas, but flag burning and pornography are court protected activities. A supposedly self-governing American people must now wait for this all-powerful tribunal to tell us what we may, and may not do, about capital punishment, taxes, abortion, conscription, even how our legislature districts may be drawn up. This is the American Civil Liberties Union's America; not what the Founding Fathers had in mind. And we all know it.

Fortunately, this time, the court went too far. The good news about the flag-burning decision is that the affront to Congress, not just the states, may finally convince our cowardly first branch of government to drive the renegade third branch back onto its constitutional reservation.

But there is an easier method of redress than amending the Constitution. The Founding Fathers, who knew the capacity of men to abuse power, provided for a Bill Brennan.

Article III specifically authorizes Congress to restrict the "appellate jurisdiction" of the Supreme Court. All Congress need do is pass a law denying the Supreme Court the right to hear appeals from state courts on cases dealing with flag desecration.

Flag worship is not, as some insist, a form of idolatry. A man who reveres and honors the flag no more "worships" it than a man who keeps a picture of his family on his desk worships them.

All of us know friends who, without request, will take out of their wallets a photograph of a child. This is not idolatry, but an expression of paternal pride, affections, love. Burning the flag is like taking that picture, spitting on it, throwing it in the gutter, trampling on it. It is not an invitation to argue; it is a challenge to fight. Like calling one's mother a tramp.

The idolatry, here, is on the part of those who have exalted the First Amendment above the Constitution of which it is only a part; then, declared it to be an absolute, inviolable right. Anyone who did that with the Second Amendment would be called a nut.

"We, the People of the United States," the Constitution says in its preamble, "do ordain this Constitution, in order to form a more perfect Union . . . insure domestic Tranquility . . . etc." How does burning the American flag help "create a more perfect union"; how does it help "insure domestic Tranquility"?

America's kulturkampf, the cultural struggle, deepens. People who hate America are no longer satisfied with airing their views, because no one pays any attention to their views. That is why they resort to provocation: urinating on crucifixes, burning flags, filing the airways with filth, polluting the culture. Then they demand we respect, protect, even subsidize their hatred.

The flag amendment is a vehicle for giving them the kind of beating that is long overdue. As Thomas Jefferson reminded us, "A little rebellion, now and then, is a good thing, as necessary in the political world as storms in the physical." A flag amendment is our rebellion.

Where should that rebellion lead? Ultimately, to restoration to its rightful place of our lost, 10th Amendment: "The Powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people." The pornography and prayers cases, the flag-burning and abortion cases belong back there—with the states and the people.

[Station KCDA, June 14, 1990]

RON RANKIN COMMENTARY

On this, Flag Day, in 1777 the Continental Congress proudly adopted the Stars and Stripes as the official flag of the United States. Now, 203 years later vermin are publicly desecrating that symbol of our God given freedom, protected by perverted Supreme Court decisions in the name of free speech—may God forgive us. Forty years ago, I carried a small American flag from one end of Korea to the other as a young marine in combat. I was given a small pocket bible by the Red Cross. It had metal covers, supposedly bullet proof, on the front and back, on one flap was engraved, the Lords Prayer, on the other an enameled American flag. Each time I had occasion to read my Bible, and that was frequent in combat, I saw the Lords Prayer and that gave me strength to go on and my tiny American flag, that told me why I must go on. Many a young marine carried that symbol of freedom in his dungaree jacket pocket next to his heart. Many died to preserve the freedom it represents. Today and every day that proud symbol, the Stars and Stripes flys proudly above my home as a reminder of the continuing fight to preserve our freedoms for which so many have fought and died. Out of respect for those fallen patriots of the past, I cannot, we cannot allow these liberal un-Americans to take license with our liberty. In the name of liberty, by desecrating our flag, I agree with our President, we must have a constitutional amendment to protect our flag. And we must have it now!

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 10 seconds to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, after extensive study, analysis, and hearing my constituents on both sides, I have decided to vote for a constitutional amendment to permit flag burning to be made illegal because I believe the flag represents a fundamental American value rooted in the traditions and conscience of our people.[1]

Balancing competing values has been the lodestone of U.S. constitutional government for more than two centuries. In that continuum, it is my judgment that society's interest in respect for the flag substantially outweighs the individual's interest in burning the flag.[2]

Footnotes at end of article.

The Constitution has traditionally permitted limiting what a person may say: fighting words are not covered;[3] endangering others by inciting to riot and crying fire in a crowded theatre are excluded;[4] obscenity is not protected.[5] Two of the Supreme Court's most renowned civil libertarians, Chief Justice Earl Warren and Justice Hugo Black, who led the expansion of individual rights, held the firm view that flag burning was not constitutionally protected.[6]

The following are only a few of the countless examples demonstrating the unique status of the flag's value which is rooted in the conscience and tradition of the American people. Betsy Ross' Philadelphia home is a minimuseum drawing thousands of visitors from all parts of the Nation; the Pledge of Allegiance is made by school children daily all over our land; the flag is displayed by millions of Americans on holidays and every day by many individuals as well as public institutions, such as the Congress with the flag flying over the U.S. Capitol; the focus is on the flag accompanied by the singing of the "Star-Spangled Banner" on many public occasions including all sporting events.

An elected official—who travels among, hears from, and listens to his constituents—has special insights on the will of the people beyond those getting their information and insight from all other sources.

The most intense response on this issue comes from those who have made sacrifices for their country in military service: deaths of loved ones; loss of limbs; or other permanent physical or psychological injuries. Their intensity is perhaps explained by the extra pain they sustain because their loss was not worthwhile if others not only did not serve or sustain trauma like theirs, and others are permitted to degrade the symbol Americans fought and died for.

Not everyone feels that way. Many Americans, including disabled veterans, speak out against this amendment. But I have found a deep residue of feeling among my constituents in favor of protecting the flag.

My own instinctive feelings favor flag protection. I was awakened by my alarm clock radio early on June 22, 1989, with the news of the Supreme Court's decision striking the Texas antiflag burning statute. My first reaction was—why did the Supreme Court have to do that. My next thought was about the Chaplinsky "fighting words" case I studied in law school which made so much sense when the Court said freedom of speech did not cover fighting words.

Later, in reflecting on the flag issue, I thought of my father's pride in serving in the American Expeditionary Force in the Argonne Forest in France to "make the world safe for democracy." Compared to Russia, America was heaven notwithstanding the struggle to support his family during the depression and the World War I shrapnel he carried in his legs until the day he died. Our prized family possession was the plaque he received for his service: the Goddess of Liberty knighting the wounded American doughboy. While not quite the flag, it was close.

In balancing society's interest in respect for the flag against the individual's interest in burning the flag as an expression of political dissent, I have thought long and hard about the rockbed value of freedom of speech and the recent calls from my colleagues at the Yale Law School. Three summers ago, I reread cases on free speech in preparing for Judiciary Committee hearings on a Supreme court nomination. No one has ever articulated a constitutional doctrine better than Justice Holmes did when he said "time has upset many fighting faiths." From his dissent in Abrams[7] to DeJonge[8] to Dennis[9] to Brandenburg[10] and beyond, I believe I understand the great value of lusty, loud and forceful dissent. But flag burning goes too far like "fighting words" and other limitations on freedom of speech in the continuum of our constitutional history.

The flag burners, as I see it, are really not so much engaged in communicating political dissent or in seeking to persuade others to accept their views as they are in trying to inflame or enrage by a perverse, extreme acts. A person's motives or intent are relevant in numerous legal contexts such as malice in libel, wanton conduct in tort or mens rea in criminal cases. While the flag burner's motive or intent is not determinative, it is not irrelevant in balancing the competing interests on this constitutional issue. There is no political view communicated by flag burning. It is, at most, an act collateral to a political message.

Our Constitution provides for amendment. Respect for individual rights will be enhanced if society sees an occasional move its way where warranted. While this country will survive with or without flag burning, my judgment is that a better balance will be maintained by protecting the flag.

FOOTNOTES

[1] In *Palko v. Connecticut*, 302 U.S. 319 (1937), Justice Cardozo articulated this concept in defining individual rights. This principle is equally useful in defining fundamental American societal values.

[2] In many quarters, it has become unfashionable or anti-intellectural to favor this amendment. Many of the same people who opposed this amendment also rejected last year's effort to craft a Constitutional statute. Their position opposed any restriction on flag burning contrasted with the narrower concern now about amending the Bill of Rights. Last year, I voted against the Constitutional amendment and for the statute in the hope that the objective could be obtained without dealing with the First Amendment.

[3] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

[4] *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Schench v. United States*, 249 U.S. 47, 52 (1919).

[5] *Roth v. United States*, 354 U.S. 476 (1957).

[6] In *Street vs. New York*, Chief Justice Warren said, "I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace." 394 U.S. 576, 605 (1969). In the same case, Justice Black said, "It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense." *Id.* at 610.

[7] *Abrams v. United States*, 250 U.S. 616, 630 (1919).

[8] *DeJonge v. Oregon*, 299 U.S. 353 (1937).

[9] *Dennis v. United States*, 341 U.S. 494 (1951).

[10] *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 5 minutes to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Massachusetts [Mr. KERRY].

Mr. KERRY. Madam President, I thank the distinguished chairman of the Judiciary Committee.

Madam President, I really do not believe that we need an amendment to protect the extraordinary virtues of our flag.

The Stars and Stripes does not need any one individual or any one law or an amendment to protect it because the strength and the power of our flag does not come from any one protector or from any one law or one amendment. It is such a powerful symbol precisely because it embodies all that we are as a nation, all that we have been and all that we want to be.

I ask, Madam President, my colleagues if flag burning is really so threatening and so epidemic that this extraordinary institution should consume its time with this debate and consider changing the Bill of Rights for the first time in history, how many flags have been burned in this country? How many flags have been burned recently? I think it was perhaps four last year. How many flags have ever been burned in America? How many Americans are threatened in their streets and their homes because flags are being burned? How many children have come up to ask a parent why people are burning the flag?

Madam President, it is my belief that the real question before the Senate and before Americans in this debate is whether the U.S. Senate will stand up for what this country is really about. The real question before the Senate is not who will protect the flag but who will protect the Constitution and, by doing so, the Republic?

In answering those questions, I believe, Madam President, we can define the real strengths and weaknesses of this country. I just cannot help but believe that if you vote for an amendment to protect a symbol that really needs no added protection, you actually weaken what that symbol represents. Those who vote for an amendment and assert a proprietary political

partriotism so brazenly, diminish the real definition of patriotism.

Madam President, what is patriotism? It is love of country, not love of flag. It is love of country, a country that is willing to tolerate dissenters, not a flag that does so, but a country under all of its laws, a country that can actually tolerate someone dumb enough to burn a flag, a country that itself can make mistakes and a country that is even willing to admit them sometimes and correct them.

It is not a flag that does any of those things, but a country and a government which representing it has the confidence in its strength and willingness to do so. If this amendment were to pass, it will not be the first time that a legislative body has succumbed to easy politics, but it will be the first time that the U.S. Senate would have taken so powerful a national symbol and in the name of protecting what it stands for actually weakens the extraordinary foundation on which it stands.

Madam President, my most important reservation about this amendment is deeply personal. It has to do with the lessons I learned in the experience of opposing the war in Vietnam and in the efforts of my friends and fellow veterans to try to end that war. It has to do with the lessons learned about many different kinds of protests and the value to this country of never limiting our tolerance of dissent.

During the years of civil rights protest and Vietnam war protests, countless citizens expressed countless feelings through symbols, peace signs, dress codes, the form of demonstration, all contributed to the process of communicating something about ideas. The famous case of Cohen versus California in 1971 illustrates this when Justice Harlan wrote: "One man's vulgarity is another's lyric."

Eighteen years ago, I was one of the leaders of a group of veterans opposed to the war. We came to Washington, more than 5,000 strong, and took part in a week long demonstration that included many forms of protest. No one would have tolerated the burning of a flag and there was no burning of a flag by anyone. But there were dramatic moments involving symbols.

On one occasion, a group of marines carried an American flag upside down, the international sign of distress. They took extraordinary care to never let the flag touch the ground, to fold it formally and correctly. Nevertheless, people saw in their act what they wanted to see, many misinterpreting it. Despite their scars, their medals, their uniforms, their love of country and honorable service, some observers disdained their form of protest and some suggested desecration.

Ironically, after the Supreme Court flag decision, hundreds of veterans in Virginia flew flags upside down in protest of the decision and not a murmur was heard. No talk of desecration—same flag, same tradition, same form of protest but different messages and meanings in the eyes and mind of the beholder, different content in the symbolic message, different passions applied differently to similar forms of protest.

In another ceremony of extraordinary powerful emotion, the veterans assembled returned to their country and Government the symbols of their service as a way of trying to reach the conscience of the Nation.

One by one we stepped forward and dropped through, hurled or placed medals, ribbons or certificates of service or even a beret over a fence erected in front of the Capitol.

I will never forget the sorrow and the anguish as I personally put over that fence my own ribbons and the medals of a friend who was absent. I do not think there was one dry eye among those who took part who gave back those symbols of a war and that, too, was a confrontation with symbols that many could never understand. It called to question the very patriotism of men who loved their country deeply, who had bled for it and who were willing to do so again.

That event and its use of symbols, Madam President, reinforces the caution with which we should approach any restraint on the freedom of expression. It showed me how fragile is our patience, how easily upset our tolerance, how quickly some might judge unacceptable and about which someone else deems patriotic. We cannot afford to pick and choose expression we agree with or disagree with based on a moving standard.

The first amendment has always understood that fact.

Mr. President, my flag didn't send me to Vietnam. My country did. And like thousands of other veterans, when I fought there I fought for my country. I fought with my flag—and with great pride—but not for it specifically. And when a firefight ended I thought not immediately about the flag—but about wounded, about how wonderful it was to be alive—about friends and family who seemed so far away.

And when we talked in quiet moments about the war we talked about families and home, about politics, about communism, about foreign policy, about goals and strategies, about past wars, about the peace movement and protests back home, about R&R—about the future. I do not believe I ever heard a fellow soldier talk about the flag. We did not need to. We respected it—even revered it. It was with us everywhere. We needed no constitutional amendment to affirm its status.

The words of the National Anthem tell us all we need to know:

> The rocket's red glare, the bombs bursting in air, gave proof through the night that our flag was still there.

Those words reinforce the clarity and the simplicity of this choice. Through bombs and rockets, fires and pestilence, war and peace, our flag is still there—without hungry politicians grabbing for proprietary political advantage, without amendments to protect it, without challenge to the Bill of Rights.

Our flag does not need us to protect it. It will protect itself, as it has for all these years, because of the Republic for which it stands. If we protect the Republic, the flag will take care of itself.

Protecting the flag is indeed an honorable and appropriate goal. Many of us voted for a law to do so, with the hopes that it would pass constitutional muster. But the question now is, does the effort to protect the flag take precedence over the Bill of Rights and the Constitution?

I voted for a statute not because a statute is essential to protect the flag, but because the flag is a symbol vital and important enough to deserve a ratification of law that has existed in 48 States of the Union and because I believed, and still do, that one could do so without doing violence to the Constitution.

I did so believing of the fact that a majority of the current court has made it clear that if a statute were passed seeking to protect the physical integrity of the flag in all circumstances, such a statute could withstand constitutional scrutiny.

I did so recognizing that there are laws against attacking national monuments. No one is allowed to scrawl anything on the Lincoln Memorial, whether the message is intended as a political message or not. The same is true of a gravesite. The same is true of our currency. Regardless of whether someone writes "I love President Bush," on the Lincoln Memorial, or "I hate President Bush," on the Lincoln Memorial, or "John loves Mary," they can go to jail for defacing public property. I believe a flag is no different.

I did so recognizing that in the Johnson case it was the message for which Johnson was punished. To pass constitutional muster there can be no linkage of the act the statute seeks to prohibit and the message the burner seeks to express. I believe the statute we passed avoided that linkage.

I thought that the balancing test which the Court applies—the test of strict scrutiny—would permit the State to take this action. The Court now says we cannot, and I understand why. The Court has attached to the action of burning the flag rights under the first amendment. And so the question is now, do we want to change the

Constitution of the United States in order to extend that protection?

The Constitution has been amended only 16 times in the 198 years since the Bill of Rights was ratified. No amendment has ever limited the Bill of Rights itself.

That fact alone makes one question why we are here debating this now. It was, after all, only 6 days after the Court's decision that the President proposed a constitutional amendment—dead in the heat of emotion swirling around the Supreme Court's decision.

I still wonder how much careful deliberation went on in that period? How many constitutional scholars suggested this was important and worthy?

But you do not need to look far to understand what has really brought us to this moment—to this remarkable consumption of the Senate's time while debt piles up, drugs threaten communities, children's needs are unmet and the country yearns for action.

Because of the vote in the House of Representatives this vote in the Senate has become as symbolic as the issue itself. But then everyone knows what is really happening here. The New York Times of July 24 told us when it reported:

> Republicans are poised to use a vote for or against a constitutional amendment as a critical weapon in the rough politics of values.

Or as John Buckley of the Republican Congressional Campaign Committee said:

> It's going to be a very long campaign season for those who get on the wrong side of this.

Or, as Lee Atwater said:

> We don't intend to make this a partisan issue. The only people who will make it a partisan issue are Democrats if they choose not to support an amendment.

A few days ago, the minority leader referred to the 30-second ads.

Mr. President, it is really tragic—for process and country alike when flag and Constitution are abused for partisan politics. That is its own form of desecration. And so suggested Justice Stevens in his dissent.

Symbols have always been an important part of the governing process of a nation. And we in the United States are no exception. Symbols are important to candidate, to party, and to Nation.

But no one ever suggested that symbols and the debates about them should become a substitute for the real process of governing. In the final analysis, this debate is really one more in a long steam of symbolic substitutes.

Too much of the vital debate of this country has been consumed by one symbol or another being thrust into the national consciousness, tapping into hopes, fears, and prejudices.

But no symbol more underscores government by symbol than the current debate taking place in the U.S. Senate to amend the Constitution of the United States to protect our flag.

It is hard to believe that with all the other problems pressing for attention that the U.S. Senate should be forced to devote such energy to this curious choice of priorities.

It is one thing to pass a statute which regulates conduct and, by most interpretations, does not do violence to the first amendment in order to protect our cherished flag. It is another to change the Constitution itself so as to take away the ability of the court to decide that a particular form of expression involving the flag might indeed deserve first amendment protection.

As Duke Law Professor Walter Dellinger testified before the Senate Judiciary Committee:

> This potentially dangerous amendment would create an entirely unlimited exception to either one, some, none or all of the Bill of Rights; it would place this power in the hands of all future Congresses, fifty State legislatures, the government of the District of Columbia, and perhaps as many as 14,000 local governments; it would set a dangerous precedent for resorting to the amendment process for the curtailment of the rights of the unpopular in general, and for unpopular speech in particular; and it would deprive the First Amendment of much of its moral legitimacy by suggesting that speech that is deeply offensive to most of us will be suppressible, while speech deeply offensive to others must continue to be tolerated.

If we passed this amendment, we would undermine not only the powerful, clear understanding we now have that in the United States, no one can be prosecuted for expressing an opinion, but we would undermine also what Professor Dellinger calls the moral legitimacy of the first amendment.

Sadly, we would be giving to a flag burner recognition he does not deserve—the "ultimate trophy," the 27th amendment to the Constitution of the United States.

If we adopt this amendment, Gregory Lee Johnson will have succeeded beyond his wildest imagination. He will have succeeded in taunting us into drafting a permanent blemish onto our most fundamental constitutional principles. He will have succeeded in making us just look a little silly, and a little less free, and a little less brave.

Mr. President, I cannot help but feel that an amendment to the Constitution for this purpose is not the act of a nation strong and vibrant, confident in the natural affection that flows from citizens to the symbols of nationhood.

A nation as strong and vibrant as we are doesn't need to change the Bill of Rights to protect a symbol. That symbol should be protected by the very love and devotion which without compulsion elevates symbols in the first place.

I believe we have more to fear from passing an amendment prohibiting the burning of a flag than we do from the act of a miscreant burning the flag itself. For the passage of such an amendment is an act of fear. We are not a nation which shows signs of losing our confidence—we have not lost our ability to look a demagog in the eye without blinking—surely we are still a nation whose scorn and public opprobrium for a flag burner should be protection enough

James Madison warned us of the dangers of exactly what this amendment attempts to do.

On June 8, 1789, Madison rose to propose the amendments to the Constitution which became the Bill of Rights.

In doing so he warned:

> And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revisal of the Constitution, we must feel for the Constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure of the Government—for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened we should be very likely to stop at that point which would be safe to the Government itself.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KERRY. I ask for 1 additional minute. Does the chairman have time?

Mr. BIDEN. I really do not. I apologize. There are other Senators wanting to speak.

I yield 5 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the chairman.

Madam President, let me speak briefly. I would like to just state what this debate is not about because, although I have not heard too much of it on the floor today, I certainly hear it in the public press, but this debate is not about patriotism.

On the Democratic side of the aisle, the distinguished junior Senator from Nebraska [Mr. KERREY], who holds the Nation's highest decoration, that I have always held in awe, the Congressional Medal of Honor, opposes the amendment. The Senator from Hawaii, my good friend, Senator INOUYE, who holds the Distinguished Service Cross and lost a limb fighting under this country's flag in Italy, opposes the amendment.

On this side of the aisle, the distinguished Republican leader, decorated in Italy—severely, gravely wounded in Italy—and Senator MCCAIN, one of the great American heroes, held captive by the Vietnamese, but refused to have his will broken for 7 years, favor the

amendment. Madam President, this is not about patriotism, and let anyone who challenges the patriotism of anyone on either side be ashamed of themselves.

Madam President, it is not about demagoguery. With all respect, there are Members who support this amendment who believe it deeply and they are not demagogs.

Madam President, I oppose the constitutional amendment. It proposes, for the first time in our Nation's history, to restrict the rights granted to American citizens under the Bill of Rights to the U.S. Constitution.

As the Members know, on June 11, 1990, the Supreme Court in a 5-to-4 decision struck down the Federal statute that criminalized the conduct of anyone who "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground or tramples upon" a U.S. flag. This action was a sequel to last year's decision, where the Court by the same vote struck down a Texas law on the subject.

Before addressing the merits of the issue, I would like to take a look at the individuals who are provoking this effort to restrict the Bill of Rights, the first 10 amendments to the Constitution, which were adopted 200 years ago.

In the most recent case, U.S. versus Eichman, three individuals were prosecuted by the Government: Vietnam war protestor David Gerald Blalock, "revolutionary artist" Scott W. Tyler also known as "Dead Scott," and feminist Shawn D. Eichman. Let us look at their backgrounds.

They are members of a New York-based group called the Emergency Committee to Stop the Flag Amendment and Laws.

The Washington Post described the three in this way: "Wearing leather jackets and tie-dyed clothes, they brought a wide range of causes to the courtroom. Tyler displayed slogans on racism and AIDS and an epithet in support of abortion rights, while Eichman, who wore flags as a necktie and handkerchief, pumped for Mao Tse Tung and Shining Path guerillas of Peru."

Dread Scott's artistic works include "What is the Proper Way to Display a U.S. Flag," which invites viewers to walk across an American flag. That is very creative.

Nancy Kent, their spokesman, said many people in the emergency committee are "extremely patriotic, but they still hate the flag." As for her own views, she said, "I personally hate America."

Gregory Johnson, the defendent whose case led the Supreme Court to overturn the Texas flag-burning law in 1989, is the same sort of person. He:

Belongs to the Communist youth brigade, which at this time in history is like belonging to the Flat Earth Society;

Has stated: "Liberty and justice for all is a lie. I am not an American. I am a proletarian internationalist, a Maoist";

Believes the United States is a "racist and oppressive society"; and

Believes that veterans offended by his acts are "Rambo-maniacs, John Wayne-type patriots, and war criminals."

These people do not endanger the fabric of our society or our form of government. They are nuts. They are irrelevent.

As Charles Fried, the Solicitor General of the United States under President Reagan, the official responsible for defending the Government's position before the Supreme Court, said:

> The flag symbolizes our nation, its history, its values. But those are values, that is a history which poor, pathetic, strange and marginal people like Shawn Eichman and Gregory Johnson cannot harm and cannot detract from by their childish antics. Only you, the elected leaders and representatives of our people, can add to or take away from the Constitution, can add to or take away from our history. The antics of a few shabby flag-burners are of no significance, unless you give them significance. What they do does not matter; it will be forgotten. What you do, will endure as part of our history, as part of the living text of our national charter forever.

Since these people are provoking this effort to amend the first amendment of the Constitution, we should remember what that historic measure provides. It states:

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

Although only 45 words, probably no other provision of the Consitution has given rise to so many different views with respect to its underlying philosophical foundations, and hence proper interpretive framework.

I believe the appropriate standards were articulated by the noted Supreme Court Justice Hugo Black, who in 1941 wrote:

> I view the guaranties of the First Amendment as the foundation upon which our governmental structure rests. * * * Freedom to speak and write about public questions is as important to the life of our government as the heart is to the human body. In fact, this privilege is the heart of our government. If that heart be weakened, the result is debilitation; if it be stilled, the result is death.

Madam President, how does this relate to the constitutional amendment now pending before the Senate? At the outset, I will note that I disagree with the Court's decision to overturn Federal flag-burning law. I do not believe that flag burning is expressive communication protected by the first amendment. The flag is a symbol of this country; it is not an ordinary piece of cloth.

Having said that, it must be noted that deciding when methods of communication constitute protected speech and when they are unprotected conduct can be extremely difficult, often involving very close calls.

Very little expression is mere speech. If it is oral, it may be noisy enough to be disturbing, and if it is written, it may be litter. In both cases, it is conduct which may be prohibited by government in specific circumstances.

Shouting fire in a crowded theater is prohibited conduct and, under certain circumstances, speech which is intended and likely to incite violence can be restricted.

At the other end of the spectrum, the Supreme Court has frequently held that first amendment rights "are not confined to verbal expression," and has for over 50 years regularly erred on the side of protecting acts intended to communicate political thoughts, no matter how offensive.

The Court has used the following line of reasoning in these decisions:

Conduct may have a communicative content, and may be intended to express a point of view.

When conduct or action has a communicative content to it, the first amendment is implicated in any regulation or prohibition of that conduct or action. But, this does not mean that such conduct or action is necessarily any more immune from governmental process than other forms of "speech," such as picketing and leafleting.

In 1968, the United States versus. O'Brien, while upholding a congressional prohibition on burning draftcards, the Supreme Court enunciated the generally applicable rule that it uses in evaluating first amendment cases to this day:

> A government regulation is sufficiently justified if it is within the constitutional power of Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedom is no greater than is essential to the furtherance of that government interest.

In fact, laws, governing communicative conduct were struck down by the Supreme Court as early as 1931, 59 years ago. In Stromberg versus California, the Court held unconstitutional a State prohibition on displaying the red flag "as a sign, symbol or emblem of opposition to organized government." This California statute had been passed to prevent the flying of the red flag as a gesture in support of communism.

There have been many other cases protecting communicative actions under the first amendment. These include:

A prohibition on schools expelling Jehovah's Witnesses who refused to salute the flag. This decision, Board of Education versus Barnette, is notable because it was issued in 1943 at the peak of World War II;

A sit-in by black students to protest a "whites only" library, in 1966;

The right of striking workers to picket in an area generally open to the public, in 1968;

Permitting school students to wear black armbands to protest the Vietnam war, in 1969; and

With respect to my own State of New Hampshire, a probibition on prosecuting individuals who defaced the message "Live Free or Die" on their license plates, in 1977.

Parenthetically, I would note that there has been no noticeable increase in people attacking New Hampshire's proud motto since the Supreme Court held that such action was constitutionally protected.

Contrary to much of the rhetoric of recent weeks, Supreme Court actions on behalf of people who chose to defile the flag in order to vent their hostility toward our society are also not new. In 1969, in Street versus New York, the Court overturned the conviction of a person who had been found guilty of violating a New York statute that made it a misdemeanor "publicly [to] mutilate deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States]." The defendant had burned the flag to protest the murder of civil rights leader James Meredith.

A number of Senators, during this debate, have quoted the words of Chief Justice Warren who dissented in that case. But, the words of Justice Harlan who wrote in the opinion of the Court are compelling:

> We have no doubt that the constitutionally guaranteed "freedom to be intellectually * * * diverse or even contrary." and the "right to differ as to things that touch the heart of the existing order," encompass the freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous.

There have been other similar decisions by the Court since then.

In Spence versus Washington, the Court reversed the conviction of a defendant who had affixed a peace symbol to the flag flying from his apartment window. The Court held that the State did not have an interest in protecting a privately owned flag from its owner.

In Smith versus Goguen, the Court struck down a Massachusetts flag-misuse statute, finding it void for vagueness.

These cases foreshadow the result reached by the Court in the flag-burning cases in 1989 and this year. The fact is that, since the late 1960's, the Court has recognized the value of symbolic speech and has guaranteed it protection under the first amendment. The Court has also established that speech cannot be prohibited in order to protect the public's sensibilities.

As I noted earlier, I believe the Court was wrong in the two recent flag-burning cases. But they were judgment calls in line with precedents extending back for nearly 60 years. Deciding when an act is sufficiently communicative and insufficiently damaging to the public interest to be deserving of constitutional protection can be a very close call.

And, whether the Court was right or wrong, I do not believe that these two cases require, for the first time in our history, a constitutional amendment which limits the scope of the freedom granted under the first amendment.

The flag is the symbol of our Nation, its history and its values. We love the flag because it symbolizes our Constitution, our form of government, our way of life, and our freedoms. The Bill of Rights, however, is the foundation of our freedoms, and we should not protect the symbol at the expense of the foundation.

The best way I can make this point is to quote a portion of an article in the Washington Post by a former American POW in North Vietnam, James Warner. Mr. Warner was a prisoner of war from 1967 to 1973. He wrote:

> I remember one interrogation where I was shown a photograph of some Americans protesting the war by burning a flag. "There," the officer said. "People in your own country protest against your cause. That proves you are wrong."
>
> "No," I said. "That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us." The officer was on his feet in an instant, his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

Madam President, as I said, this debate is not about patriotism. Members of Congress and American citizens on both sides of this debate have fought and made sacrifices for their country, love the flag, and support our society, our Government, and our way of life.

The people who burned the flag last year—they hate America by their own words and deeds. We can invite them to leave our country, we can and should oppose their acts, but we should not amend our Constitution for them.

Madam President, I commend to my colleagues the 13th, 14th, and 15th amendments. They expand the Bill of Rights. This will be the first time in the Nation's history, if this were to be successful and passed by the House on a later vote, that we would limit the Bill of Rights.

I would like to conclude these brief remarks with a quote by a great American President, Woodrow Wilson, who probably summed it up as well as anyone:

> I have always been among those who believe the greatest freedom of speech is the greatest safety, because if a man is a fool, the best thing to do is to encourage him to advertise that fact by speaking.

Of, if I could parenthetically add, expressing himself by doing a ludicrous thing like burning the flag. He went on to say:

> It cannot be so easily discovered if you allow him to remain silent and look wise. But if you let him speak, the secret is out and the world knows he is a fool.

Madam President, those who burn the American flag are fools. Let us not dignify them by changing the Bill of Rights.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. How much time is remaining?

The PRESIDING OFFICER. The Senator has 8 minutes and 6 seconds for his side of the argument.

Mr. BIDEN. I yield 1 minute to my colleague from California.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I will vote against both the Biden constitutional amendment and the Dole constitutional amendment.

Although I recognize that the remarkably able chairman of the Judiciary Committee, Senator BIDEN, in honoring his commitment of a year ago to bring forward a carefully crafted constitutional amendment, if the statute he wisely offered then was deemed unconstitutional, has worked very hard to develop language which is much more narrowly drawn than the Dole amendment, I do not believe that any amendment to the Constitution under the Bill of Rights is necessary or appropriate in regard to the flag.

I voted for the Biden statute last year based upon the judgment of numerous constitutional scholars that a content neutral statute would pass constitutional muster. The Supreme Court concluded otherwise. The Court, quite properly, has concluded that any effort to curb political dissent expressed through flag burning violates the principles underlying the first amendment.

Madam President, I deplore flag burning, but I care more deeply about preserving the Bill of Rights and freedom of speech. In 200 years, our Nation has flourished under the protection of the Bill of Rights. We should not take any step, however well-intentioned, which would diminish those rights. We should not, at a time when the rest of the world looks

to our Constitution and Bill of Rights as the model for democracy and liberty, be weakening that great charter of freedom.

Mr. BIDEN. Madam President, I yield the remainder of my time to the distinguished Senator from Virginia, Senator ROBB.

The PRESIDING OFFICER. The Senator has 6½ minutes.

Mr. BIDEN. I yield all 6½ minutes.

The PRESIDING OFFICER. The Chair recognizes the junior Senator from Virginia.

Mr. ROBB. I thank the Chair.

Madam President, what I am about to say is not easy for me. It is not easy to admit that you have changed a strongly held position.

On the day that the Supreme Court first ruled that Texas could not punish flag burners, I shared the visceral outrage of most Americans. Like most veterans, I wanted to show my respect for our flag and my contempt for those who would defile it.

When presented with a proposed amendment to protect the flag that same afternoon, I signed on as a cosponsor. I did not give any speeches on it or hold any press conferences or participate in any rallies, but I did vote for both the statute and the amendment last fall.

My initial instinct was to do the same again today—knowing that changing my position on this issue would not be politically popular in my own State or fully understood by many of my fellow veterans. But this is one instance where debate in the greatest deliberative body in the free world actually helped change at least one Senator's mind.

On further reflection in the months since those votes and during the debate that has followed the Supreme Court's recent decision in United States versus Eichman, I have concluded that the meaning of our flag can better be protected by not tinkering with the first amendment.

As the Court observed in the Eichman case:

> If there is a bedrock principle underlying the first amendment, it is that government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.
>
> Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered and worth revering.

As public officials, we can appreciate the irony of extolling the virtues of the first amendment, when it is that very amendment that protects those who may seek to defame us.

Even Thomas Jefferson saw the amendment quite differently at the end of his Presidency.

Given my earlier thinking on this issue, the simpler thing to do would be to ignore my conscience and vote for the amendment.

It would be made even easier by the fact that, since the House of Representatives has already rejected the amendment, the Senate vote is "purely for the record," purely for political purposes, when so many critical challenges facing this country could otherwise be addressed and the political vote would be consistent with my emotional reaction to this issue.

Having been a member of the Armed Forces, Active and Reserve, for a third of a century, I have never knowingly failed to stand and render appropriate honors to our flag during my adult lifetime. And I am unapologetic about having chills run up and down my spine when our "national anthem" is played. I have also handed our folded flag to too many widows of servicemen and police officers killed in the line of duty. But despite all these experiences I am no longer persuaded that a constitutional amendment will best protect our flag.

I am persuaded instead that a preservation of the Bill of Rights is the best example that we can provide to the fledgling democracies around the world as they face dissent and try to rise above the lessons handed down by their autocratic forebearers.

My heart requires that I defend the flag. My mind tells me that our flag will be better protected and the freedoms and values it represents will be better honored by resisting this amendment.

I believe that in doing so I am faithfully upholding my solemn oath to support and defend the Constitution of the United States.

Madam President, I yield any time I have remaining.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. How much time remains?

The PRESIDING OFFICER. One minute and forty-four seconds.

Mr. BIDEN. Madam President, I understand the Senator from South Carolina has 1½ minutes. I would be glad to yield my time to the Senator from Wyoming.

Mr. THURMOND. I yield my time to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. WALLOP. Madam President, the following reasoned thesis was developed as a letter to the editor by Mr. Joseph E. Schmitz of Washington, DC. His arguments merit the serious attention of the Senate.

I ask unanimous consent that the entire text be printed in the RECORD.

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

The key to success for Congressional House opponents of the flag amendment was their characterization of the issue as "the flag vs. the Bill of Rights." (See Wall Street Journal, June 22, 1990, at A10). Members of Congress claim to oppose the flag amendment because it would somehow "destabilize" the Bill of Rights. House Democrats argued passionately that the flag amendment would be the first substantive change in the Bill of Rights since its ratification 200 years ago.

The fact is that the Bill of Rights has been substantively amended on numerous occasions by expansive Supreme Court interpretations. The current Bill of Rights demagoguery is blatantly wrong to anyone who simply takes the time to read the Bill of Rights, the text of which has never changed. The shame is that honest, patriotic Americans are fooled by the clever lies of those who simply care more about a deranged individual's license to burn Old Glory than they do about protecting the flag.

The whole flag debate came to a head last year when the Supreme Court struck down a Texas flag protection statute as violating the First Amendment. But the applicable portion of the First Amendment reads: "*Congress* shall make no law * * * abridging the *freedom of speech*" (emphasis added). How did "Congress" come to include "Texas" and how did "abridging the freedom of speech" come to include "prohibiting flag desecration"? By judicial fiat, of course. "We the people" certainly never Amended the Bill of Rights to prohibit States from punishing flag desecraters, as evidence by the fact that most States and Congress had anti-flag burning statutes in place last year when the Supreme Court voted 5-4 to overturn the Texas law.

At the heart of the flag burning controversy is the federal judiciary's usurpation of a power "reserved to the States respectively, or to the people" by the Tenth Amendment. The liberal pundits conveniently ignore the ultimate provision of the Bill of Rights: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The proposed flag amendment simply states: "The congress and the States shall have power to prohibit the physical desecration of the flag of the United States." Had this amendment been drafted by James Madison, it may well have read: "Among the powers reserved to the States respectively, or to the people, is the power to prohibit the physical desecration of the flag of the United States." Far from destabilizing the Bill of Rights, this new proposed amendment merely reaffirms the ultimate provision of the Bill of Rights in one specific context.

The American system of government is based upon the consent of the governed. The Declaration of Independence proclaims that "Governments . . . deriv[e] their just powers from the consent of the governed," the opening words of the Constitution are "We the people," and Article V of the Constitution requires the ratification of three-fourths of the states for amendments to the Constitution.

If the respective States and the people of the United States wish to exercise their constitutional power under the Tenth Amendment to prohibit flag burning, and to amend the constitution pursuant to Article V so as to prevent the federal judiciary from further usurping that constitutional power, the proposed flag amendment is by far the most stability-enhancing measure for the Bill of Rights. A one vote difference on the Surpeme Court is hardly the type of bedrock

upon which to base an allegedly fundamental rights of free expression for an entire nation.

The Bill of Rights is about core values. The debate over the flag amendment is about core values. Ultimate ratification of the flag amendment should depend not upon a misguided or disingenuous argument that the Bill of Rights has never before been amended, but rather upon how deeply-rooted respect for the flag still is in our society.

Perhaps those opposed to the flag amendment are right. Perhaps Americans place more value today in permiting a few social misfits to defile publicly our national symbol than they place in protecting the banner that countless American servicemen have valiantly fought for and sacrificed their lives to protect.

If the liberals are correct about their fundamental right to desecrate the flag, then the currently proposed flag amendment would surely fail to be ratified by three-fourths of the states. It appears, however, that the liberals in Congress are deathly afraid to propose the flag amendment to the States. Why else the clever smoke screen about protecting the supposedly never-changing Bill of Rights?

If the Congressional champions of the flag desecraters lobby are wrong, heaven help them at the polls.

The PRESIDING OFFICER. The Chair advises the Senator that his time has expired.

Mr. WALLOP. The Senator is well aware and managed to finish just in time for the unanimous-consent agreement. Thank you. I yield the floor.

Mr. DODD. Mr. President, Edmund Burke, the 18th century statesman, orator, and writer, once said that "the people never give up their liberty but under some delusion." Last week, when the House overwhelmingly voted against the constitutional amendment to ban flag desecration, it was a clear-headed people who spoke up for preserving liberty and freedom—without delusion. They understood that if the Bill of Rights means anything, if freedom of speech means anything, it means also the freedom to criticize the Government by challenging the authority of its symbols.

We stand here in the Senate today charged with the same mandate that our colleagues faced in the other body, perhaps even a greater one—for we know that the people have already spoken.

We must ask ourselves whether or not, in the name of political expedicency, we are willing to tinker with the Bill of Rights for the first time in 200 years.

Benjamin Franklin almost 200 years ago said, "They that can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.

We must ask ourselves today whether or not there is room for giving up a little liberty to achieve potentially a little safety for our flag by amending the first amendment to that Bill of Rights, knowing that it has ben preseved unfettered through a bloody Civil War, the Great Depression, two world wars, even the trauma of Vietnam.

Are we willing, Mr. President, to abdicate even a part of the freedom that preserves our democracy—through all the conflicts that have challenged, and will continue to challenge it? Are we willing to tarnish our Bill of Rights simply because a 30 second television spot might challenge us to show the kind of individual leadership that can, with clear words of conviction, dismiss such shallow arguments out of hand?

Mr. President, in my view, the anwser to that question is very clear. We must overwhelmingly join our House colleagues in voting against this attack on our fundamental freedoms.

The question before us today has nothing, absolutely nothing, to do with condoning the behavior of those few who choose to desecrate our greatest national symbol. Their actions should repulse us, and they do. We must look beyond, however, the trifling distractions of petty noisemakers. We must have faith that what they do does not change—or even challenge—the strength of our principles that make our flag wave with such simple and inviolable dignity. We should exalt in the power of our position—knowing that it has sustained our Nation throughout all its glorious history.

John Stuart Mill, in his famous work, "On Liberty," wrote:

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

If we choose, Mr. President, to silence the flag burner, we lend credence to his actions by fearing them. If we choose to silence the flag burner, we desecrate our great Constitution for having lost faith in its magnificent power.

The first amendment, more than possibly any other amendment, is what distinguishes this society and the reason that we are held up as a model for emerging democracies around the world. Certainly, we appreciate the right of trial by jury, to prohibit illegal search and seizures, to prohibit cruel and unusual punishment. Other societies have such prohibitions in their own laws but very few throughout history have guaranteed the right of free speech.

Mr. President, earlier this month I was in Czechoslovakia where after 44 years of Soviet Marxist domination the people of that land have thrown off the shackles of their oppression. For the first time since the Second World War, they are experiencing freedom—freedom from a brutally imposed ideology—free, Mr. President, to speak without danger or without fear of retribution.

The people of Czechoslovakia, the students in Tiananmen Square, the peasants in Nicaragua, the wall-busters of Eastern Europe, were emboldened by the power and example of our Constitution, of the Bill of Rights that stands as a beacon of freedom and hope to men and women throughout this world.

Let us be emboldened here today, knowing that it is our Constitution that has fueled their freedom. Let us choose to preserve the simple document that is such testament to the absolute power of absolute freedom and liberty.

Mr. President, I urge the rejection of both these amendments to our Bill of Rights.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has expired. Under the previous order, the Senator from Delaware is recognized to offer his amendment.

AMENDMENT NO. 2068

(Purpose: Proposing an amendment to the Constitution authorizing Congress to protect the physical integrity of the Flag of the United States)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for himself, and Mr. LEVIN, proposes an amendment numbered 2068.

Mr. BIDEN. 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:

Strike all after resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. The Congress shall have power to enact the following law:

" 'It shall be unlawful to burn, mutilate, or trample upon any flag of the United States.

" 'This law does not prohibit any conduct consisting of the disposal of the flag when it has become worn or soiled.'.

"SEC. 2. As used in this article, the term 'flag of the United States' means any flag of the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

"SEC. 3. The Congress shall have the power to prescribe appropriate penalties for the violation of a statute adopted pursuant to section 1.".'

Mr. BIDEN. Madam President, I want to make it clear that the amendment is sent to the desk on behalf of myself and the distinguished Senator from Michigan [Mr. LEVIN]. Madam President, I understand I control 20 minutes of the time for debate on this amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senator from Delaware controls 20 minutes of the time, and the Senator from South Carolina controls the remaining time.

Mr. BIDEN. Madam President, I yield 10 minutes to the distinguished Senator from Michigan [Mr. LEVIN], the cosponsor of the amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Mr. LEVIN. Madam President, I thank the Chair. I thank my friend from Delaware.

Madam President, I believe we can and should protect both the flag and the first amendment; the flag because it is a unique symbol of our Nation, and the first amendment because it is a unique testament to freedom.

My preference was to have done that by Federal statute. I believe that such a statute would have struck the best balance between the clear desire of most Americans to protect the American flag from burning or other forms of mutilation, and the clear need to protect the cherished liberties for which it stands.

I had hoped that the Supreme Court would uphold the statute that I and 60 other Senators voted for in this Chamber a few months ago. I voted for that statute because it would have given us national statute protecting the symbol of our national unity. It provided for that protection, and yet had no impact on the first amendment because the motive, intent, and purpose of the flag burning was irrelevant. The action of the burning was prohibited regardless of intent or effect.

However, as we all know, that statute was recently declared unconstitutional by a five to four decision of the Supreme Court. So today the Senate is faced with a choice: Do we continue to pursue the protection of the American flag or, do we say that the Supreme Court's most recent decision striking down a statute passed by a majority in Congress should be the end of our efforts?

I said before the passage of the statute last year, and I still believe, that if the Supreme Court struck down that statute, then we should take the next step of basically authorizing that same statute by a carefully worded constitutional amendment.

That is why I am a cosponsor of the Biden substitute to Senate Joint Resolution 332, which offers the Senate the opportunity to vote on a carefully constructed, narrowly drawn constitutional amendment to protect the American flag.

The Biden substitute does that. I am afraid that Senate Joint Resolution 332 does not. But I am not ready to give up on efforts to protect the American flag. Neither am I ready to say that the only way to cross through a forest is to fell every tree in that forest, when cutting a narrow path would just as effectively provide passage.

I believe we should pass a narrowly drawn constitutional amendment, the Biden substitute, one that protects the flag, while also carrying out our responsibilities to protect the liberties that it represents. I believe, as do many people I have spoken with in Michigan and here, that Senate Joint Resolution 332 is not a narrowly drawn constitutional amendment to protect the flag. Instead of moving us carefully along a path to protecting the flag, Senate Joint Resolution 332 will weaken important safeguards of the Bill of Rights.

First, let us look at the face of Senate Joint Resolution 332. In its preamble the resolution states, "Whereas, physical desecration may include, but is not limited to such acts as," and then it goes on to describe a number of acts.

Madam President, on its face, this resolution does not say "what you see is what you get," but rather in effect, it says "what you see is an inkling, a taste, of what you might get." On its face, Senate Joint Resolution 332 is an invitation to the Federal Government and to the States to go broadly beyond the resolution's own words.

In addition, Senate Joint Resolution 332 states that, "Physical desecration" includes "displaying the flag in a contemptuous manner." Madam President, I agree that there are some actions which most people would conclude are examples of "displaying the flag in a contemptuous manner," but there are certainly other instances of displaying the flag which are obviously open to wide interpretation as to whether the manner is contemptuous or not.

Second, the testimony offered by the Justice Department last year before the Senate Judiciary Committee included numerous references to the broad flexibility that the Federal Government and States would have in enacting legislation pursuant to an amendment such as Senate Joint Resolution 332.

On August 1, 1989, William Barr, Assistant U.S. Attorney General in the Office of Legal Counsel, stated the following on page 13 of his testimony regarding the Dole-Dixon amendment which was identical with Senate Joint Resolution 332:

> The amendment would define the framework within which the legislative authority of the Congress and the States could be exercised. Within this framework, however, the Congress and the States would have wide latitude to prohibit that conduct toward the flag that they believe deserves proscription.

On page 14, the Assistant Attorney General said:

> While we believe the amendment would certainly permit the legislatures to define "flag" in this (narrow) manner, legislatures would be free to adopt a broader definition, as Congress itself has done.

On page 17, Mr. Barr stated, "There are an infinite number of forms of desecration. I will not attempt even a representative listing here."

On page 20 of his testimony, the Assistant Attorney General concluded by saying, "By way of summary, the Dole-Dixon amendment confers substantial discretion on Congress and the States to determine precisely the degrading acts toward our flag that are to be prohibited."

Madam President, "wide latitude," "broader definition," "infinite number," "substantial discretion," are not words normally used to describe a narrow constitutional amendment. But those are the very words that the administration used last year in describing a constitutional amendment, which is identical to Senate Joint Resolution 332, which is before us today.

What is particularly ironic is that on June 21 of this year, in his testimony before the Judiciary Committee, Mr. J. Michael Lutting, Acting Assistant Attorney General of the Office of Legal Counsel, stated that "the amendment is appropriately narrow in scope." He also stated that "Congress and the States would have to determine which types of physical desecration to forbid. The range of their choice is fairly narrow, because physical desecration entails actual contact with the flag."

Madam President, in less than 1 year, the administration spokesmen have shifted in their description of what can be prohibited under this amendment from "infinite number" to "fairly narrow." The first amendment has endured for 200 years, and now we are asked to consider an amendment, Senate Joint Resolution 332, which has traveled at warp speed, in less than 1 year, from being described by the administration in terms of being "infinite" to being described by the same administration as "fairly narrow."

I find it hard to understand how an amendment capable of such elastic interpretations by the same administration over such a short period of time can be referred to as "carefully drawn."

One final point, Madam President, with respect to the testimony offered on behalf of Senate Joint Resolution 332 by the administration, which highlights its potential for broad interpretation and application. As Mr. Barr

correctly pointed out in his testimony, the amendment "will permit the (State) legislatures to focus on the kind of conduct" that they find offensive.

By permitting, and even encouraging, this focus by 50 State legislatures, Senate Joint Resolution 332 would place in the Constitution the principle that some flag desecration is prohibited, and some flag desecration is not; it would all depend upon the State. Under Senate Joint Resolution 332, each State would be free to determine what is prohibited—all 50 of them, and hundreds more when local ordinances are tallied—and what would be enshrined in the Constitution.

It is because of these problems with Senate Joint Resolution 332 that I cosponsor Senator BIDEN's carefully drawn constitutional amendment. It offers us the opportunity to prohibit the burning, mutilating, or trampling upon of the American flag, without undermining the first amendment.

The Biden amendment represents the careful approach that this issue deserves; it protects both the flag and the first amendment and avoids the potential for confusion, which would arise out of a multiplicity of State and local laws on the subject.

I thank the chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I rise in opposition to the amendment offered by the distinguished chairman of the Judiciary Committee.

In the aftermath of the Eichman decision, I know my distinguished friend has been making a good-faith effort to draft a constitutional amendment to alter the Supreme Court ruling.

However, Madam President, we have language before us now to amend the Constitution, which has been under consideration for some time. The President has studied this proposal, Senate Joint Resolution 332. The Department of Justice has studied our proposal. They both favor this proposal. Constitutional scholars have studied our proposal. There have been extensive hearings in the House and Senate on the President's proposed language. There has been widespread debate on the Senate and House floors concerning the President's proposal. Members of this body know where they stand.

Madam President, the Chairman is now offering language to amend the Constitution, which we just received a short time ago for the first time. I believe it is only logical that the U.S. Senate not support an amendment to the Constitution, which has just been revealed and with debate allotted to 40 minutes per side equally divided. That would hardly give Senators time to make an educated vote on adding an amendment to the United States Constitution.

Madam President, I do observe, however, that the amendment of the able chairman of the committee denies the States the opportunity to legislate in this area, which I think is bad. I think the Federal Government and the States ought to be allowed to legislate in this area.

I yield 3 minutes to the able Senator from Texas.

The PRESIDING OFFICER. The junior Senator from Texas. [Mr. GRAMM].

Mr. GRAMM. Madam President, for 200 years the States believed they had the authority to prohibit flag burning, and most of them did. We in the Congress believed that we had that authority, and on occasion that authority was used. Yet, for 200 years, despite the fact that flag burning was then banned in the overwhelming number of jurisdictions in the Nation, we still had debate.

We had debate on numerous subjects. We had protests and demonstrations on behalf of or in opposition to, many causes. Yet where is the evidence to suggest that the inability to legally burn the American flag, the symbol of the freedom that we all enjoy, somehow prevented people for 200 years from expressing their opinion?

Madam President, do you think there is any evidence to suggest that that is the case? If I believed for one moment that legitimate views and opinions could be expressed only by destroying the symbol of our right to express our opinion I would be opposed to amending the Constitution. But, Madam President, I see no evidence whatsoever to suggest that, given the great capacity of the human mind to find ways to call attention to one's opinion, with all the infinite variety of opportunities available, that it is essential that we give people the right to burn the symbol of freedom in order for them to be able to express their opinion.

If someone wants to call attention to himself he has a right to do it. He can jump up and down. He can condemn officials and institutions. He can set his britches on fire to call attention to his views and as long as he does not set anybody else's britches on fire. Then I say that is freedom of speech.

I do not see any evidence whatsoever to substantiate the claim that for 200 years people's freedom has been limited by their inability to legally burn the American flag.

We voted on a law that was aimed at protecting the flag and the vote was 91 and 9 and 3 of the 9 voted against it because they thought the law was unconstitutional, not because they did not want to protect the flag; that is 94 people thought the flag ought to be protected. The Court said the flag cannot be protected without amending the Constitution. This is no unconstitutional act. This act that we contemplate today is the very essence of the Constitution and that is our ability as prescribed in the Constitution to amend the Constitution.

Madam President, would I rather protect the flag by law? Yes. Would I rather not have a 27th amendment to the Constitution to allow Congress and the States to protect the national symbol if there were any other way of doing it? Yes. I would rather not do it this way. But there is no other option. The courts have made it clear if we want to protect the flag this is the way we have to do it. So the burden of proof is on those who say this limits free speech.

Madam President, I am unconvinced and, as a result, I support the constitutional amendment as proposed in the underlying Joint Resolution 332 and I hope it will be adopted. I appreciate the Chair's kindness to me.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina has 14 minutes and 15 seconds. The Senator from Delaware has 9 minutes and 46 seconds.

The Senator from South Carolina.

Mr. THURMOND. I yield 8 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The distinguished Senator from Utah is recognized for 8 minutes.

Mr. HATCH. Thank you, Madam President.

I am oppossed to this so-called content neutral amendment.

Senate Joint Resolution 332, the Bush amendment, has been available for a year, and has been subjected to intense and searching inquiry. We have had five hearings on the Bush amendment. It has been reviewed, on the hearing record, by numerous scholars and others. It was fully debated on the Senator floor for several days last October. The Judiciary Committee had a hearing on this issue just last week, on June 21. The alternative amendment, now before us, was not presented at that hearing for review.

The pending amendment to Senate Joint Resolution 332 has been subjected to no scrutiny. It has not been reviewed at a single hearing. It has been available only for a matter of hours.

This amendment to the Constitution is better titled the stealth amendment.

I take it that the basis for the pending amendment is a desire to avoid what its sponsor claims would be a transgression of first amendment values. What about the values underlying section 5, which provides for a difficult process to amend the Consti-

tution? Surely, the framers contemplated greater deliberation than this.

We have heard a great deal of talk about the grave significance of amending the Constitution and the care with which we must undertake such a step. I agree.

On June 11, the day the ill-fated Flag Protection Act of 1989 went down in flames, the Republican leader, Senator DOLE, called for a vote on Senate Joint Resolution 332 on Flag Day, June 14. As I mentioned, this amendment had been available for nearly a year. Four committee hearings and a full-scale Senate floor debate had already taken place on the amendment. Yet, one of our colleagues called this the "fast food school of constitutional amendments." Talk about a fast food approach to amending the constitution! The pending amendment isn't even half-baked.

At the Judiciary Committee hearing last week, the distinguished chairman of the committee, Senator BIDEN, who has been a real workhorse on this issue, commented to the effect that there is no more solemn task for a Member of Congress than the consideration of amendments to the Constitution. I submit Madam President, that the brevity of our consideration of this brand new language to amend the Constitution clearly contradicts the solemnity of which the Senator from Delaware spoke.

As an example of how haste is undesirable, take a good look at the amendment. It essentially writes a statute into the Constitution and says Congress has the power to enact it. Any time there is another offensive act toward the flag not covered in the amendment, we will have to amend the Constitution. That turns the Constitution into a statutory code-like document.

For example, the amendment does not allow Congress to prohibit the drawing of a swastika on the flag. Defacement is not prohibited by this amendment. And if we fix that omission, we may come up with another omission next week.

Madam President, I cannot help but remark on the irony of this amendment. Its sponsor has claimed that Senate Joint Resolution 332 will not override Texas versus Johnson because it does not specify if it overrides the first amendment. Neither does this consitutional amendment. The amendment is no more specific than Senate Joint Resolution 332 about whether it overrides the rest of the Constitution, such as the fourth amendment on search and seizure. Yet, the President's amendment was subject to this misplaced criticism.

So there is something positive about this amendment, although not in its substance or the process by which it was brought before us. The positive thing is that it implicitly, even if inadvertently, concedes that much of the criticism directed toward the President's amendment is misplaced.

I urge the rejection of this amendment because it really does not say anything. It basically just says Congress has power to enact a law that it shall be unlawful to burn, mutilate, or trample on any flag of the United States. There are all kinds of other ways we can denigrate the flag of the United States and all kinds of other ways that we can desecrate the flag and if we want to outlaw those we have to enact another constitutional amendment to do so. That is what is wrong with this amendment.

I urge our colleagues to vote it down. It has not had the consideration that the President's amendment has and frankly the President's amendment is the way to go and I hope all of our colleagues will support it.

Madam President, I reserve the remainder of the time and yield back the time.

The PRESIDING OFFICER. Who yields time?

The Senator from Delaware.

Mr. BIDEN. Madam President, let me begin by saying no one has illusion about what my amendment is going to be. I said at the outset it parallels the statute. It will take the statute and put the statute in the form of a constitutional amendment.

Two of the witnesses before the committee when we held hearings last week were explicitly there at my request to speak to my notion of taking the statute and putting it in amendment form. It is true they have not had the precise language because I have quite frankly been trying to get enough votes to have the precise language to see that this amendment had an opportunity of passing.

Madam President, let me say to my distinguished friend from Utah about whether or not the Biden-Levin amendment would overrule any other amendment. The Dole amendment, as you read in the back, says the Congress and the States shall have the power to prohibit. That overrides arguably all the amendments of the Constitution. The Biden-Levin amendment is explicit. For that reason I did not put it in that form. It says the Constitution prohibits the following. It gives no discretion to the Congress or to the States to determine how to protect the flag. It states precisely how the flag will be protected. Therefore, it does not have the same fatal flaw as the President's amendment.

Madam President, yesterday I took the floor to address two issues. First, is protecting the American flag an object worthy of amending the Constitution? As the Senator from Texas said I would rather do it another way. But it is worthy of a constitutional amendment.

Madam President, the fact of the matter is that we have always stated in law and it has always been clear under our traditions that the Federal Government has a compelling interest in protecting and promoting the flag. That is not a debatable notion or motion.

The second issue before us, if it is worthy of amendment, what is the appropriate content of the amendment?

As to the first question, I explained at length yesterday why I believed the American flag is worth protecting even if the Constitution must be amended to meet that end. To me, the flag symbolized the bond that unites one of the most heterogeneous nations in the history of mankind, one of the most heterogeneous people in the world, because that is what we are, a heterogeneous community made up of many nationalities, many races, religions, and backgrounds, and we need unifying symbols.

This Nation does not have a common ethnicity or culture that other nations happen to share that binds them together. We are a nation of different races and religions, and we need symbols. They are important. As Justice Holmes said, paraphrasing him, symbols are important.

The flag serves that crucial role.

Indeed, as Justice John Paul Stevens wrote in support of the constitutionality of the Flag Protection Act, "The Federal Government has a legitimate interest in protecting the symbolic value of the American flag."

The weight of that interest defies measurement. That is because—as he went on to write—the flag serves at all times "as a reminder of the paramount importance of pursuing the ideals that characterize our society." It is difficult to define.

To say that the flag is worth protecting, however, does not end our analysis. We must then ask how should that flag be protected.

I made clear, I hope, yesterday in a 2-hour presentation why I believe the President's proposed amendment is not the answer. That amendment would do fundamental violence to the first amendment. It would go to the core principle of the first amendment.

The President's amendment forces us to choose between doing violence to the Bill of Rights and permitting violence to the flag. And in that choice, Madam President, it is clear that the Bill of Rights warrants greater protection.

But that choice need not be made. Together with Senator LEVIN, I proposed a substitute for the President's proposed amendment. Our proposed amendment would protect the flag and not do violence to the core principles of the first amendment.

Let me make clear what I mean by that.

I acknowledge that a restriction on flag burning is a restriction on expressive conduct. But that was equally true last year when 91 Senators voted to do just that. Had the Supreme Court upheld my statute, we would all have had the exact same impact on the conduct of every American as we would by passing this statute. So if we were going to limit speech, the core principle would have been limited, if that is the argument, by the statute as well as by the amendment. And 91 of us thought the statute made sense.

We all must recognize that, whether we do it by statute or amendment, a prohibition on flag destruction is a restriction on free expression.

Now, the simple principle of the first amendment that must be viewed here and looked at closely, the core principle of that amendment, which I pursued with the statute and pursue now in this amendment, is that Government cannot regulate expression based upon the viewpoint of the speaker.

That is the same principle upon which the amendment today is based. The amendment that I propose authorizes Congress alone, and not the States, to enact flag protection. Moreover, this law has been revised to avoid any use of content-laden terms criticized by the Court.

That means that it will not, as the President's amendment would, allow some to violate the physical integrity of the flag while denying others the right to do so.

We can limit the way in which people are able to express certain ideas, as long as we limit everybody. We could not allow, for example, the Senator from Illinois to stand on the top of the Capitol and make a speech in favor of America and deny someone else the right to stand on top of the Capitol and make a speech against America. But we can deny anyone from standing on top of the Capitol and making any speech.

We can deny the time and place and manner, whether or not people can speak, not what they can say, but if they can say anything. And the virtue of this amendment of mine and Senator LEVIN's is it does not do violence to that core principle of equality and equal treatment of every viewpoint. Everyone, everyone, no matter what the circumstance, would be prohibited from burning, mutilating, or trampling on that flag. And there is a basic reason for that. It is a unifying symbol of a diverse people.

With all due respect to all my colleagues in here who have served their country bravely and given much, the reason we are protecting the flag is not because of their efforts. The reason we are protecting the flag is because it is of symbolic unifying value in a country that is increasingly diverse and needs unifying symbols. For how else do you define what an American is unless you define it in terms of the way in which we govern ourselves and the symbols which we agree unify us? That is why I am proposing this amendment.

There are reasons to be against my amendment, but not for first amendment reasons. You can argue that it is beyond and outside the tradition of how we amended the Constitution, and that is true. In the past, we have only amended the Constitution to deal with procedural differences between the Federal and State governments, the franchise, who can vote, how can they vote, and how old do they have to be to vote, and expanding civil liberties.

That is all true. And this does not fit into that mold and may warrant people voting no. There are other reasons to vote against this, arguably.

In basing this amendment on the cardinal first amendment principle of viewpoint neutrality we have relied on the testimony of two learned and very well-respected constitutional law scholars—Henry Monaghan of Columbia Law School and Cass Sunstein of the University of Chicago Law School.

Concededly, both men argued against an amendment to the Constitution. They did so based on a cautious predisposition against constitutional amendments generally.

I respect these arguments and I appreciate the wisdom in which they are steeped.

But I believe that the compelling governmental interest in protecting the flag outweighs those arguments as long as we can protect the flag without doing fundamental violence to the core principles of the first amendment.

The amendment we have proposed meets that test. With viewpoint neutrality as our signpost said professor Monaghan, the first amendments cardinal value—equality—would be preserved.

And as Professor Sunstein put it:

> I do not believe that . . . an amendment on this subject would, by itself threaten constitutional liberty in the United States in a serious way. Our tradition of free speech is sufficiently robust to withstand a narrowly drawn amendment.

One that "maximized neutrality," in Professor Sunstein's words.

Our amendment ensures that the implementing legislation will be viewpoint neutral. It ensures that no other constitutional provisions—beyond free speech—are overridden to protect the flag. It ensures that there will be no patchwork of conflicting local flag protection laws.

Under this amendment there are no risks—we know what we are getting. And what we're getting is legislation that in Professor Monaghan's words:

> Will prevent prosecutions and convictions and prosecutorial discretion to be exercised upon some assessment of whether the prosecutor or the jury likes what was done.

To be sure, the amendment we have proposed has some impact on first amendment values.

But I believe, on balance, that his amendment stands in the proud tradition of U.S. legal scholars—from Justice Harlan to Justice Fortas from Justice Black to Justice Stevens, from Chief Justice Warren to Chief Justice Burger—who have believed that flag protection and free expression are not incompatible.

They joined in believing that the one symbol of our nationhood ought to be protected. They recognized, as Justice Holmes once said, that "we live by symbols."

I share that view.

The amendment that we proposed today would do nothing more than authorize a single law protecting the flag—and does nothing less than respect the core of first amendment values of neutrality and equality.

We can protect both the flag and the Constitution. That is what this amendment does, and I urge my colleagues to support it.

Madam President, I realize my time is drawing to a close. There are reasons to be against this amendment, but not because it violates the core principle of the first amendment of viewpoint neutrality. But the Dole amendment not only has all the reasons to be against it that this may, but it has a fundamental flaw in that it does violate the first amendment core principles.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. I thank the Presiding Officer.

Mr. GRASSLEY. Madam President, I rise to oppose the amendment by the distinguished chairman of our Judiciary Committee, Senator BIDEN.

I strongly believe that the amendment I support—Senate Joint Resolution 332—will only take the law back to the day before the Supreme Court's 1989 decision in Texas versus Johnson. I also believe that Senate Joint Resolution 332 will not do violence to the freedoms guaranteed by the Constitution.

Senate Joint Resolution 332 will simply restore the powers of the States and the Congress that constitutional scholars properly maintain they legitimately had prior to the Supreme Court's June, 1989 Texas versus Johnson.

Although any attempt to pass an amendment to the States to protect the flag is apparently dead for this Congress, I believe it is right that the Senate take a stand on this issue.

I know that the Senator from Delaware has attempted to draft an amendment that he describes as "content neutral."

However, I think it is safe to say that protecting the flag is not content neutral. In fact, it is a matter of priorities and values.

I believe that protecting the flag involves protecting a fundamental value of our Nation. Of course, that fundamental value has on occasion come in conflict with some of the principles of our modern first amendment jurisprudence.

And I think it is safe to say that many of us believe that modern first amendment jurisprudence—including some of the decisions of the Supreme Court—has misinterpreted the original understanding of the first amendment.

First, section 1 of the proposed amendment by the Senator from Delaware would—for the first time—enshrine a criminal statute in our basic document of Government. This is unprecedented and unwise.

For another thing, section 1 restricts the power to protect the flag to the Congress.

Third, I do not believe that it is wise to attempt to place a definition of the flag in the Constitution. Section 2 of the amendment may be overly broad. In addition, if changes should have to be made to this definition, this new article of the Constitution would—itself—have to be amended.

I believe that both Federal and State statutes contain adequate, proper, and constitutional definitions of what is meant by the term "flag of the United States," without violating any freedoms guaranteed by the Constitution.

I think it is entirely proper that the people—through their State legislatures—should also be able to safeguard the American flag. The States are full partners in our Federal Union. They have separate governmental entities that are a part of this Union. There is no reason why the States should not participate in this endeavor.

The 48 States with flag protection statutes have never caused any harm.

I do not think the State statutes are going to change if Senate Joint Resolution 332 is adopted. I think it is wrong to suppose that the legislatures of the 50 States will suddenly become irresponsible and begin to do very strange things. I have more faith than that in the people and the States.

Senate Joint Resolution 332 is simple and straightforward. It grants all the power that needs to be granted to the political bodies that are in the best position to protect the flag.

Senate Joint Resolution 332 has been thoroughly reviewed by our committee during our four hearings last year and the one we held on June 21. It deserves our full support.

I urge my colleagues to reject the Biden amendment.

Mr. THURMOND. Madam President, I yield the rest of my time to the distinguished Republican leader.

The PRESIDING OFFICER. Will the Senator restate to whom he yields time? The Senator from South Carolina has 6½ minutes.

Mr. DOLE. Does the Senator from Illinois need additional time?

Mr. DIXON. I thank my colleague, but I do not.

Mr. THURMOND. I yield my 6½ minutes to the distinguished Republican leader.

The PRESIDING OFFICER. The distinguished Republican leader, the Senator from Kansas, is recognized for 6 minutes and 12 seconds.

Mr. DOLE. Madam President, this will be the next-to-the-last-vote. I understand the vote will occur at about 7 or 8 after 6, then there will be the final vote. It may be we can reduce the time on the last debate. I think the two leaders have that right and we might be able to accommodate some of our colleagues and their families who want to attend the White House barbecue.

I would be willing, now, to reduce it to 10 minutes on a side, if that would be all right with the majority leader?

The PRESIDING OFFICER. The distinguished majority leader.

Mr. MITCHELL. Madam President, I also wish to accommodate as many of our colleagues as possible and would be agreeable to reducing the time for debate on the subsequent pending constitutional amendment to 10 minutes a side, controlled by the distinguished Republican leader and myself.

So, Madam President, I ask unanimous consent that the time previously allocated to the leaders for debate following the vote on the pending constitutional amendment be reduced from 40 minutes equally divided and controlled by the distinguished Republican leader and myself, to 20 minutes, equally divided and controlled by the distinguished Republican leader and myself.

The PRESIDING OFFICER (Mr. KERREY). Is there objection? Without objection, it is so ordered.

The distinguished Republican leader has approximately 5 minutes and 5 seconds for debate.

Mr. DOLE. Mr. President, my distinguished colleague, Senator BIDEN, proposes something called a content-neutral constitutional amendment.

That is an interesting proposition, if you can understand it, since the so-called content-neutral solution has struck out, having flunked three separate times in the Federal courts.

Mr. President, I will not hide my intentions: I do not want a content-neutral amendment. And I do not think most of my colleagues want a content-neutral amendment either.

I want a constitutional amendment that punishes what it is supposed to punish—flag desecration. I want an amendment that protects the cherished values that the flag symbolizes, not an amendment that views the flag neutrally—as if it were some lifeless rock. And I want an amendment that punishes only those people who publicly cast contempt upon the flag, not an amendment—like the Biden amendment—that would lump the innocent with the likes of Gregory Johnson.

So my distinguished colleague can have his content-neutral amendment. This approach may have made sense when we considered the so-called Flag Protection Act of 1989. But it makes no sense at all now that a constitutional amendment is the only way to give Old Glory the protection she so much deserves.

The Biden proposal would also strip the States of the authority to pass laws criminalizing flag desecration, as if my amendment would create a crazy-quilt patchwork of 50 State flag statutes.

The truth is, my amendment would simply validate the 48 State Flag statutes that are already on the books. These State laws have worked well, and fairly, for decades.

And let us face it: Congress has not once—not once—been deluged with constituent mail complaining about the great injustices wreaked upon the American people by the 48 different State flag laws.

Let me also point out the obvious: There are many areas in which Federal and State interests overlap.

We have many different State product liability laws. Many different State insurance laws. Many different State securities laws. The list goes on and on.

Mr. President, in each and every one of the areas that I have just described, Federal and State regulation have happily coexisted. And there is no reason to believe that Federal and State flag desecration laws could not continue to coexist as well as they have been for decades.

So my distinguished colleague Senator BIDEN, may think that stripping the States of authority over the flag desecrators is a big improvement.

I happen to think it is a big mistake. And I happen to believe it is a big insult to the 48 State legislatures that have thought it important enough to pass laws prohibiting the desecration of our national symbol.

Finally, Mr. President, the good Senator from Delaware has criticized—as too vague—the words physically desecrate, which appear in my amendment.

The word "desecrate" appears 10 times in the majority opinion in Texas versus Johnson. Apparently, the Supreme Court did not have a so-called definitional problem, and I do not know why we would have a problem either.

As an alternative my distinguished colleague from Delaware proposes to

insert the words "mutilate" and "trample," as if these words are bright beacons of clarity. Certainly words like "mutilate" and "trample" are neither less vague nor more vague than the word "desecrate."

CONCLUSION

Mr. President, when I introduced my amendment, I was told that the Senate could not take it up immediately. I was told we needed more hearings, more testimony, more debate.

Well here we are, debating the Stealth amendment—an amendment that I have seen for the very first time just hours ago.

This amendment has had no hearings. We have heard no testimony. And we will have just 40 minutes of debate on the Senate floor.

Mr. President, for this reason alone, the amendment should be defeated.

Mr. President, I think I have consumed my time. If I have any time I yield it back.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired.

The yeas and nays have not been requested.

Mr. BIDEN. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is now on agreeing to amendment No. 2068 offered by the Senator from Delaware. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 7, nays 93, as follows:

[Rollcall Vote No. 127 Leg.]

YEAS—7

Biden	Fowler	Nunn
Burdick	Hollings	
Cohen	Levin	

NAYS—93

Adams	Durenberger	Lieberman
Akaka	Exon	Lott
Armstrong	Ford	Lugar
Baucus	Garn	Mack
Bentsen	Glenn	McCain
Bingaman	Gore	McClure
Bond	Gorton	McConnell
Boren	Graham	Metzenbaum
Boschwitz	Gramm	Mikulski
Bradley	Grassley	Mitchell
Breaux	Harkin	Moynihan
Bryan	Hatch	Murkowski
Bumpers	Hatfield	Nickles
Burns	Heflin	Packwood
Byrd	Heinz	Pell
Chafee	Helms	Pressler
Coats	Humphrey	Pryor
Cochran	Inouye	Reid
Conrad	Jeffords	Riegle
Cranston	Johnston	Robb
D'Amato	Kassebaum	Rockefeller
Danforth	Kasten	Roth
Daschle	Kennedy	Rudman
DeConcini	Kerrey	Sanford
Dixon	Kerry	Sarbanes
Dodd	Kohl	Sasser
Dole	Lautenberg	Shelby
Domenici	Leahy	Simon
Simpson	Symms	Warner
Specter	Thurmond	Wilson
Stevens	Wallop	Wirth

So the amendment (No. 2068) was rejected.

Mr. GRASSLEY. Mr. President, at last count, 46 of our Senate colleagues have joined as cosponsors to Senate Joint Resolution 332, a joint resolution sponsored by Senator DOLE which proposes an amendment to the Constitution of the United States authorizing Congress and the States to prohibit the physical desecration of the flag of the United States.

I do not intend to offer a prediction of the vote count.

But Mr. President, I want to provide this body with a vote count based upon how everyone should have voted if the Members cared to be consistent on their position on amending the Constitution, particularly the first amendment of the Constitution. This is how we should vote if we want to avoid presenting a double standard; if we are to maintain any sense of credibility.

Mr. President, opponents to a constitutional amendment to protect the flag argue that we should not amend the Constitution for that purpose.

Yet if Senators today cast their votes based upon whether or not they have sponsored or cosponsored constitutional amendments for everything from A through Z, everything under the Sun, then the vote today on Senate Joint Resolution 332 will be 99 to 1.

Mr. President, some refine their arguments against a constitutional amendment to protect the flag by trying to distinguish between the proposition of amendment the Bill of Rights, specifically the first amendment's speech clause in this case, and that of amending other parts of the Constitution.

I guess what they are arguing is that the rest of the Constitution is not as important, so it's OK to amend it.

But even if we concede this point, there are still 83 members of the U.S. Senate who have either sponsored, cosponsored, or cast votes to facilitate the passage of a constitutional amendment to the first amendment's speech clause.

Simply look back at the debate on Senate Joint Resolution 282 during April 1988. This was a constitutional amendment directly undermining the speech clause of the first amendment. It was offered in the name of reducing expenditures for campaigns, because the Supreme Court had ruled doing so was an unconstitutional infringement upon free speech.

During the debate on April 21 and 22, 1988, it was revealed that Common Cause, the American Civil Liberties Union, and the Washington Post all opposed this resolution because it violated the first amendment.

But that did not stop 50 Senators who cast their votes to facilitate the passage of this first amendment constitutional amendment with rollcall votes 107 and 108.

And now this Congress, Senate Joint Resolution 48 has been introduced with 25 Senators who have added their names as sponsor and cosponsor.

There are only 17 Senators who have not sponsored, cosponsored, or voted to facilitate the passage of a constitutional amendment to limit the speech clause of the first amendment.

They are as follows: Senators BIDEN, BOND, CHAFEE, COHEN, DANFORTH, DURENBERGER, GORE, HATFIELD, HUMPHREY, JEFFORDS, KENNEDY, KOHL, LIEBERMAN, METZENBAUM, PACKWOOD, ROBB, and AKAKA.

Of these 17, 4 have indicated they intend to vote in favor of the constitutional amendment to protect the flag.

So based upon past actions regarding the first amendment, Senate Joint Resolution 332 should pass by an overwhelming margin of 87 to 13.

All I can say is that I would hate to be in the shoes of some of our colleagues who must explain why they support constitutional amendments which would violate the free speech of millions of Americans, all in the name of so-called campaign reform, or as some have said, incumbent protection, but these same people won't support a narrowly drafted constitutional amendment that restricts conduct, not speech, that desecrates the flag of the United States.

It's simply inexcusable.

Mr. COATS. Mr. President, often the American flag's unique power to move and and inspire is only evident when displayed in times of crisis—like that day when it was draped over the caskets of those sailors who died on the battleship *Iowa*, or on the day when it was burned by chanting Iranian fanatics during the hostage crisis.

These unforgettable images provoke a kind of pride and anger that is easier felt than explained. They are emotions that do not need to be syrupy or sentimental, but they are rooted in one solid and extraordinary fact: that the flag somehow embodies the selflessness of thousands of men and women who died to preserve an American experiment in freedom.

But now the Supreme Court has reaffirmed the curious and disturbing new constitutional right. The Court once again determined that it was perfectly legal to burn the American flag as a form of political speech. This kind of desecration provokes in most Americans—including myself—a sense of barely restrained outrage, an outrage that is felt across this Nation.

It is not that Americans are insecure. We do not blindly follow traditions. We never have. But we do care deeply about symbols, particularly

that one symbol of ideas and values for which men and women have sacrificed and died in every generation. To desecrate the flag, I believe, is to desecrate their memory and make light of their sacrifice.

There is a type of patriotism that is held so deeply that it finds expression in concrete things like a patriot's crippled body, or in bits of colored cloth. For men and women who have risked death in service of a flag, it is more than just a symbol. It is a sacrifice you could hold in your hand—or trample underfoot in contempt.

The flag bears our pride in times of celebration. It bears our grief when it is flown at half staff. But it should not be forced to bear the insults of a calloused and deformed conscience.

The Court has now made it clear that protecting the flag will take a constitutional amendment. The support I have seen and heard for such an amendment is undeniable. I read it in my mail. It is clear at rallies. But most of all, I can see it in the determination fixed on the faces of our veterans.

These angry men and women are not political activists by nature, but they have been actively provoked. The Court's decision was rooted in a curious paradox, accusing those who want to protect the flag of debasing the values it embodies.

When veterans opposed to flag burning stripped away the court's veneer of sophistry, they found themselves accused of betraying democratic principle—an accusation belied by their sacrifice. They were, in effect, patronizingly lectured on their deficient respect for the Constitution—an odd lesson, especially for those crippled in the very defense of that Constitution. These wounds will not easily heal, and this issue will not easily die.

Tolerance is an important thing in a free and diverse society. But tolerance can never be rooted in the view that nothing is worth our sacrifice or our outrage because nothing is worth our sacrifice.

Chief Justice Rehnquist cautioned a stinging dissent in the previous flag case by saying:

> 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.

Justice John Paul Stevens added, referring to the ideals of American patriotism:

> If those ideas are worth fighting for—and our history demonstrates that they are—it cannot be true that the flag that uniquely symbolizes their power is not itself worthy of protection from unnecessary desecration.

Protecting the American flag is not required to preserve the Republic. Our Republic is not as fragile as that. But it is, I believe, a requirement of conscience—owed as a trust to those we ask to risk death in service of that symbol. This trust is fragile, and by the constitutional amendment we have a rare opportunity to strengthen it.

Yes, we as a people must be tolerant, but we must never adopt the enervating and cowardly disdain that strips us of patriotic conviction and dulls our ability to be offended by the desecration of vital symbols, symbols that mean so much to so many in this Nation.

In the world it is called tolerance,

Wrote Dorothy Sayers,

but in hell it is called despair * * * The sin that believes in nothing, cares for nothing, enjoys nothing, finds purpose in nothing, lives for nothing, and remains alive because there is nothing for which it will die.

A WISCONSINITE SPEAKS OUT ON FREEDOM AND THE AMERICAN FLAG

Mr. KOHL. Mr. President, soon this body will vote on whether or not to amend the Bill of Rights for the first time in its 200-year history. Like all of my colleagues, I have heard from many of my constituents who want their opinion to be included in the debate about the proposed constitutional amendment to prohibit flag desecration. Whatever their point of view, people have very strong feelings about this subject. One of my constituents, Roger Grace of Milwaukee, requested that I share an essay he wrote on the need to leave the Bill of Rights intact with my colleagues, and I am more than happy to do so.

Mr. President, I ask unanimous consent that Roger Grace's essay on the Bill of Rights and the American flag be printed in the RECORD.

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

> The first thing I want to make clear is that I love the flag of the United States. However, I must oppose the constitutional amendment banning physical desecration of the flag because I have a great love for the rights contained in the Bill of Rights.
>
> The Bill of Rights was created to preserve the rights we won in the Revolutionary War; so that our freedoms would never be taken away from us. However worthy the cause, to dilute the Bill of Rights is to court disaster. For, in the weakening of the Bill of Rights this once, you set a precedent for weakening the Bill of Rights. This precedent could make it easier to further dilute our greatest protection from tyranny.
>
> The flag is a symbol of freedom. The freedom of expression must extend to even the most heinous form of expression, like burning the flag that we revere, or we will spiritually desecrate the flag more severely than any match will ever desecrate the flag. Soldiers fought for the flag's symbolic protection of freedom. If you do not preserve the rights they fought for, you will make a mockery of their deaths.
>
> Because I revere freedom of speech and expression, I will put flag desecrators in the same category in which I put fundamentalists, Nazis, communists, KKK members and people who advocate violence unless all other alternatives had been used and didn't succeed; people who must be tolerated for the sake of freedom, even though I think they utter idiotic phrases that are offensive to any clear-thinking, unbiased person.
>
> I must reiterate that in rushing to pass the flag desecration amendment, you will be doing what none of the enemies of freedom have been able to do: Desecrate the symbolic and spiritual meaning of the flag that we revere.
>
> If the flag could speak I believe it would say, "I don't need protection from those who fear what I stand for. I need protection from well-meaning people who in trying to protect me, wound the very essences of me. I have been torn, but I'm still whole. I have been stepped on, but I'm still standing tall. I have been dragged through the mud, but I'm still a beacon of the freedoms that all men yearn for. I have been burned, but where are the ashes that show their victory, for I'm still flying—a proud, majestic symbol of freedom. I have not been defeated by anything my enemies have done to me, but remain an integrated symbol of the best that mankind can be. Don't wound the value of my symbolism by denying rights in your rush to protect me. My friends, I beg you, do not do what my enemies could not do. Don't defeat my purpose."
>
> I can never desecrate the flag by supporting a constitutional amendment that dilutes the Bill of Rights.
>
> Although I fear it is a lost cause, I must speak against this. For as some one said, "The only cause worth fighting for is a lost cause." I think James Stewart said that as Mr. Smith.

Mr. KENNEDY. Mr. President, today the United States is not the only nation in the world considering a ban on the desecration of its flag. The totalitarian government in China is about to outlaw burning, tarnishing, tearing, treading on, and other acts harming the Chinese flag.

The United States, with its historic tradition of tolerance of dissent, should not emulate the brutal dictatorship in China. Our country, our Constitution, and our flag stand for something more than the enforced obedience that the Chinese Government demands.

True, we cherish our flag for its design, its colors, and its fabric; but we cherish it most because of what it stands for—the ideals of liberty and tolerance and justice that are written in the Constitution and enshrined in the heart of every American.

Those ideals are captured in the Bill of Rights, especially the first amendment, which protects the fundamental freedoms that the flag represents, and for which the American Revolution was fought. For two centuries, the Constitution and the Bill of Rights have served as the enduring charter of our liberties, a unique symbol for freedom-loving peoples throughout the world.

And for two centuries, nothing—not a bitterly divisive civil war, not a shattering depression, none of the other dramatic changes that have transformed America from a cluster of quarreling colonies to the world leader

it is today—has caused this Nation to amend the Bill of Rights.

Yet now, we are being asked to do so—partly because of concern over the antics of a few obnoxious protesters—but largely because of a partisan campaign to misuse the flag and abuse the Constitution for political advantage. Stirred by fears of sound bites and 30-second spots, Members of Congress who should know better are expressing a willingness to sacrifice the Bill of Rights for what they hope will be a benefit in the polls.

But the first amendment is fighting back. It is by no means clear that the cynical calculations of those with little faith will prevail. even at the polls. The more the American people hear about what is really at stake in this debate, the more they reject the idea of tampering with the first amendment.

There can be no doubt that flag burning is a despicable act. It casts contempt on our country, and on the proud symbol under which so many Americans have fought and died in service to its ideals. Flag burning sends a deeply offensive message that the overwhelming majority of Americans categorically reject.

But the greatness of the first amendment is that it protects their speech, too. It protects not only speech we admire, but also speech we abhor. No constitutional guarantee is more central to our democracy than freedom of speech. If the Government can censor its critics, then the ideal of free and open debate—so indispensable to our democracy and to our freedom—becomes an empty promise.

It would be particularly ironic to diminish that freedom now, at the very moment when emerging democracies around the world look to the United States as the world's preeminent example of liberty. What message do we send to the nations of Eastern Europe, if we restrict the first amendment, the very cornerstone of American democracy?

The proposed flag burning amendment will do more violence to our Constitution than any flag burner could ever hope to accomplish. For the first time in 200 years, an amendment would be enacted that creates an exception to the Bill of Rights.

Any amendment to remove the constitutional protection for flag burning—no matter how well-meaning or carefully drawn—would endanger our remaining liberties. Throughout our history, freedom of speech has rested on the idea that the Constitution requires us to tolerate opposing viewpoints—not just those we approve, but those we despite as well. That tolerance is a fundamental part of our democracy. We proudly teach it to our children; it is perhaps the most distinctly American virtue. It is what makes us free; it is what makes us proud to pledge allegiance to the flag.

A constitutional amendment would undermine that broad tolerance. Freedom of speech would then protect only some of us, not all of us. If we make an exception today to the first amendment because of a few isolated acts of flag burning, what will we say tomorrow, when the majority is again offended by some other form of unpopular protest? There is no fair or logical way to draw the line. We must take our stand now, and reject any constitutional amendment that limits the first amendment.

As Pastor Martin Niemoller said a generation ago:

> When Hitler attacked the Jews * * * I was not a Jew; therefore, I was not concerned. And when Hitler attacked the Catholics. I was not a Catholic, and therefore, I was not concerned. And when Hitler attacked the unions and the industrialists, I was not a member of the unions and I was not concerned. Then, Hitler attacked me and the Protestant church—and there was nobody left to be concerned.

Today, we are being asked to attack the flag burners. It is time for the Senate to be concerned—and to say no.

It is true that the Supreme Court has recognized that the first amendment does not protect obscenity, or libel, or fighting words, or shouting "fire" in a crowded theater. But not one of those judicially recognized exceptions concerns political protest, which is at the very core of the freedom of speech protected by the first amendment.

It is wrong to desecrate the Constitution to prevent desecration of the flag. We do not honor the flag—we dishonor it—when we diminish the freedoms for which it stands.

A constitutional amendment would also undermine the separation of powers that has protected our constitutional freedoms throughout our history. The brilliance of the Constitution's framers is clearly demonstrated by their concept of an independent Federal judiciary, sworn to uphold the Constitution against the ides of public outrage.

For more than 200 years, we have trusted the courts to determine when expression is protected by the Constitution, because judges insulated from public pressure can best evaluate the claims of unpopular minorities. But adopting a constitutional amendment will upset this separation of powers. Elected officials will decide when minority views are worthy of protection. If we adopt this precedent, no unpopular minority can safety assume its rights will be preserved.

Next year, in 1991, America will celebrate the bicentennial of the Bill of Rights. It would be the height of hypocrisy for Congress to commemorate that historic anniversary by proposing to amend the first amendment for the first time in our history.

The proposed constitutional amendment will not bring flag burning to an end. Love of country cannot be legislated; it springs from affection for the democratic principles, the free traditions, and the generous and noble character that are at the heart of America's greatness.

Americans are outraged by flag burning not because the Government tells us that we must be, as the Chinese Government tells its people, but because we love the country that our flag represents, and because we are free to do so.

"Punishing desecration of the flag," Justice Brennan wrote for the Supreme Court earlier this months, "dilutes the very freedom that makes this emblem so revered, and worth revering." As former Solicitor General Charles Fried testified, "Shawn Eichman and Gregory Johnson can burn a flag. They cannot burn the flag."

We respect the flag most—and protect it best—when we honor the freedoms for which it stands. I urge my colleagues to reject the proposed constitutional amendments. After two centuries of unparalleled success for our free society, this Congress should not be the Congress that begins to dismantle our constitutional liberties.

I yield the floor.

Ms. MIKULSKI. Mr. President, today is a very important day because the U.S. Senate will be continuing its consideration of a constitutional amendment to amend the Constitution to deal with legislation protecting the flag.

Mr. President, I take amending the Constitution very, very seriously. I am here because of three constitutional amendments. I am a U.S. Senator because of three constitutional amendments. The first reason I am a U.S. Senator is, because of the populist movement, the U.S. Senate passed a constitutional amendment giving the people the direct choice of choosing the U.S. Senate, and taking it out of the hands of the legislature. The other constitutional amendment that helped me was giving women the right to vote, another constitutional amendment that expanded democracy.

Mr. President, I am also here because of the Bill of Rights. I never thought I would be in politics, Mr. President. I grew up in an ethnic, working class neighborhood. My mother and father worked in a little neighborhood grocery store. They worked very hard so that I could go to Catholic schools. You see under our Constitution in this country, parents had freedom of choice. There was no State-determined reigion and no mandated particular form of education. Our Government said you had to go to school, but it did not say where you had to go to school.

Under the first amendment, we could practice our Roman Catholic faith. I could go to the Catholic schools where the nuns taught me how to be a Catholic, and how to be a good citizen. I learned how to do good, and through their education hopefully how to do well.

Mr. President, later on, as I had my masters degree in social work and was fighting the war on poverty, I was invited to a meeting in St. Stanislas Church where the community had gathered, again under the freedom of our Constitution, because their homes were about to be taken for a 16-lane highway.

Mr. President, I organized a protest movement. I exercised free speech and freedom of expression. We challenged the thinking of city hall and all the road planners. But the way we challenged it was, we organized a festival in the very neighborhood where they wanted to put a highway. I exercised my freedom of speech on that first festival when I said the British could not take Fells Point, the termites could not take Fells Point and, believe it or not, the State Roads Commission would not take Fells Point.

Through other citizens, I helped organize a mass-based community organization called SCAR, Southeast Community Against the Road. Well, that mass-based group liked what I was saying so much, they encouraged me to run for political office.

Mr. President, 19 years ago I did. I challenged that establishment. I beat two political machines. I went in a neighborhood where they said no woman could win, where no one who did not have the backing of the machine could win, and certainly no one who had been active in the civil rights movement could win.

Well, now you know the rest of the story, Mr. President. I went to the city council; I came to the United States Congress; and, along with you, 4 years ago, I took my oath in these chambers and became 1 of only 16 women in all of American history ever to become a U.S. Senator. And I am also the first woman of Polish extraction ever to serve in the Congress.

Mr. President, I know the power of the Constitution and I know the power of amending the Constitution. Because the amendments have continually expanded democracy, I am in the U.S. Senate. I did not go to prison. In another country, those who protest Government, challenge existing policy, are often not only sanctioned but imprisoned. Here, dissent, protest, done in a lawful, unviolent way, community organizing was rewarded by the people, because I spoke for them and their frustration.

And, today, I also speak for the people. I am very frustrated about what is going on in our country, Mr. President, because I think that there is a war going on against our culture. I agree with those who express that concern. I believe that, yes, there is a war going on against our own people and our own symbols. I am deeply disturbed about the desecration of the flag. I am very concerned about the other activities that are going on. I talk about not only the desecration of the flag, but what we also see in some of the other activities even funded by our own Government, the desecration of religious symbols. When I listen to music, or turn on TV, I see a culture that denigrates women. We look at soap operas so foul that you would have washed out their mouths with the very soap that they peddle, and I am concerned that our culture is becoming vile, vulgar and violent.

When you go out into the neighborhoods the way I do, and you talk to moms and dads, they will tell you the toughest job in this country today is being a mother and a father; that while they work at home to teach their children the values of our society: Love your neighbor; love your country; be a good kid; honor your father and your mother; respect each other—they feel that no one is looking out for them. The very values they teach in the home are being eclipsed and eroded by the pop culture that we surround ourselves with.

We see the fact of this. Rape in a suburban community in my own State is up 167 percent; 167 percent in a suburban community. Child abuse is on the rise. And we all know about the intensity and increase of hate crimes.

Mr. President, there is a part of me that wants to fire a salvo today to protect our culture, to protect our society, to look out for those moms and dads, to fire that salvo by drawing the line.

Mr. President, the more I considered that, and the more intense my feelings were, I found myself really praying for guidance, and I say that with humility. I wanted to speak out against this vileness and violence that I see. I wanted to organize meetings, town hall meetings to talk about what is going on. I wanted to organize PTA meetings to plan strategies. In essence, Mr. President, because I am so concerned about this war against our culture, I wanted to live the first amendment. I wanted to pray. I wanted to speak out. And I wanted to organize.

So, Mr. President, as I come here today, very thoughtful, I concluded that you do not change the culture by changing the Constitution. That is not the way we should do it. Mr. President, I believe that we change the culture by living the Constitution, by speaking out, by organizing, by asking God to give us the guidance for ideas that are beyond us right now.

Mr. President, I believe we should not desecrate the flag. I voted for legislation to prohibit it. When they ask me to vote today for legislation to prohibit it, I will do that. But, Mr. President, today I will not vote to change the Constitution.

Yes, I believe we need to change the law. And, you know what, Mr. President, I think we need to change the Supreme Court. Their 5-to-4 decisions leave a lot to be desired, both in the law books and in the communities.

But, Mr. President, today I ask, with all the passion and patriotism in me, that for those who speak about constitutional rights, who talk about their freedom of speech, who talk about their freedom of expression—yes, we give you a law to enable you to do that. But we call you also to a new kind of thing, which is community responsibility. If we allow you to march and organize, remember the community and the responsibility and follow a nonviolent strategy.

Let us ask of ourselves what we ask of Nelson Mandela, to organize and speak out in a nonviolent way. When we desecrate symbols we desecrate each other. Mr. President, we ask people who use our airwaves, who have access to the young minds of our country, to also exercise community responsibility. We do not want to inhibit expression, or freedom of expression. But we do want to have a culture that calls people to their highest and best mode of behavior. And I do not think we are doing that, in our society.

Mr. President, not everything goes. We cannot build a society for the 21st century that advocates permissiveness, that advocates no responsibility, that simply says "I want my rights." Well, you know what, we have them. But for every right there is a responsibility. For every opportunity, there is an obligation.

I thank the dear Lord, and the people of Maryland, who sent me here today. I hope when I am in that Fourth of July parade, the veterans will know today I am voting for what they fought for and all the people who work every day to make our country great. When I cast my vote, I hope I cast my vote to continually use the Constitution to expand democracy and not to constrict it.

Mr. President, that is my position. I hope it helps provide guidance to the other Senators. I yield the floor.

Mr. DIXON. Mr. President, there has been a great deal of discussion on the merits and demerits of an amendment to the Constitution prohibiting the desecration of the flag. I support Senate Joint Resolution 332, the constitutional amendment before us.

I choose to support an amendment to the Constitution because I believe the amendment before us would be an effective check on the abuse of our national symbol while not undermining the principles of free speech. Adoption of this amendment is the only effec-

tive way to legally protect the physical integrity of the flag.

Let me say from the outset that I view this vote as an individual decision. This is not, and should not be, a partisan issue.

I believe the arguments for a constitutional amendment are compelling. The Government has an interest in the preservation of the flag, and the Supreme Court has affirmed such an interest.

In a 1969 Supreme Court case, Street versus New York, former Chief Justice Earl Warren said,

> I believe that the States and Federal Government do have the power to protect the flag from acts of desecration and disgrace * * * [I]t is difficult for me to imagine that, had the Court faced this issue, it would have concluded otherwise.

Former Justice Black, concurred with former Chief Justice Warren and added:

> It passes my belief that anything in the Federal constitution bars a State from making the deliberate burning of the American flag an offense.

In that same case, former Justice Abe Fortas wrote that:

> [T]he flag is a special kind of personality * * * A flag may be property, in a sense; but it is property burdened with peculiar obligations and restrictions. Certainly * * * these special conditions are not per se arbitrary or beyond governmental power under our Constitution.

The Supreme Court's 1968 decision in United States versus O'Brien, upheld a law which convicted a man for burning his draft card. The Court found that not all conduct, considered speech by some, is protected. The Court rejected "the view that an apparently limitless variety of conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express his idea."

Some have attempted to make a distinction between acts which tangibly threaten the well-being of an individual, such as the potential harm caused to individuals when someone falsely shouts "fire" in a theater, and those acts which do not threaten the physical well-being of an individual, such as flag-burning. The Court, in United States versus O'Brien, made no such distinction.

As some may recall, in that case the defendant argued that the act of burning his draft card constituted symbolic speech, or "speech plus." The defendant was protesting the Vietnam war, and expressed his opposition in this graphic way. There were thousands of ways to protest the war, and the Court held that burning one's draft card was not one of them.

I acknowledge that during that time, it was mandatory for those who were draft eligible to carry a draft card. However, the issue on which the conviction was upheld was on the question of whether the defendant's actions constituted speech. The act of burning a card could not hide behind the cloak of free speech as a justification for the act.

We are faced with a similar scenario in this matter. What is the Government's interest in protecting speech, and in protecting the flag?

Justice Stevens, writing in the most recent Eichman case, makes a key point. He states:

> It is * * * clear that the prohibition (of flag burning) does not entail any interference with the speaker's freedom to express his or her ideas by other means. It may well be true that other means of expression may be less effective in drawing attention to those ideas, but that is not itself a sufficient reason for immunizing flag burning.

Justice Stevens continues:

> The freedom of expression protected by the first amendment embraces not only the freedom to communicate particular ideas, but also the right to communicate them effectively. That right, however, is not absolute. * * *

The Court has placed narrow, limited restrictions on behavior and speech on past occasions. Senate Joint Resolution 332 is another example of an attempt to set reasonable limitations on acts, joined by words, which are justified as speech. Joining verbal communication with behavior does not always afford sufficient protection of the behavior under a broadly defined category of speech.

We have attempted to redress this issue on a number of occasions. The courts have held that a statutory approach will not work. The only permanent solution to this problem is through the adoption of a constitutional amendment.

Mr. President, the vote on this amendment is not a referendum on one's patriotism, and those who seek to use the vote in this manner are guilty of the worst abuse of the political process. I will vote for this amendment because I believe it is appropriate as a legal remedy to a subject that merits redress. Those who vote against this amendment do not hold the flag in any less regard than I do.

Patriotism cannot be bought and sold, or proven in 30 seconds. It is intangible. It does not rise and fall with the polls; cannot be measured on a chart—or be subject to some sort of litmus test.

True patriotism, it was once written, is of no party.

Nor is it, in the words of Adlai Stevenson:

> A short and frenzied outburst of emotion but the tranquil and steady dedication of a lifetime.

My interest in preserving the flag will continue long after the debate on this amendment has ended. I simply do not believe the actions of a few people to burn and desecrate the flag are constitutionally protected. I have read the arguments in the Court's decisions in Johnson and Eichman, and have found the dissents persuasive.

Mr. President, nobody advocates burning the American flag. The question before us is how best to protect our flag. We agree on the principle of respect for our flag. However, we differ on the means for upholding that principle.

The Senate will express its will shortly. We have held numerous debates on this subject. The Judiciary Committee has held many hearings, and should be congratulated on its commitment to granting ample opportunity for discussion and debate.

The American people have made their views known on the issue. The House has expressed its will. It is now our moment. I urge my colleagues to support Senate Joint Resolution 332.

I thank my colleagues.

Mr. SIMON. Mr. President, I have participated in the debate on the proposed constitutional amendment on the flag on previous occasions on this floor, and I have examined this issue in considerable depth as chairman of the Judiciary Committee's Subcommittee on the Constitution.

I realize this is an issue that stirs strong emotions on both sides, and I have tried to explain as clearly as I can to my constituents why I cannot support this amendment to our Bill of Rights. I recently summarized my views on this issue in remarks in Chicago, and I ask unanimous consent that these comments be printed in the RECORD.

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

SYMBOLS OF LIBERTY AND LIBERTY ITSELF

(Remarks of Senator Paul Simon before the American Library Association, Chicago, June 23, 1990)

My message today is about freedom.

In recent days, the House of Representatives, by a sufficient minority of 177 courageous legislators, rejected a constitutional amendment to criminalize flag-burning.

It was a victory for freedom. But we are far from the end of the war to preserve the Bill of Rights. A push is on in the Senate, with the hope that if the Senate passes the amendment, enough votes can be changed in the House to propose the constitutional amendment to the states. We probably will vote on this in the Senate next week.

This battle can be won only through education, through a reaching out to all citizens to renew their commitment to freedom.

The Stars and Stripes are on display at my home in rural Southern Illinois every day of the year. I am proud of the flag and what it represents. I served overseas in the Army under the flag.

Flag-burning is a disgusting and obscene gesture hurled in the face of our people.

It is an act which should be subject to statutory limitations, just as burning currency is.

But a law to permit such limitations, a law enacted with my support, has been struck down in a 5-4 ruling of the Supreme Court.

The understandable emotional response to that unpopular decision is the move to amend the Bill of Rights for the first time in more than two centuries.

Rushing to amend the Constitution, when there is an unpopular action taken, is not a new phenomenon in our nation's history. When many felt the nation was threatened by polygamy, a serious effort to change the Constitution occurred. A few decades ago when criminal elements appeared on national television, taking the fifth amendment and refusing to testify, polls showed a majority of Americans wanted to get rid of the fifth amendment. When a few weeks ago the Supreme Court handed down a 5-4 decision on a Kansas City, Missouri matter involving the ability of the federal court to impose taxes, within hours a constitutional amendment was proposed and speeches were being made on the Senate floor.

While public opinion polls show substantial support for a constitutional amendment on burning the flag, those—like librarians—who have a sense of history, tradition, and the freedoms upon which this country is based, should call upon us to be more thoughtful.

We need you to join those who are speaking up. Listen to letters I have received from two veterans. John M. Field of Northbrook, Illinois wrote: "I received the bronze star . . . and I believe that I am as patrotic as any of the super-patriotic flag-wavers. Real patriotism means keeping intact the foundation of our freedom." And a Korean veteran, George Hails of Arlington Heights, Illinois, writes: "Senator, my political views are probably farther to the right than Attila the Hun, but those first ten amendments do not need any tampering with."

What has caused this sudden rush to amend the Bill of Rights? Is the nation inundated with flag-burners?

In a nation of 250 million people, four people were arrested last year for flag-burnings. In 1988, three people were arrested and in 1987, two.

If we amend the Constitution, are we likely to have fewer flag-burners? I doubt it. A flag-burner is an attention-seeker whose act of anti-American expression is as pathetic as it is provocative. If we gave these few people less attention, the problem would disappear. I am 61 years old, and I have never seen a flag burned, and I doubt that any member of Congress has. We do not face a great national threat. And we must recognize this simple reality: Patriotism results from what we stand for as a nation. It cannot be imposed upon people by law, and it cannot be created by constitutional amendments.

Right now mainland China is promulgating harsh penalties for flag-burning. Is that likely to make the people of China yearn less for freedom? Will that create some new sense of loyalty to a regime that murdered freedom-seekers at Tiananmen Square? To ask these questions is to answer them. While we are applauding the new-found freedoms in central and eastern Europe, this nation's leadership for freedom should not be tarnished by a change in our Bill of Rights.

And if we amend the Constitution to prohibit flag-burning, what about burning the Constitution? What about burning a Bible, or a cross, or a Star of David? All of these acts offend me, but must we rush into constitutional amendments simply because offensive actions are taken?

If a constitutional ban is ratified, the flag-burner's status will be elevated to that of a martyr. For a penalty he or she will be most willing to pay, he or she will be rewarded by receiving more of what was sought in the first place: Attention.

Is this what we hope to accomplish?

Freedom of expression is the most basic of our freedoms. This seemingly simple emotional appeal for a constitutional ban on flag-burning is frought with peril to that basic freedom.

In opposing this amendment, we need not abandon our sense of outrage. I remain outraged by acts of disrespect to our flag, just as I am by appeals to ethnic or racial hatred and by poverty and injustice and official irresponsibility.

And I am outraged by this attack on the Bill of Rights. We are witnessing an attack on liberty in the guise of patriotism.

My colleagues and I who oppose this amendment have been threatened with political retaliation, threatened with being attacked in "a good 30-second spot" for our defense of the Constitution.

Those at the highest levels of our government who use this issue to divert attention away from our momentous challenges do a disservice to the nation. Directing hatred toward a handful of flag-burners cannot hide the needs of the poor and of the homeless and of the elderly and of the illiterate.

Yes, I have a sense of outrage toward those who burn our flag. But, I am also outraged at those who have enriched themselves in the savings and loan scandal, who have defrauded our citizens of billions of dollars.

I am outraged at a deficit that clouds our future, that both political parties largely ignore. I am outraged by a system of campaign financing that makes our government more responsive to the whims and the wishes of the economically more fortunate than to middle-income and less fortunate Americans. I am outraged that this richest of the world's nations has people sleeping on the streets. I am outraged that quality education remains a distant, unachievable goal for millions of American young people. I am outraged that when the military threat dramatically lessens, there is no commensurate lessening of spending on weapons and nuclear warheads. I am outraged that long-term care is the right of people in all industrial nations except South Africa and the United States. I am outraged that decent health care is still denied millions of Americans.

But instead of dealing with these problems, we are engaged in a fight over symbols that diverts our attention from the real problems and threatens to erode our most basic document, our Constitution.

There are those who would make the position on this issue a litmus test for patriotism. The reality is this is more of a test of the caliber of our leadership.

But it is a problem not simply for those of us who sit in Congress, but for all Americans, including librarians. The question that you will answer with letters to your leaders, or with your indifference, is how important the Bill of Rights is to you.

We must not permit isolated attacks on the symbol of our liberties to become a justification for a general attack on liberty itself.

Mr. ROTH. Mr. President, last October 91 Senators, I among them, analyzed the flag protection statute and found it consistent with their oath to obey the Constitution. The Senate passed the flag protection statute by a vote of 91 to 9. Senators found that there was no inconsistency between protecting the flag by statute and the right of free speech guaranteed by the first amendment to the Constitution. That was last October, after there was ample time to review the Supreme Court's decision Texas versus Johnson, a 5-to-4 decision that found the Texas flag-burning statute to violate the first amendment.

Now that we are nearing the moment of truth on Senate Joint Resolution 332, a substantial number of Representatives and even Senators are urging us to obey our oath and hold the Bill of Rights superior to flag protection. These arguments must have been dreamed up by a political consultant because they have a certain superficial charm without having any basis in reality.

How does voting for a constitutional amendment violates one's oath to obey the Constitution? The suggestion is a little silly. The Constitution contains article V, and article V permits Congress to propose constitutional amendments to the States for ratification. Our tradition resounds with the exhortation of Thomas Jefferson that Americans should change their political system every 200 years. In a system that purports to embrace popular will, it is difficult to see how voting for a constitutional amendment that the people want could violate one's oath, particularly in view of the Senate's judgment that flag protection violates no part of the Constitution. If, last October, flag protection did not violate the first amendment, why does it today?

The Constitution established three branches of Government, each supreme in its own sphere. Each branch owes allegiance to the same Constitution. Thus each Senator, like the President or a Supreme Court Justice, takes an oath to support the Constitution. None of us take an oath to support another branch's interpretation of the Constitution; the Constitution does not require that. Each branch owes respect to another, but not abdication of responsibility in interpreting the Constitution.

This is commonly accepted practice. When the President for example interprets his foreign policy powers, this body has been known to disagree; each branch is interpreting the Constitution even though the issue may fall within the President's jurisdiction. However, Congress seems more reluctant to disagree with the Supreme Court. One of the reasons for this reluctance is that a liberal Congress is fearful that the country is becoming more conservative, so that the Supreme Court—which has, even lately, been relatively more liberal—appears to be their best hope. The relentless drive of liberals to increase the role of the judiciary in American life at the expense of the branches elected by the people is manifest here. And that is why members who last year found no

inconsistency between flag protection and free speech now piously intone that they, when forced to choose between the Bill of Rights and protecting the flag, choose the Bill of Rights.

There is, of course, no need to choose. Ninety-one Senators rendered that judgment last year, notwithstanding a Supreme Court decision—and nothing has changed. Furthermore, one may wonder how sacrosanct were the Bill of Rights before the Supreme Court narrowed the second amendment right to bear arms, before the Supreme Court emasculated States' rights once recognized under the tenth amendment, or before the Supreme Court transformed the fifth amendment's due process clause from conservative to liberal. Last century we amended the Bill of Rights no less than three times to overturn the Dred Scott decision. Today's reverence for the Bill of Rights is no more than liberal thanksgiving for more recent Court victories that they may not have been able to win at the ballot box.

So do not be fooled by what is going on here. Even though 91 Senators, true to their oath to the Bill of Rights, found nothing wrong with flag protection, some of them now fear that a constitutional amendment might undercut the current reverence they have been able to generate for their judicial political agenda. And well they should fear; one-half of the 16 constitutional amendments after the Bill of Rights have been adopted to overturn Supreme Court decisions. Erroneous decisions of the Supreme Court are the single most common reason for amending the Constitution.

The Supreme Court decisions in Texas versus Johnson and United States versus Eichman are erroneous decisions that need correction. To me, it seems ironic that a Supreme Court that has found that the right of free speech does not embrace obscene words, copyrighted words, perjured words, fighting words, or libelous words also has concluded that the conduct of burning the flag is protected from prosecution by the first amendment. All of that speech is not "speech," yet burning the flag is "speech" in the eyes of five of the nine Justices.

For two centuries the law was otherwise. Conduct, even conduct undertaken to communicate a message, could be prohibited where it offended the community. This constitutional amendment, if adopted, would not send us on some unknown course, rather only return us to where we as a nation were for two centuries. Any protestor who would seek to convey a message by spray painting the Lincoln Memorial or assaulting a Member of Congress is, as far as I know, still prosecutable for his conduct regardless of his message. The Supreme Court found that draft-card burners could be prosecuted. But why not flag burners? According to the Supreme Court, a draft card is a part of the Selective Service System and, therefore, has value which the Government may protect. The flag, according to the Court, apparently has no governmental value. In that conclusion, the Court is wrong.

It is true that the flag is a symbol. But that does not mean that it has no value. Every nation has a right to a flag as an incident of sovereignty. The American Government has an intangible property interest in the flag, in every American flag, in many respects as an artist does in copies of his work or a corporation does in its trademark.

We are a great and diverse people—black, white, yellow, brown, and red. Our forefathers came from all parts of the globe. We practice many religions—Catholic, Protestant, Jewish, and others—as well as none. Yet for all our diversity, we are united as one under the flag. The flag does have a value, a value more significant than a draft card. There are values more important than efficiency. If the efficiency of the millitary draft is a value we may recognize, so is the value of nationhood itself. The Court was wrong. We should terminate this embarrassment by proposing a constitutional amendment. The flag is the people flag, and we are the people's representatives. Let us do their will. Let the people decide. That is the way our system was established to work.

Mr. GRASSLEY. Mr. President, I rise again to very strongly support Senate Joint Resolution 332, the constitutional amendment to protect the flag of the United States.

I believe that protecting the flag is a matter of priorities and values.

My oath of office demands that I preserve, protect, and defend the Constitution. I do not take my oath lightly.

I believe that the flag protection amendment will not cause the destruction of the Constitution, the Bill of Rights, or the first amendment.

I believe that Senate Joint Resolution 332 will help to defend the first amendment.

I believe that protecting the flag is consistent with other constitutional priorities and values such as domestic tranquility, decency, civility, and the responsibilities of individual members of the American community in upholding these values.

Let's remember one thing: The freedom to burn the flag is not a fundamental freedom. It did not exist until June 1989, when five Justices of the Supreme Court decided it was.

In fact, some of the most respected civil libertarians that ever served on the Court—such as Chief Justice Earl Warren and Associate Justice Hugo Black—never through that there was any constitutional problem with punishing flag desecrators.

Consequently, we are not considering a core right grounded in the Constitution.

The flag protection amendment does not change the first amendment because there is nothing wrong with the first amendment.

What we are confronted with—as we were 1 year ago—is the present Supreme Court's incorrect interpretation of the fundamental rights grounded in the first amendment.

I believe the flag protection amendment will help in the restoration of the original understanding of the first amendment: The protection of the ability to discuss and criticize the Government and to advocate political change.

It is important to remind my colleagues that our debate over the flag illustrates that our constitutional rights do not exist in a vacuum.

One person's exercise of a constitutional right can often trespass on another's rights.

The first amendment has been interpreted in recent years to not only include political speech, but outrageous acts of arson, commercial speech, nude dancing, and host of other acts and concerns.

Given this state of first amendment jurisprudence, it is no wonder that the lines that once distinguished our fundamental freedoms, have been blurred.

In essence, the debate over the flag is evidence of the battle between two conceptions of how the Constitution ought to be construed.

On one side, the opponents of the flag amendment are all too eager to remind us of the venerable tradition of the "continuing expansion" of individual rights and liberties.

They view any attempt to circumscribe expressive actions—such as burning the flag—as a dangerous precedent to capture the genius of the American political tradition.

However, those of us who favor the flag amendment need to remind our colleagues on the other side of this issue of one point:

The community itself has rights that deserve protection. These include physical safety or the security of property, known as domestic tranquility—and the achievement of emotional well-being, known as the pursuit of happiness.

Most importantly, let's remember that the first amendment has never been construed to provide absolute license for all expressive acts. Reasonable time, place, and manner restrictions have been upheld as constitutionally permissible because the community values of our Republic I have described above are worthy of protection as well.

One wonders whether such a view remains after Texas versus Johnson and United States versus Eichman.

Let's ask: Just what is the logical extension of the Court's rationale in these decisions?

Should publicly urinating or defecating on the flag to show contempt for the flag and the country it represents be protected by the first amendment as a fundamental right?

Or would such acts be liable to public health and safety regulations?

I maintain that flag burning can and should be proscribed.

It is common sense that while it is a badge of honor to have died, picking up a fallen flag from the ground—as it was during the Civil War—it is also a constitutional right to allow someone to spit on, rip, or burn the same flag?

The debate over the flag seems to come down to this: The Constitution contains a competition between protected rights and responsibilities.

How is this conflict to be resolved, especially if the text of the first amendment and recent Supreme Court decisions give little guidance?

I think the amendment before us places that decision where it should be: In the hands of the people and their State legislative representatives.

The adoption of the flag protection amendment will not result in our starting down a slippery slope toward more constitutional amendments that will erode our fundamental freedoms.

Nor will adoption of the flag protection amendment place the stability of our Government in jeopardy by establishing government-by-plebiscite.

Successful passage of the flag protection amendment will not result in a flood of changes in the Constitution. There has not been any flood of amendments since the last amendment—the 26th—was adopted in 1971.

And let's not forget just how hard it is to get an amendment enacted by State legislatures. Just ask the proponents of the equal rights amendment, who were given two chances to convince 38 States to adopt it.

Mr. President, there are those who say that late-20th century America cannot be trusted to act with the restraint of the Framers of the Constitution. They contend that supporters of Senate Joint Resolution 332 are "wrapping-themselves-in-the-flag."

Some even claim that we are engaged in form of idolatry called "flag worship." I do not worship the flag. I respect and honor it. I worship God.

In fact, some of the opposition to the flag protection amendment is based in its own brand of idolatry:

> The notion that the Framers believed that the rights enumerated in the first 10 amendments to the Constitution should never be altered.

I'd like to hear some of these same opponents of Senate Joint Resolution 332 in a discourse on the meaning of the 2d or 10th amendments.

It would appear to this Senator that these opponents—as sincere as they may be—seem to be "wrapping-themselves-in-the-bill-of-rights." It would appear that some opponents may be attempting to exploit their blind loyalty to a national symbol for partisan purposes.

The first 10 amendments to the Constitution are not absolute or inviolate.

The 13th, 14th, and 16th amendments tampered with the bill of rights. They altered the rights of the States and general property and the Republic still stands.

Of course, it is always proclaimed that these amendments expanded individual rights; and that this kind of tampering is consistent with the original understanding of the constitutional framers.

I'm afraid we cannot resolve that debate here today. However, I think we must take a serious look at what appears to be antidemocratic—small "d"—undertones inherent in the opposition to the flag protection amendment.

This sentiment may ultimately pose more danger to the stability of the American Republic.

The Constitution contains an amendment process on purpose. The framers did not add article 5 as some "sop-to-the-masses," in the real hope that it would never be used.

I think it is plain that the Framers believed that the people are the ultimate sovereigns of the country. The people should have a role in determining the future course and structural development of their Nation.

The flag protection amendment is just such an issue.

The Supreme Court's decisions on flag desecration involve a method of expression; not about the expression of an opinion.

To interpret the Constitution to allow such a method of expression not only does damage to the first amendment, but it does damage to the national morale.

If the first amendment comes to be seen simply as a license for anybody to do anything—so long as there is some faint political content—then the first amendment will fall into disrepute. It will become the last refuge of the scoundrel.

Ultimately, we should ask ourselves how does desecrating the flag help to "create a more perfect union;" or how does it help to "insure domestic tranquility?"

If we answer ourselves honestly, the flag protection amendment becomes a step toward a restoration of the Constitution to the people.

Although any attempt to pass an amendment to the States to protect the flag is apparently dead for this Congress, I believe it is right that the Senate take a stand on this issue.

Once again, I urge my colleagues to support its passage.

Mr. DURENBERGER. Mr. President, as I have previously indicated, I will vote today against the pending constitutional amendment. The action by the House of Representatives last week to defeat this amendment has removed some of the drama from this debate, but it has not removed all its significance. Every debate about the Constitution is important, and deserves the attention of the American people.

As I said last week, Mr. President, the argument over this amendment has and will continue to be fraught with emotion and conflict. Like any red-blooded American, I cannot watch the film clips of those who burn our flag without anger welling up inside me. The individuals who sparked this controversy, who have already received mountains of attention more than they deserve, engaged in a cynical and hateful act against America. But in an era of shock journalism and mass merchandized politics, the acts of an infinitesimal minority are magnified hundreds fold and pushed onto the American consciousness. Our challenge here in the Congress is react in the proper way.

This boils down to a choice between fundamentals. Justice Frankfurter wrote in 1940:

> The Flag is the symbol of our national unity, transcending differences, however large, within the framework of the Constitution.

I believe that sets the issue very well. The flag symbolizes our unity. The Constitution is the substance of that unity. I'm afraid the proponents of the amendment are elevating the symbol above substance, in a way that may end up diminishing both.

History will no doubt judge that the first amendment to the Constitution is the single greatest contribution to world civilization that we have made as a people. It enshrines the individual, his words, his beliefs and associations, in a place above Government, beyond control. That is the powerful idea that draws millions from around the world to our shores; that is what, in the past few years, has inspired millions to risk everything to bring down repressive regimes.

Free speech carries with it costs to the society which embraces it. First and foremost, there is the eventuality that some will exercise that right in repulsive, obnoxious ways. Free speech protects "the thought we hate" as Justice Holmes wrote. But free speech also guarantees that there will be an answer, and each patriotic American has a duty to respond. Offensive ideas don't go away when we try to silence them or put them in jail; they go away

when they are either ignored or drowned out by better ideas. That is the essence of our marketplace of ideas in America.

The impact of the proposed amendment on the Constitution itself is not totally clear, even as we prepare to vote on it. We must not forget that courts will still have to interpret and implement any amendment we pass here. I have heard one school of thought argue that passage of the pending would overrule other elements of the Bill of Rights, to permit for instance a warrantless search of a person's home to obtain evidence of flag burning. Another point of view is that the proposed amendment would still be subject to the first amendment, in which case it would have no effect at all. I raise those points just to illustrate that amending the Constitution is no simple matter.

There are three somewhat related international events which shed light on our decision here. The first is a statute recently passed in the Soviet Union, making it illegal to criticize the Soviet presidency. In the People's Republic of China, two men were recently sentenced to long jail terms for splashing black paint across a large picture of Mao. And word even comes to us this week that the Chinese Parliament is passing its own flag protection legislation. Those two societies, which are still unfree, are fighting to protect national symbols against dissent, but we hope and we know that those voices will not be silenced.

Last summer I had the opportunity to travel through a number of nations in the Third World. I was amazed at the positive reaction evoked by the American flag on the hood of the Embassy car we used in several places. That flag is a symbol for what the world is looking for: the right to free expression, the right of people to elect those who govern them and the right to worship freely. It would be ironic if we were to backtrack on the first amendment just as the world is coming to appreciate it.

I return, Mr. President, to the three key questions I believe we need to ask ourselves as we consider this amendment.

We have only amended our Constitution 16 times in the 199 years since the Bill of Rights was added. Never before have we attempted to cut back on the liberties provided in the first amendment. Is this the time to start?

James Madison established the standard that the Constitution deals only with "great and extraordinary" matters. Can we really believe a few malcontents are so powerful, or that the rest of us are so weak, that we face a threat only the Constitution can fix?

Eleven years ago, I swore an oath to protect and defend the Constitution of the United States. To me that means I am to guard its integrity and its cohesion, even in instances where it is politically unpopular to do so. Does this amendment enhance the Constitution and is it worthy to be inscribed in our permanent national charter?

I conclude that the answer to all of these questions is "no."

When the Supreme Court handed down its unpopular school prayer decision in 1962, President Kennedy said this:

> The Supreme Court has made its judgement. A good many people will disagree with it; others will agree. * * * We have in this case an easy remedy, and that is to pray ourselves. And I think it would be a welcome reminder to every American family that we can pray a good deal more at home, we can attend our churches with a good deal more fidelity and we can make the true meaning of prayer more important to our children.
>
> We have the same remedy in this situation: that we show the flag burners what America stands for by honoring the flag far more than we already do in our daily lives, and dedicate ourselves with greater energy to our patriotic duties.

I close with the story of an American POW, James Warner. As part of his interrogation by the Vietnamese, his captors tried to break his spirit by showing him a photograph of antiwar protestors burning the American flag. "There. People in your own country protest against your cause. That proves you are wrong," the officer said. Warner's answer says it all. He replied, "No, that proves I am right. In my country we are not afraid of freedom, even if it means people disagree with us."

Such is our flag that the very freedom it stands for defeats those who seek to destroy it.

Mr. DOMENICI. Mr. President, I rise in support of the constitutional amendment to prohibit desecration of our American flag.

One year ago, the Supreme Court held in the case of Texas versus Johnson that a Texas law that banned the burning of the American flag was unconstitutional. In the Johnson case, the Court held that the Texas law violated the first amendment's guarantee of freedom of speech.

Last fall, because the Federal law that prohibited flag burning was similar to the Texas law that the Supreme Court had struck down, the Congress changed the Federal anti-flag-burning statute to attempt to make it acceptable to the Supreme Court.

Earlier this month, the Supreme Court overturned the new Federal law against flag burning. The Supreme Court once again held that the burning of the American flag is protected by the first amendment guarantee of freedom of speech.

Frankly, Mr. President, I disagree with the Supreme Court's analysis of flag burning. The Supreme Court erred in interpreting the first amendment's guarantee of freedom of speech as permitting the burning of the American flag. There is a difference between speaking one's mind and desecrating the American flag.

The act of desecrating the American flag goes beyond merely expressing a point of view—it is a violent act against the symbol of our Nation. It is not an act of free speech.

Every American is free to denounce our Nation and the ideals for which the flag stands. Frankly, I think those who do that are terribly misguided, but if that is what they want to say, they have the right to say it.

There is a vast difference, however, between speaking one's mind and desecrating the symbol of our Nation.

The flag burners were not arrested for what they said, they were arrested for what they did. They were free to express their views in hundreds of ways other than burning the flag.

In fact, one of the flag burners did just that. He chanted "America, the red, white and blue, we spit on you." He was not arrested for that, nor should he be. The first amendment guarantees his right to say those things.

But I do not think the Supreme Court should have interpreted the first amendment as protecting the burning of the American flag.

Even if this were an issue of free speech, the Supreme Court has recognized many times that there are limits on speech.

One could be arrested for using obscenities in a political speech on television or for broadcasting their political views from a soundtruck in the middle of the night or for making a political point by engaging in indecent public behavior.

Those restrictions limit speech. So, the argument really is not whether there can be limits on types of speech that people engage in—the Supreme Court already has imposed limits.

It is a question of balance: Is the flag something that is important enough to us as a people to give it special protection, and can we do so without undermining people's ability to say and think what they want?

I think the answer to both of those questions is "Yes."

The Supreme Court could easily have come to the same conclusion. The Court's decisions on flag burning were very, very close: 5-4. If just one Justice had interpreted the Constitution another way, the Court would have found that the first amendment does not protect flag burning.

In fact, some of the most liberal members of the Supreme Court in this century, Earl Warren, Hugo Black, and Abe Fortas, all indicated that they did not think a law to ban flag burning would be unconstitutional.

Which is to say that different people who have analyzed this issue have

come to different conclusions. The Supreme Court could have easily interpreted the first amendment to permit laws banning flag burning. Such an interpretation would not have destroyed the first amendment nor would it have substantially weakened it.

Mr. President, the Supreme Court made a mistake in interpreting the first amendment to legalize flag burning. The Congress ought to correct their mistake.

When the Supreme Court makes a mistake in interpreting the Constitution, the way to fix is through a constitutional amendment. That is what the Founding Fathers intended when they set out the amendment process. The Congress and the States have used that process to amend the Constitution 26 times.

The amendment that has been proposed is very simple and straightforward. It would not affect anything other than the act of flag burning. It says:

> The Congress and the States shall have the power to prohibit the physical desecration of the Flag of the United States.

This amendment would not dilute the first amendment. It would not restrict anyone's ability to give a speech against the flag or to write an article against the flag or to hold a protest rally against the flag or to petition Congress about the flag.

It would say that Congress and the States have the ability to declare that this one specific type of action—burning the symbol of our Nation—is not permissible conduct.

To those who say we must be careful that, in reacting to this decision of the Supreme Court, we do not weaken or dilute the first amendment rights of American citizens, I wholeheartedly agree.

We must protect the right of every American to speak his or her mind—no matter how offensive their ideas may be. Freedom of speech is a right that the Constitution grants to every American, and our Constitution has preserved the vitality of our Nation for over 200 years.

If I thought that this amendment would dilute the first amendment or open the door to changing the Bill of Rights, I would oppose it.

But this amendment would not undermine the first amendment. It would simply overturn the Supreme Court's erroneous interpretation of the Constitution in the flag-burning cases.

The American flag and all it represents deserves the protection of our laws. We can protect the flag without undermining the principles of the first amendment. I am supporting the amendment to prohibit flag burning because of the necessity to correct the flawed interpretation of the Supreme Court and to protect the integrity of our Nation and its oldest symbol, the American flag.

Mr. HARKIN. Mr. President, I rise today in opposition to a constitutional amendment prohibiting the physical desecration of the American flag.

In considering this constitutional amendment, we have a solemn responsibility to separate reason from passion. We must preserve and protect not just the Stars and Stripes of the United States of America—but the principles and values for which it stands.

The sight of cowards and kooks burning the flag stirs something in us all.

You can almost feel the revulsion churning inside.

I know I did. Whether it was the demonstrators in Dallas some 6 years ago, or those who have committed the same callous act in the wake of Supreme Court decisions this year and last: My first reaction was a strong desire to punish these people, to find a way to strip them of their citizenship.

I felt that then and I feel that now. That is why last year I supported a law making flag desecration a punishable offense.

I hold no brief, I make no case for anyone so mistaken and misguided as to burn, mutilate, deface, defile, trample or dishonor the American flag. Their actions are despicable and demeaning to us all.

We all have memories that cut deep to the heart, and when we see a flag on fire it feels like something burning inside of us.

I remember what the American flag meant to my mother, an immigrant from Yugoslavia who came here speaking just a few words in English.

We always had a flag proudly displayed in our home because to my mother that flag meant the freedom of her new country.

I have not forgotten my mother's pride, and even now the American flag, standing proudly by my desk, is the first thing I see when I go to work in the morning and the last thing I see when I leave to go home at night.

I remember, too, the friends I lost in Vietnam. I remember escorting the body of a fellow pilot to his home and presenting the American flag to his widow.

It is our country's ultimate tribute to a fallen soldier.

So it is with strong feelings—right here in my stomach, and right here in my heart—of rage and disgust that I view those who would desecrate my flag, defile my memories, and dishonor my heritage.

So I have no trouble with this portion of the resolution before us today: "whereas the Flag of the United States of America is a national symbol of such stature that it must be kept inviolate." I believe in keeping the American flag free from violation, injury, or outrage.

But if protecting the sanctity of the flag means we have to amend the Bill of Rights for the first time in history, then that is something altogether different.

When the President first announced that he would seek a constitutional amendment, I reserved judgment.

I was concerned about the effect such an amendment could have on all of our first amendment freedoms. But I also felt the anger that so many others felt toward those who would burn or defile our flag.

Like so many other Americans, I was torn by these conflicting emotions.

I thought back to my days flying jets in the Navy.

I thought of the friends I had, and the friends I continue to have as a proud member of American Legion Post 562 in my hometown of Cumming, IA.

So I turned to my fellow veterans to see how they would vote. Some were for, some against, an amendment.

But as I listened, the arguments of those veterans who were against the amendment made more sense to me.

And as time has passed since last year's original decision, more and more veterans I have heard from and talked to have told me of their opposition.

I expected my neighbor, who won five Purple Hearts, to be gung-ho for a constitutional amendment. But he told me he was absolutely opposed to an amendment—"I fought for freedom," he said, "I didn't fight for doing away with it."

An Iowa veteran I met at a coffee shop last summer had this common sense perspective: "Look," he said, "this flag burner, this Greg Johnson, he's just one of a handful of kooks. Should we change the Bill of Rights, which has never been changed, for a handful of kooks?"

Most moving to me was the article I read last summer at the Cedar Rapids Gazette by a former prisoner of war, James Warner.

Let me read to you part of his article:

> It hurts me to see other Americans willfully desecrate the flag. But I have been in a communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners.

He went on to say how in the prison camp, he was given a choice—he could renounce his country and leave, or stay and be tortured.

James Warner chose to stay. The North Vietnamese tried to break his spirit but they couldn't.

During one interrogation, his captor showed him a photograph of some Americans protesting the war by burning a flag.

"There," the officer said. "People in your country protest against your cause. That proves you are wrong."

"No," Warner said, "That proves I am right. In my country we are not afraid of freedom, even if it means that people disagree with us."

In that moment, the interrogator was on his feet—his face purple with rage, the article said. There was also pain in the interrogator's eyes, compounded by fear.

The Communist feared freedom; only freedom could be used to defeat him.

Just as Communists in China feared the students in Tiananmen Square last summer who burned the Chinese flag. Their protests were silenced with tanks and guns.

And just as Communists in the Soviet Union and throughout the Eastern bloc feared freedom over the course of the last year.

But we have seen freedom and free expression triumph in those countries.

And in those countries, that expression took on many forms: protests, speeches, underground newspapers, strikes—and yes, even flag burning.

Remember the news reports of Romanians and other Eastern Europeans cutting the Soviet hammer and sickle out of the center of their flags?

Those were some of the most lasting images of the revolutions of 1989.

And when we saw those torn and tattered flags purged of the symbols of Communist domination, did we denounce these protestors for defiling their own state symbols?

No. We praised them for their act of political defiance.

Burning and tearing their flags represented a powerful act of political speech—denouncing the Communist regimes that had oppressed those countries for far too long.

And once the Communist regimes began to fall, what came next?

Calls for Western-style guarantees of rights to freedom of the press, freedom of association, and freedom of speech.

There is a reason citizens of Czechoslovakia walked around with copies of the U.S. Constitution in their pockets.

They knew—what we seem to be forgetting—that the only way those freedoms can be protected is with an inviolable Bill of Rights like our own.

A Bill of Rights that has stood unchanged for 200 years.

Despite Civil War, Depression, two world wars, and powerful internal movements of dissent.

As a veteran, I will never, ever do anything to show disrespect for the flag. But I also don't want to do anything that would desecrate the freedom our flag represents.

In our churches and synagogues, we are taught not to worship the idols of our faith, but rather the ideals of our faith. Likewise, patriotism is not measured by our love for the flag itself, but for everything the flag stands for.

I do not want to see the flag become another Golden Calf—devoid of any meaning; an object to be worshipped for the sake of worshipping.

The flag is only as powerful as the republic for which it stands.

The way to honor the flag is not to destroy the most precious freedoms for which countless Americans have fought and died.

Just this week I read a letter to the editor of the Burlington, IA, Hawkeye written by a WW II veteran who volunteered for duty:

> I served my country under the flag. I pledged allegiance to the American flag. And the Republic for which it stands. Stands is the key. The flag stands for the government. The government guarantees us free speech. My allegiance is to the flag however it is displayed, cloth, paper, paint, or the one that waves continuously in my mind.
>
> That one, in order to burn, they would need to burn me. I like the Bill of Rights just as it is. Exactly what the flag stands for.

So wrote Mr. George Allen Shaw of Mount Pleasant, IA, concluding with these words: "Isn't it better to put up with a few disgusting frustrating acts of free speech than to open a Pandora's box?"

I have to agree with George Shaw's characterization of this amendment as a "Pandora's box" which, once opened could lead to other proposals to punch holes in the Bill of Rights.

Last week the House of Representatives defeated this amendment. This week I hope the Senate does the same. But I believe this debate can have a positive legacy—not a diminishment of our rights as citizens, but an increase in public displays of the flag, an increase in people's knowledge and understanding of the flag's history, an increase in good citizenship and public service.

We are proud of the flag, let us fly the flag.

We are proud of the flag, let us tell our children and grandchildren about what that flag represents, what it means and why so many died for it.

That flag in my mother's house was not used as a tablecloth, it was not used as a scarf, it was not used to keep a can of beer cold. I grew up believing there was a proper way to hold the flag, a right way to display it.

We need to take it a step further and educate people, young and old, as to the meaning behind the symbols—behind the flag and our Bill of Rights.

That's why I have introduced the Flag Education Act to make educational materials available to Americans of all ages. As I explained to my colleagues on the floor last week, the seed of the idea came from former Congressman Fred Schwengel and I hope to see Congress cultivate it until it blooms all across this country.

Mr. President, next week we celebrate 214 years since our Declaration of Independence. Fireworks will recall the "rocket's red glare" and the "bombs bursting" overhead when those who were first to wear our uniform put their lives on the line.

And in all of our 50 States, the American flag will be hailed, waving in the breeze over courthouses and city halls, public buildings and private homes. And pride will be felt and respect shown, not because it is mandated by law, but because it is embedded in our hearts.

The stripes of the flag tell the tale of our forefathers' struggle for independence from the British Union Jack. The stars remind us of our country's growth and unity in the face of Civil War and expansion.

It is the embodiment of all we as a people hold dear—independence, union, freedom, equality, justice, opportunity for all Americans and not just for some. The very principles Nelson Mandela spoke to us about. The very principles we will strengthen in passing the Americans With Disabilities Act.

I urge my colleagues to show their respect for the American flag and for the principles for which it stands by voting against this proposed amendment to the Bill of Rights.

Mr. CONRAD. Mr. President, we face a challenge—what do we do about those who would dishonor our flag? Let me just share with you some of my thoughts:

Some say that the flag is a piece of cloth. I cannot agree. The flag is the symbol of the freedoms we enjoy. Considering this vote, I reflected on the words in the pledge of allegiance:

> I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Thousands of patriots have fought and died to protect the freedoms that flag represents.

There has been much talk about the special reverence Americans hold for the flag. I recall the incident at the Chicago Art Museum last year. The flag was displayed on the floor. Visitors to this exhibit were supposed to step on the flag and sign their names. I vividly recall my reaction—it was one of the deep, profound anger. I could not understand why somebody would not protect the flag.

I also think of the fact that State laws have been protecting the flag for many years—all of my lifetime, in fact. That is, until the Supreme Court decisions said that these laws violate the first amendment to the Constitution.

In its strictest sense, speech means the spoken or written word. Flag burning goes beyond that—it is an action.

Mr. President, I believe that these laws do not infringe on the first amendment. The Supreme Court is simply wrong in its decision. The act of flag burning goes beyond speech. It is uniquely offensive to those who have fought under that flag to protect this country. I am not alone in my feeling on this matter. Respected Supreme Court Justices like Warren, Black, and Fortas have defined the right of the Government to prohibit desecration of the American flag.

Mr. President, there are exceptions to freedom of speech. The Supreme Court has upheld the constitutionality of laws limiting particular kinds of expression. We all know of the prohibition of the yelling of "fire" in a crowded theater—this stems from the prohibition on speech that creates a clear and present danger. Laws against slander, libel, and obscenity are constitutional. Laws against burning draft cards and defacing currency have been upheld by the courts.

Mr. President, I believe the flag of the United States should be protected from desecration. Americans feel intensely that the flag deserves special status in our society. They feel a deep reverence for the flag. They have expressed their view on this matter in the form of State statutes outlawing flag desecration. Given the strength and depth of these feelings, without protection for the flag, we may invite acts of violence. The people must be allowed to act together, through their elected representatives, to protect the flag in a legal manner. Lack of protection for the flag may invite social disruption. The new Louisiana statute is instructive to me: A no-fault assault on those who burn the flag. Mr. President, is that the sort of action we want to engender by not protecting the flag? I don't think so.

As my colleagues know, I am very reluctant to vote to move the constitutional amendment process forward. Last year, I opposed a constitutional amendment on the grounds that protecting the flag through a statute would be a better option. Yet, it appears that we have a Supreme Court which will not allow a flag protection statute to pass constitutional muster. I do not agree with them. I believe their decisions are wrong-headed. But they have been granted the constitutional power to enunciate the law of the land.

Because I believe that the flag should have legal protection, I supported statutes last year and today to protect the American flag. But these attempts have failed. And now we are left with no other choice if we believe that the flag deserves protection. So I will support the amendment, but I will continue to seek a statute that will pass constitutional muster.

We should let the States decide this matter. If we fail to adopt an amendment today, we will deny the States the right to express their views on this matter. By approving the constitutional amendment before us, we will foster a healthy debate in this country about the Bill of Rights, the freedoms we enjoy, our constitutional guarantees, and how we can legally and legitimately protect the flag.

It is for these reasons that I will support a constitutional amendment in this body and let the people decide this important matter.

The PRESIDING OFFICER. There will now be 20 minutes of debate equally divided and controlled by the two leaders for closing statements.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is Senate Joint Resolution 332.

Mr. DOLE. There are 10 minutes on a side. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Mr. President, last Thursday evening the House of Representatives defeated a constitutional amendment to protect the American flag from desecration. As the votes came in; as Members watched closely to see which way it was going; as the opponents of the flag protection amendment finally got enough votes to kill the amendment, there was a great cheer in the House Chamber; Members smiled, shook hands, laughed—probably some high fives, too. They had won a big, big victory.

THE PAIN OF FLAG DESECRATION

Meanwhile, a Wisconsin couple spent the day in agony. They had been the latest victims of the flag burners. There was not any celebration in Fond du Lac that day. George and Beverly Rhoades were in mourning again.

You see, the desecrators had stolen a flag from the Rhoades' front yard, where the family had proudly erected a homemade memorial to their son Louis, an 18-year-old Army medic who was killed in combat in Vietnam 22 years ago.

The desecrators didn't just steal the flag. They burned it. The charred remains were eventually found near some restaurant. It is the third flag the desecrators have stolen since November.

We have heard a lot of rhetoric these past weeks about the flag. About the Bill of Rights. And free speech and the first amendment. Now let us hear from Mrs. Rhoades:

> My son died for that flag and I think I would, too. I am pretty disgusted.
>
> If our old Presidents like Washington and Lincoln were here, I think they would be pretty disgusted by the way our country is being run.

Mr. President, flag burning is not about free speech. It is about malicious conduct; conduct that hurts; the kind of hurt the Rhoades family is trying to cope with right now.

It is the same kind of hurt millions and millions of Americans feel when they see Old Glory mutilated, spat upon, trampled, and torched.

WORDS FROM THE HEARTLAND OF AMERICA

Last week, services were held in Sacramento, CA, for police officer James McKnight, who was gunned down in the line of duty. His 10-year-old son Kevin proudly accepted the folded American flag that once draped his father's casket. Now, Kevin's flag may never be burned or mutilated, but one can only imagine the kind of pain that young man will probably feel for the rest of his life whenever he sees a flag go up in smoke; the same pain George and Beverly Rhoades are feeling right now.

Mrs. Rhoades doesn't know who desecrated her son's memorial, but she is absolutely determined to see this Nation enact a flag protection amendment.

"We'll keep fighting," she said. "There's no patriotism in our country anymore for our young children to look up to."

Meanwhile, in the heartland of America, some folks just can't understand what Congress is up to; they cannot comprehend why Congress is standing in their way; why Congress refuses to let the American people defend their flag.

We have heard from the academics, the lawyers, and the cynics. But let us hear from Mr. and Mrs. Henry Winter of Burdett, KS. In a letter written on Flag Day, the Winters see in Old Glory what the self-proclaimed constitutional experts will never see:

> We are proud Americans, and we flew our flag today. It blew freely in the western Kansas wind. It flew to remind passers-by on this country road what it means to live in this country, going about our work, proud to be living free—thanking all who gave of their lives that we might do so. And then we have this Supreme Court ruling. We just get a little riled up.

Mr. President, America is plenty riled up.

THE FIVE MISCONCEPTIONS

A lot of us are riled up about some of the misinformation our opponents are spreading. As I see it, there are five major misconceptions about the constitutional amendment, and about those of us who support it:

Misconception one: We are amending the Bill of Rights for the first time in history.

False: That is a hoax. The simple truth is, the flag amendment changes nothing in the Bill of Rights. The American people know that the first amendment—an amendment which states the "Congress shall make no

law abridging the freedom of speech"—was never intended to protect the act of flag burning. That is why 48 States have passed flag desecration statutes.

I have reviewed a statement made by the distinguished Senator from Massachusetts, Senator KENNEDY, during last week's Judiciary Committee hearing.

The distinguished Senator said that "flag burning is a despicable act." On this point, Senator KENNEDY is absolutely right. Flag burning is an act—not speech. It is conduct—malicious conduct, not speech.

Listen to Justice Hugo Black, one of the Nation's most zealous defenders of the first amendment, who wrote:

> It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the flag an offense.

Listen to former Chief Justice Earl Warren, no Reagan court appointee, who said that,

> I believe that the States and the Federal Government have the power to protect the flag from acts of desecration and disgrace.

Listen to Justice Abe Fortas, appointed to the Court by President Lyndon Johnson, who said:

> The States and the Federal Government have the power to protect the flag from acts of desecration in public.

So it is not just the American Legion. It is not just the Veterans of Foreign Wars. It is not just the Rhoades family of Wisconsin. It is not just the Paralyzed Veterans of America. It is not just the Winters of Burdett, KS. It is not just the Non-commissioned Officers of America—who believe that flag desecration has nothing to do with the first amendment or freedom of speech.

Next, misconception two: Congress should decide the flag burning issue.

False: The people should decide. That is what the Founding Fathers wanted. And that is why they made the process to change the Constitution so challenging. Unfortunately, the people may never get the chance to amend their Constitution to protect their flag: Congress always knows best.

Well, try selling that one to the men and women of Douglass, KS. Last night their city council—fed up with Congress' flag filibuster—voted unanimously to make flag burning illegal.

Mayor Ron Howard spoke for America when he said:

> Down here, we believe in the flag. I'm no lawyer, but it's come to the point that we've got to do whatever we can to protect the flag, and later see if it flies. I just got frustrated with Congress and the Supreme Court.

It is pretty clear to me it is time to listen to the people for a change.

Misconception three: Supporters of the constitutional amendment are demagogues.

False: I must say it is a little surprising to hear on the floor of the Senate that we somehow have to apologize for a debate about protecting the American flag from desecration.

I always thought the flag was something special. I always thought we had a right to stand up for the flag without being accused of being a demagogue by some liberal editorial writer or political opportunist.

In my view, about all we've heard from our opponents is a frenzy about their own campaigns and reelection prospects; about campaign commercials and the terror of facing the people out on the campaign trail. I thought we were debating the constitutional merits of a flag amendment. All this nervous campaign chatter is unworthy of this debate.

Here is misconception four: The House overwhelmingly rejected the flag amendment.

False: The truth is, a majority of House Members voted for the flag amendment. Let me repeat that fact: A majority of House Members support the constitutional amendment to protect the flag; 254 Members voted for it, or 58 percent of the House.

Let us face it, if you were elected by a 58-percent majority, you would be touting it as a landslide.

Finally, misconception five: Debating the flag amendment is a waste of Senate time.

Tragically false: This is perhaps the most offensive attack by the opposition. If protecting the flag does not deserve priority treatment in the Halls of Congress, then we do not stand for much around here.

Let us talk about wasting time for a minute. Let us talk about the Hatch Act. Let us talk about being forced to deal with that blatantly political package for 7 days. But look at today's Washington Post. A new poll of Federal workers shows that they are indifferent about the Hatch Act—that 27 percent of the Federal work force does not want to engage in political activity, and another 41 percent do not care! Yet we were told this was one of those issues of the decade.

We spent 2 days debating a Federal flag statute that everyone knew was dead, dead, dead. We spent 21 days this year on the Clean Air Act. Do not get me wrong, that is a priority—a landmark. But does the American flag not deserve the same kind of respect?

And then look at the calendar. Look at all the legislation waiting to come to the floor. We have 150 proclamations on deck, and 81 commemorative or memorial resolutions. We have World AIDS Day, National Tap Dance Day, and the Decade of the Brain awaiting final action. Now these are well-meaning efforts, and I do not mean to trivialize them. But do they have any more priority—any more legitimacy—than the American flag?

I do not think so. And neither do George and Beverly Rhoades of Fond du Lac, WI; nor Mr. and Mrs. Winter of Burdett, KS. Nor do the people of Poland, Denmark, and Switzerland, where the American flag receives more protection than it does now, here on American soil.

WHAT ARE OPPONENTS AFRAID OF?

So what are our opponents afraid of? Apparently, it is the American people. The last thing the antiflag amendment crowd wants is a confrontation with the American people.

The last time I looked, the American flag had 50 stars on it; 50 stars for 50 States: 50 stars for 50 State legislatures; 50 stars for 50 States of real people who will be cut out of Old Glory if the Congress continues its stubborn and arrogant filibuster. The Constitution says, "We the People," not we the Congress.

We will keep fighting' in its arrogance, Congress has ignored the words of our great Chief Justice, John Marshall, who pointed out years ago what should be obvious to us today:

> The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will.

Mr. President, this amendment does not change the Bill of Rights. It does not do violence to the first amendment.

This amendment rescues the Bill of Rights by correcting the Supreme Court's red, white, and blue blunder. It restores the first amendment by saying "no" to the five Justices of the Supreme Court who have distorted decades of precedent, decades of accepted practice, and decades of reverence and respect for America's pride and joy.

Mr. President, the flag filibuster may win today, but the flag's day will come. I don't have much faith in Congress, but I have a whole lot of faith in Americans like Beverly Rhoades.

"We will keep fighting," she said. "There is no patriotism in our country anymore for our young children to look up to."

Mr. President, the debate over the constitutional amendment to protect the American flag from the desecrators has sparked a spirited nationwide exchange. We have had a vigorous discussion of views in the House and Senate, plenty of media coverage, and an avalanche of opinion from editorial writers all across the country, including my home State of Kansas.

But let me make one point in all of this—the opponents of our flag amendment would have us believe that a vote for the constitutional amendment is the easy vote; the really tough vote is to oppose this so-called red, white, and blue issue and risk the wrath of home State opinion.

Well, let me correct that view. If Kansas newspaper editorials are any

indication, I must be casting one of the toughest votes of my career. In a dazzling display of free speech, the editorial writers back home have really had a field day with the flag issue, ranging from scholarly to nasty.

I would like to include a sampling of these opinion pieces to make certain that all sides of this issue are heard from Kansas. After reading them, I do not see how anyone can say my vote was the easy vote.

No doubt about it, the constitutional amendment is a close call, with solid arguments on both sides. I invite my colleagues to discover how easy this vote really is.

Mr. President, I ask unanimous consent to have a group of editorials printed in the RECORD.

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

[From the Leavenworth (KS) Times, June 14, 1990]

LONG MAY IT WAVE

U.S. Rep. Jim Slattery did a brave thing earlier this week.

He tangled with Bob Dole over a constitutional amendment to prohibit desecration of the American flag.

Dole threatened Monday to take political advantage of the issue on the Senate floor if the Democratic leadership didn't allow a quick vote on the constitutional amendment he proposed.

"If the Democrats don't want to move, I guess we can talk about it every day," said the Kansas Republican, who is Senate minority leader.

"If this is dragged along and put off and delayed, then I believe you could get up a pretty good head of steam at home," Dole stated. Even if it is voted on quickly, "You vote against it and you go home, and I think you're going to hear from a lot of people. It would make a good 30-second spot."

That kind of thinking enrages Slattery.

"If you can't stand up and defend the Constitution against the political whim of the moment, then you ought to go home," said Slattery, D-2nd District.

Dole does not believe flag burning is a protected form of speech, as the Supreme Court has ruled. According to Dole, a World War II veteran who was disabled in combat, most people of "my generation" believe the flag has risen above all other national symbols and deserves constitutional protection.

Slattery says that he is aware of the beliefs of veterans' groups, but he argues what they fought and died for "was not the piece of cloth, but the freedoms that cloth represents, including freedom of expression."

Today is Flag Day; everywhere you look, people are flying the Stars and Stripes. It is a good time to recite the Pledge of Allegiance.

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

Slattery is right; although we pledge our allegiance to the flag, it is the republic for which it stands that our fathers, sons and brothers have died for.

And that republic is built—at least in part—on freedom of expression, a fundamental part of liberty and justice for all.

Informed on Monday of Dole's remarks, Slattery uttered three simple words: "Shame, shame, shame."

Sadly, we must agree.

Shame, shame, shame.

[From the Olathe (KS) Daily News, June 15, 1990]

FORGET FLAG BURNING

The nation is battling a declining economy. The savings-and-loan bailout gets more expensive each day. Drug abuse is killing the brain cells of our youth.

And all three branches of government are embroiled in debate over a case of flag burning.

With so many pressing issues facing our government, the flag-burning amendment is a waste of talent and time. If an amendment is ever passed by Congress and deemed constitutional by the Supreme Court, nothing will be gained except a chance for politicians to wrap themselves in the flag during the next election.

An amendment outlawing flag burning will not feed the hungry or take a step towards world peace. It will not help bring some crippling disease under control. It will only violate a most basic principle on which the United States of America is founded—freedom of protest.

So shelve the rhetoric on flag burning, and let's work to solve the real problems facing the nation.

[From the Kansas City Star, June 26, 1990]

BOB DOLE'S FOLLY

Sen. Bob Dole's performance on the flag burning amendment is a vicious assault on honorable politics. It is a purely destructive act against the rational processes of representative government. Kansans should be embarrassed.

Dole says opponents to the amendment let themselves in for a nice 30-second TV spot. What a comment on a reasonable reluctance to tamper with the First Amendment. What a devaluation of the meaning of patriotism.

The matter involved here is an attempt to amend the Bill of Rights of the U.S. Constitution because of the posturing of a few crazies whose obvious motives are to attract attention. The media give the creeps that. And then the politicians allow themselves to be manipulated into raising the issue to the level of a constitutional crisis.

What is this United States that people have fought and died for? It is not a piece of cloth. It is the way of life and freedom guaranteed and protected by the Constitution.

Dole knows that. He is anything but dumb.

The most charitable thing that can be said for him in this demeaning exercise is that he sees a chance to advance the fortunes of his party and himself. That the price would be the dilution of the Bill of Rights apparently makes no difference.

How sad for Bob Dole, for his party, for Congress, for Kansas, and for the true values of liberty in America.

[From the Wichita Eagle, June 13, 1990]

TRAGEDY: FLAG AMENDMENT CAN'T IMPROVE ON IRREPLACEABLE BILL OF RIGHTS

Kansans who long have admired Sen. Bob Dole, R-Kan., are saddened by the Senate minority leader's attempt to weaken, with his Flag Amendment, the Bill of Rights to the U.S. Constitution. The amendment would cut back, for the first time in 200 years, the rights enjoyed by Americans under the first 10 amendments. Once done, it would open the door wide for other restrictive amendments.

If the Flag Amendment were sent to the states and ratified, there would be no logic whatever in rejecting future amendments that would make other exceptions to the First Amendment's precious guarantee that "Congress shall make no law . . . abridging the freedom of speech." If flag-burning can be banned, as the Flag Amendment seeks to do, then Ku Klux Klan cross burnings and Neo-Nazi street marches also can be banned. All are activities that repulse most Americans—and all are activities currently protected under the Constitution.

Why such repugnant acts should be draped under the protective mantle of the highest law in the land may be hard for some to understand. It wasn't hard, though, for James H. Warner, former prisoner of war in North Vietnam from October 1967 to March 1973. Recalling how he cried when he first saw Old Glory after 5½ years of torture and despair, he says "it hurts me to see other Americans willfully desecrate it. But I have been in a Communist prison where I look into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners."

When Mr. Dole's amendment says "The Congress and the States shall have power to prohibit the physical desecration of the flag of the United States," what it also is saying is that Congress and the 50 states have the power to restrict freedom of speech and expression. There's no other way to read it, as the U.S. Supreme Court twice has said.

The wisdom and the farsightedness of James Mason and James Madison, who share the honor of being father of the Bill of Rights, thus would be overruled by a later generation that didn't understand how irreplaceable those rights are. The import of this historic document stating in clear and ringing terms what it means to be a free American would be sacrificed to the political passion of the moment. And what a tragic moment it would be.

We are ashamed that the senior senator from Kansas is leading the lynch mob. We beg him to reconsider. We second what our conservative brother in the press, columnist James J. Kilpatrick, wrote last year in opposing any attempt to dilute those protections granted under the First Amendment: "[T]hat precious amendment ought to be left alone."

[From the Kansas City Star, June 23, 1990]

ATTACK ON THE BILL OF RIGHTS

The following members of the U.S. House of Representatives from Kansas and Missouri voted this week to carve a hole in the Bill of Rights: In Kansas, Jan Meyers, Pat Roberts and Bob Whittaker; in Missouri, Jack Buechner, Ike Skelton, Mel Hancock, Bill Emerson and Harold Volkmer.

Remember their names. Most are seeking re-election this year. If you get a chance, ask them why they are so keen to revise the Bill of Rights by passing a flag desecration amendment.

It might be a good idea, too, to ask whether there is anything else they don't like about American democracy in its current form. If they want to whittle down the First Amendment, it would be nice to know if there are some other constitutional protections and freedoms they want to whittle down as well.

The Bill of Rights has served this country well for many generations. Why are some people in the late 20th century—many of them self-described "conservatives"—so certain that they have found flaws in this marvelous document that have somehow escaped previous notice?

When you talk to the members of Congress who have voted to revise the Bill of Rights, try to pin them down on their thinking as much as possible. It's important. Historic American principles and freedoms could be at stake in the future, as they were this week.

This will be the first time this portion of our Constitution has been amended in over 200 years," Meyers noted in a recent statement. But she continued:

The flag is unlike any other symbol of our country. It is a symbol of high achievement, as when the astronauts placed our flag on the moon. And when men and women in our armed forces have died, we have draped their coffins with the flag. It is the symbol of our national identify and our national values."

This is all true. But as Meyers' own language makes clear, the flag merely symbolizes American freedom. It should hardly take precedence over freedom itself. Meyers, along with many of her colleagues, has it all backward.

Others in Washington are simply trying to score partisan points. Sen. Bob Dole of Kansas, for example, talks eagerly of the 30-second campaign ads that will be built around the flag amendment, then howls about the need to "come through for Old Glory."

If that isn't flag desecration, what is? Please, senator. Show some respect.

Much of the other rhetoric behind the flag amendment has been simplistic and shameless. Some of it, frankly, was offensive. There was certainly no need to drag in the war deed to serve as political props.

In a pleasant surprise, wisdom prevailed over haste, cynicism and misguided patriotism in the House. Supporters of the proposed amendment complain that the vote was rushed through before they had enough time to get the public riled up again.

This is typical of the nonsense this side has been dishing out. They have been clamoring about flag-burning for months and, in some cases, years. But the more voters hear about flag burning, the less concerned they seem to be about it.

This country has much more important things to worry about than a few idiots burning flags. It's about time some people in Congress—starting with a few people from Missouri and Kansas—figured that out.

[From the Kansas City Star, June 13, 1990]

LEAVE BILL OF RIGHTS ALONE

Last month a proposed law surfaced in the Soviet Union that would make it a crime to insult President Gorbachev in public. The proposal appeared after Gorbachev had called for steps to protect the "symbols" of his country.

Few Americans bought that argument. When we look abroad, we expect other societies and government officials to turn the other cheek to political dissent. Thus Gorbachev's concern about the symbolic value of his office was widely dismissed as evidence that he still had a lot to learn about democracy.

So do many Americans, as evidenced by the reaction to the Supreme Court's wise ruling this week on flag-burning and the First Amendment.

Some officials, including President Bush and Republican congressional leaders, are again demanding that the United States junk the First Amendment so that certain types of flag-burning could be punished.

Much of their case relies upon the same argument Gorbachev suggested, namely that certain national symbols are more important than freedom of expression. This argument was not convincing for the Soviet Union, and it certainly is not convincing for the United States.

The glorification of the American flag should hardly take precedence over the fundamental democratic rights for which it stands.

Some people pretend that punishing flag-burning would not really infringe upon anyone's freedom of expression. Four Supreme Court justices presented this argument in their flag case dissent.

They are, however, in an inescapable bind. No one is against flag-burning in all cases. The flag desecration law in question, for example, exempted disposal of "worn or soiled" flags.

Prohibiting only certain types of flag-burning leaves the government playing the role of thought police, distinguishing between good flag-burners and bad flag-burners on the basis of their motivations.

The U.S. law tried to get around this problem by feigning indifference toward the motivations of flag-burners. But the court majority saw through the charade, pointing to words in the law like "defiles" and "tramples."

This problem is insurmountable as long as the U.S. keeps its current Bill of Rights. Some people, unfortunately, don't want to do that.

"There are no options left," says Sen. Bob Dole of Kansas. "It's either do nothing or have a constitutional amendment."

Please, Sen. Dole: Do nothing. Leave the Bill of Rights alone.

Here we have another example of so-called "conservatives" who are really nothing of the sort. They want to make radical changes in our form of government, curtailing freedoms that American citizens have enjoyed for two centuries.

Leading the charge are Bush, Dole and Robert H. Michel, the House minority leader. Perhaps they really are so blinded by anger at flag-burning that they cannot see the harm of tinkering with the Bill of Rights.

It is obvious, however, that part of their motivation is simply to score points over Democrats. Dole told reporters that focusing on a vote against a flag-burning amendment "would make a good 30-second spot." Michel described the debate over such an amendment as boiling down to: "Who wants to be against the flag?"

This is flag desecration of a different sort. It may well prove to be more damaging than the kind involving matches.

[From the Wichita (KS) Eagle, June 16, 1990]

DOLE DESIGNATED DEMAGOG ON FLAG

(By Thomas Oliphant)

It is no accident that President Bush is running a kinder, gentler crusade this year to defend the American flag from nonexistent danger.

It is also no accident that his designated demagogue, Senate Republican Leader Bob Dole, has pressed for an immediate vote on a constitutional amendment whose only practical effects are likely to be an increase in the flag-burning by showoffs and millions of dollars in court and jail costs.

These are not accidents because this year's fight—regardless of the odds favoring the torching of 200 years of constitutional tradition—is not over yet, as White House and congressional Republican and Democratic nose-counters all agree.

Accordingly, the same president who dashed off to the Iwo Jima statue by the Potomac River last year to bellow at a partisan rally, stayed in the White House this week to accept a small reproduction of the statute at a lame photo opportunity; Thursday there was only an early-morning, tasteful, rhetoric-free visit to the Vietnam Memorial for Flag Day.

Also, Dole is scheming for a fast vote before senators have a chance to think about the issue, and even before the Senate Judiciary Committee has a chance to consider an amendment next week.

CAUTION VS. YAHOOISM

For Bush, caution and a modicum of decorum are in order. Last year, when he and flag-burning were objects of attention, the nation's foremost advocate of compulsory Pledge of Allegiance-chanting in 1988 could afford to be boisterous. This year, however, when he is a broadly popular chief executive with a presidential (i.e., responsible) image, he must be more careful.

For Dole, care and a modicum of decorum are less important, as well as less in character. As one of the figureheads for a congressional party whose intellectual vacuity makes even the Democrats look good, Dole & Co. are turning to yahooism to spice up state and local campaigns that so far have been better at raising money than serious issues—a message deficit made worse by Bush's recent waffling on taxes.

For many opponents of fiddling with the Constitution to deal with a nonexistent threat, the sight of Dole waving a small flag at a White House meeting with Bush was welcome for its sophomoric trivializing of the issue; so, also, was the sound of Dole in the White House driveway, sneering "I might make a 30-second spot" at his opponents.

A GOOD SIGN?

The reason for this quiet pleasure at Dole's meanness is that the House and Senate have a long record of getting serious when a constitutional amendment is on the floor and that close issues are decided by moderates.

As things stand now, opponents of the flag amendment are generally thought to be 15 to 20 votes short of the 146 votes (one-third plus one) needed to prevail if the entire House shows up; and they appear three or four votes short of the 34 they need in the Senate, where the wild card is Judiciary Committee Chairman Joseph Biden's search for an undefined substitute he hopes would do less damage to the Bill of Rights, a search several colleagues consider illogical. Assuming Biden fails, the opponents' best chance is the high-minded debate Dole's conduct shows he fears.

For the minority that remains hopeful, the historical analogy worth clinging to is Congress' consideration eight years ago of a proposed constitutional amendment on prayer in the public schools.

THEY JUST MIGHT LISTEN

After 20 years of dogged efforts to keep the amendment bottled up in the House Judiciary Committee, the Reagan Revolution's

political guns finally launched it to the Senate under a powerful head of steam.

But then an odd thing happened: Senators began listening to a debate remarkable for its seriousness, and minds began to change, as well as the perception of the amendment. It became not a proposal to permit prayer, but one to allow local politicians to write prayers for teachers and children to read out loud. As such, it was rejected, no Senate careers were lost, and the issue faded away.

As in 1982, the real enemy of hasty tampering with the Bill of Rights is a little time and a little thought.

[From the Garden City (KS) Telegram, June 16, 1990]

FLAG BURNING FLAP

Too bad Congress doesn't pay as much attention to substantive issues as it does to campaign trail topics.

Take this unfortunate flap over flag burning, for example.

The only reason a constitutional amendment stands even a chance of passing is that Republicans have made it a campaign issue in an election year.

Leading the charge for an amendment is Senate Minority Leader Bob Dole. He's all fired up over the issue.

On the Senate floor Thursday, Dole attacked liberals in Congress for "defending flag burners."

He snapped that liberal reporters have tried to make it look like Congress "is taking an ax to the First Amendment."

Dole and the Republicans know these lines play well with certain voters. That's the only reason they care.

But it's nothing more than outright demagoguery.

As we see it, Dole and his fellow Republicans should be concerned about issues that are more important than flag burning.

Has a flag ever been burned in protest in Garden City? Not that we can recall.

But there are two savings and loans with Garden City branches that taxpayers must pay to bail out. Dole and his fellow senators failed to push regulators to do their jobs. Some of his colleagues even tried to prevent regulators from doing their jobs.

There are citizens here who question whether Dole and others in Congress work for taxpayers or special interests. They have failed to enact needed campaign finance reforms and ban honoraria for speaking appearances.

And there are people who pay unnecessarily high real interest rates on home mortgages, auto loans and business financing. Dole and those sitting in Congress are to blame for this too, for they have been unable to control federal budget deficits. Continuing deficits force the government to borrow, and that borrowing keeps interest rates high.

With all these problems, the last thing the nation needs is a senate minority leader who is out leading the charge for a constitutional amendment banning something that is not a problem.

[From the Salina (KS) Journal, June 14, 1990]

FLY THE FLAG FREELY

This Flag Day the air is sure to be even more filled with talk of protecting the flag than usual.

President George Bush and Kansas' own Sen. Bob Dole are among Republicans leading the charge for a constitutional amendment to allow Congress to make a law against flag desecration.

Undoubtedly they, like most Americans, love their country and its flag.

But politics is also at work in this.

Dole and Bush are counting on the political appeal of a dramatic vote to "save the flag." They guess—and hope—that those who vote against a flag-waving amendment will be vulnerable in elections.

A politician who votes against protecting the flag, the political wisdom says, is on his or her way to a career change as soon as voters can arrange it.

Let's hope that conventional wisdom is wrong and that lawmakers will have the good sense to vote to protect the First Amendment, not to repeal it.

A constitutional amendment is not needed or desirable to protect the flag. Politicians as well as all true red-white-and-blue Americans need to recognize that.

The Supreme Court has twice held that a law against intentionally damaging the U.S. flag directly violates the free speech provisions of the First Amendment to the Constitution. To ban flag-burning, then, Congress would first have to seriously weaken the free speech guarantee contained in the First Amendment.

That freedom is a cornerstone of America.

Those who support an amendment to allow Congress to ban flag-burning say that freedom of speech is not absolute and that there are many restrictions on it. Certainly the courts do recognize limits on free speech—inciting a riot, for example, or the classic example of yelling "fire" in a crowded theater, causing panic and death.

But the case at hand is not one of those exceptions.

It is the very sort of case the First Amendment was designed for—the protection of the right of a small minority to express a very unpopular political view in an unpopular manner.

Flag-burning as a political protest may not be exactly what the nation's founders had in mind, but it is precisely the sort of unpopular expression of political dissent they were determined to protect.

Those who vote for an amendment to protect the flag, including Dole if he continues his support, should be prepared to explain to voters why they voted to repeal the First Amendment.

A vote against free speech and against the Bill of Rights which protects Americans' individual freedoms ought to be far more difficult to explain to voters than a vote "against" the flag.

If it is not, this nation is in serious trouble.

[From the Chanute (KS) Tribune, June 14, 1990]

FLAG DAY

Today is Flag Day.

Up to now it has been a pleasant, if somewhat minor, holiday, a way for a free people to express their love of country.

But in the future, if President Bush and Senator Dole have their way, it will be a day that will live in infamy.

Bob Dole made it clear the other day that he thinks the American people are too stupid to have a Bill of Rights. He said the campaign for a constitutional amendment to ban desecration of the flag will be a good campaign issue for the Republicans because it can be expressed in 30-second sound bites.

But the argument against it, he said, is something that will take some thoughtful explanation, suitable only for, say, an American Bar Association convention.

In other words, Dole is saying that the American people can't understand the ideas that support our First Amendment, our Bill of Rights, our belief in a free, open and diverse society where we accept the expression even of ideas we hate in order to ensure freedom for the ideas we love.

What we can understand, he says, is the worship of a graven image above the word of our founders—patriotism for the illiterate.

If Dole is successful in amending the Constitution to disembowel, for the first time in 200 years, and First Amendment, then his dim view of the intelligence of the American electorate will have been proven true.

Those who truly respect the American flag will put a stop to this nonsense now. It does not honor the flag to use it as a club to beat the Bill of Rights bloody.

[From the Dodge City Globe, June 21, 1990]

ITS RALLY 'ROUND FLAG, FORGET EVERYTHING ELSE

It's a corny old joke. Chances are, you've heard one version of it or another;

One night a man and a woman were slowly walking around the base of a street light, peering at the ground.

Somone walked by and said, 'My wife lost a pearl earring."

"We ought to be able to spot it in this light," the passerby said. "It fell off around here?"

"No," the man said, pointing to a stretch of dark street. "I'm pretty sure she lost it back there."

"Then why are you looking here?"

"Because there's no light back there."

That's the way hordes of politicians sounded when the U.S. Supreme Court once again said it isn't illegal to burn an American flag.

Suddenly they had a cause they could chomp on—socking it to the dirty, low-down, unpatriotic burners of Old Glory.

U.S. Sen. Bob Dole vowed to help lead the move for a constitutional amendment making flag desecration a crime.

And he let anybody who disagreed with him know that they might be risking their political lives if they didn't jump on the amendment bandwagon, saying, "it would make a good 30-second spot" in the fall congressional campaigns.

Politicians from the White House down to the statehouses are expected to scramble aboard.

Typical of the lower species is State Sen. Walter Dudycz, of Chicago's Northwest Side.

Dudycz was one of the noisiest of the flag-protecting patriots when a goofy art student displayed a flag-on-the floor exhibit at the School of the Art Institute of Chicago.

Such disrespect must stop, Dudycz said then and says now, forgetting that he once distributed plastic trash bags with an American flag printed on them. He didn't think there was anything wrong with putting crumpled cigarette packages, soiled Kleenix and candy wrappers in a flag-bag and tossing it into the garbage can. Not if it got him votes.

No, they are all rallying 'round the flag, gearing up for the great debate on flag burning. And it will be a great debate, since an amendment will require two-thirds of the vote of the House and Senate and approval by 38 state legislatures.

If you multiply the number of politicians by the number of speeches that will be given, the feverish words will number in the billions. They will give off more hot air than a 10-megaton bomb.

And for what? Ask yourself this question: Have you ever seen anyone burn an American flag? I mean live, before your very eyes? Have you ever seen it happen on your block, in your neighborhood? Are clouds of flag smoke filling the air?

Of course not. The only time you see it is on TV, when some two-bit radical persuades the nitwit TV assignment editors to send out a camera crew and give him 15 seconds of fame.

At any given minute on any given day, someone in America is being murdered, raped, mugged, mauled and stomped. By the time you finish flipping through this paper, a million dollars worth of dope will have been sold. Mentally ill people will be shoved into the streets because there aren't enough hospitals to take care of them. Dangerous criminals will be released because there aren't enough jail cells. And a thousand new potholes will appear on the interstate highway system.

And, of course, we have the S&L scandal, which will cost every man, woman and child in this country, $2,000-plus before the final tab is in.

Actually, it won't cost every man, woman and child that much because many of them don't pay taxes. So if you're someone who does, it'll cost you twice as much.

But is Sen. Dole yelling about S&L thieves as loudly as he is about a few petty nuisances who hold a match to a flag? Is he demanding that the S&L thieves be punished as harshly as some overgrown delinquent?

You bet he isn't. Like most Washington politicians, Dole knows that if and when the blame for the S&L scandal is ever established, members of Congress will bear their fair share.

Only three years ago, when Dole was a presidential aspirant, one of his national campaign cochairman tried to put the arm on S&Ls for contributions, saying "Should he not win, Sen. Dole will still be an extremely important and powerful person who can have a great impact on our business."

Yes, there is no question that Congress has had one heck of an impact on the S&L business. At our expense.

That's what makes the flag-burning issue—and it's really a non-issue—so politically delicious. It's simple and appeals to mindless emotion. It gives the politicians a chance to thump their chests and act as if there's a crisis when there isn't. And to con us into thinking they're doing something heroic when all they're doing is making noise.

And best of all, or so they hope, it will take their minds off the S&L swindle. They can now spend millions on a needless amendment campaign while thousands of executive-suite thieves are getting away with the biggest government-aided financial swindle in our history.

If they are going to have a flag-amendment, why don't they simply change the design? Replace the stars with little dollar signs and make the stripes jailhouse gray.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas [Mrs. KASSEBAUM] is recognized.

Mrs. KASSEBAUM. Mr. President, I rise to speak as a cosponsor of the constitutional amendment to prohibit the burning of the American flag. I do so with both reservations and misgivings, not because I doubt the value and importance of protecting our flag, but because our debate over this issue has become a distorted and troubling one.

After reading both the Supreme Court's majority opinion and the dissents that accompanied it, it is clear to me that there are reasonable grounds for disagreement on this issue. The nine justices confirmed by this body to rule on such matters were themselves deeply divided.

However, I see no reason to draw into this debate all of the red herrings, strawmen, and imaginary bogeymen who seem to be holding center stage. I see no reason to question either the patriotism of those who oppose this amendment or the commitment to the Bill of Rights of those who support it.

Amending the Constitution to prohibit the specific action of desecrating the flag will not nullify the first amendment guarantee of freedom of speech. Indeed, it will not affect freedom of speech in any real sense as we commonly understand it. Burning the flag is not speech. It is an action, and in nearly every case, it is an action that comes after all extremes of speech have been exhausted. There is no question raised either in the court case or in the constitutional amendment about the right of any American to dissent from Government policies, to denounce government actions, to denounce the flag, or even to vilify political leaders. That clearly is speech, and it clearly is protected under the first amendment.

The question that is raised is whether any person has the right to put action to words, to go beyond what clearly is protected speech into the gray zone that the Court terms "expressive conduct." As the Court's majority opinion makes clear, this is not a simple matter. Some conduct may be expressive and thereby protected; other conduct is not. Even expressive conduct is not protected in all circumstances, just as speech itself is not protected as an absolute. We do not allow people to advocate the violent overthrow of our Government; we do not allow statements inciting violence or mob action, or other extreme action.

In this case, the Court ruled that burning the flag was expressive conduct and was therefore protected as a fundamental, constitutional right. I disagree because I simply do not believe that the act of burning the flag can or should be cloaked under our freedom of speech guarantee. Instead, I agree with the thoughtful dissent filed by Justice Stevens, and I would like to quote briefly part of his conclusion:

The case (*Texas* v. *Johnson*) has nothing to do with "disagreeable ideas." * * * It involves disagreeable conduct that, in my opinion, diminishes the value of an important national asset.

The Court is therefore quite wrong in blandly asserting that respondent "was prosecuted for his expression of dissatisfaction with the policies of this country, expression situated at the core of our First Amendment values." Respondent was prosecuted because of the method he chose to express his dissatisfaction with those values. Had he chosen to spray paint—or perhaps convey with a motion picture projector—his message of dissatisfaction on the facade of the Lincoln Memorial, there would be no question about the power of the government to prohibit his means of expression. The prohibition would be supported by the legitimate interest in preserving the quality of an important national asset. Though the asset at stake in this case is intangible, given its unique value, the same interest supports a prohibition on the desecration of the American flag.

Mr. President, I do not believe a constitutional amendment to prohibit the burning of the flag will infringe the right of free speech or set a radical new limit on the Bill of Rights. Neither do I believe that such an amendment can cure all the ills of our society. But I believe this amendment makes an important statement about what we hold to be valuable.

As many before me have said here, the flag stands as a unique symbol of our democracy. It is the physical expression of the values on which our Nation is founded—freedom, equality, justice. With most Americans, and I believe with all Senators here, I believe those values are worth defending. As the unique symbol of those values, I also believe the flag can and should be protected from physical assault.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized for 10 minutes.

Mr. MITCHELL. Mr. President, Members of the Senate, last year I supported and voted for a law to protect the flag. I believed then, and I believe now, that this is the appropriate response to a flag burning that occurred in 1984.

Two weeks ago, by the narrow 1-vote margin of 5 to 4, the Supreme Court ruled that the law violates the freedom of speech provision of the first amendment to the Constitution. I disagree with the five Justices who form the majority in this case. I think they were wrong. I agree with the four who voted to uphold the constitutionality of the law.

But, under our system, once the Supreme Court has ruled, that ruling is the law of the land. So even though I disagree with the Court's ruling, I accept it. The question now before us is whether we should override the Court's decision by amending the Constitution.

I oppose and condemn the burning of the flag. I find it offensive and obnoxious.

I am proud to be an American, proud of the American flag.

But I do not support changing the Constitution. We can support the American flag without changing the American Constitution.

The first 10 amendments to the Constitution have come to be known as the Bill of Rights. They were adopted as part of the Constitution because the States insisted that before a new and powerful Federal Government could be created, there had to be clear and controlling limits on the power of that Federal Government against individual citizens.

The Bill of Rights secures the liberty of the individual by limiting the power of Government.

Across the whole sweep of human history, there is no better, clearer, more consistant, more eloquent, or effective statement of the right of citizens to be free of the dictates of Government than the American Bill of Rights.

For 200 years it has protected the liberties of generations of Americans. During that time, the Bill of Rights has never been changed or amended. Not once. Ever. It stands today, word for word, exactly as it did when it was adopted two centuries ago.

Of the 10 amendments which make up the Bill of Rights none is more important than the first. In this debate, its relevant words are:

"Congress shall make no law * * * abridging the freedom of speech * * *"

The English language could not be more clear. Let me repeat those few words. "Congress shall make no law abridging the freedom of speech."

Never in 200 years has the first amendment been changed or amended. As a result, never in 200 years has Congress been able to make a law abridging the freedom of speech.

Now we are asked to change that, for the first time. We are asked to give Congress and the States the power to do that which, for 200 years, the Bill of Rights has prevented them from doing.

We are asked to permit Congress, or any State, to make a law that would abridge the freedom of speech, as defined by the Supreme Court.

Even though, as I have already said, I disagree with the Court, I do not believe we should amend the Bill of Rights. I do not believe we should ever, under any circumstances, for any reason, amend the American Bill of Rights. The Bill of Rights is so effective in protecting individual liberty precisely because of its unchanging nature. Once that is unraveled, its effectiveness will be forever diminished.

If the Constitution is amended to prohibit the burning of a flag, where do we stop?

The supporters of this amendment argue that their goal is so important that it warrants overriding the court's decision. But the supporters should consider this question before they vote.

If someone burns the Constitution, will they propose an amendment to the Constitution to prohibit that? If not, does that mean that they have less respect for the Constitution than they do for the flag?

If the answer is "yes," then where do we draw the line? How about the Declaration of Independence?

The point is that once the Bill of Rights is changed or amended, no line can be drawn. That is why it should not be changed or amended.

We Americans revere the flag. We also revere the Constitution and the Bill of Rights. We need not choose between them.

For a free people, the fight against an enemy army demands sacrifice and courage. That is difficult and demanding. It is also difficult and demanding in time of peace to live up to our own high ideals.

It is not difficult for Americans or anyone else to tolerate differences and eccentricities. They are all around us. But defending the freedom of those who would deny it to others—that is difficult.

Perhaps that is why no other nation today tries, or has ever tried, to live by a standard as high and as demanding as the American Bill of Rights. Every nation has a government. Every nation has a flag. But only the United States of America has a Bill of Rights.

We Americans do try to live by the Bill of Rights. We have chosen not to take the easy way out. We have chosen not to try to silence those who are wrong, but rather to challenge them with the truth.

That way has served America well. It has preserved our liberties for two centuries.

We will celebrate the 200th anniversary of the Bill of Rights next year. We will remind ourselves, and the world, that the greatest protector of liberty is the truth.

We have religious liberty in America because we reject any government-sanctioned religion. We believe that each American will find God by his or her own path, through his or her own church.

We have political liberty in America because we reject any government-imposed political doctrine. We believe each American will find and defend his or her own political views.

We have personal freedom in America because we reject any government-dictated patriotism. We believe that each American will freely discover in his or her own heart the love of country and the pride in our Nation that has made Americans willing to defend it at the cost of blood and life itself for two centuries.

Our Founding Fathers had more confidence in their fellow Americans and more faith in their children than some of our current leaders. They knew better than to have the Government dictate what politics are right or wrong.

For 200 years, the Bill of Rights has protected the liberties of Americans through economic turmoil, civil war, political strife, social upheaval, and international tension.

Despite the worst that fate and our enemies have hurled at us, we have never ever found it necessary to change the fundamental principles on which our Government was founded and by which our freedom is secured.

Principles which have stood that test of time should not be discarded or tampered with.

It will be a sad irony if a few obnoxious publicity seekers who appear to hate America achieve their victory by stampeding those who love America to take the unwise action of changing the Bill of Rights for the first time in our history. I love America and the American flag and the American Bill of Rights too much to let that happen without a fight.

So I urge my colleagues not to give those publicity seekers the reward they want. I urge you to vote against changing the American Bill of Rights for the first time in our history. I urge you to vote against this proposal to amend the Bill of Rights. I urge you to defeat this amendment.

The PRESIDING OFFICER. All time has expired on the joint resolution.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Have the yeas and nays been requested?

The PRESIDING OFFICER. They have not.

Mr. MITCHELL. 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 joint resolution having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

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

The yeas and nays resulted—yeas 58, nays 42, as follows:

[Rollcall Vote No. 128 Leg.]

YEAS—58

Armstrong	Ford	McClure
Baucus	Fowler	McConnell
Bentsen	Garn	Murkowski
Bond	Gorton	Nickles
Boschwitz	Graham	Nunn
Breaux	Gramm	Pressler
Bryan	Grassley	Reid
Burdick	Hatch	Rockefeller
Burns	Hatfield	Roth
Byrd	Heflin	Shelby
Coats	Heinz	Simpson
Cochran	Helms	Specter
Cohen	Hollings	Stevens
Conrad	Johnston	Symms
D'Amato	Kassebaum	Thurmond
DeConcini	Kasten	Wallop
Dixon	Lott	Warner
Dole	Lugar	Wilson
Domenici	Mack	
Exon	McCain	

NAYS—42

Adams	Gore	Mikulski
Akaka	Harkin	Mitchell
Biden	Humphrey	Moynihan
Bingaman	Inouye	Packwood
Boren	Jeffords	Pell
Bradley	Kennedy	Pryor
Bumpers	Kerrey	Riegle
Chafee	Kerry	Robb
Cranston	Kohl	Rudman
Danforth	Lautenberg	Sanford
Daschle	Leahy	Sarbanes
Dodd	Levin	Sasser
Durenberger	Lieberman	Simon
Glenn	Metzenbaum	Wirth

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 42. Two-thirds of the Senators present and voting not having voted in the affirmative, the joint resolution is rejected.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I have mixed emotions at this moment. Having had the responsiblity of managing this legislation and being deeply embroiled with the flag issue for the last year and learning more about the constitutional questions revolving around this issue than I ever thought I would be required to know, I want the record to show that I still believe there was a way to have dealt with protecting the flag without doing violence to the core principles of the first amendment.

Obviously, my colleagues, all those who supported the President's amendment, 58 or so, were not about to support that position nor did the vast majority who wanted no amendment. So there are only a few of us who shared my view.

But, having said that, that being done, I had no doubt, as I did last year when I was responsible for this issue on the majority side, that my efforts to defeat the Dole amendment and the President's amendment, one and the same, were the right thing to do.

I believe that did go, and would have gone, to the core principles of the first amendment and that is why last year I made the case as strongly as I could, and again this year. But I might add, although I had the responsibility for managing this, as chairman of the committee, on the committee, and here, taking part helping to lead the opposition against the President's amendment, I want to pay special tributes because a lot of people have worked hard on this.

And I might add, this is one of those votes which everyone should have voted freely, because it is a matter of conscience. Everyone had to make a decision on this one. It was not a party line vote.

Having said that, there are a few people who have made an extraordinary effort and did extraordinary work and are responsible, I believe, more than anyone else for the outcome of the vote, which was an overwhelming defeat for the amendment. The person more responsible for that, in my view, is Senator ALAN CRANSTON of California. Senator CRANSTON immediately, when the issue was raised about this time last year, although he is not on the committee, although it is not his responsibility, began to work with me. I soon found I was working for him because he literally spoke to every Member in this body making a very cogent case as to why this amendment was pernicious and, quite frankly, changing votes I was unable to change.

I made my best arguments. I made my best arguments to some of our colleagues who said, "No, Joe, I am going to have to be with the President, with his amendment."

When Senator CRANSTON geared up that famous tallying capability—I hope he will forgive me. I can see here one of his sheets, the famous Cranston tally sheet. After working with him for hours and hours and hours and hours these past several weeks, it turns out he was right. He said from the beginning, and I did not think it was going to be so clear, he thought we not only could defeat the amendment but that we could defeat it decisively, and he went about his business. His business ended up to the point that before the vote was cast today, a number of my colleagues asked what the vote would be and I said there will be 42 votes against the amendment. We are not always right in predicting, but there were 42 votes against.

I want to say to my colleagues to whom I said 42 votes against, that was not based upon merely my counting. That was based upon my confidence in the count and the expertise and the persuasion of the senior Senator from California. I think he did the country a great service today. I know this puts to rest this issue for a long time. I know the Senator from Delaware is not going to be back at it any time soon even though I thought there was a way to do it.

But on this particular amendment, I think he was right. I wish he had not been so effective with regard to the amendment of the Senator from Delaware, but his effectiveness was equally as evident, more evident, quite frankly, than on this President's amendment.

Having said that, let me conclude by saying I thank the leader for his confidence in allowing me to handle this matter, and I want to thank my colleague from South Carolina with whom it is always a pleasure to work. I know how deeply and strongly he felt about the President's amendment, the Dole amendment, and his amendment. I know it came from his heart, moved to his head, and they were both in sync on this. I respect his view, even though I strongly disagreed with it but respect it.

I just want to conclude by telling my colleagues one very brief Thurmond story. As I was going down in blazing defeat for the Biden approach, which I thought was the rational approach—I guess we all think that when we work so hard on an effort—and one of our colleagues walked up and voted for me, making it the fifth vote for Biden. The man who never says die jumps off his chair, comes down here, collars this particular Senator and said, "You told me you were going to be with me." And this Senator said, "There is no reason I cannot be with Biden and with you if Biden loses." He said, "No, that is not good enough. You said you were going to be with me." We are friends, but I want to tell my colleagues, beating a man 93 to 7 is not a close call. I just want to point out that this Senator never yields. I am sorry, in light of the intense feelings he has, about how he must feel at this moment losing.

I am absolutely convinced Senator CRANSTON's effort in leading this effort is the right thing to do. The country is better off for it; the Constitution is better off for it. Quite frankly, we are better off for having Senator CRANSTON in this body. I am not sure we would be as effective in this effort if he had not been here.

I want to thank my staff for their efforts. I thank my colleagues.

Mr. CRANSTON. Will the Senator yield?

Mr. BIDEN. I yield the floor.

Mr. CRANSTON. I want to thank Senator Biden for his overgenerous words about my efforts with him. I want to pay tribute to his leadership. Had he not done all that he did, we would not have achieved the victory that was accomplished today. That is a very significant one in America's history and protection of the Bill of Rights and what our country stands for. He made a commitment last year to come up with an amendment if the statute that he authored was defeated. He kept that commitment, he kept it in a very effective way, and the outcome of all this is a tribute to his skill and his

wisdom and his understanding of constitutional issues.

I also thank the majority leader for all that he did. His inspirational leadership on this matter was a very significant part of the victory, as were the contributions of many others who took a courageous stand on this issue.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, if I may just for a moment congratulate all concerned in the debate, all participants on each side of each of the many proposals that were before us.

I want to join Senator BIDEN in paying special tribute to Senator CRANSTON who proved once again that he is the most effective and accurate vote counter in the Senate. He certainly was invaluable to me in organizing the effort to defeat the amendment. He demonstrated great skill, and I am very grateful to him for that, as I am to Senator BIDEN who had, as all Senators have come to expect, enormous skill and patience and perseverance in very difficult and trying circumstances. I am very grateful to both of them.

Mr. President, I am pleased to yield.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I think all who supported this amendment are disappointed in the result. But I want to express my deep appreciation to the able chairman of the Judiciary Committee, Senator BIDEN, for the fine cooperation that he extended in working on this amendment in the committee and on the floor. Senator BIDEN and I have had a very fine working relationship, and he has always shown himself to be fair and just. He is an outstanding leader on the Democratic side.

I want to also express my appreciation to Senator DOLE, who was the chief sponsor of this amendment for the President of the United States. President Bush recommended this amendment. The Attorney General of the United States recommended this amendment, and Senator DOLE proposed this amendment, along with other Senators. I was pleased to join him on this as an original cosponsor. We felt it was meritorious. We still feel it is meritorious and regret that it was not accepted.

I want to express my appreciation to the 58 Senators who supported this amendment. That is a majority of the Senate, but in order to submit a constitutional amendment, of course, it takes two-thirds of the Senate. We did not get that number. We lost 42 Members.

I am convinced this amendment would not have affected the first amendment of the Bill of Rights. I will not take time now to go into that in more detail as I did earlier during debate on this proposal. But again I say, in my judgment, and the judgment of many scholars and outstanding intelligentsia, this amendment would not have affected the Bill of Rights.

I still feel that the Congress should have accepted this amendment and sent it to the States, especially since the Supreme Court vote was 5 to 4, just one vote difference. The American people deserved an opportunity to be heard on this important issue.

I felt we should submit it to the American people. I trust the American people. If they had not supported this amendment, if it was submitted to them, that would have been their privilege. But I feel on any matter so important as protecting the flag of the United States, preventing it from being burned, trampled on, or desecrated in any other manner, the people should have been provided an opportunity to act. I feel, if it had been submitted, the American people would have overwhelmingly voted in every State to adopt this amendment through their State legislatures.

But since the Congress, both bodies, did not agree to submit this amendment, then of course that closes the matter for the present. I do not think it is closed permanently, and I think you will see it come back again. I think you are going to see an aroused public because people believe in the flag. It is a symbol of freedom and justice and equal opportunity and hope all over the world. That flag is a hope for people everywhere. When they see that flag, they think about the privileges and rights the people in this Nation enjoy which many of them do not have the opportunity of enjoying.

Again I thank all those Senators who supported this amendment and express my appreciation to them. I am hoping yet that we can get some action to prevent the desecration of the flag of the United States.

I want to extend my appreciation to the able majority leader and able Republican leader for their courtesies to us during the debate on our proposed constitutional amendment. They were both thoughtful and considerate, and I express my appreciation to them.

I also commend two members of Senator BIDEN's staff who worked very hard on this amendment, Jeff Peck and Lisa Meyer, and Thad Strom on our side. They proved to be very helpful and dedicated in their service on this particular matter.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, I rise briefly to supplement some of the fine things that have been said about Senator BIDEN, Senator THURMOND, and, of course, especially our majority whip, the Senator from California.

At the end of this day the Bill of Rights is intact, and yet it ought to be noted that a majority of this body were prepared to see it amended for the first time in nearly two centuries. I think it speaks to the underlying strength and wisdom of the Constitution that a mere majority was not enough. It required two-thirds of all Senators, not just present and voting. But it is something to keep in mind that the Supreme Court, having said that this was, however much one may wish it one not to be, protected speech under the first amendment, we were prepared to that degree to change the first amendment. And when we say what that flag stands for, the rights it stands for, I think it would be fair to note that above all it stands for the Bill of Rights, and it has sustained that travail today but only just.

As for Senator CRANSTON's tally sheets which were shown by the distinguished chairman just a moment ago, I think we can say several things have been proved today. We proved that the basic structure of the Constitution is sound. We also proved that as regards tally sheets, neatness is not everything. These are the most dog-eared, blurred, scratched upon, revised bits of paper you ever did see, but they come out right in the end. I want to congratulate him. He knows how much we love him and admire him.

Mr. KERREY. Mr. President, I simply rise as well to put a postscript on this debate. We are standing here having won a vote. Strangely, it does not feel like a victory. It does not feel like the same victory we had with the clean air bill. It does not seem like the victory we had with the ABC bill. It does not feel like a victory on behalf of America's children or America's elderly. It does not feel like the victory I think we should have when taking Social Security off budget or other things we are trying to get done. It does not feel as good for some reason.

It seems the reason it does not is that this debate has opened a wound in the Nation. I say to my friend from South Carolina and to others on the other side of the aisle who feel strongly that this Constitution should be amended, I feel equally strong that it should not. I do not take this position for the purpose of getting attention. I do not take this position for the purpose of getting a 30-second ad either run for or against me. I feel it strongly.

I hear the Senator from South Carolina saying that perhaps this will come back again. I tell you that a wound has been opened in America over this debate, a real wound, not one that will be felt by us having ads run against us or for us, but a real wound. I have talked to older veterans who are angry with me, disappointed in me, disillusioned in me personally.

A wound has opened in America as a result of this debate and it will not

close easily. It will not go away simply with the close of this debate. It is regrettable. It is unfortunate. It will make it difficult for us to do other things not just in this body but in this country.

There will be many difficult things we will be asked to do in this Senate. I suspect some are coming down the road rather quickly as a consequence of the budget summit. There will be many difficult things we will have to face in this Senate as a consequence of our concern for children and for the future of our country.

This debate has not made it easier for us to pass those things. It has, in my judgment, made it more difficult. I hope we can go forth from this debate not as victors, not as people who have been defeated, but as Americans who care about the future of our country, as Americans committed to make sure we defend not just our own liberty but the liberty and freedom of posterity, which to my mind at least is the highest act that an American can give.

I hope we make the effort as Senators to heal the wound that has been opened from this debate, not keep it open, not try, for political purposes, to keep it open because it damages the fabric of this country if we do.

I do not feel a victory this evening. I believe the Senate has acted correctly. But the real victories will come tomorrow. The real victories will come for our country after this vote we have taken today. I yield the floor.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. 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 and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

REVISED DEFERRALS OF CERTAIN BUDGET AUTHORITY MESSAGE FROM THE PRESIDENT—PM 127

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on the Budget, the Committee on Appropriations, and the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two revised deferrals of budget authority now totalling $2,547,688,227.

The deferrals affect programs in International Security Assistance and the Department of State. The details of the deferrals are contained in the attached report.

GEORGE BUSH.

THE WHITE HOUSE, *June 26, 1990.*

MESSAGES FROM THE HOUSE

At 4:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3058. An act to provide for the exchange of certain Federal coal leases from the Alton Coal Field in the State of Utah for other Federal coal leases in that State;

H.R. 3863. An act to direct the Secretary of the Interior to conduct a study of the Underground Railroad;

H.R. 4501. An act to provide for the acquisition of the William Johnson House and its addition to the Natchez National Historical Park, and for other purposes;

H.R. 4525. An act to amend the Ethics in Government Act of 1978 to increase the authorization of appropriations for the Office of Government Ethics; and

H.R. 4872. An act to establish the National Advisory Council on the Public Service.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3058. An act to provide for the exchange of certain Federal coal leases from the Alton Coal Field in the State of Utah for other Federal coal leases in that State; to the Committee on Energy and Natural Resources.

H.R. 3863. An act to direct the Secretary of the Interior to conduct a study of the Underground Railroad; to the Committee on Energy and Natural Resources.

H.R. 4501. An act to provide for the acquisition of the William Johnson House and its addition to the Natchez National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

The following bill, reported from the Committee on Agriculture, Nutrition, and Forestry on June 22, 1990, was referred to the Committee on Commerce, Science, and Transportation until the close of business on July 10, 1990:

S. 1245. A bill to amend the Federal Meat Inspection Act to expand the meat inspection programs of the United States by establishing a comprehensive inspection program to ensure the quality and wholesomeness of all fish products intended for human consumption in the United States, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, June 26, 1990, he had presented to the President of the United States the following enrolled bill and joint resolutions:

S. 1999. An act to amend the Higher Education Amendments of 1986 to clarify the administrative procedures of the National Commission on Responsibilities for Financing Postsecondary Education, and for other purposes;

S.J. Res. 264. Joint resolution to commemorate the 50th anniversary of the National Sheriffs' Association;

S.J. Res. 315. Joint resolution for the designation of July 22, 1990, as "Rose Fitzgerald Kennedy Family Appreciation Day";

S.J. Res. 320. Joint resolution designating July 2, 1990, as "National Literacy Day."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 647. A bill to amend the Federal securities laws in order to provide additional enforcement remedies for violations of those laws (Rept. No. 101-337).

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. KERRY (for himself, Mr. STEVENS, Mr. HOLLINGS, Mr. PACKWOOD, Mr. INOUYE, Mr. GRAHAM, Mr. CRANSTON, Mr. AKAKA, Mr. LAUTENBERG, Mr. GORE, and Mr. ADAMS):

S. 2782. A bill to amend the Coastal Zone Management Act of 1972 to authorize appropriations for fiscal years 1991 through 1995 and to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce programs for the improvement of coastal zone water quality, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SYMMS (for himself, Mr. BURNS, Mr. WALLOP, Mr. NICKLES, Mr. HUMPHREY, Mr. SIMPSON, Mr. COCHRAN, Mr. HATCH, Mr. BOSCHWITZ, and Mr. HELMS):

S. 2783. A bill to amend the Internal Revenue Code of 1986 to revise the estate and gift taxes in order to preserve American family enterprise, and for other purposes; to the Committee on Finance.

By Mr. WILSON:

S. 2784. A bill to designate certain lands in Los Padres National Forest as wilderness, to designate Sespe Creek, the Sisquoc River, and the Big Sur River in the State of California as wild and scenic rivers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO (for himself and Mr. HARKIN):

S. 2785. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide a lump sum payment to public safety officers who become totally and permanently disabled as a result of a catastrophic injury sustained in the line of duty; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mr. COHEN, Mr. RIEGLE, Mr. WIRTH, Mr. GRAHAM, Mr. DIXON, Mr. KENNEDY, Mr. METZENBAUM, Mr. SIMON, Mr. KOHL, Mr. KERRY, Mr. GORE, Mr. CRANSTON, Mr. LIEBERMAN, and Mr. LEAHY):

S. 2786. A bill to mount a national crackdown on fraud and embezzlement in the thrift and banking industries; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. PELL, Mr. HELMS, and Mr. MOYNIHAN):

S. 2787. A bill entitled the "Iraq International Law Compliance Act of 1990"; to the Committee on Foreign Relations.

By Mr. KERRY (for himself, Mr. HOLLINGS, and Mr. GRAHAM):

S. 2788. A bill to authorize certain programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GORE (for himself, Mr. DANFORTH, Mr. HOLLINGS, Mr. FORD, Mr. INOUYE, Mr. BRYAN, Mr. GORTON, Mr. CRANSTON, and Mr. AKAKA):

S. 2789. A bill to authorize appropriations for the Earthquake Hazards Reduction Act of 1977, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself and Mr. SIMON):

S. 2790. A bill to promote educational partnerships and establish education programs involving Federal laboratories and public schools, colleges, and universities to promote and enhance science, mathematics, and engineering education at all educational levels, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. JOHNSTON:

S. 2791. A bill to amend the Federal Oil and Gas Royalty Management Act of 1982 to provide for the appointment by the President of a director of the Minerals Management Service, and for other purposes; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS (for himself, Mr. BURNS, Mr. WALLOP, Mr. NICKLES, Mr. HUMPHREY, Mr. SIMPSON, Mr. COCHRAN, Mr. HATCH, Mr. BOSCHWITZ, and Mr. HELMS):

S. 2783. A bill to amend the Internal Revenue Code of 1986 to revise the estate and gift taxes in order to preserve American family enterprise, and for other purposes; to the Committee on Finance.

AMERICAN FAMILY ENTERPRISE PRESERVATION ACT

Mr. SYMMS. Mr. President, I rise today to introduce the American Family Enterprise Preservation Act. I think it is no secret to Members of the Senate, and to Americans in general, that a high percentage or our population earn their living working in or for small businesses in this country, and that most of the small businesses in the country are owned by families.

Family-owned businesses are the essence of the American dream. Hard work, resourcefulness, and pride in doing the job well are typical characteristics that we find in family businesses. Family businesses are an attractive venture of Americans to enter into and try to work for their own benefit, pleasure, and sense of accomplishments.

I assert to you today, that it has been families and their businesses that have been the bedrock of a strong economy in the United States since the very beginnings of this Nation.

Mr. President, due to the present tax laws however, a family's business accomplishments are heavily taxed upon the death of the majority owner of the business, which exposes many of these small businesses to what can lead to financial collapse, particularly in the agricultural community.

I would venture to guess that well over 90 percent of the farms in America are operated as family businesses. Most of those farms are land rich and cash poor. So if someone dies in the family, and if the farm is of any value and substantial size, it forces liquidation or heavy debt in order to pay off the tax collector.

One of the reasons that we have seen such a concentration of newspaper ownership in America, is because of the death tax laws in this country that have forced families to sell local newspapers to bigger corporations so they can pay off the debt taxes.

Family-owned businesses are not an American institution that Congress should contemplate taxing into extinction. Family businesses provide jobs, revenues to the Treasury, and products and services that are essential to the well-being of America. It is by no means easy that a family business can be built. And what is really tragic is that Congress has, through its infinite wisdom, created a taxing system we now have that imposes death taxes in this country. It is crushing the backbone of America—the family business. Family business should not have to be sold in order to pay off the death tax.

Mr. President, if American Government has evolved to the point of destroying such a fundamental part of society, I feel one of the most important and vital legacies we possess will be lost forever. Extremely high estate taxes strike at the heart of the American dream. More than half of all businesses qualify as family businesses. As I said earlier, in agriculture it is a much higher percentage.

Incredibly, as the citizens in this country are clamoring for tax relief across the board from the income tax system and from property taxes, the Federal Government continues to impose no less than 17 different tax rates on estates. They range from 18 to 55 percent. This often causes the family of the deceased business owner to sell the assets of the business just to pay the Federal taxes.

The legislation I intend to introduce today, which I call the American Family Enterprise Preservation Act, will do several things. I fell these are all essential to help ensure the survival of thousands of family businesses in the country, and not only the survival for the business, but the survival for the people that work in those businesses, who enjoy working in a small company where they have direct contact with the owners, and can become part of a team, with a family that operates a business.

First, this bill would repeal section 2036(c) of the IRS Code by eliminating the estate tax freeze. That means that the heir will only pay taxes on the portion of the estate that is actually inherited. They will not have to pay capital gains taxes on the growth of the company from the time that they assumed ownership until the owner is deceased, in the interim period.

For example, if a father would give or sell a business to his children, during the interim period of, 25 years before the time the father might be deceased, and the business were to enjoy a great deal of growth and expand in its value, under current tax law, upon the death of the original owner of the business, they will have to go back, recoup, and pay taxes on the growth that took place even after that person moved out of the business.

I feel this estate tax freeze will be received favorably. I am confident that at least this portion of this bill will be passed this year.

Second is to reduce the number of tax brackets from 17 tax brackets down to 2. This is the same as the top income tax bracket. It would be indexed for inflation, and the top bracket would be 28 percent. Why we tax people at 55 percent on an estate is beyond my imagination. It is pure confiscation of property to tax anyone at 55 percent, particularly if they have worked, been thrifty, reinvested in their business, and paid taxes on the profits of that business throughout the years of building it. To have the heirs upon their death pay at 55 percent tax rate is absolutely outrageous, and should be stopped. We should not have this inequity taking place in the United States. My legislation would

lower the estate tax rates to either 15 or 28 percent, same as the income tax rate.

Third, it would increase the "unified credit" to a higher amount equivalent to a $1 million estate and index it for inflation. The unified credit is currently $600,000. This bill would raise it to $1 million finally, this will extend the 4 percent interest rate to the entire amount of tax due, instead of being increased after the first $153,000 is paid.

Mr. President, this bill does not go all the way. I know many people in the Congress and in the country believe that the estate tax should be repealed entirely—I do not argue with that philosophy—because those people have already paid taxes on it. But this is a modest step to moderate the destructive damage done to the businesses, jobs and to the economy of this country by these very confiscatory taxes.

The advantages of these provisions are easily seen. Repeal of these onerous, laws returns to law prior to the Tax Reform Act of 1986, and reinstates the expectation of fairness and simplicity in estate planning that families running a business had come to depend on.

What incentive is there, Mr. President, to establish a business owned and operated by the family, only to have up to 55 percent of it taken away by estate tax payments when the majority owner dies? In fact, precisely because of 2036(c) and the resultant high estate taxes, there is no incentive to keep a family business going. The purpose of a family business is to provide for the family; yet, our present estate tax laws discourage this, discourage the basic backbone of the American dream for most people.

Mr. President, unfair tax laws stand as a barrier to the hopes and dreams of the American people. Estate taxes discourage normal intrafamily transactions which prevent the passage of the family farm or business to the next generation. We have an opportunity to do something to correct this error in our taxing system. I urge all my colleagues to support this legislation. I say to my colleagues that the National Federation of Independent Business supports this legislation, along with the Family Businesses of America. I ask unanimous consent to have printed in the RECORD at this point a letter from Mr. John Garvey to Senator BOB DOLE encouraging his support of this legislation.

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

FAMILY BUSINESSES OF AMERICA,
Wichita, KS, June 20, 1990.

Hon. BOB DOLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: We are grateful for your past and continuing support of S. 849 to repeal section 2036(c) of the Internal Revenue Code.

Family Businesses of America, formed in 1990, already represents family businesses and their advisors from all regions and most states and many industries.

We aspire to represent many of America's 20 million family businesses, which represent an estimated 40-60% of U.S. GNP, at least ½ the U.S. population, including owners, investors, employees and dependents of American family businesses.

As a Kansan and as a founder of FBA, I solicit your consideration and support of Senator SYMMS' "Family Enterprise Protection Tax Act" which will be announced on or around June 21, 1990.

Sincerely,

JOHN K. GARVEY.

Mr. SYMMS. On behalf of myself, Mr. BURNS, Mr. WALLOP, Mr. NICKLES, Mr. HUMPHREY, Mr. SIMPSON, Mr. COCHRAN, Mr. HATCH, Mr. BOSCHWITZ, and Mr. HELMS and any other Senators who would like to join in this effort, I invite their participation, and I hope that they will cosponsor this. I think it is going to have a very minimal impact on the Federal Treasury in terms of costs to the Treasury. In my view, if we look at a dynamic model, I think we can make the case that this bill will, in the long run, generate income and revenue to the Federal Treasury, because it will generate the desire for people to own and operate their own profitable small businesses.

By Mr. WILSON:

S. 2784. A bill to designate certain lands in Los Padres National Forest as wilderness, to designate Sespe Creek, the Sisquoc River, and the Big Sur River in the State of California as wild and scenic rivers; to the Committee on Energy and Natural Resources.

DESIGNATION OF CERTAIN WILD AND SCENIC RIVERS IN CALIFORNIA

● Mr. WILSON. Mr. President, today I am introducing a new bill to designate lands in the Los Padres National Forest as wilderness, establish several wild and scenic rivers, and propose several other rivers to be studied for possible inclusion under that system. This bill significantly revises and expands a bill that I introduced earlier in this session.

When I introduced S. 637, I said that I welcomed suggestions on how it could be improved. Since that time, I have discussed this issue with many concerned citizens and organizations. I have also followed closely the developments surrounding H.R. 1473, a companion measure to S. 637, introduced in the House by my colleague from California, [Mr. LAGOMARSINO].

Mr. President, I have used the suggestions and concerns that have been expressed to create a stronger, more complete, sensitive, and well-balanced bill. It is similar in many ways to the amended version that recently was passed by the House.

My bill would designate nearly 368,000 acres in the Los Padres National Forest as wilderness, an increase of 50 percent over my previous bill. Four new wilderness areas would be created and two existing wilderness areas would be expanded.

The largest of these proposed wilderness areas is the Sespe Wilderness. Comprising approximately 209,000 acres, this region is a major watershed and an important habitat for the Bighorn Sheep and the endangered California Condor, two critical California wildlife species.

The legsialtion also creates the Matilija Wilderness, comprising 30,000 acres, the Garcia Wilderness, comprising 11,600 acres, and a 36,200 acre wilderness to be named in honor of the Chumash Indian Tribe.

The bill would expand the San Rafael Wilderness by 43,000 acres and the Ventana Wilderness by 38,000 acres. Those areas not designated wilderness will be released for multiple-use planning by the Forest Service.

This new bill significantly expands the wild and scenic river provisions of my previous bill. On the Sespe Creek, 27.5 miles would be designated as "wild" and 4 miles as "scenic." A 31-mile segment of the Sisquoc River and 14.4 miles of the Big Sur River would be designated as wild rivers. A total of 6 other rivers—Piru Creek, Little Sur River, Upper Sespe Creek, Matilija Creek, Lopez Creek, and Arroyo Seco River—are listed as study rivers, to be considered for future designation as wild and scenic.

I have revised the Ventana land exchange provision of the House-passed bill to improve the quality of the land to be received by the Forest Service in the exchange. In addition, I have included a provision that would provide for a mineral withdrawal of the Monterey coastal zone in accordance with the local coastal plan for Monterey County. Such a withdrawal would prevent the establishment of new mining claims and preclude oil and gas leasing. Valid existing claims would not be affected by this provision.

Finally, this legislation calls for the construction of two new off-road vehicle trails. The first, the Long Canyon to Sulphur Springs Trail, was included in H.R. 1473. The second will connect the Lockwood Creek and the Dry Canyon Off-Road Vehicle Trails, a distance of approximately 12 miles. This meets the needs of on-trail vehicle recreationists and offsets the loss of two popular ORV trails now located in resource sensitive areas that will be eliminated by this legislation.

Though located less than a 2-hour drive from one of America's largest cities, the Los Padres National Forest is an area of outstanding natural beauty. The forests and rivers covered under this bill are truly deserving of protection that will allow generations of Americans to continue enjoying these precious natural resources. I trust my colleagues will give this

matter the prompt consideration it deserves.●

By Mr. D'AMATO (for himself and Mr. HARKIN):

S. 2785. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide a lump sum payment to public safety officers who become totally and permanently disabled as a result of a catastrophic injury sustained in the line of duty; to the Committee on the Judiciary.

PUBLIC SAFETY OFFICERS COMPENSATION ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce The Public Safety Officers' Compensation Act.

This legislation amends the Omnibus Crime Control and Safe Streets Act to provide a one-time Federal payment of $100,000 adjusted for inflation to public safety officers who are permanently and catastrophically injured in the line of duty. Such payments are now made only to the families of officers killed in the line of duty.

This bill is introduced in honor of Steven McDonald, a New York City Police officer who was paralyzed from the neck down as a result of gunshot wounds inflicted by three men he stopped for questioning in New York's Central Park on July 12, 1986. I am sure my colleagues will agree with me that not only is a life confined to a wheelchair an overwhelming sacrifice for a 33-year-old husband and father to make, but it is a sacrifice deserving of the assistance provided for in this bill.

We have a duty to acknowledge with more than kind words the bravery of Mr. McDonald and other valiant public safety officers who in service to their communities become the tragic victims of brutal violence.

The Public Safety Officers' Compensation Act will help relieve some of the burden being borne by the family, friends, and community of severely injured or disabled officers, and it recognizes the unique and costly sacrifice of these extraordinary men and women with meaningful help.

This legislation has already received the support of the Fraternal Order of Police, the International Association of Firefighters, the International Brotherhood of Police Officers, the International Association of Fire Chiefs, the National Association of Police Organizations, the International Association of Chiefs of Police, the National Sheriffs Association, the State of New York, the State of California, the State of Alabama, the State of Indiana, the State of Alaska, the New Mexico Department of Public Safety, the Washington State Patrol, the State of Maryland, the Commonwealth of Virginia, the State of Arizona, the State of Idaho, the State of Maine, the State of South Dakota, the State of Missouri Department of Public Safety, the Territory of Guam, the State of Wyoming, the Commonwealth of Pennsylvania State Police, the State of North Dakota, the Commonwealth of Puerto Rico, and Homecare.

Mr. President, I urge my colleagues to join in support of this important measure.●

By Mr. BIDEN (for himself, Mr. COHEN, Mr. RIEGLE, Mr. WIRTH, Mr. GRAHAM, Mr. DIXON, Mr. KENNEDY, Mr. METZENBAUM, Mr. SIMON, Mr. KOHL, Mr. KERRY, Mr. GORE, Mr. CRANSTON, Mr. LIEBERMAN, and Mr. LEAHY):

S. 2786. A bill to mount a national crackdown on fraud and embezzlement in the thrift and banking industries; to the Committee on the Judiciary.

COMPREHENSIVE THRIFT AND BANK FRAUD PROSECUTION ACT

● Mr. BIDEN. Mr. President, we all know that the crisis in the savings and loan and banking industries is the largest financial scandal in this Nation's history, costing U.S. taxpayers up to $500 billion during the next three decades.

The S&L debacle is not only the largest financial scandal in this Nation's history. It is also the largest criminal scandal in our history.

The Attorney General recently described the "epidemic of fraud" in the thrift and banking industries, stating that at least 25 to 30 percent of the thrift failures can be linked to fraud and criminal conduct by bank insiders.

The head of the Resolution Trust Corporation, L. William Seidman, estimated that fraud and insider abuse played a major role in 60 percent of the thrift failures.

Make no mistake. Fraud and criminal conduct was one of the major factors responsible for the crisis in the savings and loan industry.

According to the Office of the Comptroller of the Currency, fewer than 10 percent of the bank failures were caused solely by depressed economic conditions in the area.

Two weeks ago, I stated that nothing short of a massive Federal crackdown will suffice to punish these white-collar criminals, seize and recover every possible dollar of stolen and embezzled funds, and restore public confidence in the banking and financial services industry.

Today, I am introducing legislation to mount that crackdown on a massive scale. The Comprehensive Savings and Loan Prosecution and Enforcement Act of 1990 is aimed at punishing those white-collar criminals who have stolen tens of billions of dollars from U.S. taxpayers, recovering every possible dollar in ill-gotten gains, and preventing such insider crime in the future.

Mr. President, many sound legislative proposals have been introduced to address parts of the S&L problem by my colleagues on both sides of the aisle. The Comprehensive Savings and Loan Prosecution and Enforcement Act of 1990 incorporates many of these proposals and includes a series of other initiatives that I have developed.

Among the major provisions of this legislation:

Creates a new "S&L kinpin" statute that authorizes up to life imprisonment for the most egregious cases of fraud and embezzlement, and significantly increase penalties for S&L fraud and embezzlement offenses.

Expands Federal forfeiture, money laundering, wiretap, and racketeering laws to include important bank fraud and embezzlement crimes.

Authorizes $167.5 million to add hundreds of new U.S. prosecutors, FBI and Secret Service agents, IRS criminal investigators, and bank examiners and technical specialists for the Office of Thrift Supervision, FDIC, Resolution Trust Corporation, and other oversight agencies.

Creates new penalties to prevent and prosecute fraud in the sale of billions of dollars of assets by the Resolution Trust Corporation.

Creates a new Financial Services Crime Division in the Department of Justice and at least 10 Financial Services Crime Strike Forces in cities around the country composed of special teams of prosecutors, FBI and Secret Service agencies, IRS investigators, bank auditors and examiners, and financial crime experts.

Authorizes additional funding for U.S. courts in areas experiencing overwhelming S&L fraud-related caseloads and expanding the authority of U.S. magistrates to expedite S&L prosecutions in Federal courts.

Authorizes private attorneys to bring suits against S&L violators, the so-called bounty hunter or qui tam provision.

Mr. President, in recent weeks there have been numerous charges and countercharges leveled about who is to blame for the S&L scandal. Many of the charges have been straight political attacks, trying to turn the S&L crisis into a partisan issue.

Instead of following this approach by simply introducing my own S&L fraud package, I have pulled together a bipartisan package of S&L enforcement proposals. By introducing this package of Democratic and Republican S&L fraud initiatives, I hope to move the debate on the S&L crisis beyond partisan political attacks, to a point where we can work with the administration to craft a comprehensive plan to attack fraud in the thrift and banking industries. We cannot afford delay in mounting a tough, thorough crackdown on S&L criminals—whose

actions may end up robbing the Federal Treasury of as much as $500 billion.

The S&L proposals announced by the President last week demonstrate that the debate is no longer about whether we need to do more to prosecute S&L violators, but about how many additional FBI agents and prosecutors are needed and what additional tools and penalties do they need. The time for finger pointing is over. The time for action is now.

As I announced last week, I have scheduled a Judiciary Committee hearing on S&L fraud for July 10. At the hearing, I intend to review the package of initiatives I am introducing today, along with proposals submitted by other Senators and by the administration.

I intend to work closely with the Senate Banking Committee and the administration to craft a bipartisan S&L fraud prosecution package that can receive swift action in the Judiciary Committee and prompt action by the full Senate.

I ask unanimous consent that a summary of the bill and the full test of the bill be printed in the RECORD.

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

S. 2786

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Thrift and Bank Fraud Prosecution Act of 1990".

TITLE I—BANK FRAUD AND EMBEZZLEMENT PENALTIES

SEC. 101. INCREASING BANK FRAUD AND EMBEZZLEMENT PENALTIES.

(a) RECEIPT OF COMMISSIONS OR GIFTS FOR PROCURING LOANS.—Section 215(a) of title 18, United States Code, is amended by striking "20" and inserting "30".

(b) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended by striking "20" and inserting "30".

(c) LENDING, CREDIT AND INSURANCE INSTITUTIONS.—Section 657 of title 18, United States Code, is amended by striking "20" and inserting "30".

(d) BANK ENTRIES, REPORTS AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended by striking "20" and inserting "30".

(e) FEDERAL CREDIT INSTITUTIONS ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended by striking "20" and inserting "30".

(f) FEDERAL DEPOSIT INSURANCE CORPORATION TRANSACTIONS.—Section 1007 of title 18, United States Code, is amended by striking "20" and inserting "30".

SEC. 102. FINANCIAL CRIME KINGPIN STATUTE.

(a) CONTINUING FINANCIAL CRIME ENTERPRISES.—Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Continuing Financial Crimes Enterprise

"(a) Any person who engages in a continuing financial crime enterprise shall be sentenced to a term of imprisonment of not less than 10 years and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, or $10,000,000 if the defendant is an individual, or $20,000,000 if the defendant is other than an individual.

"(b) For purposes of subsection (a) of this section, a person is engaged in a continuing financial crime enterprise if—

"(1) he violates section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of this title; and

"(2) such violation is part of a continuing series of violations under sections 215, 656, 657, 1006, 1007, 1014, or 1344 of this title—

"(A) such are undertaken by such person in concert with three or more persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

"(B) from which such person receives $5,000,000 in gross receipts during any 24-month period.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 18, United States Code, is amended by inserting at the end the following new item:

"225. Continuing Financial Crime Enterprise.".

SEC. 103. AMENDMENTS TO THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE.

Section 1961(1)(B) of title 18, United States Code, is amended—

(1) by inserting "section 215 (relating to receipt of commissions or gifts for approving loans)," after "section 201 (relating to bribery),".

(2) by inserting "sections 656 and 657 (relating to financial institution embezzlement)," after "473 (relating to counterfeiting),"; and

(3) by inserting "sections 1004, 1005, 1006, 1007, and 1014 (relating to fraud and false statements)," after "section 894 (relating to extortionate credit transactions),".

SEC. 104. INCREASED PENALTIES IN MAJOR BANK CRIME CASES.

(a) INCREASED PENALTIES.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating sections 215, 656, 657, 1006, 1007, 1014, 1341 or 1343 affecting an insured depository institution, or section 1344 of title 18, United States Code, where the offender derives more than $1,000,000 in gross receipts from the offense, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(1) four levels greater than the level that would have been assigned had the offense not been committed under circumstances set forth above; and

(2) in no event less than 24.

(b) AMENDMENTS TO SENTENCING GUIDELINES.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

TITLE II—BROADENING INVESTIGATIVE AUTHORITY IN BANK CRIME CASES

SEC. 201. SUBPOENA AUTHORITY IN BANK CRIME CASES.

(a) IN GENERAL.—Part II of title 18, United States Code, is amended by adding at the end of the following new chapter: inserting after section 537 the following new chapter:

"CHAPTER 237—ADMINISTRATIVE PROVISIONS

"Sec.

"3771. Administrative subpoena authority.

"§ 3771. Administrative subpoena authority

"(a) ISSUANCE.—

"(1) GENERALLY.—Upon a determination that a person may possess, or have care, custody, or control of any books, records, papers, documents, or other objects, which may be relevant to an authorized law enforcement inquiry of alleged violation of—

"(A) section 215, 371, 567, 656, 1005, 1006, 1007, 1008, 1014, or 1344 of this title; or

"(B) section 1341 or 1343 affecting a financial institution, and any alleged conspiracies to commit violations of such sections under section 371 of this title;

a Federal Bureau of Investigation official described in paragraph (3) may issue in writing and cause to be served upon such person a summons requiring such person to produce the objects at the place designated in the summons.

"(2) CONTENTS OF SUMMONS.—The summons shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

"(3) OFFICIALS WHO MAY ISSUE.—The Federal Bureau of Investigation officials referred to in paragraph (1) are—

"(A) the Director; "(B) designees of the Director at Bureau headquarters; "(C) special agents in charge of Bureau divisions; and "(D) senior supervisory resident agents.

"(b) SERVICE.—A summons issued under this section shall be served—

"(1) by any special agent of the Bureau; and "(2)(A) upon a natural person by delivering a copy to that person personally, and "(B) upon a corporation, a partnership, or other unincorporated association by delivering the summons to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, or by certified or registered mail to any such person. The affidavit of the person serving the summons shall be proof of service.

"(c) PLACE OF SERVICE.—A summons issued under this section may be served at any place within the United States or any place subject to the laws or the jurisdiction of the United States.

"(d) ENFORCEMENT.—

"(1) PREPARATION REQUIRED.—Any person served with a summons issued pursuant to this section shall proceed to assemble the objects required to be produced and shall be prepared to produce them on the date and at the place specified in the summons, notwithstanding any petition filed under subsection (d)(3).

"(2) COURT ORDER TO COMPEL COMPLIANCE.—In the case of contumacy by, or refusal to obey a summons issued to, any person pursuant to this section, the Attorney General may seek an order to compel compliance of such a summons, from a district of the United States where—

"(A) the investigation is pending; "(B) the summons was served; or "(C) the summoned person resides, carries on business, or may be found. All process in any such court action may be served in any judicial district in which such person may be found.

"(3) PETITION FOR MODIFICATION.—Within 10 days after the service of a summons upon such a person, or at any time before the return date specified in the summons, whichever period is less, such person may

file, in the United States district court in the district where the investigation is pending, a petition for an order modifying or setting aside the summons. The petition shall specify each ground upon which the petition relies in seeking relief. The time allowed for initiation of formal criminal proceedings under any applicable statute of limitations shall be tolled while the petition is pending in court or on appeal.

"(4) POWER OF COURTS.—The court may enter such order as may be required to enforce this section. Any failure to obey any such order may be punished as a contempt thereof. Any petition filed, or any such order entered shall be under seal.

"(e) APPLICABLE STANDARDS GOVERNING PRODUCTION.—The standards relating to production of books, records, papers, documents, or other objects, pursuant to a subpoena duces tecum issued by a district court of the United States in furtherance of a grand jury investigation, shall—

"(1) apply to summons issued under this section; and

"(2) govern any proceedings under subsection (d)(3).

Nothing in this subsection shall prevent the use of any summons pursuant to this section issued in connection with locating fugitive felons for alleged violations of those sections of this title set forth in subsection (a) of this section.

"(f) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a summons under this section, who complies in good faith with the summons and any orders issued under subsection (d)(3) and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 235 the following new item:

"237. Administrative provisions ..... 3771".

(c) CONFORMING AMENDMENT.—Section 1510(b)(3)(B) of title 18, United States Code, is amended by inserting "or a Federal Bureau of Investigation summons (issued under section 3771)," after "subpoena".

SEC. 202. SECRET SERVICE AUTHORITY.

(a) SECRET SERVICE JURISDICTION IN BANK CRIME CASES.—Section 3056(b)(1) of title 18, United States Code, is amended by—

(1) by inserting "financial institutions, and the Resolution Trust Corporation, and concurrent with the authority of any other Federal law enforcement agency," after "land bank" associations,";

(2) inserting "215," after "213,";

(3) inserting "656," after "493,";

(4) inserting "1005, 1032," after "709,"; and

(5) inserting "1341, 1343, 1344 and 1510," after "1014,".

(b) SECRET SERVICE PARTICIPATION IN FINANCIAL SERVICES CRIME STRIKE FORCES.—Secret Service personnel investigating violations of sections 213, 215, 656, 657, 1005, 1006, 1007, 1032, 1341, and 1344 shall exercise such jurisdiction through the Financial Institutions Crime Strike Forces established in Title III of this Act.

SEC. 203. WIRETAP AUTHORITY FOR BANK FRAUD AND RELATED OFFENSES: TECHNICAL AMENDMENTS TO WIRETAP LAW.

Section 2516 of title 18, United States Code, is amended by—

(a) in subsection (1)(c)—

(1) by inserting "section 215 (relating to bribery of bank officials)," before "section 224";

(2) by inserting "section 1014 (relating to false statements to financial institutions)," before "sections 1503,";

(3) by striking out "section 1343 (fraud by wire, radio, or television)," and inserting in lieu thereof "section 1343 (fraud by use of facility of interstate commerce), section 1344 (relating to bank fraud),"; and

(4) by striking out "the section in chapter 65 relating to destruction of any energy facility,"; and

(b) by redesignating the first paragraph (m), which reads "any conspiracy to commit any of the foregoing offenses."

(c) by striking out "and" at the end of paragraph (m);

(d) by striking out the period at the end of paragraph (n) and inserting in lieu thereof "; and"; and

(e) in paragraph (j), by striking out "any violation of section 1679(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1742 (relating to aircraft piracy) of title 49, of the United States Code" and inserting in lieu thereof "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) (49 U.S.C. App. 1679(c)(2)) or sections 902 (i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy) (49 U.S.C. App. 1742 (i) or (n)".

TITLE III—RESTRUCTURING THE FEDERAL ATTACK ON BANK CRIMES

SEC. 301. ESTABLISHMENT OF FINANCIAL SERVICES CRIME DIVISION.

There is established within the Department of Justice the Financial Services Crime Division.

SEC. 302. ASSISTANT ATTORNEY GENERAL FOR FINANCIAL SERVICES CRIME.

(a) ASSISTANT ATTORNEY GENERAL.—There shall be at the head of the Financial Services Crime Division established by this Act an Assistant Attorney General for Financial Services Crime who shall—

(1) be appointed by the President, by and with the advise and consent of the Senate;

(2) be responsible for—

(a) supervising and coordinating investigations and prosecutions within the Department of Justice of fraud and other criminal activity in and against the financial services industry;

(b) ensuring that federal statutes relating to civil enforcement, asset seizure and forfeiture, money laundering and racketeering are used to the fullest extent authorized by law to attack the financial resources of those who have committed crimes in and against the financial services industry; and

(c) ensuring that adequate resources are made available for the investigation and prosecution of fraud and other criminal activity in and against the financial services industry.

(b) COMPENSATION.—(1) Section 5315 of title 5, United States Code, is amended by striking "Assistant Attorneys General (10)." and inserting "Assistant Attorneys General (11)."

(2) The Assistant Attorney General of the Financial Services Crime Division shall be paid at the basic pay payable for level IV of the Executive Schedule.

SEC. 303. DEPUTY ASSISTANT ATTORNEYS GENERAL.

(a) ESTABLISHMENT.—There are established two (2) Deputy Assistant Attorneys General for Financial Services Crime Divison, who shall report directly to the Assistant Attorney General for Financial Services Crime.

(b) COMPENSATION.—The Deputy Assistant Attorneys General for Financial Services Crime Division shall be paid at the rate of basic pay payable for level V of the Executive Schedule.

SEC. 304. ADMINISTRATIVE PROVISIONS.

There shall be established within the Financial Services Crime Division such sections, offices, and personnel as the Attorney General shall deem appropriate to maintain or increase the level of enforcement activities in the area of fraud and other criminal activity in and against the financial services industry.

SEC. 305. FINANCIAL SERVICES CRIMES STRIKE FORCES.

(a) ESTABLISHMENT.—There are established not less than ten (10) field offices of the Financial Services Crime Division in the federal judicial districts experiencing the greatest number of civil and criminal offenses in and against the financial services industry, as determined by the Attorney General. All such field offices shall be known as Financial Services Crime Strike Forces.

(b) PARTICIPATION OF FEDERAL AGENCIES.—The field offices of the Financial Services Crime Division shall include attorneys, agents, specialized technical personnel and administrative support personnel from the following agencies:

(1) assistant United States attorneys;

(2) the Federal Bureau of Investigation;

(3) the United States Secret Service;

(4) the Criminal Investigative Division of the Internal Revenue Service;

(5) the Federal Deposit Insurance Corporation;

(6) the Office of Thrift Supervision;

(7) the Resolution Trust Corporation;

(8) the Office of Comptroller of the Currency;

(9) the Federal Reserve Board; and

(10) the Securities and Exchange Commission.

(c) OPERATION OF THE FINANCIAL SERVICES CRIME STRIKE FORCES.—(1) The agents assigned to the Financial Services Crime Strike Forces shall be dedicated exclusively to and located with the Strike Forces so that the Strike Force personnel may develop expertise and function as a working unit.

(2) The agents assigned to the Strike Forces from the various participating agencies shall be given credit for the work of the Strike Forces, regardless of the statutory authority used to prosecute Strike Force cases.

(d) EXPENSES OF FINANCIAL SERVICES CRIME DIVISION AND STRIKE FORCES.—Beginning in fiscal year 1992, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Financial Services Crime Division and Strike Forces. Such appropriations shall be made to the Department of Justice's Financial Services Crime Division Account for the Attorney General to make reimbursements to the involved agencies as necessary.

SEC. 307. REPORTS.

(a) IN GENERAL.—(1) The Division shall compile and collect data concerning—

(A) the nature and quantity of investigations, prosecutions, and enforcement proceedings in progress;

(B) the nature and quantity of such matters closed, settled or litigated to conclusion; and

(C) the outcomes achieved, including fines and penalties levied, prison sentences imposed and damages recovered.

(2) The Division shall make the raw data collected available to any committee of Congress or congressional agency.

(3) The Division shall analyze and report to the Senate committees on Banking, Housing and Urban Affairs Committee and the Judiciary and the House committees on Banking, Finance and Urban Affairs and the Judiciary semiannually on the data described in paragraph (1), and its own coordination activities with the agencies identified in section 5(b).

(b) SPECIFICS OF REPORT.—The report required by this section shall identify, with respect to the activities of the Division and its sections and offices—

(1) the institutions in which evidence of significant fraud or insider abuse has been deleted;

(2) the Federal adminsitrative enforcement actions brought against parties;

(3) the claims for monetary damages or other relief sought, and any settlement or judgments against parties;

(4) indictments, guilty pleas or verdicts obtained against parties; and

(5) the resources allocated in pursuit of such claims, actions, settlements, indictments or verdicts.

SEC. 308. STATISTICS ON FINANCIAL SERVICES CRIME ENFORCEMENT.

Section 522 of title 28, United States Code, is amended by—

(1) inserting "(a)" before "The Attorney General"; and

(2) adding at the end thereof the following:

"(b) The information provided pursuant to subsection (a)(2) shall include records of the number of pending causes, matters, investigations, cases, defendants, and files in the area of criminal activity involving financial services and financial institutions which shall specify the number of such cases relating to the savings and loan and banking industries shall be made available to the Congress not less than monthly during each year.".

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as shall be necessary to carry out the purposes of this title.

TITLE IV—EXPANDING FEDERAL FORFEITURE AND MONEY LAUNDERING LAWS

SEC. 401. EXPANDING CIVIL FORFEITURE LAWS IN BANK CRIME CASES.

Section 981 of title 18, United States Code, is amended—

(a) in subsection (a)(1)(C), by inserting "or a violation of section 1341 or 1343 of such title affecting an insured depository institution" before the period;

(2) in subsection (e)(3), by striking "(if the affected financial institution is in receivership or liquidation)"; and

(3) in subsection (e)(4), by striking "(if the affected financial institution is not in receivership or liquidation)".

SEC. 402. RESTITUTION FOR VICTIMS OF BANK CRIMES.

Section 981(e) of title 18, United States Code, is amended—

(1) by striking out "or" where it apears at the end of paragraph (4) and "." where it appears at the end of paragraph (5);

(2) by adding "; or" at end of paragraph (5); and

(3) by adding after paragraph (5) the following new paragraph:

"(6) in the case of property referred to in subsection (a)(1)(C), restore forfeited property to the victims of an offense described in subsection (a)(1)(C).".

SEC. 403. SEIZURE OF ASSETS BY THE ATTORNEY GENERAL.

Section 981(b) of title 18, United States Code, is amended by inserting "Attorney General or" after "subsection (a)(1)(C) of this section may be seized by the".

SEC. 404. MONEY LAUNDERING INVOLVING BANK CRIMES.

Subparagraph 1956 (c)(7)(D) of title 10, United States Code, is aamended—

(1) by inserting "section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent federal credit institution entries), 1007 (relating to Federal Deposit Insuance transactions), 1014 (relating to fraudulant loan or credit applications)," after "section 875 (relating to interstate communications"; and

(2) by inserting "section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting an insured depository institution," after "section 1203 (relating to hostage taking)".

SEC. 405. CLOSING LOOPHOLES IN FEDERAL BANKRUPTCY LAW INVOLVING BANK CRIMES.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following:

"(p) BREACH OF FIDUCIARY DUTIES.—A finding by a Federal bankruptcy or district court that a director or an officer of an insured financial institution has breached any of his or her fiduciary duties to that institution shall constitute a defalcation while acting a fiduicary capacity within the meaning of section 523(a)(4) of title 11, United States Code. The liability arising from such breach shall constitute a debt not dischargeable in bankruptcy.".

SEC. 406. DISALLOWING USE OF BANKRUPTCY TO EVADE COMMITMENTS TO MAINTAIN THE CAPITAL OF A FEDERALLY INSURED DEPOSITORY INSTITUTION.

(a) EXCEPTION TO DISCHARGE UNDER CHAPTER 11.—Section 1141(d) of title 11, United States Code, is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by adding the following new paragraph:

"(4) The confirmation of a plan does not discharge a debtor of its responsibilities on any commitment to maintain the capital of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), entered into by the debtor and the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors.".

(b) EXCEPTION TO DISCHARGE UNDER CHAPTER 7.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting a semicolon;

(3) by inserting "or" at the end of paragraph (10); and

(4) by adding at the end the following new paragraph:

"(11) for any commitment to maintain the capital of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), entered into by the debtor and the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervisions, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors.".

(c) COMMITMENTS MAY NOT BE DISAVOWED AS EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code is amended by adding at the end the following new subsection:

"(o) The debtor may not reject any commitment of the debtor to maintain the capital of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), entered into by the debtor and the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors.".

SEC. 407. DISCLOSURE OF CIVIL ENFORCEMENT ACTIONS.

(a) Section 8(u) of the Federal Deposit Insurance Act is amended to read as follows:

"(u) PUBLIC DISCLOSURE OF AGENCY ACTION.—

"(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public within 10 days of the agency's action—

"(A) any notice of charges issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law;

"(B) any letter, directive, agreement, settlement, memorandum of understanding, business plan, or other written statement issued or accepted in lieu of a final order issued under this section of any other provision of law;

"(C) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

"(D) any modification to or termination of any document made public pursuant to this paragraph.

"(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public. Any document or evidence presented in such a hearing shall be published as part of the transcript of the hearing and made available for public inspection.

"(3) EFFECTIVE DATE.—The disclosure required by paragraph (1) shall apply with respect to all documents outstanding as of January 1, 1990 or issued after January 1, 1990. The publication required by paragraph (2) shall apply with respect to the transcripts of all hearings conducted after January 1, 1990.

"(4) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of a document pursuant to paragraph (1), or holding a hearing open to the public pursuant to paragraph (2), would seriously threaten the safety and soundness of an insured depository institution, such agency may delay the publication of such document or transcript of the hearing for a reasonable time.".

(b) Paragraph (s) of section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended to read as follows:

"(s) PUBLIC DISCLOSURE OF AGENCY ACTION.—

"(1) IN GENERAL.—The Board shall publish and make available to the public within 10 days of the agency's action—

"(A) any notice of charges issued with respect to any administrative enforcement proceeding initiated by the Board under this section or any other provision of law;

"(B) any letter, directive, agreement, settlement, memorandum of understanding, business plan, or other written statement issued or accepted in lieu of a final order issued under this section or any other provision of law;

"(C) any final order issued with respect to any administrative enforcement proceeding initiated by the Board under this section or any other provision of law; and

"(D) any modification to or termination of any document made public pursuant to this paragraph.

"(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Board shall be open to the public. Any document or evidence presented in such a hearing shall be published as part of the transcript of the hearing and made available for public inspection.

"(3) EFFECTIVE DATE.—The disclosure required by paragraph (1) shall apply with respect to all documents outstanding as of January 1, 1990, or issued after January 1, 1990. The publication required by paragraph (2) shall apply with respect to the transcripts of all hearings conducted after January 1, 1990.

"(4) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of a document pursuant to paragraph (1), or holding a hearing open to the public pursuant to paragraph (2), would seriously threaten the safety and soundness of an insured depository institution, the Board may delay the publication of such document or transcript of the hearing for a reasonable time.

"(5) DOCUMENTS FILED UNDER SEAL IN ENFORCEMENT HEARINGS.—The appropriate Federal banking agency may file any document or part of a document under seal in a hearing on the record of an action commenced by such agency, if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2). Such report and the part of the document withheld shall be transmitted to the Committee on Banking, Finance and Urban Affairs, of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.".

TITLE V—INCREASING INVESTIGATORS AND PROSECUTORS FOR BANK FRAUD AND EMBEZZLEMENT CASES

SEC. 501. FINDINGS.

The Congress hereby makes the following findings:

(1) The Federal Bureau of Investigation has received more than 20,000 referrals involving fraud in the financial services industry that the Bureau has been unable to examine;

(2) As of February 1990, the Bureau has had more than 7,000 pending bank fraud and embezzlement cases, some 3,000 of which were major cases;

(3) More than 900 pending cases and more than 200 unaddressed referrals involve losses greater than $1,000,000;

(4) The Attorney General recently spoke of an "epidemic of fraud" in the Savings and Loan industry and indicated that at least 25 to 30 percent of thrift failures can be attributed to criminal activity by the institution's officers and management;

(5) Officials at the Resolution Trust Corporation indicate that an estimated 60 percent of the institutions it has seized "have been victimized by serious criminal activity";

(6) The Federal Bureau of Investigation has received more than 20,000 referrals involving fraud and other criminal activity in the financial services industry that the FBI has been unable to examine;

(7) More than 1,000 of the criminal referrals received by the FBI involving losses of more than $100,000;

(8) As of February 1990, the FBI had more than 7,000 pending bank and thrift fraud and embezzlement cases, 3,000 of which were considered major cases and more than 900 pending cases and approximately 235 of the unaddressed referrals involve losses greater than $1 million.

(9) The Director of the Office of Thrift Supervision recently indicated that bank and thrift regulators were sending the Department of Justice 8,000 referrals per month regarding civil and criminal violations involving financial services crimes and that there were now 80,000 cases pending.

SEC. 502. ADDITIONAL FUNDING FOR INVESTIGATORS AND PROSECUTORS FOR BANK CRIME CASES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $167,500,000 for each of the fiscal years 1991, 1992, and 1993: *Provided*, That such appropriation shall be in addition to any appropriation provided in regular appropriations Acts; *Provided further*, That the additional funds authorized to be appropriated under this section shall be allocated for salaries and expenses for participation in the Financial Services Crime Strike Forces as follows:

(1) $75,000,000 for 400 additional assistant United States attorneys and 325 specialized technical and administrative support positions;

(2) $47,500,000 for 225 additional FBI agents and 150 specialized technical and administrative support positions;

(3) $10,000,000 for 75 additional IRS criminal investigative division agents and 35 specialized technical and administrative support personnel;

(4) $10,000,000 for 75 additional Secret Service agents and 35 specialized technical and administrative support personnel;

(5) $5,000,000 for 50 additional Federal Deposit Insurance Corporations investigators, examiners, and support personnel;

(6) $5,000,000 for 50 additional Office of Thrift Supervision investigators, examiners and support personnel;

(7) $5,000,000 for 50 additional Office of the Comptroller of the Currency investigators, examiners and support personnel;

(8) $5,000,000 for 50 additional Resolution Trust Corporation investigators, examiners and support personnel;

(9) $2,500,000 for 25 additional Federal Reserve investigators, examiners and support personnel; and

(10) $2,500,000 for 25 additional Securities and Exchange Commission investigators, examiners and support personnel.

TITLE VI—PREVENTING AND PROSECUTING FRAUD IN THE SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION

SEC. 601. CONCEALMENT OF ASSETS FROM FDIC OR RTC.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"SEC. 1032. CONCEALMENT OF ASSETS FROM CONSERVATOR OR RECEIVER OF INSURED FINANCIAL INSTITUTION.

"Whoever knowingly conceals from the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in any such corporation's capacity as conservator or receiver for any insured depository institution, any assets or property against which the corporation, as conservator or receiver, may have a claim shall be fined not more than $1,000,000, or imprisoned not more than 5 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code is amended by inserting after the item relating to section 1031 the following new item:

"1032. Concealment of assets from conservator or receiver of insured financial institution.".

SEC. 602. CIVIL AND CRIMINAL FORFEITURE FOR FRAUD IN THE SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding the following new subparagraphs:

"(D) Any property, real or personal, which represents the gross receipts obtained, directly or indirectly, as a result of a violation of the following sections of this title relating to the sale of government assets by the Resolution Trust Corporation or which is traceable to such gross receipts: sections 666(a)(1) (Federal program fraud); 1001 (false statements to the Federal government); 1031 (major fraud against the United States); section 1341 (mail fraud); or 1343 (wire fraud).".

"(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding the following new paragraphs:

"(3) The Court, in imposing a sentence on a person convicted of an offense under sections 666(a)(1), 1001, 1031, 1341, 1343 involving the sale of assets by the Resolution Trust Corporation shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts obtained, directly or indirectly, as a result of such violation, or which is traceable to such gross receipts.".

"(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which is obtained, directly or indirectly, by

or through such scheme or artifice to defraud.".

SEC. 603. CIVIL ACTIONS UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964 of title 18, United States Code, is amended in subsection (b) by adding ", or the chairman of the Federal Deposit Insurance Corporation or the chairman of the Resolution Trust Corporation or their designees for violations affecting insured depository institutions," after "The Attorney General".

SEC. 604. SUBPOENA AUTHORITY FOR FDIC AND RTC ACTING AS CONSERVATOR OR RECEIVER.

Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by redesignating subparagraph (I) as subparagraph (J) and by inserting after subparagraph (H) the following new subparagraph:

"(I) SUMMONS AUTHORITY.—

"(i) IN GENERAL.—The Corporation may, as conservator or receiver and for purposes of carrying out any power, authority, or duty with respect to the insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution) exercise any power established under section 8(n) and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

"(ii) AUTHORITY LIMITED TO BOARD OF DIRECTORS.—A summons may be issued under clause (i) only by, or with the written approval of, the Board of Directors (or, in the case of a summons issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation) and such authority to issue or approve may not be delegated by the Board of Directors.".

SEC. 605. PREJUDGMENT ATTACHMENTS.

Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended by inserting after paragraph (17) (as added by section 306 of this title) the following new paragraph:

"(18) PREJUDGMENT ATTACHMENT.—Any court of competent jurisdiction may, at the request of the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution), place the assets of any person designated by the Corporation under the control of the court and appoint a trustee to hold such assets if the Corporation demonstrates the likelihood that—

"(A) such person is—

"(i) an institution-affiliated party who is obligated to the institution or otherwise may be required to provide restitution to the institution; or

"(ii) a debtor of the institution; and

"(B) the assets of such person will be dissipated or otherwise placed beyond the jurisdiction of the court or Corporation before any recovery in favor of the institution may be completed unless a trustee is appointed.".

SEC. 606. FRAUDULENT CONVEYANCES AVOIDABLE BY RECEIVERS.

Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended by adding at the end the following new paragraph:

"(17) FRAUDULENT TRANSFERS.—

"(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, may avoid any transfer of any interest of any institution-affiliated party, or any person who the Corporation determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with actual intent to hinder, delay, or defraud the insured depository institution.

"(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—

The Corporation may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.".

SEC. 607. INJUNCTIVE RELIEF.

Section 951 of the Financial Institution. Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended by adding at the end thereof the following:

"(g) INJUNCTIVE RELIEF.—(1) In any action brought by the Federal Deposit Insurance Corporation, Resolution Trust Corporation, or the National Credit Union Administration, in their receivership, conservatorship, or corporate capacities, involving a scheme to defraud affecting a financial institution injunctive relief may be granted in conformity with the principles that govern the granting of such relief from threatened loss or damage in other cases, including the possibility that any judgment for money damages might be difficult to execute (including secreting or dissipating assets or other similar conduct that might defeat a judgment for money damages), but no showing of special or irreparable injury shall have to be made.

"(2) Upon a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any action described in paragraph (1) before a final determination on the merits.".

SEC. 608. FDIC ENFORCEMENT DIVISION.

The Federal Home Loan Bank Act is amended by inserting after redesignated subsection 21A(a)(12)(G) the following new subsection:

"(H) The Corporation shall maintain a Fraud and Enforcement Review Division to assist and advise the Corporation, and other relevant agencies, in pursuing criminal cases, civil claims and administrative enforcement actions against institution-affiliated parties of thrifts under the jurisdiction of the Corporation. The Fraud and Enforcement Review Division shall have such duties as the Corporation establishes, including the compilation and publication of a report to Committee on Judiciary of the House of Representatives, Committee on Banking, Finance and Urban Affairs of the House of Representatives, Committee on Judiciary of the Senate, and Committee on Banking, Housing and Urban Affairs of the Senate, on the coordinated pursuit of claims by the relevant Federal agencies, including the Department of Justice, the Comptroller of the Currency, the Securities and Exchange Commission and the Corporation. Such Report shall be published before December 31, 1990 and updated semiannually thereafter.

TITLE VII—STRENGTHENING THE JUDICIAL SYSTEM IN THE PROSECUTION OF BANK FRAUD AND EMBEZZLEMENT CASES

SEC. 701. AUTHORIZING ADDITIONAL FUNDS FOR THE FEDERAL JUDICIARY.

There is authorized to be appropriated to the Federal courts for salaries and expenses of the Court of Appeals, District Courts, and other Judicial Services, $25,000,000 in each of the fiscal years 1991, 1992 and 1993: Provided, That such appropriation shall be in addition to any appropriation provided in regular appropriations Acts; Provided further, That the additional funds authorized to be appropriated under this section shall be allocated among the Federal judicial districts with the highest financial institutions crime case loads and for the following purposes:

(a) additional United States magistrates;

(b) renovation of court facilities;

(c) additional law clerks and clerical support staff; and

(d) additional deputy clerks.

SEC. 702. AUTHORITY FOR UNITED STATES MAGISTRATES.

Subsection 636(a) of title 28, United States Code, is amended by—

(1) at the end of paragraph (3) striking "and";

(2) at the end of paragraph (4) striking "." and inserting "; and"

(3) inserting a new paragraph (5) as follows:

"(5) the power to accept a guilty plea to a felony upon the consent of the defendant for the following offenses in title 18, United States Code: sections 215, 656, 657, 1005, 1006, 1007, 1014 or 1344, or sections 1341 or 1343 affecting an insured depository institution.

TITLE VIII—PRIVATE ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD AND EMBEZZLEMENT CRIMES

SEC. 801. PRIVATE ACTIONS IN BANK FRAUD AND EMBEZZLEMENT CASES.

Section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended by adding at the end thereof the following.

"(h) ACTIONS BY PRIVATE PERSONS.—A person may bring a civil action under this section pursuant to the procedures provided in section 3730 of title 31, United States Code, except that where—

"(1) provisions relating to section 3730 refer to a violation of section 3729 of title 31, United States Code, such provisions shall be deemed to refer to a violation of an offense described in subsection (c) of this section; and

"(2) provisions relating to section 3730 refer to a 'false claims law' and a 'false claims law investigator' such provisions shall be deemed to refer to an offense described in subsection (c) and a person authorized to investigate such offenses, respectively.".

SUMMARY OF THE BANK CRIMES ENFORCEMENT ACT OF 1990

TITLE I—ENHANCED BANK FRAUD AND EMBEZZLEMENT PENALTIES

Creates a new "S&L kingpin" statute that provides up to life imprisonment for the highest level of S&L violators who act in concert with three or more other violators and who derive more than $5 million in profits from their crimes. (Biden)

Increases the maximum penalty for bank fraud and embezzlement from 20 years to 30 years. (Biden)

Adds important bank fraud and embezzlement-related crimes to the list of predicates under the Racketeering Influenced and Corrupt Organizations law. (Dole/Heinz)

Imposes stiff mandatory minimum sentences in major bank fraud and embezzlement cases to ensure that S&L violators serve time behind bars. (Biden)

TITLE II—BROADENING INVESTIGATIVE AUTHORITY IN BANK FRAUD AND EMBEZZLEMENT CASES

Gives the FBI administrative subpoena authority in S&L cases, which will allow investigators to require individuals and financial institutions to make available all records that might provide evidence of criminal wrongdoing without a court order. (House/Kassebaum)

Giving U.S. Secret Service agents the authority to investigate bank fraud and embezzlement cases. (Lieberman)

TITLE III—RESTRUCTURING THE FEDERAL ATTACK ON FRAUD AND THEFT IN THE BANKING AND SAVINGS AND LOAN INDUSTRIES

Concentrates the attack on S&L fraud cases by creating a new Financial Institutions Crime Division in the Department of Justice, headed by a high-level Assistant Attorney General. (Graham/Wirth/Dixon).

Creates 10 new Financial Institutions Crime Strike Forces in those cities hardest hit by the S&L scandal, composed of special teams of FBI agents, criminal IRS investigators, bank examiners and federal prosecutors. (Graham/Wirth/Dixon).

TITLE IV—EXPANDING FEDERAL ASSET SEIZURE, FORFEITURE, AND MONEY LAUNDERING LAWS IN S&L-RELATED CASES

Allows U.S. prosecutors to use civil seizure and forfeiture laws to recover the proceeds of mail and wire fraud involving financial institutions. (House/Kassebaum)

Authorizes the Attorney General to seize property used in or derived from bank fraud and embezzlement crimes; current law restricts such seizure authority to the Secretary of the Treasury. (Simon/Administration)

Adds bank fraud and embezzlement offenses to the predicates under the federal money laundering and wiretap statutes. (Biden/Dole/Heinz)

Authorizes the Attorney General to restore forfeited property directly to victims, including those involved in S&L fraud cases, rather than requiring victims to file a time-consuming action in civil court for mitigation or remission. (Biden/Administration)

Closes the loophole that allows persons to escape repaying their victims for S&L-related offenses by filing for bankruptcy; this provision would prevent the discharge of such debts in bankruptcy proceedings. (Dole/Heinz)

TITLE V—INCREASING INVESTIGATORS AND PROSECUTORS FOR BANK FRAUD AND EMBEZZLEMENT CASES

Authorizes $167.5 million over each of the next three years to dramatically expand the number of federal agents and prosecutors devoted to bank fraud and embezzlement cases. (Hollings/Biden)

Adds 375 new FBI agents and support personnel to be devoted exclusively to S&L fraud and related cases.

Adds 725 new assistant U.S. attorneys and technical and administrative support personnel to prosecute bank fraud and embezzlement cases.

Adds 110 more U.S. Secret Service agents and support personnel to attack fraud in and against the financial services industry;

Adds 110 more IRS criminal investigators to investigate tax and other S&L fraud-related cases.

Adds 250 additional FDIC, Office of Thrift Supervision, RTC, Office of the Comptroller of the Currency, and Securities and Exchange Commission financial experts to the Financial Services Crime Division and Strike Forces.

TITLE VI—PREVENTING AND PROSECUTING FRAUD IN THE SALE OF ASSETS BY THE RTC

Makes the knowing concealment of funds obtained through certain bank fraud and embezzlement offenses a crime under federal money laundering laws. (House/Kassebaum)

Expands federal forfeiture laws to authorize U.S. prosecutors to seize and forfeit the proceeds of fraud against the U.S. government involving the sale of assets by the Resolution Trust Corporation. (Biden)

Authorizes the RTC and the FDIC to bring civil RICO charges for violations in and against the banking and savings and loan industries. (Biden)

Gives the RTC subpoena authority and clarifies the existing subpoena authority of the FDIC to investigate fraud in thrift and banking industries, including in the sale of assets by the RTC. (House/Kassebaum)

Permits the RTC and FDIC to place under the control of a court-appointed trustee the assets of individuals who may be held culpable in the failure of an insured depository institution and establishes a uniform federal statute that permits the RTC and the FDIC to unwind fraudulent conveyances made in anticipation of liability for fraud involving the thrift and banking industries dating back over a five-year period. (House/Kassebaum)

TITLE VII—INCREASING JUDICIAL RESOURCES TO ENSURE PROMPT PROSECUTION OF BANK FRAUD AND EMBEZZLEMENT CASES

Provides $25 million in additional funding for the Judicial Branch for those districts where the S&L-related case load is the heaviest. (Biden)

Expands the authority of federal magistrates in bank fraud and embezzlement cases to expedite these cases in federal courts. (Biden)

TITLE VIII—PRIVATE ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD AND EMBEZZLEMENT CASES

Authorizes private citizens to bring civil suits in the name of the U.S. government for violations of certain bank fraud and embezzlement offenses, similar to federal laws authorizing such suits for violation of defense fraud statutes. (Simon)

Provides that the private party may recover at least 15 percent, bvut not more than 25 percent, of any recovery obtained for a claim filed under this title. (Simon)●

By Mr. KERRY (for himself, Mr. HOLLINGS, and Mr. GRAHAM):

S. 2788. A bill to authorize certain programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION ACT

● Mr. KERRY. Mr. President, I rise today with my fellow colleagues, Senators HOLLINGS and GRAHAM, to introduce a bill which provides authorization of fiscal year 1991 appropriations for certain operations, research, and facilities requirements of the National Oceanic and Atmospheric Administration, or NOAA. As the manager of a wide range of the Nation's civilian programs related to the oceans and atmosphere, NOAA's activities touch our daily lives—from the weather reports we depend on for deciding what to wear tomorrow, to the global environmental information we use to manage our living and nonliving resources. This legislation will enable NOAA to fulfill its observation, monitoring, prediction, and management responsibilities related to these programs.

NOAA's atmospheric activities center in large part around the responsibility to provide routine and severe weather forecasting services and to monitor and predict climatic trends. Over the past years, NOAA has undertaken significant efforts to advance its forecasting systems and techniques. One result has been dramatic reductions in the number of deaths caused by severe storms such as tornadoes and hurricanes, even though these storms have become more frequent. This legislation includes sufficient authorization for continuation of NOAA's modernization of its weather services—both in the acquisition of technologically advanced systems, and in the demonstration of improved atmospheric science and technology to operational forecasting.

This legislation also supports NOAA's efforts to improve our understanding and prediction of climatic changes which occur over longer periods of years, decades, or even centuries. NOAA's approach to conducting these monitoring and research efforts indicates its concern for sound investment of Federal funds. For example, by focusing on programs with a high probability of early and useful results—such as the El Nino-Southern Oscillation ocean-warming phenomenon which triggered droughts in Africa and Australia and severe storms in South America earlier in this decade—we improve our chances of developing a predictive capability for seasonal climate fluctuations.

Another example is NOAA's Climate and Global Change Program which is coordinated with other participants in the U.S. Global Change Research Program to ensure that we have an integrated strategy for understanding our changing planet. In recognition of the increased importance of NOAA's envi-

ronmental prediction and information management activities to this national research effort, this legislation authorizes the funding required for NOAA to establish a new national information service—based on reliable assessments and quantitative predictions of changing global climate—to serve both government and non-government sectors around the world.

NOAA will continue to play an important role in advancing the use of satellites to meet the growing demands for global environmental information. This legislation authorizes funding for spacecraft procurement, launch and operations for the polar-orbiting and geostationary environmental satellites, as well as for the land remote-sensing satellites. Continuity of service from the geostationary, or "GOES," satellite system is threatened because recent instrument development problems have caused cost increases and a launch delay of over a year from the original schedule for the next series of spacecraft. This legislation authorizes sufficient funding to support a schedule that will maintain our ability to monitor the development and course of hurricanes for protection of public safety and property.

NOAA does not rely on just the GOES system to monitor hurricanes and severe storms. Reconnaissance aircraft operated by both NOAA and the U.S. Air Force also collect critical information for advance warnings in coastal areas. As a result of recent budget pressures, the Defense Department has proposed to transfer its aircraft and reconnaissance mission to NOAA. This bill will ensure that reconnaissance missions are flown by both the Air Force and NOAA until a tropical cyclone surveillance management plan can be developed and implemented.

Funding is also authorized to continue operations of the Government's Landsat 4 and 5 system, as well as the completion and launch of the Landsat 6 spacecraft that will be operated by a private contractor. These land remote-sensed data are extremely valuable for assessing global environmental problems like deforestation and acid rain. This legislation will improve the utility of these data for research and other purposes by authorizing the transfer of the archiving responsibility for the historical Landsat data to the Department of the Interior which will integrate them with its observations of the Earth's surface from other systems.

Mr. President, as the summer begins, we once again find our coastal areas on the front page of every newspaper in the country—oil from the *Bermuda Star* poured into Buzzards Bay last week, the *Mega Borg* fire recently threatened the Texas and Louisiana coasts, shellfish beds are closing at alarming rates, and the summer has just begun. This legislation authorizes NOAA to carry out many of the ocean programs required to monitor and manage our coastal areas in the face of these man-imposed burdens. NOAA recently established the Coastal Ocean Science Program, which I strongly endorse, to apply observational, research, assessment, and modeling activities to these key coastal ocean problems.

The authorization before us provides necessary resources for a host of important programs throughout the Nation. Specifically of interest to my home region, the legislation provides $2 million for technical upgrading at the National Marine Fisheries Service Laboratory in Woods Hole. These funds will be used to prepare the lab for its active participation in the President's Coastal Ocean Science Program. The legislation includes $2.9 million to renovate and operate the NOAA research vessel, the *Albatross*. In the past, this vessel has provided critical science and data on our coastal resources and fisheries. Sadly, it has been out of commission for over a year while the lab has lost the capacity to accumulate essential data.

In the bill, there is $700,000 to finish bulkhead repairs at the Woods Hole facility. Just last year the docks at the lab were literally falling into the sea. In addition, $1.4 million is restored in the bill to keep the NOAA lab in Gloucester, MA operating. For years this lab has been on the cutting edge of fisheries product research. The Massachusetts coastal region has long been the home for critical fisheries and coastal resource research. These funds in the bill provide for continuation of projects that are nationally beneficial.

This legislation authorizes two additional programs that focus on protection of natural resources. First, a coastal environmental monitoring program will strengthen NOAA's comprehensive national monitoring on the long-term effects of human activities on the marine environment. The National Research Council recently completed a study that identifies ways to improve the quality and usefulness of monitoring information. The monitoring program authorized in this bill will address the recommendations of that study, building on NOAA's current program which collects pollutant information at 180 sites around the country.

Second, this legislation authorizes establishment of the Florida Keys National Marine Sanctuary, which will assist efforts to preserve the last living reef on the North American continent. Mr. President, I am particularly sympathetic to this effort to protect the Florida Keys from vessel groundings because of my recent success at getting a similar valuable national resource, the Stellwagen Bank fisheries, on the marine sanctuary list.

NOAA is also responsible for providing the scientific and technical expertise to manage the Nation's living marine resources. Many of the programs that support this responsibility have been targeted for elimination by the administration in recent budget proposals. However, this legislation maintains Congress's commitment to the fisheries research, information collection, regulation enforcement, seafood quality, and fisheries development activities necessary for that management.

To support these ocean, coastal, and fisheries management responsibilities, this legislation also authorizes NOAA's research efforts which increase our understanding of coastal and marine processes for the purpose of predicting environmental changes, and provide the technical basis for enhancing the Nation's marine economic sector. These efforts include drawing upon the National Sea Grant College Program for research and technology transfer support, and operating undersea research facilities to develop techniques for working in the underseas environment.

Finally, this legislation authorizes the administrative and facilities support activities necessary for NOAA to conduct its atmospheric and oceanic programs. In NOAA's case, these support activities aren't confined to buildings and desks—they also include the operations and maintenance of the aircraft and ships required for NOAA to carry out its research, monitoring, prediction, and management responsibilities. Mr. President, I'm particularly concerned about the deteriorating status of NOAA's ships, which represent over one-third of the Nation's research fleet. Although this bill authorizes funds requested by NOAA to begin a modest service life extension program for these vessels, a more thorough replacement and refurbishment program is required. Accordingly, this legislation requires NOAA to provide a report to the Congress on the modernization needs of its oceanographic vessels.

Mr. President, the breadth of scope of the programs covered by this authorization bill—from observations over 22,000 miles in space to research under the ocean's surface—supports NOAA's claim to be an "Earth systems agency." I urge my colleagues to support me in ensuring that we develop NOAA's capabilities to their greatest potential.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2788

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Oceanic and Atmospheric Administration Authorization Act of 1990".

SEC. 2. For the purposes of this Act, the term—

(1) "Act of 1890" means the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (26 Stat. 653); and

(2) "Act of 1947" means the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.).

TITLE I—NOAA ATMOSPHERIC AND SATELLITE PROGRAMS

Subtitle A—Authorization of Appropriations

NATIONAL WEATHER SERVICE OPERATIONS AND RESEARCH

SEC. 101. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out the operations and research activities of the National Weather Service under law, $300,831,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to National Weather Service operations and research specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include meteorological, hydrological, and oceanographic public warnings and forecasts, as well as applied research in support of such warnings and forecasts.

PUBLIC WARNING AND FORECAST SYSTEMS

SEC. 102. (a) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to improve its public warning and forecast systems under law, $177,467,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to public warning and forecast systems specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include the development, acquisition, and implementation of major public warning and forecast systems.

(b) CONTINGENT LIABILITY.—In procuring information processing and telecommunications services of the National Oceanic and Atmospheric Administration for the Advanced Weather Interactive Processing System, the Secretary of Commerce may provide, in the contract or contracts for such services, for the payment for contingent liability of the Federal Government which may accrue in the event that the Government decides to terminate the contract before the expiration of the multiyear contract period. Such contract or contracts for such services shall limit the payments which the Federal Government is allowed to make under such contract or contracts to amounts provided in advance in appropriations Acts.

CLIMATE AND QUALITY RESEARCH

SEC. 103. (a) IN GENERAL.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its climate and air quality research activities under law, $123,290,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to climate and air quality research specified by the Act of 1980, the Act of 1947, and any other law involving such activities. Such activities include the interannual and seasonal climate research, long-term climate and air quality research, and the National Climate Program.

(b) CLIMATE AND GLOBAL CHANGE.—Of the sums authorized under subsection (a) of this section, $86,914,000 for fiscal year 1991 are authorized to be appropriated for the purposes of studying climate and global change. Such program shall augment and integrate existing programs of the National Oceanic and Atmospheric Administration and shall include global observations, monitoring, and data and information management relating to the study of changes in the Earth's climate system, fundamental research on critical oceanic and atmospheric processes, and climate prediction and diagnostics.

ATMOSPHERIC RESEARCH

SEC. 104. (a) IN GENERAL.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric research activities under law, $48,395,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to atmospheric research specified by the Act of 1890 and by any other law involving such activities. Such activities include research for developing improved observation and prediction capabilities for atmospheric processes, as well as solar-terrestrial services and research.

(b) STORM PROGRAM.—Of the sum authorized under subsection (a) of this section , $2,500,000 for fiscal year 1991 are authorized to be appropriated for the Stormscale Operational and Research Meteorology (STORM) program.

SATELLITE OBSERVING SYSTEMS

SEC. 105. (a) IN GENERAL.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite observing systems activities under law, $260,576,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include spacecraft procurement, launch, and associated ground station system changes involving polar orbiting and geostationary environmental satellites and land remote-sensing satellites, as well as the operation of such satellites.

(b) SEARCH AND RESCUE SATELLITE SYSTEM.—Of the sum authorized under subsection (a) of this section, $2,300,000 in fiscal year 1991 are authorized for the administration by the National Oceanic and Atmospheric Administration of the ground stations for the Search and Rescue Satellite Aided Tracking system. Such administration shall be carried out in consultation with the Department of Transportation and the Department of Defense.

(c) LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.—The authorization provided for under subsection (a) of this section shall be in addition to moneys authorized under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) for the purpose of carrying out such activities relating to satellite observing systems.

DATA AND INFORMATION SYSTEMS

SEC. 106. There are authorize to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its data and information services activities under law, $27,174,000 for fiscal year 1991. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include climate data services, ocean data services, geophysical data services, and environmental assessment and information services.

Subtitle B—Hurricane Reconnaissance Program Findings

SEC. 130. The Congress finds that—

(1) many areas of the United States, including those bordering the Gulf of Mexico, and the Atlantic and Pacific Oceans (including the State of Hawaii), rely on data provided by the Department of Defense through the Air Force WC-130 weather reconnaissance aircraft to predict the intensity, speed, and direction of movement of tropical cyclones, including hurricanes and tropical storms;

(2) these same areas also rely on data collected by the Department of Commerce through the National Oceanic and Atmospheric Administration's satellite, radar, aircraft, and buoy technologies to predict tropical cyclone behavior and to conduct research on improving forecasts and warnings;

(3) satellites, including the Geostationary Operational Environmental Satellites, are an important source of tropical cyclone information, but they cannot provide the same quality of information as is supplied by weather reconnaissance aircraft;

(4) there is currently only one Geostationary Operational Environmental Satellite positioned over the United States and the loss of its ability to collect data would severely restrict tropical cyclone information gathering; and

(5) a vigorous research program in tropical cyclone behavior and forecasting is important if the accuracy of prediction of tropical cyclones is to be significantly improved.

ESTABLISHMENT OF PROGRAM

SEC. 131. The Secretary of Defense and the Secretary of Commerce shall establish a 5-year joint program for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the understanding of the cause and behavior of tropical cyclones.

RESPONSIBILITIES

SEC. 132. (a) SECRETARY OF DEFENSE.—The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under section 131 and to transfer the data to the Secretary of Commerce, unless a joint agreement is reached, with the approval of both the Secretary of Defense and the Secretary of Commerce, for the transfer of such responsibility (including full funding) to an appropriate Federal agency or department which may include the Coast Guard.

(b) SECRETARY OF COMMERCE.—The Secretary of Commerce shall have the responsibility of funding the carrying out of data gathering and research by remote sensing, ground sensing, research aircraft, and other

technologies necessary to accomplish the program established under section 131.

MANAGEMENT PLANS

SEC. 133. (a) MANAGEMENT PLAN FOR PROGRAM.—The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 120 days after the date of enactment of this Act, submit to the Congress a management plan for the program established under section 131, which shall include organizational structure, goals, major tasks, and funding profiles for the 5-year duration of the program.

(b) TROPICAL CYCLONE SURVEILLANCE AND RECONNAISSANCE.—The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 4 years after the date of enactment of this Act, submit to the Congress a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

(c) DEGREE AND QUALITY OF PROTECTION.—The management plans and programs required by this title shall in every sense provide for at least the same degree and quality of protection (such as early warning capability and accuracy of fixing a storm's location) as currently exists with a combination of satellite technology and manned reconnaissance flights. Additionally, such plans and programs shall in no way allow any reduction in the level, quality, timeliness, sustainability (in terms of quantity and quality of aircraft, flying hours, crews, and support personnel), or area served (including the State of Hawaii) of both the existing principal and back-up tropical cyclone reconnaissance and tracking systems.

Subtitle C—Land Remote-Sensing Commercialization

TRANSFER OF DATA ARCHIVING RESPONSIBILITY

SEC. 170. (a) FINDINGS.—The Congress finds that—

(1) section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) directs the Secretary of Commerce to provide for the archiving of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) the Secretary of Commerce currently provides for the archiving of Landsat data at the Department of the Interior's EROS Data Center, which is consistent with the requirement of section 602(g) of such Act (15 U.S.C. 4272(g)) to use existing Federal Government facilities to the extent practicable in carrying out this archiving responsibility;

(3) the Landsat data collected since 1972 are an important global data set for monitoring and assessing land resources and global change;

(4) the Secretary of the Interior maintains archives of aerial photography, digital cartographic data, and other Earth science data at the EROS Data Center that also are important data sets for monitoring and assessing land resources and global change;

(5) it is appropriate to transfer authority to the Secretary of the Interior for the archiving of land remote-sensing data; and

(6) the Secretary of the Interior should explore ways to facilitate the use of archived data for research purposes consistent with other provisions of the Land Remote-Sensing Commercialization Act of 1984.

(b) PROVISION OF UNENHANCED DATA.—Section 402(b)(4) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4244(b)(4)) is amended by inserting "of the Interior" immediately after "Secretary".

(c) ARCHIVING OF DATA.—Section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) is amended—

(1) in subsections (b), (c), (d), (f), and (g), by inserting "of the Interior" immediately after "Secretary" each place it appears; and

(2) by adding at the end the following new subsection:

"(h) In carrying out the functions of this section, the Secretary of the Interior shall consult with the Secretary to ensure that archiving activities are consistent with the terms and conditions of any contract or agreement entered into under title II, III, of V or this Act and with any license issued under title IV of this Act.".

AUTHORIZATION

SEC. 171. Section 609(a) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4278(a)) is amended by inserting immediately after the first sentence the following: "There are authorized to be appropriated to the Secretary $36,334,000 for fiscal year 1991 for the purpose of carrying out the provisions of this Act.".

TITLE II—NOAA OCEAN AND COASTAL PROGRAMS

Subtitle A—Authorization of Appropriations

NATIONAL OCEAN SERVICE

SEC. 201. (a) MAPPING, CHARTING, AND GEODESY.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out mapping, charting, and geodesy activities (including geodetic data collection and analysis) under the Act of 1947 and any other law involving those activities, $50,347,000 for fiscal year 1991.

(b) OBSERVATION AND ASSESSMENT.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out observation and assessment activities—

(1) under the Act of 1947 and any other law involving those activities, $54,560,000 for fiscal year 1991;

(2) under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), $4,500,000 for fiscal year 1991; and

(3) under title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), $17,000,000 for fiscal year 1991.

OCEAN AND GREAT LAKES RESEARCH

SEC. 202. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out ocean and Great Lakes research activities under the Act of 1947, the Act of 1890, the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.), and any other law involving those activities, $68,049,000 for fiscal year 1991.

Subtitle B—Coastal Monitoring

SHORT TITLE

SEC. 251. This subtitle may be cited as the "Marine and Coastal Monitoring Act of 1990".

PURPOSE

SEC. 252. The purpose of this subtitle is to establish under the Administrator a comprehensive national program for the monitoring of marine and coastal waters of the United States, which will provide the data and information on the status and trends of contamination levels and biological effects in such waters necessary for governmental entities to make well-informed management decisions concerning the utilization and protection of the resources of such waters.

DEFINITIONS

SEC. 253. As used in this subtitle, the term—

(1) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce; and

(2) "marine and coastal" refers to the marine and coastal waters off the States along the coasts of the Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the Pacific Ocean, the marine and coastal waters off the coast of the State of Alaska, and the waters of the Great Lakes.

COMPREHENSIVE PROGRAM

SEC. 254. The comprehensive national monitoring program referred to in section 252 shall consist of —

(1) a nationwide monitoring network as described in section 255;

(2) intensive regional monitoring programs as described in section 256; and

(3) a national monitoring center as described in section 257.

NATIONWIDE MONITORING NETWORK

SEC. 255. (a) ESTABLISHMENT.—There is established within the National Oceanic and Atmospheric Administration of the Department of Commerce a unified nationwide monitoring network, which shall, on the date of enactment of this Act, include the activities and functions of the National Status and Trends Program of the National Oceanic and Atmospheric Administration as in existence immediately before such date of enactment. The network shall be the single Federal activity for the national-scale monitoring of the marine and coastal waters of the United States and shall evaluate the status and trends of the following aspect of such waters:

(1) toxic substances, both organic and inorganic, and their biological effects;

(2) nutrient over-enrichment and low oxygen conditions;

(3) toxic and nuisance algal blooms; and

(4) overall ecological condition or health.

(b) INTERAGENCY COMMITTEE.—The Administrator shall carry out monitoring activities under this section in accordance with the guidance and priorities established by an interagency committee which shall be chaired by the Administrator and shall include representation from the Environmental Protection Agency, the United States Fish and Wildlife Service, the United States Geological Survey, and the Army Corps of Engineers.

REGIONAL MONITORING PROGRAMS

SEC. 256.(a) DESIGNATION OF REGIONS.—The Administrator shall designate specific estuarine and coastal regions of major concern in which the waters shall be intensively monitored. Such regions shall include—

(1) each of the estuarine areas listed in section 320(a)(2)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1330(a)(2)(B)) as areas requiring priority consideration; and

(2) such additional areas as the Administrator may designate from among areas nominated for designation by the Governors of States that border those areas.

(b) MONITORING COORDINATION GROUPS.—The Administrator shall establish monitoring coordination groups for each designated region to develop and direct a monitoring program tailored to the needs of the region

and based on the existing monitoring conducted in the region. Each such group shall consist of representatives of the Federal, State, and other agencies with marine or coastal monitoring programs or responsibilities in the region and such academic and other experts as the Administrator may appoint. Each such group shall develop a longterm monitoring plan for the region and, within two years after the establishment of the group, shall submit the plan to the Administrator.

(2) The members of any such monitoring group shall receive neither compensation nor expenses, except that any nongovernmental experts appointed to the group may be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the member's usual place of residence, in accordance with section 5703 of title 5, United States Code, when engaged in the actual performance of duties as a member of the group.

(c) REGIONAL MONITORING ACTIVITIES.—The Administrator shall ensure that the regional monitoring activities fully incorporate activities of the nationwide monitoring network established under section 255. The Administrator shall include only such additional sampling sites, times, and measurements as are required to assemble the data and information needed by regional resource managers to identify and address estuarine and coastal problems within the region.

(d) ANNUAL OPERATING PLAN.—After approval by the Administrator of its longterm monitoring plan, each regional monitoring group shall develop annually an operating plan for the monitoring activities to be conducted in its region. Each such plan shall identify—

(1) monitoring activities proposed to be conducted;

(2) the agency responsible for each such activity;

(3) the estimated cost for each such activity; and

(4) the source of funding available for each such activity.

The Administrator, upon recommendation by the regional monitoring group, may award supplemental funding for a specific monitoring activity, not to exceed 50 percent of the total cost of the activity.

(e) REGULATIONS.—The Administrator shall issue regulations necessary to implement the provisions of this section, including procedures for the approval of longterm monitoring plans and for the awarding of supplemental funding for regional monitoring activities.

NATIONAL COASTAL MONITORING CENTER

SEC. 257.(a) ESTABLISHMENT OF CENTER.—Within 90 days after the date of enactment of this Act, the Administrator shall establish within the National Oceanic and Atmospheric Administration a National Coastal Monitoring Center. The Center shall develop scientific methods and procedures for carrying out the monitoring activities under this subtitle in an effective, efficient, and economical manner and shall issue reports and other data products to disseminate in a timely manner the results of such activities.

(b) FUNCTIONS.—The Center shall, among other things—

(1) develop a coordinated national data and information management system to assure compatibility of all data and information developed under this subtitle and facilitate the exchange of such data and information;

(2) develop a coordinated national quality assurance and quality control program to assure accuracy and compatibility of all data and information obtained in the nationwide network and regional programs established under this subtitle;

(3) support research studies to develop and improve procedures and methods for monitoring marine environmental quality indicators and conditions;

(4) implement studies to develop recommendations for standardized sampling protocols, analytical measurement methods, and statistical data analysis procedures to be used in the nationwide network and regional programs established under this subtitle;

(5) organize national and regional workshops and meetings, develop reports, and otherwise take actions to coordinate the Federal, State, regional, and other monitoring programs carried out in association with the nationwide network and regional programs established under this subtitle; and

(6) develop periodically reports assessing various aspects of the status and trends of the environmental quality of marine and coastal waters of the United States, including the development every two years of a report synthesizing all the results from the activities under this subtitle to provide an overall evaluation of the current conditions indicating environmental health of these areas and an identification of significant trends that are occurring in these conditions.

TITLE III—AUTHORIZATION OF NOAA FISHERY PROGRAMS

SEC. 301. The National Oceanic and Atmospheric Administration Marine Fisheries Program Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in section 2(a) by striking "$26,500,000" and all that follows through "fiscal year 1988, and" and by inserting "and $43,152,000 for fiscal year 1991" immediately after "1989";

(2) in section 3(a) by striking $35,000,000" and all that follows through "fiscal year 1988, and" and by inserting "and $25,880,000 for fiscal year 1991" immediately after "1989"; and

(3) in section 4(a) by striking "$10,000,000" and all that follows through "fiscal year 1988, and" and by inserting "and $10,556,000 for fiscal year 1991" immediately after "1989".

TITLE IV—MISCELLANEOUS PROVISIONS PROGRAM SUPPORT

SEC. 401. (a) EXECUTIVE DIRECTION AND ADMINISTRATIVE ACTIVITIES.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out executive direction and administrative activities (including management, administrative support, provision of retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development) under the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857-1 et seq.), and any other law involving those activities, $67,475,000 for fiscal year 1991.

(b) ACQUISITION, CONSTRUCTION, MAINTENANCE, AND OPERATION OF FACILITIES.—There are authorized to be appropriated to the Department of Commerce for acquisition, construction, maintenance, and operation of facilities of the National Oceanic and Atmospheric Administration under any law involving those activities, $7,377,000 for fiscal year 1991.

(c) MARINE SERVICES.—(1) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out marine services activities (including ship operations, maintenance, and support) under the Act of 1947 and any other law involving those activities, $69,030,000 for fiscal year 1991.

(2) The Secretary of Commerce shall, not later than December 31, 1990, report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the modernization needs of the oceanographic vessels of the National Oceanic and Atmospheric Administration and the funding required to meet such needs.

(d) AIRCRAFT SERVICES.—There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out aircraft services activities (including aircraft operations, maintenance, and support) under the Act of 1890 and any other law involving those activities, $9,306,000 for fiscal year 1991.

REQUIREMENT OF NOTICE OR REPROGRAMMING

SEC. 402. The Secretary of Commerce shall not reprogram an amount appropriated under the authority of this Act unless, before carrying out that reprogramming, the Secretary provides notice of that reprogramming to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Merchant Marine and Fisheries and the Committee on Science, Space, and Technology of the House of Representatives.

TITLE V—FLORIDA KEYS MARINE SANCTUARY

SHORT TITLE

SEC. 501. This title may be cited as the "Florida Keys National Marine Sanctuary and Protection Act".

FINDINGS

SEC. 502. The Congress finds and declares the following:

(1) The Florida Keys extend approximately 220 miles southwest from the southern tip of the Florida peninsula.

(2) Adjacent to the Florida Keys land mass are located spectacular, unique, and nationally significant marine environments, involving tropical fisheries, seagrass meadows, mangrove islands, and extensive living coral reefs.

(3) These unique marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and esthetic values which give this area special national significance.

(4) These environments are the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptiable to damage from human activities, and possess high value to human beings if properly conserved.

(5) These marine environments are subject to damage and loss of their biological integrity from a variety of onshore and offshore sources of disturbance.

(6) Vessel groundings along the reefs of the Florida Keys represent one of many serious treats to the continued vitality of the marine environments of the Florida Keys

which must be addressed in order to protect their values.

(7) Action is necessary to provide comprehensive protection for these marine environments by establishing a Florida Keys National Marine Sanctuary, by restricting commercial vessel traffic within such Sanctuary, and by requiring promulgation of a management plan and regulations to assure that all allowed uses are compatible with the purposes for which such Sanctuary was established.

(8) The agencies of the United States must cooperate fully to achieve the necessary protection of Sanctuary resources.

POLICY AND PURPOSE

SEC. 503. (a) POLICY.—It is the policy of this title to protect and preserve the fisheries, wildlife, coral reefs, and other sanctuary resources of the Florida Keys marine environments.

(b) PURPOSE.—The purpose of this title is to protect the nationally significant sanctuary resources of the area described in section 505(b), to educate and interpret for the public regarding the Florida Keys marine environment, and to manage such human uses of the Florida Reef Tract and adjacent waters as may be determined by the Secretary to be compatible with this title.

DEFINITIONS

SEC. 504. As used in this title, the term—

(1) "adverse effect" means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm—

(A) any sanctuary resource; or

(B) any of those qualities, values, or purposes for which the Sanctuary is designated.

(2) "comprehensive management plan" means the plan developed pursuant to section 507 to ensure the proper management of compatible uses in the Sanctuary and the protection of Sanctuary resources in perpetuity.

(3) "Sanctuary" means the Florida Keys National Marine Sanctuary established and designated under section 505.

(4) "sanctuary resource" has the meaning given that term in section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)).

(5) "Secretary" means the Secretary of Commerce.

SANCTUARY DESIGNATION

SEC. 505. (a) DESIGNATION.—The area described in subsection (b) is designated as the Florida Keys National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.). The Sanctuary shall be managed in compliance with all applicable provisions of such title III as if the Sanctuary had been designated under such title.

(b) AREA INCLUDED.—The area referred to in subsection (a) consists of all submerged lands and waters including living marine and other resources within and on those lands and waters, bounded by the following coordinates:

(1) Latitude: 24°43'12" N Smith Shoals; longitude: 81°55'00" W

(2) Latitude: 24°43'42" N Northwest Corner; longitude: 83°06'00" W

(3) Latitude: 24°22'45" N Southwest Corner; longitude: 83°06'00" W

Follows 600 foot isobath:

(4) Latitude: 24°18'30" N; longitude: 82°30' 00" W

(5) Latitude: 24°23'15"; longitude: 81°28'30" W

(6) Latitude: 24°43'24" N; longitude: 80°34'42" W

(7) Latitude: 24°48'36"N; longitude: 80°23'48" W

(8) Latitude: 24°59'00" N; longitude: 80°13'12" W

(9) Latitude: 25°13'18" N (Northeast corner of Sanctuary); longitude: 80°05'51" W

(10) Latitude: 25°17'30" N (Existing southeast corner of Biscayne National Park); longitude: 80°09'54" W

Follows southern boundary of Biscayne National Park to southwest corner of park on western shoreline of Card Sound. Follows western shoreline of Card Sound, Barnes Sound, and Manatee Bay to include those water bodies.

Follows southeastern boundary of Everglades National Park through Blackwater Sound, Tarpon Basin Sound, Buttonwood Sound, and Florida Bay to include the area of those water bodies that lie outside the Park, to southwest corner of Everglades National Park at:

(11) Latitude: 24°51'06" N; longitude: 80°50'00" W

Follows western boundary of Everglades National park northward to:

(12) Latitude: 24°59'12" N; longitude: 81°00'42" W

(13) Latitude: 24°57'48" N; longitude: 81°32'00" W

Excluding areas within Ft. Jefferson National Monument.

(c) AREAS IN BOUNDARIES OF STATE OF FLORIDA.—The designation under subsection (a) shall not take effect with respect to an area located within the seaward boundary of the State of Florida if, not later than 180 days after the effective date of regulations enacted in accordance with this title and title III of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1431 et seq.), the Governor of the State of Florida notifies the Secretary in writing that the designation of that area is unacceptable. Not later than 30 days after receiving such a notification, the Secretary shall publish and transmit to the Congress the boundaries of the Sanctuary, as modified in accordance with the notification.

(d) BOUNDARY MODIFICATIONS.—Subsequent to a boundary review conducted pursuant to section 507(a)(7), the Secretary may make such minor modifications to the boundaries of the Sanctuary as necessary to properly protect Sanctuary resources. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications.

PROHIBITION OF CERTAIN USES

SEC. 506. (a) COMMERCIAL VESSEL TRAFFIC.—(1) Consistent with generally recognized principles of international law, a person may not operate a tank vessel (as that term is defined in section 2101 of title 46, United States Code) or a vessel greater than 50 meters in length in the Area to Be Avoided described in the Federal Register notice of May 9, 1990 (55 Fed. Reg. 19418-19419).

(2) MODIFICATION.—The prohibition in subsection (a) including, the area to which the prohibition applies, may be modified by regulations issued jointly by the Secretary of the Department in which the Coast Guard is operating and the Secretary of Commerce. Such regulations shall include—

(A) a requirement that the Secretary issue a finding that any vessel allowed to operate under this subsection would not pose a threat to sanctuary resources when operated in accordance with such regulations; and

(B) other provisions necessary to prevent vessel groundings within the Sanctuary.

(3) EFFECTIVE DATE.—Paragraph (1) shall be effective the earliest of—

(A) six months after the date of enactment of this Act,

(B) publication of a notice to mariners consistent with this section, or

(C) publication of new nautical charts consistent with this section.

(b) MINERAL AND HYDROCARBON EXPLORATION AND DEVELOPMENT.—No mining, mineral extraction, or hydrocarbon exploration, development, or production shall be permitted within the boundary of the Sanctuary.

(c) OTHER USES.—The Secretary shall prohibit such other uses or classes of uses as may be determined to be incompatible with the purposes for which the Sanctuary is established. Such determination shall be made in accordance with development of a comprehensive management plan and regulations pursuant to section 507(a)(1) of this Act.

COMPREHENSIVE MANAGEMENT PLAN

SEC. 507. (a) PREPARATION OF PLAN.—The Secretary, in consultation with appropriate Federal, State, and local government authorities, shall prepare a comprehensive management plan and implementing regulations to assure the protection of the marine environment within the Sanctuary in perpetuity. The Secretary shall complete such comprehensive management plan and final regulations for the Sanctuary not later than 30 months after the date of enactment of this Act. In developing the plan and regulations, the Secretary shall generally follow the procedures specified in section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434), including those provisions requiring extensive public participation, opportunities for public comment, and congressional review. Such comprehensive management plan shall include, but not be limited to, the following:

(1) A determination of which uses, or classes of uses, are incompatible with the purposes for which the Sanctuary is established and should be prohibited in accordance with section 506.

(2) A management strategy for compatible uses, including consideration of temporal and geographical zoning, to ensure protection of Sanctuary resources.

(3) The identification of existing or potential sources of damage or disturbance to Sanctuary resources, within or outside the Sanctuary boundary.

(4) Strategies to prevent or mitigate existing or potential sources of damage or disturbance to Sanctuary resources, particularly including strategies to ensure protection of water quality.

(5) The identification of needs for further research, and the establishment of a long-term ecological monitoring program.

(6) The identification of funding needed to fully implement the plan's provisions.

(7) The identification of any need for minor modifications to the Sanctuary boundary, pursuant to section 505(d), as may be necessary to properly protect and enhance the nationally significant resources of the area.

(8) A mechanism to ensure coordination and cooperation between Sanctuary managers and managers of State and Federal lands and waters within or in the vicinity of the Sanctuary.

(9) A strategy to promote education, among users of the Sanctuary, about coral reef conservation and navigational safety.

(10) A procedure for incorporation of the existing Looe Key and Key Largo National Marine Sanctuaries into the Florida Keys National Marine Sanctuary to assure their protection and management in accordance with provisions of this Act.

(b) PROMULGATION OF IMPLEMENTING REGULATIONS.—The Secretary shall promulgate such rules and regulations as may be necessary to implement provisions of the comprehensive management plan.

(c) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in development of the comprehensive management plan.

(d) KEY LARGO AND LOOE KEY SANCTUARIES.—Pending the promulgation of the comprehensive management plan and regulations pursuant to this title, the existing Key Largo and Looe Key National Marine Sanctuaries shall continue to be operated in present protected status.

(e) TERMINATION OF STUDIES.—On the date of enactment of this Act, all congressionally mandated studies of existing areas in the Florida Keys for designation as national marine sanctuaries shall be terminated.

PENALTIES AND ENFORCEMENT

SEC. 508. (a) CIVIL PENALTIES AND DAMAGES.—Any person subject to the jurisdiction of the United States who violates this title is subject to civil penalties under section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437), and any vessel used for such a violation shall be liable in rem for civil penalties and is subject to the seizure and forefeiture provisions of such section 307.

(b) ENFORCEMENT.—The Secretary may enforce this title under sections 307 and 312 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437 and 1443).

(c) TERRITORIAL SEA.—For the purposes of implementing and enforcing this title and regulations promulgated thereunder, the territorial sea of the United States extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES

SEC. 509. (a) LIABILITY IN GENERAL.—Any person who destroys, causes the loss of, or injures any sanctuary resource is subject to liability to the United States pursuant to section 312 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443) for response cost and damages resulting from such destruction, loss or injury.

(b) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem pursuant to section 312 of the Marine Protection Research and Sanctuaries Act of 1972 (15 U.S.C. 1443) for response costs and damages resulting from such destruction, loss or injury.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. (a) AUTHORIZATION.—In addition to amounts authorized under section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444), there is authorized to be appropriated to the Secretary of Commerce not more than $750,000 for fiscal year 1991 to carry out the purposes of this title.

(b) REPORT.—The Secretary of Commerce shall, not later than March 1, 1991, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the future requirements for funding the Sanctuary through fiscal year 1999 under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).●

By Mr. GORE (for himself, Mr. DANFORTH, Mr. HOLLINGS, Mr. FORD, Mr. INOUYE, Mr. BRYAN, Mr. GORTON, Mr. CRANSTON, and Mr. AKAKA):

S. 2789. A bill to authorize appropriations for the Earthquake Hazards Reduction Act of 1977, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM REAUTHORIZATION ACT

Mr. GORE. Mr. President, today, I am pleased to join Senators HOLLINGS and DANFORTH, the distinguished chairman and ranking Republican member of the Commerce Committee, and Senators FORD, INOUYE, BRYAN, GORTON, CRANSTON, and AKAKA in introducing the National Earthquake Hazards Reduction Program Reauthorization Act of 1990. This bill amends the Earthquake Hazards Reduction Act which established the program and will both improve our understanding of earthquakes and reduce the death and destruction they cause.

The tragedy in Iran that has been unfolding on the front pages of our newspapers over the last few days is a reminder that earthquakes are the most devastating natural disasters we face. In a single minute, tectonic forces can be unleashed that can kill tens or even hundreds of thousands of people. In Iran, the death toll is now at 50,000 and is still rising. It will be weeks before an accurate count is possible. Roads are blocked, communication links are down, and when an entire village is destroyed there are few survivors still alive to count the missing.

The stories from Iran are heartrending. Entire families killed. Villages where not a single building remains standing. According to pilots flying over the area, more than 100 cities have been destroyed, and an area larger than the State of Connecticut has been devastated.

The pictures are much like those from the Armenian earthquake in December 1988, which killed over 25,000 people. Last year, at a Senate Science Subcommittee hearing in Memphis, Valeri Anikolenko, a Soviet earthquake expert, testified on the devastation caused by that earthquake. He showed slide after slide of the damage and the rubble and the people desperately trying to dig loved ones out of the ruins. According to Dr. Anikolenko, it looked like there had been "an H-bomb explosion"—the devastation was that extensive.

I'm afraid that too often we assume that such a disaster can't happen here. We like to think that the high death toll in Armenia and Iran was due to the poor construction techniques used there. While it is true that many of the dead were in old, mud brick houses, it is important to remember that in both Armenia and Iran, many modern apartments, factories, and other facilities were damaged or destroyed. Many of the buildings that collapsed were not all that different from buildings in the United States, especially those in the eastern and central United States that were built without regard to seismic safety. Many of the older buildings in the United States are built in locations that are just as vulnerable. If an earthquake the size of the one that struck Iran hit in the central United States, the death toll would almost certainly be in the thousands and the damage in the tens of billions of dollars.

And this is not a remote possibility. A devastating earthquake in the United States will almost certainly happen in our lifetimes.

The threat of earthquakes is very real, too real for more than two out of three Americans. In 1811 and 1812, the most severe earthquakes in U.S. history struck the New Madrid, MO, area near the city of Memphis in my home State. The New Madrid Fault Zone is still active today, and as several earthquake experts testified at a Science Subcommittee hearing in March, the New Madrid Seismic Zone could produce another killer quake at any time. Lives are at stake. Cities could be devastated.

In California, there is a greater than 50 percent chance of a great earthquake, as powerful and as destructive as the 1906 San Francisco earthquake, in the next 30 years. The U.S. Geological Survey just recently revised its estimate for the probability of a major earthquake on the two major faults that flank the San Francisco Bay, the San Andreas and the Hayward Faults. According to their estimates, the probability of an earthquake of Richter magnitude 7.0 or greater occurring on these faults in the next 30 years is about 50 percent. Such an earthquake would be at least as strong as the Loma Prieta earthquake last year, but instead of occurring in a remote mountainous area 70 miles from San Francisco, it would be centered right in the middle of some of the largest cities in California. The devastation and the death toll would be much higher than from the Loma Prieta earthquake. Hundreds or thousands of people would die, and the total damage would far exceed the $8 billion total from Loma Prieta.

To reduce the death toll and the damage which will occur when the next big earthquake strikes, I am in-

troducing legislation to strengthen and expand the National Earthquake Hazards Reduction Program [NEHRP]. The earthquake program was created in 1977, thanks in large part to the leadership of Senator CRANSTON and Representative GEORGE BROWN. When the program was created, most Americans thought they did not need to worry about earthquakes. But research funded by the NEHRP has revealed that damaging earthquakes are possible in 39 of our 50 States. In the last 300 years, Boston; New York City; Charleston, SC; Memphis; St. Louis; Little Rock; Los Angeles; and San Francisco, all have experienced earthquakes that would cause extensive damage and hundreds of deaths if they occurred today. In just the last few years, geologists have found evidence of ancient earthquakes in Washington State and Oregon that were as large as the largest earthquakes ever recorded. These quakes dwarfed even the mammoth 1964 Good Friday earthquake that devastated Anchorage, AK. Likewise, geologists working in Hawaii have found evidence of massive tidal waves triggered by ancient earthquakes. We can be sure that similar earthquakes will happen in the future.

NEHRP was established to address this problem. It was set up to coordinate and expand Federal agency programs which address the threat of earthquakes. The four principal agencies in NEHRP are the Federal Emergency Management Agency [FEMA], the U.S. Geological Survey [USGS], the National Science Foundation [NSF], and the National Institute of Standards and Technology [NIST]. FEMA is responsible for helping States prepare for and respond to major earthquakes. The USGS monitors and investigates earthquakes, assesses seismic risks throughout the country, and assists State and local officials in identifying the areas most vulnerable to earthquakes. NSF, as part of its mission to support basic scientific and engineering research in universities, supports academic investigators in both geology and earthquake engineering. NIST's Center for Building Technology investigates the properties and behavior of construction materials and helps develop methods of seismic-resistant construction.

When the earthquake program was started we did not know much about earthquakes, about the threat they posed, or about what could be done to reduce that threat. Consequently, the program focused primarily on research. While there is still much to learn about earthquakes and earthquake engineering and while we must continue to have a well-funded earthquake research program, it is also time to make more effective use of the research that has been done. Geologists have identified active earthquake faults, but in many places developers and home builders are building right on top of them. Earthquake engineers have developed inexpensive, effective ways to make buildings more earthquake-resistant, and yet often, even in earthquake-prone Western States, these techniques are not being applied. The recent earthquakes in northern California, Armenia, and Mexico City provided a number of valuable lessons about how to respond to an earthquake, but many State and local emergency managers do not have the equipment and resources to apply those lessons.

The legislation I am introducing today revises and updates the Earthquake Hazards Reduction Act of 1990. It expands the goals of the NEHRP and stresses the need for more earthquake preparedness and more public education about earthquakes. It calls for the Federal Government to do more to help State and local authorities reduce earthquake hazards with better land-use plans, building codes, and earthquake preparedness plans. In particular, it calls for seismic design and construction standards for Federal buildings, because in many localities Federal buildings are exempt from local building codes and are less earthquake-resistant than private buildings. The Federal Government owns or leases more than 400,000 buildings and should do what it can to protect the inhabitants of those buildings. Furthermore, we need to ensure that military bases, Federal hospitals, and other Government facilities will survive a major earthquake because at the time of the disaster, these facilities will be needed to provide critically needed services to those left injured and homeless.

The bill also puts added emphasis on public education, since the public will not prepare for earthquakes if it does not understand the threat they pose. In addition, it would establish a Center for the International Exchange of Earthquake Information at the USGS to facilitate the 2-way flow of information on earthquakes and earthquake engineering with other countries that must cope with the threat of these disasters. We can learn a great deal about dealing with earthquakes from countries like Japan, Mexico, and the Soviet Union where catastrophic earthquakes are far more common than in the United States.

The bill revises, updates, and reorganizes the original Earthquake Act and, in particular, clarifies the roles of the agencies in NEHRP, which were not defined in the original Earthquake Hazards Reduction Act. While much of the language from the original Earthquake Act is retained in this bill, there are also many provisions from S. 1062, which I and Senator DANFORTH introduced last year and which the Senate passed shortly after the Loma Prieta earthquake. In addition, there are also provisions taken from H.R. 3533, the House version of S. 1062, which has been ordered reported by the House Science and Interior Committees. The major provisions include:

First, amendments to the findings section of the Earthquake Act to update and expand the findings of the Act.

Second, amendments to the purpose section of the Earthquake Act which merge the objectives and purpose sections of the original Earthquake Act.

Third, the definition of the responsibilities of FEMA as lead agency of NEHRP. FEMA is required to work with the other lead agencies, to plan, coordinate, and report on NEHRP activities.

Fourth, the definition of the program responsibilities of the four NEHRP agencies. The bill defines and clarifies, but does not change, the present roles of the NEHRP agencies.

Fifth, a requirement that the White House Office of Science and Technology Policy (OSTP), which is responsible for coordinating interagency research programs, report to Congress on the role OSTP can play in the coordination of NEHRP.

Sixth, the establishment of a NEHRP Advisory Committee by the Director of FEMA.

Seventh, a requirement that the President adopt, not later than June 1, 1994, standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards.

Eighth, a provision allowing FEMA to accept and use bequests, gifts, or donations of services, money, or property.

Ninth, a limit on amount of cost-sharing FEMA can require from States receiving earthquake preparedness grants.

Tenth, the creation of a program for post-earthquake studies following major earthquakes coordinated by the U.S. Geological Survey.

Eleventh, authorizations for the four NEHRP agencies for fiscal year 1991 and 1992. In addition, authorizations for fiscal year 1990 are increased to accommodate additional funding provided in the dire emergency fiscal year 1990 supplemental appropriations bill following the Loma Prieta earthquake. Authorizations total $105.06 million for fiscal year 1990, $102.75 million for fiscal year 1991, and $120.25 million for fiscal year 1992.

PROPOSED AUTHORIZATIONS

	Fiscal year 1990 appropriations [1]	Proposed authorizations	
		Fiscal year 1991	Fiscal year 1992
FEMA	9.109	14.75	17.0
USGS	46.443	50.0	55.0
NSF	26.320	37.0	44.25
NIST	2.525	1.00	4.00
Total	84.39	102.75	120.25

[1] Includes additional NEHRP appropriations provided in the Dire Emergency FY90 Supplemental Appropriations bill enacted after the Loma Prieta earthquake.

I ask unanimous consent that a section-by-section analysis of the bill and the bill in its entirety be included in the RECORD.

The authorizations provided in this bill are the minimum needed to maintain a viable national earthquake program. In the last 10 years, funding for the program has declined about 35 percent in real dollars. The increased authorizations provided in this bill will restore most of those cuts, and provide funding for critically-needed earthquake research, monitoring, preparedness, mitigration, and education programs.

Earthquake engineers, geologists, and geophysicists who study earthquakes, and emergency managers all have called for significant increases in funding for the NEHRP. A 1987 report, "Commentary and Recommendations of the Expert Review Committee," done for FEMA, documented the effects of decreased funding for NEHRP and recommended an annual NEHRP budget of $188 million. This report was written by some of the Nation's leading earthquake experts and should be required reading for anyone concerned about earthquakes. When you compare what could be done—what needs to be done—with what we are presently doing, you come away very frustrated.

There are exciting new technologies—new seismometers for monitoring earthquakes, new satellites for detecting the buildup of strain before an earthquake, new building technology for protecting buildings, highways, and other facilities, and new communications and computer equipment to facilitate emergency relief services in the critical hours after an earthquake—and we are barely using any of them.

At a Science Subcommittee hearing in March, we heard testimony about measurements that the U.S. Geological Survey scientists have been making of helium in the soil along the San Andreas Fault. On the day before the Loma Prieta earthquake, the helium levels skyrocketed to the highest levels in 10 years, an unmistakable precursor of the earthquake the next day. Unfortunately, funding for the monitoring had been cut drastically over the last 5 years, and there were no other stations which could confirm the measurements. Other researchers detected very anomalous, extremely low frequency radio signals in the hours before the earthquake. Exploring these tantalizing signals to see if they might provide a way to predict earthquakes will cost money, money that this bill will provide.

The Loma Prieta earthquake has also focused additional attention on the need for earthquake preparedness. The earthquake last October showed that proper construction techniques can save lives and property, but the death of 42 people in the collapse of the Cypress Street Viaduct showed that much remains to be done. And California has invested hundreds of millions of dollars in earthquake hazard mitigation; the rest of the Nation is woefully unprepared by comparison. We need to see that engineers know about the latest techniques for building earthquake-resistant buildings, both in the West and in the East. And we need to promote the use of such techniques. All the technology in the world is useless if it is not applied. This bill promotes the adoption of model building codes and it requires that seismic standards be developed for new and existing Federal buildings and for federally owned and regulated lifelines—the roads, pipelines, communication links, power systems on which our economy depends.

While research will help us improve our understanding of the earthquake threat and new design and construction methods will help reduce the loss of life and property caused by an earthquake, we will never entirely eliminate the danger posed by earthquakes. We will always need to be prepared to respond when an earthquake occurs. Thus, we need to ensure that emergency managers around the country know what to do when an earthquake hits and have the equipment to do it.

This bill provides for grants to States for earthquake preparedness. It would more than double FEMA's budget from last year's level. With that additional funding, FEMA will be able to develop a national search-and-rescue capability, a capability we are sorely lacking today. In Armenia and now in Iran, hundreds and thousands of lives have been lost because people trapped beneath the rubble could not be located and rescued before they died of starvation or exposure. Remember the Cypress Street Viaduct in Oakland. It took almost a week to rescue all the people trapped beneath that collapsed freeway. Dozens of people working around the clock were needed. In the next major earthquake, there could be dozens or even hundreds of such scenes. FEMA needs additional funding to ensure that we have people and equipment ready to move in and lift away the rubble to get at the victims underneath.

FEMA needs additional funds to assist States and localities so that after the next earthquake we have the information we need to mount an effective rescue effort. After the Loma Prieta earthquake, the whole world knew that a major earthquake had hit San Francisco. The World Series coverage was interrupted and soon the Goodyear blimp was taking pictures of the fires and the damage.

But near the epicenter south of San Francisco, near Santa Cruz and Castroville, phone links were either tied up or out of commission. It took hours before it was clear what had happened there, making it difficult to deploy the people and resources to where they were needed most. Ironically, the very next day I was speaking to a workshop of disaster response experts on the need for improved emergency communications. The workshop participants were all extremely frustrated that the Federal and State Governments have not done more to ensure adequate communications after a major disaster, like the Loma Prieta earthquake. Once again, the technology is there, we just haven't provided the funding.

We know that soon another major earthquake will strike, and we know that preparing for that earthquake takes not years, but decades, so we need to take action now. I think it is time we start to adequately address the long-term problems like earthquakes. During the Reagan years, the administration seemed content to live for today and to ignore the future. The deficit, the S&L crisis, our crumbling infrastructure, and the sad state of American schools are all examples of a "Don't worry, be happy" attitude. I think it is time we start planning for tomorrow, and I hope the Bush administration will join the Congress in doing so.

I urge my colleagues to join me in supporting this legislation. The Commerce Committee is scheduled to mark up this bill tomorrow, it should be on the floor by some time in July.

This legislation is an important step forward, but it is not the only step. I call on my colleagues to join me in working with the Appropriations Committee to make sure that funding for the four agencies in NEHRP have the dollars they need to do the job that needs to be done. I call on my colleagues on the relevant committees to ensure that the Federal Government sets a good example by making sure that Federal buildings are safe.

Earthquakes are a threat we cannot ignore. I cannot predict when and where the next major earthquake will occur, but I can predict that without a strong national earthquake program there will be a lot of preventable death and destruction, wherever and

whenever it happens. I for one, do not want to have to say, "We should have done more," when that day comes.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF S. 2789, THE NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM REAUTHORIZATION ACT OF 1990

SECTION 1—SHORT TITLE

This section states that the bill may be cited as the "National Earthquake Hazards Reduction Program Act of 1990".

SECTION 2—FINDINGS

This section amends the Congressional findings section of the Earthquake Hazards Reduction Act of 1977 (the "Earthquake Act") which created the multi-agency NEHRP. It deletes two findings, one on earthquake prediction and one on the possibility of controlling or moderating earthquakes. Three new paragraphs are added regarding how the geological study of active faults is needed for long-term seismic risk assessments, the benefits of earthquake-resistant building practices, and the need for Federal government buildings and facilities to pose no greater hazards to their occupants and to the community than other, non-Federal facilities. These provisions are identical to provisions in S. 1062, which passed the Senate in October, 1989.

SECTION 3—PURPOSE

Section 3 would amend the purpose section of the Earthquake Act to consolidate language on the objectives of NEHRP scattered throughout the Earthquake Act. The purpose of the Earthquake Act is to "reduce the risks of loss of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program." This section adds the following objectives of the program:

1. Development of improved design and construction techniques for improving the earthquake resistance of structures and lifelines;

2. Implementation of systems for identifying, evaluating, and characterizing seismic risks for all areas of the United States with moderate or high seismic risk;

3. Development and promotion of model seismic building codes;

4. Improvement of earthquake preparedness;

5. Education of the public on earthquake hazards;

6. Increased application of existing scientific and engineering knowledge of earthquakes to earthquake mitigation; and

7. Research on ways to assure the availability of earthquake insurance.

SECTION 4—DEFINITIONS

Section 4 amends the definitions section of the Earthquake Act to include new definitions of "lifelines" (pipelines, roads, railroads, electrical power and communications networks, water supply and sewage treatment facilities) and "program agencies" (FEMA, the USGS, NSF, and NIST).

SECTION 5—NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM

Section 5 revises existing section 5 of the Earthquake Act on agency responsibilities. New section 5(a) establishes NEHRP. Subsection (b) outlines the responsibilities of the lead agency and the four program agencies. (The original Earthquake Act did not specify the responsibilities of each program agency.)

Paragraph (1) of subsection (b) clarifies the role of FEMA as the lead agency for NEHRP. This paragraph is similar to language in S. 1062. The Director of FEMA is to prepare, in conjunction with the other program agencies, an annual budget for NEHRP to be submitted to the Office of Management and Budget. The Director is to promote the implementation of earthquake hazard reduction measures by Federal, State, and local governments, and other organizations. The Director of FEMA, in conjunction with the program agencies, is to prepare a plan for NEHRP, which shall include specific tasks and milestones for each program agency, and which shall be submitted to Congress no less frequently than every 3 years. The Director of FEMA, in conjunction with the other program agencies, is to prepare a biennial report to Congress describing the activities and achievements of NEHRP. The Director of FEMA is authorized to request the assistance of Federal agencies other than the program agencies. The leadership function of FEMA shall be separate from the operational management of the research and implementation aspects of NEHRP for which FEMA is responsible.

Paragraph (2) of subsection (b) specifies the contributions of FEMA to NEHRP. The Director of FEMA shall:

1. Operate a program to provide States with grants and technical assistance to improve earthquake preparedness, improve building codes, increase earthquake awareness, and encourage the development of multi-State groups for such purposes;

2. Prepare and execute, with the Department of Education, a comprehensive earthquake education and public awareness program;

3. Prepare and disseminate, with the assistance of NIST and other Federal agencies, and private sector groups, information on building codes and practices for structures and lifelines;

4. Develop and coordinate Federal interagency earthquake response plans for each high seismic risk area that would ensure availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability; and

5. Provide response recommendations to communities after an earthquake prediction has been made under paragraph (3)(D) of this subsection.

In addition, the Director of FEMA may provide funding to state and local jurisdictions to promote earthquake hazard mitigation and education about earthquakes. In awarding grants to States and localities for emergency operation centers, the Director of FEMA shall give priority to applicants who propose to incorporate hazard mitigation and/or research programs with emergency management activities.

Paragraph (2)(B) requires that States, in order to qualify for grants for earthquake preparedness, must demonstrate that the assistance will result in enhanced seismic safety in the State. Subparagraph (C) provides cost-sharing requirements for FEMA's NEHRP grants to States. States which have received such grants prior to October 1, 1990, shall not be required to provide more than 50 percent of the cost of the project for which the grant is made. Cost-sharing requirements for other States are to be phased in. During the first fiscal year of such a grant, the State shall not be required to provide more than 25 percent of the cost of the project for which the grant is made. For the second fiscal year, the State shall not be required to provide more than 50 percent of the cost of the project and for the first two years the State's contribution could be in cash or in kind. After two fiscal years, the State shall not be required to provide more than 50 percent of the cost of the program in cash.

Paragraph (3) assigns program responsibilities to the USGS. The USGS shall conduct research necessary to characterize and identify earthquake hazards, assess earthquake risks, monitor seismic activity, and improve earthquake predictions. The Director of the USGS shall conduct a systematic assessment of the seismic risks of each region of the Nation prone to earthquakes and work with officials of State and local governments to ensure that they are knowledgeable about the specific seismic risks in their areas. The Director shall establish standards procedures for issuing and evaluating earthquake predictions. The USGS's National Earthquake Prediction Evaluation Council (NEPEC) shall be exempt from provisions of the Federal Advisory Commitee Act which require Federal Register notices of advisory committee meetings, because NEPEC meetings sometimes must be called on very short notice to evaluate predictions of pending earthquakes. The Director of the USGS also shall establish a Center for the International Exchange of Earthquake Information at the USGS. Such a center is to promote the two-way exchange of information on earthquake research and earthquake preparedness between the United States and other countries. In addition, the Director shall operate a National Seismic Network, which shall complement and support regional seismic networks.

Paragraph (4) specifies the program responsibilities of the NSF. NSF shall be responsible for funding research on earth sciences to improve the understanding of the causes and behavior of earthquakes, or earthquake engineering, and on human response to earthquakes. Within earthquake engineering, NSF shall emphasize development of economically feasible methods to retrofit existing buildings and to protect lifelines to mitigate earthquake damage. NSF shall encourage prompt dissemination of research results to organizations which promote earthquake hazard mitigation. NSF also shall fund studies on factors that influence the implementation of hazard reduction measures.

Paragraph (5) gives NIST responsibility for research and development to improve building codes and standards and practices for structures and lifelines. NIST shall work closely with FEMA and national standards and model building code organizations to encourage transfer of research results to the user community, to promote better building practices among architects and engineers, and to develop seismic safety standards and practices for new and existing lifelines.

SECTION 6—OFFICE OF SCIENCE AND TECHNOLOGY POLICY REPORT

Section 6 requires the Office of Science and Technology Policy (OSTP) to report to Congress within 3 months after the date of the enactment of this bill on how OSTP can play a role in interagency coordination, planning, and operation of NEHRP.

SECTION 7—ADVISORY COMMITTEE

Section 7 requires that the Director of FEMA, in consultation with the directors of the program agencies, establish a NEHRP Advisory Committee. The Advisory Committee shall include representatives of State and local governments, the design professions, the research community, business and industry, and the general public. The Advisory Committee shall submit a written annual report directly to Congress which shall describe any recommendations the Advisory Committee has made to NEHRP agencies during the preceding year.

SECTION 8—SEISMIC STANDARDS

This section requires that the President adopt, not later than June 1, 1994, standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards. These standards shall be developed by the Interagency Committee on Seismic Safety in Construction, which is chaired by the Director of NIST or the Director's designee. The President shall report to Congress by June 1, 1994, on how these standards might be applied to buildings regulated, insured, or financed by Federal programs. The President shall ensure the issuance, before February 1, 1993, by all Federal agencies of final regulations required by section 4(b) of Executive Order 12699, which required Federal agencies to implement seismic safety guidelines for buildings they own, lease, regulate, or finance. The Director of NIST shall submit to Congress, not later than June 30, 1992, a plan for developing and adopting design and construction standards for lifelines. The Comptroller General shall report to Congress, not more than eighteen months after the date of enactment of the legislation, on the seismic risks faced by Federal buildings and on the efforts being made by each Federal agency to reduce those risks.

SECTION 9—ACCEPTANCE OF GIFTS

Section 9 allows FEMA to accept and use bequests, gifts, or donations of services, money, or property. Subsection (b) directs the FEMA Director to establish by regulation criteria for accepting such bequests, gifts or donations, which should take into consideration the impact of such acceptance on the Director's ability to conduct business fairly and objectively or on the integrity of NEHRP.

SECTION 10—NON-FEDERAL COST SHARING FOR SUPPLEMENTAL FUNDS

This section stipulates that FEMA shall not require that a State provide more than 25 percent of the cost of a project funded by a grant from monies appropriated in the Dire Emergency Fiscal 1990 Supplemental Appropriations Act (Dire Supplemental) passed by Congress after the Loma Prieta earthquake. This cost-sharing requirement may be satisfied through in-kind contributions.

SECTION 11—INVESTIGATIONS

This section, under subsection (a), establishes within the USGS an Earthquake Investigations Program to provide for post-earthquake investigations following major earthquakes. Program agencies will investigate the causes and effects of the earthquakes, their effects on structures and how earthquake damage might be reduced, and how the agencies' NEHRP programs might be improved and strengthened. The Director of the USGS is authorized to provide funding to the other NEHRP agencies, other Federal agencies, and private contractors.

Under subsection (b), the Director of FEMA, in consultation with the other NEHRP agencies, shall report to Congress, not more than one year after the date of enactment of the legislation, on possible options for funding a program for post-earthquake investigations.

SECTION 12—AUTHORIZATION OF APPROPRIATIONS

Section 12 authorizes funding for the four NEHRP agencies for fiscal years (FY) 1991 and 1992. In addition, it increases authorizations for FY 1990 to accommodate additional funding provided in the Dire Supplemental following the Loma Prieta earthquake.

PROPOSED FUNDING LEVELS FOR NEHRP

[In millions of dollars]

Agency	Fiscal year 1989 appropriations	Fiscal year 1990 appropriations	Fiscal year 1990 supplemental	Proposed bill		
				Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
FEMA	5.800	6.109	3.00	8.798	14.5	17.0
USGS	34.688	34.443	12.00	55.283	50.0	55.0
NSF	23.340	23.320	3.00	38.454	37.0	44.25
NIST	.525	.525	2.00	2.525	1.00	4.0

Mr. DANFORTH. Mr. President, in the last year and a half, the world has been confronted twice with the terrible consequences of being unprepared for a catastrophic earthquake—in Soviet Armenia in December 1988 and just last week in Iran. During the same period, the United States experienced a devastating earthquake—the October 1989 Loma Prieta earthquake in the San Francisco Bay area. The lesson of the Loma Prieta earthquake is that preparation makes a difference. In Armenia and Iran, where there were scant preparations and inadequate building codes, cities were leveled. Tens of thousands of people died, and many more were injured or left homeless. Devastating earthquakes like these cannot be predicted or avoided. But we do know how to lessen their impact and minimize the amount of lethal destruction they cause, as the Loma Prieta earthquake demonstrated, where less than 100 people died, and most structures survived intact.

Many areas of the United States are prone to earthquakes, but are far less prepared than San Francisco. We must act immediately to make sure that disasters like the ones in Armenia and Iran can never happen here.

Mr. President, the highest earthquake risk in the United States outside California is the New Madrid Seismic Zone, which includes parts of Arkansas, Illinois, Indiana, Kentucky, Mississippi, Missouri, and Tennessee. A Memphis State University study estimates that the probability of an earthquake measuring 6 or greater on the Richter scale occurring in the Eastern or Central United States by the year 2010 is almost 100 percent. There is a 40- to 60-percent chance that the earthquake will occur on the New Madrid fault. New Madrid was the site, in the winter of 1811-12, of the strongest series of earthquakes in the history of the United States.

Yesterday, the Federal Emergency Management Agency [FEMA] released a study which concludes that a major earthquake near St. Louis, MO, would cause hundreds of deaths and injuries, and result in extensive damage to homes, property, and essential services. The report is shocking. A major earthquake in the Cental United States would result in damage, disruption, deaths, and injuries on a scale never caused yet by a natural hazard in the history of the United States.

The report demonstrates that St. Louis, and the surrounding region, is not prepared for a recurrence of the 1811-12 events, or even a less severe earthquake. When such an earthquake strikes, buildings will collapse and people will be trapped, communications lines will break, transportation will be interrupted, bridges will fall, and natural gas pipelines will leak. Medical services in the city and county will be unable to provide adequate care for the injured persons. Damage to highway systems and rail networks will hamper rescue and relief efforts, and disrupt national commerce. Damage to utility systems will mean electricity, water, and gas will be unavailable. Many persons will be left homeless, without food, clothing, or shelter. When a quake strikes the New Madrid fault, it will directly affect as many as seven States. Its indirect effects will be felt nationally.

But this does not have to happen. The Federal Government, through the National Earthquake Hazards Reduction Program [NEHRP], has been researching and studying earthquakes for many years. We have gathered a wealth of data on how to mitigate the

impact of an earthquake. We need to get that information to the people who can implement it as the State and local levels. People must learn what they can do to reduce the damage of an earthquake. We still do not know how to predict earthquakes, or how to prevent them, but that does not mean we should do nothing.

Today, Senator GORE and I are introducing a bill that will help prepare the Nation for the inevitable earthquake. The bill will improve the transfer of federal earthquake hazard reduction knowledge to State and local governments and the private sector, where steps can be taken to improve preparedness throughout the country. It will enable the Federal, State, and local governments to implement earthquake programs in St. Louis and other less prepared States, like Tennessee, Washington, Utah, and South Carolina, to avoid the grim scenario painted in the FEMA report.

For example, with the right building codes and construction practices, we can save lives and property, and minimize the amount of emergency rescue needed after an earthquake, the cleanup effort, and the cost to rebuild. We have the technology to build structures that can withstand earthquakes, as last October's earthquake in San Franciso demonstrated. This legislation provides some of the resources needed to distribute that knowledge. Last year Senator GORE and I introduced and the Senate passed S. 1062, a bill to improve the Nation's ability to respond to a significant earthquake. The House is considering a companion bill. This bill incorporates and improves upon last year's legislation, and authorizes funds for the program.

Specifically, the bill updates the Earthquake Act of 1977 by assigning specific responsibilities to the Federal Earthquake Program agencies and clarifying the roles of the agencies; and provides authorizations for fiscal years 1991 and 1992. The bill also:

Requires the White House Office of Science and Technology Policy [OSTP], which is responsible for coordinating interagency research programs, to report to Congress on the role OSTP can play in coordination of the NEHRP;

Requires the Director of FEMA to establish a NEHRP Advisory Committee to advise the NEHRP agencies on planning and implementing program activities;

Requires the President to adopt, not later than June 1, 1994, standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards;

Requests the Comptroller General to report to Congress on the vulnerability of federally owned and leased buildings;

Clarifies and limits the amount of cost sharing that FEMA can require from States receiving earthquake preparedness grants; and

Establishes a post-earthquake investigations program.

The bill increases NEHRP authorizations, from $86.5 million in fiscal year 1990 to $102.75 million for fiscal year 1991, and $120.25 million for fiscal year 1992, to provide the resources to conduct much-needed research and develop programs to transfer the results of that research to local builders, educators, legislators, and emergency response personnel. This is an 18-percent increase in fiscal year 1991 and another 17-percent increase in fiscal year 1992.

Virtually all States are subject to the danger of earthquakes. Planning ahead and investing in safer buildings reduces those dangers. This can only be done with adequate funds and with local participation. People must realize the earthquake threat in their own communities and take steps to protect lives and property. The Federal Government can provide this information, and can set an example for State and local governments and the private sector with comprehensive, effective earthquake program that includes achievable, concrete goals for reducing earthquake hazards. The bill we are introducing today provides additional funding and much-needed direction for the Federal Earthquake Program

Mr. HOLLINGS. Mr. President, I am glad to be a cosponsor of the National Earthquake Hazards Reduction Program Reauthorization Act of 1990. This bill will reinvigorate this Nation's Earthquake Program and help improve earthquake preparedness nationwide.

In South Carolina, we know about natural disasters. Last fall, my home State was devastated by Hurricane Hugo; more than 20 people died, and there was extensive damage done. In addition, the billions of dollars of economic losses due to closed businesses, lost tourist dollars, and damaged roads, bridges, and utilities systems, are still being felt.

Yet the harm caused by Hugo is just a fraction of the devastation that would be caused by a catastrophic earthquake. A single great earthquake, like the 1906 San Francisco earthquake or the 1964 Alaska earthquake, if it struck near a major urban area, could cause thousands of deaths and more than $50 billion in damage. It might be 50 years before the next catastrophic earthquake hits the United States, or it could happen tomorrow.

Earthquakes pose a threat to 39 of the 50 States, to Puerto Rico and the Virgin Islands, and to many United States facilities overseas. They are a direct threat to South Carolina. My fellow South Carolinians know that hurricanes are not the only natural disaster that they must deal with. In 1886, my home town of Charleston was struck by an earthquake almost as large as the one that struck northern California last October. Hundreds of buildings were damaged and over 60 people lost their lives. The people of Charleston are well aware that such an earthquake could happen, and will happen, again, and many have taken steps to protect themselves by imrpoving the construction of their homes and businesses to make them less vulnerable to earthquake damage. Dr. Charles Lindbergh, an engineering professor at my alma mater, The Citadel, has been particularly instrumental in educating the people of Charleston about the earthquake threat and helping them prepare for earthquakes.

However, much more needs to be done. Better, cheaper ways to make buildings earthquake-resistant are needed, and engineers and builders need to be educated about the methods that already exist so they can put them to use. Perhaps most importantly, the public needs to be educated about the methods that already exist so they can put them to use. Perhaps most importantly, the public needs to be educated about the danger of earthquakes so that they will take action and encourage their public officials to take action to protect lives and property.

Because a major earthquake could strike at any time, we have to work today to protect the people of this Nation from earthquakes. Preparing now is particularly important for earthquakes, because unlike hurricanes, they strike without warning, giving absolutely no time to prepare.

The bill that I am cosponsoring today will help do this. It provides for major increases in funding for all four agencies in the Earthquake Program so that they can accomplish the goals set out for the program when it was established in 1977. In addition, it clarifies the roles that each agency will play in achieving those goals.

The Committee on Commerce, Science, and Transportation is scheduled to mark up this bill tomorrow. I urge my colleagues to join me as a cosponsor of this important legislation and to support it when it comes to the floor.

By Mr. BINGAMAN (for himself and Mr. SIMON):

S. 2790. A bill to promote educational partnerships and establish education programs involving Federal laboratories and public schools, colleges, and universities to promote and enhance science, mathematics, and engineering education at all educational levels, and for other purposes; to the

Committee on Labor and Human Resources.

FEDERAL LABORATORY EDUCATION PARTNERSHIP ACT OF 1990

● Mr. BINGAMAN. Mr. President, I rise today to introduce the Federal Laboratory Education Partnerships Act of 1990 on behalf of myself and the Senator from Illinois, Mr. SIMON.

Mr. President, the United States has taken great pride in being a leader in science, engineering, and technology. However, the Nation's scientific and engineering work force is continuing to decline. It is predicted that by the year 2000 the United States will be faced with critical shortages of well-trained engineers and scientists. This bill seeks to reverse this trend by establishing educational partnerships between Federal laboratories and public schools. These partnerships will promote and enhance science, math, and engineering education at all grade levels.

Research findings indicate that children decide whether or not to pursue science and engineering disciplines not during their college studies but in early grade levels. Exposure at this age leaves an indelible and strong impression. It is for this reason that the bill encourages enhancement of these fields at these early learning stages.

Due to the changing demographics of American society, by the year 2000 an estimated 85 percent of individuals entering the work force will be women and members of minority groups. There needs to be an emphasis on expanding educational and work force opportunities for minorities and women in math, science, and engineering. Our Nation possesses the best research and development infrastructure in the world today in the form of its Federal laboratories, yet the science and engineering expertise at these labs is not being utilized to support educational needs as well as it might be. This bill would create a mechanism for bridging the gap between that infrastructure and our pressing educational needs. In particular, it would serve to encourage, enhance, and support educational as well as work force opportunities for minorities and women in math, science, and engineering.

Within each mission agency a single office will be established to coordinate the agency's programs in enhancing mathematics, science, and engineering education at all levels of the educational system. The office will identify those areas of academic study which are critical to the mission of the agency and establish educational programs to foster those areas. It will also collect and disseminate information of all of the agency's programs that impact math, science, and engineering education and the science and engineering work force.

Each Federal laboratory, under the direction of the lab director and in consultation with the agency education office, would be authorized to enter into educational partnership agreements with public schools to enhance math, science, and engineering education. These partnerships are a way in which we can leverage our research and development infrastructure to educate the scientists and engineers of tomorrow. Many of our Federal labs are involved with local educational efforts, but there is little coordination among the programs and little dissemination of information on programs that may be particularly effective. The legislation we are introducing today seeks to encourage these efforts at all of our Federal laboratories and coordinate and disseminate information on the programs through the agency education office. Finally, the educational partnerships we are proposing require a minimal investment of Federal resources, but are capable of producing a large dividend in enhanced math and science education.

The agencies covered under this act shall report annually to the President and Congress on the development, implementation, and findings of their educational programs. This report will include important factors such as research and development budget statements, the field areas emphasized, and an analysis and evaluation of the effectiveness of various partnerships.

I would also like to note that the Department of Energy, under the leadership of Adm. James Watkins, has done a particularly good job in attempting to address the Nation's math, science, and engineering education needs. However, Admiral Watkins and the Department of Energy cannot adequately address this issue alone. We would be taking a large step forward in addressing our Nation's math, science, and engineering education needs if every R&D agency were as committed and enthusiastic about trying to meet the Nation's educational needs as Admiral Watkins has been as Secretary of Energy. The educational programs in which the DOE laboratories are involved should serve as models for the Federal laboratories in other agencies.

As a nation, if we are to continue to be competitive in the development of engineering and science technology, we must increase the number of Americans studying in these fields. This effort may only be achieved through concentrated and increased attention to these scientific fields. This bill seeks to promote excellence in American mathetmatics, science, and engineering education to keep America competitive through the 1990's and beyond.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Federal Laboratory Education Partnerships Act of 1990".

SEC. 2. FINDINGS.

Congress finds that—

(1) the scientific and engineering work force of the United States is eroding, and the United States will face serious shortfalls of individuals trained in the sciences and in engineering by the year 2000;

(2) as a nation, the United States must increase the number of individuals studying mathematics, science, and engineering in order to address declines in the scientific and engineering work force;

(3) studies indicate that children decide in the early grades whether to pursue careers in science and engineering;

(4) the United States must begin intervention programs to encourage students in the early grades to pursue scientific academic study;

(5) increasing the scientific and engineering work force requires increased attention to scientific academic study at all educational levels;

(6) due to the changing demographics of the United States, by the year 2000 an estimated 85 percent of individuals entering the work force will be women and members of minority groups;

(7) the United States must emphasize programs to expand educational and work force opportunities for minorities and women in mathematics, science and engineering;

(8) Federal mission agencies require a highly trained scientific and engineering work force, and it is critical to the future of those agencies and in the interests of the Federal Government to promote scientific academic study at every educational level; and

(9) a portion of the mathematics, science, and engineering expertise present in the Federal laboratories could be better utilized to promote and enhance scientific academic education.

SEC. 3. PURPOSES.

The purpose of this Act is to enhance scientific academic study in the United States by—

(1) identifying within each Federal mission agency the areas of scientific academic study critical to the mission of the agency;

(2) focusing the resources of each mission agency to promote education, and develop a trained work force, in areas of scientific academic study critical to the mission of the agency;

(3) establishing within each mission agency a single office to coordinate the programs of the agency to promote scientific academic study;

(4) developing education programs to promote critical academic disciplines at the elementary, secondary, undergraduate, and graduate educational levels, giving special attention to developing the talents of minority and women students;

(5) developing programs within each mission agency to provide training to agency personnel in scientific academic study; and

(6) establishing within each mission agency a program of education partnerships between Federal laboratories and public schools, colleges, and universities to promote and enhance scientific academic study, giving special attention to elementary and

secondary education and the needs of minority and women students.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) CRITICAL ACADEMIC AREA.—The term "critical academic area" means, with respect to a mission agency, an area of academic study identified by the agency under section 5(b).

(2) EDUCATION OFFICE.—The term "education office" means, with respect to a mission agency, the office established or designated in section 5(a).

(3) EDUCATION OFFICIAL.—The term "education official" means, with respect to a mission agency, the official responsible for administering the education office.

(4) FEDERAL LABORATORY.—The term "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 7 or 9 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705 or 3707) that is owned and funded by a mission agency, whether operated by the Government or by a contractor.

(5) FEDERAL LABORATORY DIRECTOR.—The term "Federal laboratory director" means—

(A) the director of a Government-operated Federal laboratory of a mission agency; or

(B) to the extent that an agency-approved joint work statement permits administration of programs established in accordance with this Act, the director of a contractor-operated Federal laboratory of the agency.

(6) MISSION AGENCY.—The term "mission agency" means the Department of Defense, the Department of Energy, the Department of Agriculture, the Department of Labor, the Department of Health and Human Services, the Department of Transportation, the National Aeronautics and Space Administration, the Environmental Protection Agency, or the Department of Commerce.

(7) PUBLIC COLLEGE AND PUBLIC UNIVERSITY.—The terms "public college" and "public university" include 2-year colleges and institutions that provide postsecondary vocational training.

(8) PUBLIC SCHOOL.—The term "public school" means a public elementary or secondary school.

(9) SCIENTIFIC ACADEMIC STUDY.—The term "scientific academic study" means the study of mathematics, science, or engineering.

(10) UNDERGRADUATE EDUCATION.—The term "undergraduate education" includes educational programs at a 2-year college and postsecondary vocational training.

SEC. 5. AGENCY EDUCATION OFFICES.

(a) ESTABLISHMENT.—Each mission agency shall establish or designate an education office within the agency. The education office shall—

(1) administer education and training programs established in accordance with section 6;

(2) oversee education partnership programs established in accordance with section 7; and

(3) coordinate, and collect and disseminate information on, all agency programs that promote scientific academic study or the development of the scientific and engineering work force.

(b) CRITICAL ACADEMIC AREAS.—Each mission agency shall identify each area of scientific academic study that is critical to the mission of the agency.

SEC. 6. EDUCATION PROGRAMS AND TRAINING.

(a) UNDERGRADUATE AND GRADUATE EDUCATION PROGRAMS.—

(1) ESTABLISHMENT.—Each mission agency shall establish or designate not less than 2 programs for the purpose of awarding grants to public colleges or universities to enhance undergraduate or graduate education in critical academic areas.

(2) USE OF FUNDS.—A public college or university may use grants provided under paragraph (1) to develop—

(A) undergraduate and graduate scholarship programs for critical academic areas;

(B) minority research grants or fellowships;

(C) cooperative programs; and

(D) institutional support.

(3) PRIORITY.—In awarding grants under this subsection, the education official of a mission agency shall give priority to projects designed to attract women and minorities into the scientific and engineering work force.

(4) APPLICATION.—To be eligible to receive a grant under paragraph (1), a public college or university shall submit an application to the education official of a mission agency at such time, in such manner, and containing such information as the education official shall by regulation provide.

(b) ELEMENTARY AND SECONDARY EDUCATION PROGRAMS.—

(1) ESTABLISHMENT.—Each mission agency shall establish or designate not less than 2 programs for the purpose of enhancing the mathematics and science knowledge and abilities of elementary and secondary school faculty and students.

(2) PROGRAMS.—The mission agency may establish programs under this section to develop—

(A) workshops, seminars, or summer employment programs for faculty or students;

(B) science and math resource materials; and

(C) formal, informal, or volunteer outreach programs.

(3) COMPENSATION.—In order to enable elementary and secondary school teachers to participate in programs established under this subsection, each mission agency may compensate the teachers who participate in the programs.

(4) PRIORITY.—In awarding establishing projects under this subsection, the education official of a mission agency shall give priority to projects designed to attract women and minorities into scientific academic study.

(c) TRAINING OF AGENCY EMPLOYEES.—Notwithstanding section 4107 of title 5, United States Code, under regulations prescribed by the Director of the Office of Personnel Management, a mission agency is authorized to provide training, or payment or reimbursement of the costs of training, for agency employees in critical academic areas in order to—

(1) assist in the recruitment or retention of employees with skills in critical academic areas; and

(2) train employees to provide services in accordance with subsections (a) and (b) and section 7.

SEC. 7. EDUCATION PARTNERSHIPS.

(a) AUTHORITY.—Each Federal laboratory director shall, to the extent practicable, enter into education partnership agreements with public schools, colleges, and universities for the purposes of promoting and enhancing scientific academic study at all educational levels.

(b) REVIEW.—A Federal laboratory director who enters into a partnership agreement under subsection (a) shall submit the agreement to the education official of the mission agency for review. Within 30 days after the submission of a partnership agreement, the education official shall review the agreement and, on the basis of the review, approve or make specific objection to the agreement.

(c) MODEL AGREEMENTS.—Each mission agency shall develop and provide to the laboratories of the mission agency one or more model education partnership agreements, for the purposes of standardizing practices and procedures and enabling review of proposed agreements to be carried out in a routine and prompt manner.

(d) CONTENTS.—Education partnership agreements may include provisions under which a Federal laboratory agrees to—

(1) provide equipment, services, and support to public schools, colleges, and universities, including—

(A) collaboration in the development or enhancement of elementary, secondary, undergraduate, or graduate education curricula and research programs and projects;

(B) scientific support services, to the extent possible and at the lowest appropriate cost; and

(C) short- and long-term loans of equipment primarily for the purposes of enhancing instruction of scientific academic study;

(2) provide personnel, including—

(A) faculty or staff under appointments or exchanges, which may be salaried, with a public college or university; and

(B) resource persons to—

(i) teach courses and lecture in scientific academic studies; and

(ii) assist in the development and enhancement of programs, courses, minicourses, lectures, and workshops in scientific academic studies;

(3) appoint or employ in established summer and academic year research participation programs at the Federal laboratory—

(A) elementary, secondary, undergraduate and graduate mathematics and science faculty; and

(B) elementary school, secondary school, undergraduate, and graduate students;

(4) establish research projects for academic credit involving undergraduate and graduate students and faculty in a Federal laboratory; and

(5) establish mentorships, guidance, and assistance for elementary and secondary students, as a part of school curricula or approved extracurricular activities, to promote and enhance interest in scientific academic study.

(c) MINORITY AGREEMENTS.—Each Federal laboratory director shall make every effort to reach education partnership agreements with historically black colleges and universities and other public colleges and universities that serve Hispanic and other minority populations.

(d) AGENCY OR CONTRACTOR PERSONNEL.—Agency or contractor personnel may participate in programs under an education partnership agreement to the extent considered appropriate by the Federal laboratory director consistent with the mission of the laboratory.

SEC. 8. LOCATION.

In carrying out this Act, each mission agency and Federal laboratory is authorized to conduct or fund educational activities at either an agency site, contractor site, or any other appropriate location.

SEC. 9. REPORTING REQUIREMENTS.

Not later than 1 year after the date of enactment of this Act, each mission agency shall submit a report to Congress and the

President that describes the actions taken to carry out this Act.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as may be necessary for fiscal year 1991 and subsequent fiscal years.●

● Mr. SIMON. Mr. President, I rise to join the Senator from New Mexico [Mr. BINGAMAN] in introducing the Federal Laboratory Education Partnerships Act of 1990. This bill will ensure that the various Federal agencies involved in science and engineering activities also take some responsibility for preparing our next generation of scientists and engineers.

On May 24, I told the Senate of the new initiatives in math and science education that had just been announced by the Secretary of Energy. These initiatives were in addition to the many other exemplary programs that Adm. James Watkins is continuing at the various Federal laboratories operated by the Department.

I noted that one innovative program was not announced last month: The Academy for Mathematics and Science Teachers in Chicago. This is a comprehensive plan, developed under the leadership of Nobel Prize winner, Leon Lederman, to provide training to more than 15,000 teachers in Chicago over a 5-year period. The academy would tap the human and technological resources of the Argonne and Fermi laboratories, and of a broad coalition of universities and organizations in the Chicago area.

The Academy for Mathematics and Science Teachers was not announced last month in part because of uncertainty regarding the Department of Energy's authority to participate fully in the project. This bill is intended to clear up that problem. In addition, I continue to work with the chairman and members of the Labor and Human Resources Committee to ensure that the math and science education package, S. 2114, establishes programs that can support this model effort in Chicago and similar efforts across the country.

The bill we are introducing today not only addresses the Department of Energy's needs, but is also intended to spur other Federal agencies into taking greater responsibility for promoting scientific literacy and for educating America's next generation of engineers, scientists, and mathematicians.

Mr. President, I will not repeat all of the data regarding the state of math and science education in the United States that was included in my statement of May 24. I would ask, however, that a separate statement regarding the developing of the Math and Science Teachers Academy, which I submitted to the Labor and Human Resources Committee on April 19, 1990, be inserted in the RECORD at this point.

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

STATEMENT OF SENATOR PAUL SIMON ON MATH AND SCIENCE EDUCATION: PREPARING FOR OUR ENVIRONMENTAL AND TECHNOLOGICAL FUTURE

Mr. Chairman, last week we saw the release of yet another report on the declining technological literacy of our population. A National Academy of Sciences panel reports that the number of science, engineering and technical jobs requiring competence in math will increase 36 percent by the year 2000. At the same time, the number of college students geared to those types of majors and careers will not meet the demand.

This is a problem we can solve. If President Bush and the governors are serious about U.S. students being "first in the world in mathematics and science achievement," it is clear what needs to be done. Listen to what California's superintendent of public instruction, Bill Honig, has to say:

"[W]e now know exactly where we go wrong in math instruction and there is a consensus on what to do about it. The National Council of Teachers of Mathematics has issued a new set of standards; the University of Chicago has figured out how to teach these complicated standards to the average child; and a major textbook publisher has incorporated these ideas in new materials. Eighth graders who have used these books have grown four grade levels in one year. The University of Chicago has analyzed international textbooks and has determined exactly where we fall short. We waste one-half year in second grade by delaying introduction of some topics; we review too much at the fourth grade; and we flounder in junior high school by assigning too much review and failing to cover measurement and applied problem-solving. By the eighth grade our students are two years behind where they should be."

We know what to do. But we need to allocate the resources, to provide the training, so that teachers can implement this accelerated math strategy. That requires leadership.

I am pleased to report that some of this needed leadership is likely to pay off soon in Chicago. Last November, Dr. Leon Lederman, Nobel laureate in physics, testified before this committee about his proposal for an academy to improve the math and science teaching skills of Chicago's teachers. As you may remember, education is not a new endeavor for Dr. Lederman. He was the driving force behind the highly-acclaimed Illinois Mathematics and Science Academy, a high school which last year had the highest average American College Test score of any school in the country.

With the support and encouragement of the Secretary of Energy, Admiral James Watkins, Dr. Lederman proposed tapping the human and technological resources of the Department of Energy's laboratories, Fermilab and Argonne, to help the Chicago Public Schools. In partnership with area universities, the school system, and the labs, the academy would build the math and science teaching skills of more than 15,000 teachers in Chicago.

Last month, the proposal for the "Academy for Mathematics and Science Teachers in Chicago" was completed and was delivered to Admiral Watkins. In addressing our science and math education deficit, this proposal could well become a model for inner city school systems across the country.

We will know soon whether an interagency group headed by Admiral Watkins will be able to provide the $5.7 million in federal support that the Academy will need in its first year. After that first year, a much larger infusion of federal funds, up to $25 million each year in the third through sixth year of the program, is needed to reach the more than 15,000 teachers who have math and science responsibilities in Chicago. After this intensive training of all teachers has been accomplished, the Academy will be able to operate at a reduced budget.

Mr. Chairman, Dr. Lederman has shown great leadership in developing this Academy from just an idea to a proposal on the brink of funding and implementation. Admiral Watkins has shown great foresight in encouraging the effort. Now it's our turn. We need to ensure that the math-science package, S. 2114, establishes programs that can support this model effort, and that there are strong incentives for similar efforts throughout the country.

We know how to do a better job teaching math and science to our children. Let's commit the resources necessary to make it happen.●

By Mr. JOHNSTON:

S. 2791. A bill to amend the Federal Oil and Gas Royalty Management Act of 1982 to provide for the appointment by the President of a director of the Minerals Management Service, and for other purposes; to the Committee on Energy and Natural Resources.

APPOINTMENT PROCEDURES FOR DIRECTOR OF THE MINERALS MANAGEMENT SERVICE

● Mr. JOHNSTON. Mr. President, I rise today to introduce legislation that would make the position of Director of the Minerals Management Service [MMS] subject to appointment by the President with the advice and consent of the Senate. I believe that this legislation is important to ensuring the sound administration of two extremely significant programs administered by the Secretary of the Interior: the Outer Continental Shelf Leasing Program; and the Royalty Management Program.

Mr. President, the Secretary of the Interior, acting through the Minerals Management Service, is responsible for the management of energy and mineral resources on our Nation's Outer Continental Shelf [OCS]. These responsibilities are carried out pursuant to the OCS Lands Act, as amended.

The OCS Leasing Program is of enormous importance to the Nation. During fiscal year 1989, over 314 million barrels of oil and 4.2 trillion cubic feet of gas came from the OCS, comprising approximately 9 percent of our country's total oil production and 23 percent of our natural gas production. This production is significant, particularly given our rising oil imports which this year, for the first time since 1977, exceeded 9 million barrels per day, ac-

counting for almost 54 percent of our domestic deliveries.

In addition, production and development on the OCS is a substantial revenue source for our country. During 1988, offshore bonus receipts from competitive lease sales totalled $1.2 billion. Total revenues from royalties, rents, and bonuses from offshore oil and gas leases amounted to $3.4 billion in 1988.

Management of our OCS energy and mineral resources clearly has environmental implications as well. My colleagues are well aware of the controversy that has attended the OCS Leasing Program in the past, resulting in several areas of the OCS being subject to moratoria and off-limits to oil and gas development due to environmental concerns.

Mr. President, I strongly believe that OCS development can and does occur in an environmentally sound manner. The Secretary, acting through the Director of MMS, has responsibility to consider and mitigate the environmental effects of such development. This is an important charge.

Another highly important program administered by the Secretary of the Interior, acting through the MMS, is the Royalty Management Program. Pursuant to the Federal Oil and Gas Royalty Management Act, the Mineral Leasing Act, the Indian Mineral Leasing Act, and the OCS Lands Act, the Secretary is responsible for the timely collection, distribution, accounting and auditing of revenues owned by the holders of mineral leases on Federal and Indian lands. As with the OCS Leasing Program, sound management of the Royalty Management Program is of great importance to our Nation.

Under the Royalty Management Program, MMS collects and disburses substantial revenues. During 1988, mineral revenues from royalties, rents, and bonuses on Federal lands and royalties and rents on Indian lands amounted to nearly $4.3 billion.

MMS has in the past been subject to harsh criticism—some of it well founded—for mismanagement and failure to adequately administer the Royalty Management Program. There have been allegations of substantial royalty undercollections, resulting in adverse revenue impacts on the Federal Government, the States and Indian tribes and allottees.

Mr. President, the Director of MMS clearly holds a position of great responsibility and sensitivity. The heads of most of the other agencies within the Department of the Interior are already subject to Presidential appointment and the Senate confirmation process. These include the Directors of the Bureau of Land Management, the United States Geological Survey, the Fish and Wildlife Service, the Office of Surface Mining Reclamation and Enforcement, the Bureau of Mines, and the Commissioner of the Bureau of Reclamation. Making the position of Director of MMS subject to Senate confirmation lends recognition to the importance of the job.

In addition, fulfilling the duties of Director of MMS requires good communication between the Congress and the agency. The Senate confirmation process should help to facilitate this communication by ensuring that the MMS Director becomes personally acquainted with Members of the Senate and by helping Members to become familiar with the background and qualifications of the Director, as well as his or her position on the relevant issues.

Mr. President, this is important legislation that will enhance the functioning of the Minerals Management Service. I ask my colleagues to join me in cosponsoring this legislation.

I ask unanimous consent that my statement and the text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 2791

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Oil and Gas Royalty Management Act of 1982 is amended by adding a new section at the end of Title III as follows:

SEC. 310. (a) The Minerals Management Service established by Secretarial Order No. 3071 dated January 19, 1982, shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate. The Director of the Minerals Management Service shall have a broad background and substantial experience in public resource management. He or she shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of public resources under the Secretary's jurisdiction according to the applicable provisions of law.

(b) Subject to the discretion granted to the Secretary by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note), the Secretary shall carry out through the Minerals Management Service all functions, powers, and duties vested in the Secretary and relating to the administration of laws which, on the date of enactment of this section, were carried out by the Secretary through the Minerals Management Service established by Secretarial Order No. 3071, as amended. The Minerals Management Service shall administer such laws according to the provisions thereof existing as of the date of approval of this section as modified by subsequent law.

(c) In addition to the Director, there shall be a Deputy Director of the Minerals Management Service and so many Associate Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by the Secretary through the Minerals Management Service on the date of approval of this section.

(e) Nothing in this section shall affect the discretion granted to the Secretary by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note) to alter the responsibilities of, restructure, or abolish the Minerals Management Service.●

ADDITIONAL COSPONSORS

S. 849

At the request of Mr. DASCHLE, the name of the Senator from New Hampshire [Mr. HUMPHREY] was added as a cosponsor of S. 849, a bill to repeal section 2036(c) of the Internal Revenue Code of 1986, relating to valuation freezes.

S. 930

At the request of Mr. DODD, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 930, a bill to amend the Occupational Safety and Health Act of 1970 to establish an Office of Construction, Safety, Health, and Education within OSHA, to improve inspections, investigations, reporting, and recordkeeping in the construction industry, to require certain construction contractors to establish construction safety and health programs and onsite plans and appoint construction safety specialists, and for other purposes.

S. 1273

At the request of Mr. BOREN, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 1273, a bill to amend the Internal Revenue Code of 1986 with respect to treatment by cooperatives of gains or losses from sale of certain assets

S. 1542

At the request of Mr. HATFIELD, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from California [Mr. WILSON] were added as cosponsors of S. 1542, a bill to amend chapter 55 of title 5, United States Code, to include certain employees of the Department of Commerce as forest firefighters.

S. 1577

At the request of Mr. BOREN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1577, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 1860

At the request of Mr. BOREN, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 1860, a bill to amend title 38, United States Code, to require the Sec-

retary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 2214

At the request of Mr. PACKWOOD, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2214, a bill to provide incentives to health care providers serving rural areas, to eliminate the Medicare reimbursement differential between hospitals located in rural and urban areas, and for other purposes.

S. 2216

At the request of Mr. COATS, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 2216, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to authorize grants to States for boot camp projects to demonstrate innovative alternatives to the imprisonment of persons for nonviolent offenses and nonviolent drug-related offenses.

S. 2283

At the request of Ms. MIKULSKI, the names of the Senator from Ohio [Mr. METZENBAUM], the Senator from Maine [Mr. MITCHELL], the Senator from Illinois [Mr. SIMON], and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 2283, a bill to amend the Public Health Service Act to establish a program of grants for the prevention and control of breast and cervical cancer, and for other purposes.

S. 2317

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 2317, a bill to require Federal, State, and local law enforcement agencies to report all cases of missing persons under age 18 to the national Crime Information Center of the Department of Justice.

S. 2319

At the request of Mr. GARN, the names of the Senator from Texas [Mr. GRAMM] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 2319, a bill to amend the Federal Deposit Insurance Act and the Federal Credit Union Act to protect the deposit insurance funds, to limit the depository institutions, credit unions, and other mortgage lenders acquiring real property through foreclosure or similar means or in a fiduciary capacity, and for other purposes.

S. 2373

At the request of Mr. REID, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 2373, a bill to promote and enhance the science and mathematics literacy of elementary and secondary school students by providing grants to local educational agencies desiring to participate in curriculum choice programs, and by providing scholarships to individuals who agree to teach mathematics and science in elementary and secondary schools.

S. 2413

At the request of Mr. KERRY, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 2413, a bill to make eligibility standards for the award of the Purple Heart currently in effect applicable to members of the Armed Forces of the United States who were taken prisoner or taken captive by a hostile foreign government or its agents or a hostile force before April 15, 1962, and for other purposes.

S. 2438

At the request of Mr. BAUCUS, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 2438, a bill to amend title XVIII of the Social Security Act to make certain modifications in the Medicare Program with respect to payments made under such program to hospitals located within rural areas with 50 beds or fewer, to improve the delivery of health services to individuals residing in rural areas, and for other purposes.

S. 2442

At the request of Mr. SIMON, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2442, a bill to amend the Occupational Safety and Health Act of 1970 to expand the rights of victims of occupational safety and health hazards, and for other purposes.

S. 2494

At the request of Mr. BRYAN, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 2494, a bill to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes.

S. 2568

At the request of Mr. COHEN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from New York [Mr. D'AMATO], and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 2568, a bill to establish the Counter-Narcotics Technology Assessment Center within the Office of National Drug Control Policy, and for other purposes.

S. 2591

At the request of Mr. BAUCUS, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2591, a bill to amend title XVIII of the Social Security Act to provide relief from certain regulations relating to physicians' services.

S. 2712

At the request of Mr. WIRTH, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2712, a bill to establish a Financial Services Crime Division in the Department of Justice.

S. 2736

At the request of Mr. SIMON, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 2736, a bill to amend the Follow Through Act, and for other purposes.

SENATE JOINT RESOLUTION 287

At the request of Mr. PELL, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of Senate Joint Resolution 287, a joint resolution requesting the President of the United States to negotiate agreements to achieve early prohibition of nuclear explosions.

SENATE JOINT RESOLUTION 305

At the request of Mr. THURMOND, the names of the Senator from Tennessee [Mr. GORE], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from North Dakota [Mr. BURDICK], the Senator from Georgia [Mr. NUNN], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. DODD], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Joint Resolution 305, a joint resolution to designate the month of September 1990 as "National Awareness Month of Children With Cancer."

SENATE JOINT RESOLUTION 306

At the request of Mr. SIMON, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of Senate Joint Resolution 306, a joint resolution to designate the period commencing October 21, 1990, and ending October 27, 1990, as "National Humanities Week."

SENATE JOINT RESOLUTION 333

At the request of Mr. GORE, the names of the Senator from Illinois [Mr. SIMON], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 333, a joint resolution to designate the week of September 30, 1990, through October 6, 1990, as "National Job Skills Week."

SENATE JOINT RESOLUTION 335

At the request of Mr. JOHNSTON, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from South Dakota [Mr. DASCHLE], the Senator from Tennessee [Mr. GORE], the Senator from Louisiana [Mr. BREAUX], the Senator from Alabama [Mr. HEFLIN], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 335, a joint resolution designating July 1, 1990, as "Imported Oil Dependence Day."

SENATE JOINT RESOLUTION 339

At the request of Mr. DECONCINI, the name of the Senator from Texas

[Mr. BENTSEN] was added as a cosponsor of Senate Joint Resolution 339, a joint resolution to designate August 1, 1990, as "Helsinki Human Rights Day."

SENATE CONCURRENT RESOLUTION 123

At the request of Mr. PELL, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of Senate Concurrent Resolution 123, a concurrent resolution to encourage State governments, local governments, and local educational agencies to adopt a comprehensive curricular program which provides elementary and secondary students with a thorough knowledge of the history and principles of the Constitution and the Bill of Rights and which fosters civic competence and civic responsibility.

SENATE CONCURRENT RESOLUTION 125

At the request of Mr. COHEN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Concurrent Resolution 125, a concurrent resolution expressing the sense of Congress regarding adequate funding for long-term health care services provided through the medicare and medicaid programs.

SENATE RESOLUTION 288

At the request of Mrs. KASSEBAUM, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Resolution 288, a resolution expressing the sense of the Senate regarding the reopening of universities in the West Bank and Gaza without delay.

SENATE RESOLUTION 298

At the request of Mr. WIRTH, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Resolution 298, a resolution to express the sense of the Senate that efforts to investigate and prosecute financial institution crimes should be fully funded.

AMENDMENT NO. 1672

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of amendment No. 1672 intended to be proposed to S. 1970, a bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes.

AMENDMENTS SUBMITTED

PROPOSED CONSTITUTIONAL AMENDMENT PROHIBITING DESECRATION OF THE FLAG

BUMPERS AMENDMENT NO. 2066

Mr. BUMPERS proposed an amendment to the joint resolution (S.J. Res. 332) proposing an amendment to the Constitution of the United States authorizing Congress and the States to prohibit the physical desecration of the flag of the United States; as follows:

Strike all after "*assembled*" and insert the following:

That section 700 of title 18, United States Code, is amended to read as follows:

"§ 700. Desecration of the Flag of the United States; Penalties

"(a) Whoever purposely or knowingly desecrates the Flag of the United States shall be fined under this title or imprisoned for not more than one year, or both

"(b) For purposes of this section, the term 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows is likely to lead to a breach of the peace.".

HELMS AMENDMENT NO. 2067

Mr. HELMS proposed an amendment to the joint resolution Senate Joint Resolution 332, supra; as follows:

Strike all after the resolving clause and insert in lieu thereof the following:

SEC. . AMERICAN FLAG PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the "American Flag Protection Act".

(b) COURT OF APPEALS JURISDICTION.—

(1) IN GENERAL.—Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1260. Appellate jurisdiction limitations

"(a) Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter in accordance with section 2 of Article III of the Constitution, the Supreme Court shall have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any part thereof, or arising out of any act interpreting, applying, enforcing, or effecting any State statute, ordinance, rule, regulation, or practice, which relates to the public mutilation, defilement, incineration, or other physical abuse of any flag of the United States.

"(b) For purposes of this section, the term 'flag of the United States' has the same meaning as in section 700(b) of title 18.".

(2) SECTION ANALYSIS.—The section analysis of chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1260. Appellate jurisdiction: limitations.".

(c) DISTRICT COURT JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1367. Limitations on jurisdiction

"Notwithstanding any other provision of law and in accordance with section 2 of Article III of the Constitution, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1260 of this title.".

(2) SECTION ANALYSIS.—The section analysis at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1367. Limitations on jurisdiction.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this section, that such amendments shall not apply to any case which, on such date of enactment, was pending in any court of the United States.

BIDEN (AND LEVIN) AMENDMENT NO. 2068

Mr. BIDEN (for himself and Mr. LEVIN) proposed an amendment to the joint resolution, Senate Joint Resolution 332, supra, as follows:

Strike all after resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. The Congress shall have power to enact the following law.

" 'It shall be unlawful to burn, mutilate, or trample upon any flag of the United States.

" 'This law does not prohibit any conduct consisting of the disposal of the flag when it has become worn or soiled.'.

"SEC. 2. As used in this article, the term 'flag of the United States' means any flag of the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

"SEC. 3. The Congress shall have the power to prescribe appropriate penalties for the violation of a statute adopted pursuant to section 1.".

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, June 26, 1990, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on June 26, 1990 at 2 p.m., to hold a hearing on S. 1772, a bill to amend the Lanham Trademark Act of 1946 to protect the service marks of professional sports organizations from misappropriation by State lotteries.

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

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 2 p.m., June 26, 1990, for a hearing to receive testimony on S. 2464, a bill to establish the Red Rock

Canyon National Conservation Area; S. 2475, a bill to provide for the acquisition of the William Johnston House and its addition to the Natchez National Historical Park, and for other purposes; S. 2555, a bill to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System; S. 2612, a bill to establish a Commission to determine the feasibility of designating the Mississippi River as a national heritage corridor; and S. 2669, a bill to provide for increases in appropriation ceilings for land acquisition and development in certain units of the National Park System and for other purposes.

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

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in executive session on Tuesday, June 26, 1990 at 2:30 p.m. to receive a classified intelligence briefing on the Soviet Union and to discuss mark up of S. 2171, the Department of Defense Authorization Act, 1991.

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

ADDITIONAL STATEMENTS

HONORING MS. PAMELA CALHOUN

● Mr. BRYAN. Mr. President, I rise today to congratulate one of Nevada's most valuable citizens. Ms. Pamela Calhoun, a teacher at Diedrichsen Elementary School, has been named our Nation's 64th Point of Light by President Bush for her service to the community of Sparks and the State of Nevada. I want to join with our President and salute Ms. Calhoun for her efforts to help make Nevada energy efficient and to preserve our State's natural beauty.

Mr. President, Pamela Calhoun's outstanding work for energy conservation first became known to me 4 years ago. As a result of her success, I requested as Governor, that she teach other Nevada educators about energy conservation to help spread the message that each of us can help make Nevada a more beautiful and energy efficient State. Ms. Calhoun seized that opportunity and as a result, her efforts have developed into a community based curriculum that reaches many more students than she could possibly reach on her own.

But the core of her work remains a group called "Energy Awareness in the Northern Nevada Community" at Diedrichsen Elementary School. This organization consists of a core of 50 students in grades K-12, who, in turn, mobilize a student population of more than 600 young people. Students in the group work to educate the public on issues such as pollution, littering, recycling, conservation and energy alternatives. They hold community recycling and litter cleanups, distribute educational fliers about pollution, and publicize energy alternatives. Moreover, the students do not confine their efforts to the Sparks community, but have expanded to surrounding rural areas as well. Ms. Calhoun's other activities include working with her fifth grade science class, and the Science-Energy Club for sixth graders. She also helps with energy fairs, retreats and awards ceremonies, such as the one today for which she brought her award winning students to Washington.

Mr. President, at a time when we, as a nation, are finally coming to grips with a scarcity of both financial and natural resources, it is increasingly important that we harness the energy of our citizens. The efforts of Ms. Pamela Calhoun and her students, together with the support of the Washoe County School District and its superintendent, Dr. Marvin Moss, have served to keep Nevada as beautiful and prosperous as ever. I want to congratulate Ms. Calhoun and all those who have helped this cause, for their invaluable work.●

BUMPER CROP OF MARIJUANA

● Mr. McCONNELL. Mr. President, my colleagues well know that April showers bring May flowers, but this spring in Kentucky the rains have brought much more. For marijuana growers in the eastern part of my State, the wet weather has been a boon for their illegal business.

An article that appeared in the Courier-Journal entitled "Authorities Face Bumper Crop of Marijuana" best explains the challenges Kentucky law enforcement officials face this summer. Pot plants, usually measuring 18 inches high in early June, have been found to measure in excess of 4 feet. As Trooper Darrell Tolson stated: "It's going to be a great year for marijuana. We might even have a bumper crop."

I would like to point out that the tireless efforts of our law enforcement agencies and the Civil Air Patrol are vital to the eradication to this illegal crop.

Mr. President, I ask that the article appear in the RECORD for the benefit of all my colleagues.

The article follows:

[From the Lexington (KY) Herald-Leader, June 11, 1990]

AUTHORITIES FACE BUMPER CROP OF MARIJUANA

(By Frank Langfitt)

The war on drugs faces a somewhat larger opponent this summer in Eastern Kentucky.

Wet weather in May and early June is producing healthier marijuana crops from Clay to Lawrence counties, said state police, U.S. Forest Service agents and marijuana growers.

A farmer in the Crane Creek section of Clay County says his 600 marijuana plants are bushier and 4 to 5 inches taller than usual for this time of year.

"The wet weather is a blessing," said the unemployed coal miner, who asked that his name not be used.

Trooper Darrell Tolson, who is used to finding the illegal plant 18 inches high during early June, has found some measuring 4 and 5 feet tall in Breathitt County.

"It's going to be a great year for marijuana," Tolson said, "We might even have a bumper crop."

Rain fell 22 days in May in the region, for a total of 5.08 inches—1.56 inches more than normal, said the National Weather Service at Jackson in Breathitt County. As of Saturday, 2.56 inches in rain had fallen in June. Normal accumulation for the month is 3.78 inches.

Rain has lightened the workload for marijuana growers, who often have to carry jugs of water through the mountains to irrigate their fields. But for some law enforcement officials, it has been a headache.

Cloudy weather has grounded airplanes the U.S. Forest Service uses to spot marijuana fields among the bright, green stands of hickory walnut and red maple in the Daniel Boone National Forest.

Agents and their vehicles have had to contend with muddy mountain trails, often leaving tracks that tip off farmers, said Bill Dixon, a special agent for the Forest Service.

The Forest Service, the U.S. Drug Enforcement Administration state police and local sheriffs' offices began cutting and burning marijuana plants in early May. The Forest Service has budgeted $300,000 and plans to use at least 100 people to cut down the plants during the summer and the fall harvest seasons.

Leslie and Clay counties' sheriffs' departments report cutting at least 1,000 plants apiece.

The federal state and local task force said it cut 596,512 plants last year in Kentucky, one of the five major marijuana producers in the United States. Only Hawaii and Missouri exceeded the Bluegrass State in marijuana cut, said John Preston Sutton, chief of the Cannabis investigation section of the federal drug agency.

Most of the marijuana cut in the state was grown in and around the 660,000-acre Daniel Boone forest, which runs through 21 Eastern Kentucky counties. It grows more marijuana plants than any national forest in the country.

A 10-foot-high plant in Eastern Kentucky produces about a pound of marijuana, which can sell wholesale for $1,000 to $1,500, growers said.

About 90 percent of the crop is sent to cities in the South and Midwest, said Andy Sadler, an agent for the Forest Service.

Eastern Kentucky farmers primarily grow marijuana on the ridges and slopes of the Cumberland Mountains to hide it from police and thieves. The steep mountains drain quickly, lowering the risk of root rot.

While the marijuana crop thrives, some other agriculture in Eastern Kentucky continues to suffer.

Farmers have had trouble reaching their fields to replant tobacco, and hay is already overripe in some counties, said Roy Turley,

agricultural extension agent for Perry County.●

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the latest budget scorekeeping report for fiscal year 1990, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $3.3 billion in budget authority, and over the budget resolution by $4.2 billion in outlays. Current level is under the revenue floor by $5.2 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the budget act is $114.8 billion, $14.8 billion above the maximum deficit amount for 1990 of $100 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1990.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1990 and is current through June 22, 1990. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 1990 concurrent resolution on the budget (H. Con. Res. 106). This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the 1986 first concurrent resolution on the budget.

Since my last report, dated June 18, 1990, there has been no action that affects the current level of spending or revenues.

Sincerely,

ROBERT D. REISCHAUER.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 101st CONGRESS, 2D SESS. AS OF JUNE 22, 1990

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 106	Current level +/− resolution
Fiscal year 1990			
Budget authority	1,326.1	1,329.4	−3.3
Outlays	1,169.4	1,165.2	4.2
Revenues	1,060.3	1,065.5	−5.2
Debt subject to limit	3,050.4	3,122.7	−72.3
Direct loan obligations	19.1	19.3	−.2
Guaranteed loan commitments	115.1	107.3	7.8
Deficit	114.8	[2] 100.0	[3] 14.8

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 106. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions. In accordance with sec. 102(a) Act (101 Stat. 762) the current level deficit amount compared to the maximum deficit amount does not include asset sales.

[2] Maximum deficit amount [MDA] in accordance with section 3(7)(E) of the Congressional Budget Act, as amended.

[3] Current level plus or minus MDA.

THE CURRENT LEVEL REPORT 101ST CON., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS JUNE 22, 1990

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			1,068,600
Permanent appropriations and trust funds	954,969	791,109	
Other legislation	635,362	638,737	566
Offsetting receipts	−233,985	−233,985	
Total enacted in previous sessions	1,356,347	1,195,862	1,069,166
II. Enacted this session:			
Dire Emergency Supplemental Appropriations (Public Law 101-302)	2,293	666	
An act making technical amendments to title 5, U.S. Code (Public Law 101-303)		−1	
Total enacted this session	2,293	665	
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in budget resolution:			
Salaries of judges	−8	1	
Payment to judicial officers' retirement fund	−4	−4	
Judicial survivors' annuities fund	−3	−3	
Fees and expenses of witnesses	−5		
Justice assistance	−4		
Fisherman's guaranty fund	1	1	
Administration of territories	−1		
Firefighting adjustments	−1,057	−192	
Federal unemployment benefits (FUBA)	5		
Advances to unemployment trust fund	(48)	(48)	
Special benefits	−24		
Black Lung disability trust fund	52	31	
Vaccine improvement program trust fund	7	7	
Federal payments to railroad retirement	1	1	
Retirement pay and medical benefits	−4		
Supplemental security income program	263	263	
Special benefits, disabled coal miners	21		
Grants to States for Medicaid	−907		
Payments to health care trust funds	(325)	(325)	
Family support payments to States	84	84	
Payments to States for AFDC work programs	15	15	
Payments to States for foster care	−83		
Health professions student loan insurance fund	−25	−7	
Guaranteed student loans	−175		
College housing and academic facilities loans	−3	−3	
Rehabilitation services	−79		
Payments to widows and heirs	(1)	(1)	
Reimbursement to the rural electrification fund	111	111	
Dairy indemnity program	(1)	(1)	
Conservation reserve program	720		
Special milk program	−2		
Food stamp program	−2,000		
Child nutrition programs	−74		
Federal crop insurance corporation fund	(1)		
Agriculture credit insurance fund	342		
Rural housing insurance fund	(1)		
Rural communication development fund	(1)		

THE CURRENT LEVEL REPORT 101ST CON., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS JUNE 22, 1990—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Payments to the farm credit system financial assistance corporation	−2		
Coast Guard retired pay	−17		
Payment to civil service retirement	(84)	(84)	
Government payments for annuitants	−3	−2	
Readjustment benefits	−62		
Compensation	258	208	
Pensions	−62		
Burial benefits	−4		
Loan guaranty revolving fund	−7		
Disaster relief	−1,100	−883	
Total entitlement authority	−3,834	−371	
VI. Adjustment for Economic and Technical Assumptions	−28,685	−26,763	−8,900
Total current level as of June 22, 1990	1,326,120	1,169,393	1,060,266
1990 budget resolution H. Con. Res. 106	1,329,400	1,165,200	1,065,500
Amount remaining:			
Over budget resolution		4,193	
Under budget resolution	3,280		5,234

[1] Less than $500 thousand.

Notes.—Numbers may not add due to rounding. Amounts shown in parentheses are interfund transactions that do not add to totals.●

UNITED STATES POLICY TOWARD ZAIRE

● Mr. SIMON. Mr. President, as chairman of the Senate Foreign Relations Subcommittee on African Affairs, I have been monitoring the events in Zaire with growing concern. President Mobutu's April 24 decision to establish a multiparty system looked like a positive development for the people of Zaire. But recent events in particular reflect a very disturbing situation.

Student strikes and demonstrations have spread across the country as Mobutu's promised reforms fail to show results. One such protest at the University of Lubumbashi resulted in tragic violence on the night of May 11, when a number of students were massacred by Mobutu's elite presidential guard. Casualty estimates have ranged from 20 to 200.

Zaire is currently one of the largest recipients of American aid in sub-Saharan Africa, and especially in light of these serious events, coupled with our ongoing concerns about the human rights situation in Zaire, we need to take a hard look at our relationship with Zaire.

I ask that three excellent reports, two from Africa News and one from the Lawyers Committee on Human Rights, be printed in the RECORD in full. They provide more details on the current situation, and I commend them to my colleagues.

The reports follow:

[From Africa News, June 11, 1990]

MOBUTU UNDER FIRE

WASHINGTON, D.C.—In the wake of an apparent massacre of student protestors, President Mobutu Sese Seko of Zaire is

facing a crisis of confidence among the international supporters that have kept him in power since 1965.

Protests are spreading in several parts of the country, fueled by reports that government soldiers murdered between 50 and 100 university students in Lubumbashi last month.

Strikes have reportedly shut down Gecamines, the state-owned mining company that is Zaire's major employer and largest export earner. Protests have also closed schools across the country. Student demonstrations were reported in major towns from the capital Kinshasa to Mbanza-Ngungu in the west to Mbandaka in the north and Mbuji-Mayi in the central region. Among the others reported to be on strike or staging slow downs are doctors in Kinshasa and other cities, who last week defied a government order to return to work, Reuters reported.

News of the killings, which have made headlines in the European press, sparked a call for an international inquiry from the 12-nation European Community. The EC appeal was made at the request of Belgium, Zaire's former colonial ruler, which retains an extensive stake in the country's economy. Brussels has suspended new loans and aid programs to Zaire.

France, which in the past has sent troops to prop up the Zaire government, announced the indefinite postponement of a scheduled cabinet-level visit to the country by officials planning next year's Francophone summit, scheduled to meet in Kinshasa.

In the United States, where Mobutu was welcomed a year ago as the mediator of Angola's 13-year-old civil war, new questions are being raised about his reliability as an ally.

Zaire is currently the largest recipient of American aid in sub-Saharan Africa. But the reports of student slayings are expected to accelerate Congressional attempts to cut the military aid and restrict economic assistance (see *Africa News*, April 30, 1990).

Any cut in U.S. assistance would be important. Washington has been Mobutu's chief supporter since he seized control in a CIA-backed coup 25 years ago. Administration officials privately acknowledge his continuing usefulness as a funnel for covert U.S. aid to rebels fighting the Marxist Angolan government.

The Zaire unrest comes in the aftermath of Mobutu's April 24 announcement of political reforms, including a promise to end one-party control. But a widespread crackdown on dissenters since the announcement seems to have propelled the current protests to new heights. The level of nationwide activism reported in recent days is unprecedented in a country where independent trade unions and student movements have been banned since the late 1960s.

"Mobutu seems to have unleashed the deadliest of his security forces against his people," says Makau wa Mutua, an attorney with the New York-based Lawyers Committee for Human Rights, who has made two recent visits to the country and is preparing a report on the human rights situation there. "No one can remember such a concentrated period of repression in Zaire in recent times," he says.

Despite the crackdown, the opposition has been emboldened, Mutua says. He recounts a June 3 incident where one leader of the opposition Union for Democracy and Social Progress fired a pistol in the air when security police tried to break up a meeting at his home. The oppositionists was subsequently arrested. Mutua says it seems that people formerly cowed by Mobutu's security apparatus are saying, "To hell with it, we're just going to speak."

One measure of the unusual nature of recent events in Zaire is the account broadcast on May 28—the day the Gecamines strikes began—by the local, government-run radio station in Lubumbashi, where the mining company's operations are centered. With unaccustomed frankness, the radio that Gecamines employees "did not go to work this morning." The station also said that in Likasi, another key mining center, "shops, public and private firms, and [government] departments did not open their doors" and "markets closed shortly after having opened." The newscast reported that schools failed to reopen as scheduled after a holiday break, despite repeated requests "by the urban authorities in a communique broadcast many times on our radio this morning."

The first reports of the Lubumbashi killings appeared in the Brussels daily, *Le Soir*. Accounts have also been carried in *Libre Belgique* and the French newspaper *Le Monde*. The stories say commandos from the Special Presidential Divison—an elite unit recruited from Mobutu's home region and trained by Israeli advisors—were dispatched from Kinshasa to the Lubumbashi campus, bearing lists of suspected anti-government activists. On the night of May 11, the accounts say, the troops sealed off the university, cut electric lines, assaulted students with knives and bayonets, and set fire to dormitory rooms. A statement issued May 30 by nine Zairean opposition parties and organizations charged that at least 63 people died during the police action. The raid was believed to be a reprisal for student attacks on suspected campus police agents. Lubumbashi students have charged that the agents were responsible for the disappearance and presumed death of 23 of their fellow students in recent years.

The siege of the campus follows a year of escalating challenges to the Mobutu regime—often led by students—accompanied by reprisals against the dissidents. Soldiers and police last year killed an unknown number of young people—estimates range from four to more than three dozen—during protests in Lubumbashi and In Kinshasa.

The U.S. State Department formally noted the reported killings "with concern" and called for an independent investigation. Assistant Secretary of State for African Affairs Herman Cohen was in Kinshasa late last month after the incident occurred, but before it received much notice in the foreign press. A State Department official declined to say whether Cohen discussed the incident with Zairean officials. The Department also says it can confirm no reports to counter the Zaire government claim that only one student died in the violence, which it blamed on "faction fighting."

[From the Africa News, June 11, 1990]

REPORTER'S NOTEBOOK: CAMPUSES IN CRISIS

The National University of Zaire at Lubumbashi (UNZL), where an unknown number of students were massacred by government troops, is a once-thriving institution that now has neither toilets nor textbooks.

Although NZL is one of three institutions at the top of Zaire's educational system, physical conditions are so abysmal that it resembles a war zone, especially since no one has yet removed the scars of the last war fought in this spot, 30 years ago.

The seven-story administration building, constructed as a white-only hospital in the era of Belgian colonialism, served as headquarters for United Nations peacekeeping troops during the civil strife of the post-independence period. The structure still bears the traces of those bullets, and the subsequent decades of decay have littered the grounds with the wreckage of vehicles for which there are no spare parts.

The dormitories, whose 5000 residents are packed into a space built for 1900, could be a refugee center, where the half-starved students live on one bowl of porridge a day.

Students and teachers suffer together through classes under the blazing heat of the central African sun, because soldiers from the three military barracks that surround the university have stolen many of the classrooms' corrugated tin roofs.

Still, there's a bright side to the missing roofs. Although the classrooms become unusable during the rains, in dry weather the rooflessness makes for better lighting, compensating for the lack of electric fixtures and the power outages that plunge the campus into periodic darkness.

Similarly, power failures are less serious for studies than they might be elsewhere, since students do little reading at night—textbooks are rare and the library contains almost nothing published in the last 20 years. A Rockefeller Foundation grant to replenish the collection was stolen before it could be used. Zaire, says a foundation official, is "one of the rare places where we have felt compelled to declare failure."

The struggle to eat preoccupies both students and teachers, constantly impeding their tenacious efforts to study and to teach. Everyone would starve without resorting to some sort of supplemental income. Students sometimes steal light bulbs and desks for resale. Teachers hold other jobs, and some—apparently a disreputable minority—extort money from students.

State neglect has made the educational decline inevitable. Although UNZL is in Zaire's southeastern Shaba province, one of Africa's most mineral-rich regions, the school's operating budget, outside of salaries and scholarships, was only $16,000 a year in 1987—less than the price of one of the chauffeured Mercedes-Benzes that whisk top government officials through the streets of the town.

Faculty and staff salaries are paid separately by the central government, but the money is often late.

The university's poverty is both a product and a symptom of the underfinancing of the entire educational system. Since UNZL was founded in 1955 as a school for the white colonial elite, physical conditions have deteriorated dramatically. "We ate three meals a day in the dining halls and maids washed our clothes and cleaned our rooms," says one of the first black students to study there in 1959. Even in the 1970s, the campus was clean and there was a good dining hall.

People familiar with the school say things began to change after the Mobutu government nationalized the universities in 1971, and that the decline accelerated a few years later when the price of copper—Zaire's major revenue earner—collapsed on the world market.

Today the dining halls are closed and malnutrition is increasingly widespread. Rest is elusive for students packed four or five to a tiny room. Teachers say tired, hungry students often fall asleep in class.

Conditions are so grim that those who knew UNZL in better years are amazed that it still exists at all. "They should simply shut down until the government gets serious about education and is prepared to spend some money on reconstruction," says a 1979 graduate.

Despite the difficulties, education and scholarship somehow survive and sometimes thrive. The estimated one out of six students who survive the five year course of study can "match the best at Harvard and Yale," insists a professor who studied in the United States. "If a Zairean tells you he's an architect," says a 1986 architecture graduate from the university in Kinshasa, "you know he's a very strong man who survived an impossible ordeal."

A surprising number of faculty members have given up comfortable positions abroad to teach in Zaire. And while they haven't been able to criticize President Mobutu by name, university-based scholars have produced many of the most sophisticated studies on the roots of hunger, unemployment and agricultural stagnation. Graduate students and university teachers have developed strategies for "participatory research," working directly with peasants and the urban poor to develop ways to found cooperatives, increase food production and meet other basic needs.

Teachers are closely watched though, whether Zairean or foreign. Last year a Belgian university lecturer was expelled from the country for putting two studies of an opposition party in a university faculty library.

One of the few Zaireans who will be quoted is UNZL economic historian Tshibangu Kabel Musasa. "Simply teaching the truth," he says, "is enough to get in trouble." Trouble is something he knows well. Arrested three times during the 1980s, he nearly lost an eye during severe police beatings.

Students have proved the hardest critics to silence, keeping alive a tradition of spontaneous protest, if not organized opposition. But even complaints about poor living and study conditions is to risk imprisonment or death. Still, each new student generation has included some who are daring enough to test the limits of dissent.

[From the Lawyers Committee for Human Rights, June 19, 1990]

RECENT ATTACKS ON STUDENTS AND POLITICAL OPPONENTS IN ZAIRE

Since April 24, 1990, when President Mobutu announced the intention to institute limited political reforms, security forces in Zaire have been responsible for several violent actions against government opponents, including the killing of a number of students at the University of Lubumbashi on the night of May 11-12, 1990.

These killings occurred less than one month after President Mobutu announced that the MPR party-state would be ended, and a three party system introduced. In his speech, the President also announced the intention to depoliticize the public services, the armed forces and the security forces.

Soon afterwards, the President released Etienne Tshisekedi wa Mulumba, a leader of the Union pour la Démocratie et le Progrès Sociale (UDPS) who has been under continuous house arrest in Kinshasa for more than a year. Despite these announced reforms, on April 30, security forces belonging to the military intelligence unit (SARM), violently dispersed a gathering at the home of Mr. Tshisekedi. According to the reports of eye-witnesses, twenty armed agents arrived in three military vehicles at the home on Ave. des trois "Z" in the Gombe district of Kinshasa. They used tear gas, bayonettes and other implements to disperse the crowd.

The New York Times and other newspapers reported that at least two people died as a result of the attack.[1] According to UDFS members who were present at the gathering, five people died as a result of wounds inflicted by agents of SARM, including the following:

Mr. Muamba-Lueni Denis, 39 years old, rue Nzuzu no. 8, Limete, died on May 5, 1990 as result of stabbing wounds.

Mr. Kamanishi-Tshimuanga, 24 years old, rue Idiofa No. 16, quartier II, Masina, died on May 3, 1990 as a result of stabbing wounds.

Ms. Fika-Adolphine, 17 years old, rue Peti-Peti No. 167, Bumbu, died following rape and torture at AND prison on May 4, 1990.

A number of others were injured and required medical attention, including Mr. Tshisekedi, Mr. Lusanga Ngiele, and Mrs. Tshisekedi. At least 14 people were arrested and detained.[2] In response to foreign reports of the attack, which the government of Zaire denied, the Government of Zaire initially threatened to expel Jean Claude Fiol, a reporter for Agence France Press, but rescinded the expulsion order after the French government intervened.

The attack on students at the University of Lubumbashi came during a wave of student protests. These protests came in response to President, Mobutu's May 3, 1990 speech to the legislature.[3] Referring obliquely to the activites of the UDPS, the President, used the occasion to correct the "ambiguities and misunderstandings" created by his April 24 speech. He suspended political gathering by the opposition and established a delayed time-table for the transition he had announced on April 24. The President then announced a "transition" government composed almost entirely of MPR/Party leaders and expanded the office of the President under his exclusive control.[4]

The students were upset by the President's actions and the complacent response of the legislature,[5] According to the *Voix des Sans-Voix*, and independent Zairian newsletter, protests began soon after the speech, at the Institut Supérieur des Techniques Appliquees (ISTA).[6] These protests spread quickly to the campuses off all the institutions of higher education in Kinshasa, including the Institut de Pédagogie Nationale (IPN), the University of Kinshasa, the Institut Supérieur de Commerce (ISC) and the Institut de Batiment et des Travaux Publics (IBTB).

On the morning of May 7, 1990, students from the University of Kinshasa stopped a bus carrying members of the legislature. The bus was returning from the swearing-in ceremony for the transition government. The students reportedly dragged the legislators off the bus, beat them and questioned them as to why they had accepted the terms of the President's May 3 speech.[7]

The next day, the government moved quickly to suppress further student demonstrations. It announced that the students involved in demonstrations would be expelled and that legal proceedings would be instituted against them. The government also dissolved the student government and ordered the appointment of new committees to represent students at all institutions of higher education.[8]

On May 7 and 8, government forces belonging to the Garde Civile, the Gendermerie and the AND arrested 46 people, 29 of them students.[9] The non-students were subsequently released and on May 17, the 29 students were put under formal pre-trial detention at Makala prison in Kinshasa. On May 18, 1990, the twenty-nine protested their arrest to government authorities and announced their intention to go on a hunger strike. They insisted that their arrests were based solely on their status as students. In a letter dated May 18, the 29 students wrote to legislators in Kinshasa:

"We are saddened and frightened to note that we are now held at the central prison of Makala by the Procuracy of the Republic uniquely and simply because of our status as students. Everything is occurring as if the fact of being a student constitutes a judicial justification for arrest and detention of people finding themselves in a public place."[10]

On May 8, security forces also reportedly beat to death one student in Kinshasa.[11] The Prime Minister announced that the student was merely comatose. To our knowledge there has been no further investigation of the incident.[12]

Beginning May 9, students demonstrated on the campuses at the University of Lubumbashi, University of Kisangani and the Superior Institute of Pedagogie in Bukavu.[13]

---

[1] *See New York Times*, May 2, 1990.

[2] Amnesty International reported the names of 14 people detained at the headquarters of the National Documentation Agency (AND) as a result of the event. Amnesty International, *Urgent Action*, AFR 62/01/90, May 10, 1990.

[3] Relations on campus were tense even before the May 3 speech. Students in Kinshasa engaged in violent demonstrations on April 6, 1990 in which several vehicles were set on fire and many students reportedly arrested. *See* "Students Set Vehicles Ablaze in Kinshasa," AFP April 7, 1990, *reported in* Foreign Broadcast Information Service, Daily Report (Africa) [hereinafter FBIS], April 9, 1990 at 5.

[4] The new government is composed entirely of MPR loyalists with the exception of Ndom Nda Umbel, State Secretary for Primary and Secondary Education, who is reportedly a recently returned exile from Belgium.

[5] *See LaSemaine*, May 26, 1990 at 15, and "Perfu chronologique des évenements socio-politques au Zaire du 24 avril au 10 mai 1990." *Voix des Sans Voix*.

[6] The protests began at the Institute, according to the paper, because two former Institute officials, known for corruption and their role in suppressing student activities, were named to the new government: Minister of Higher and University Education and Scientific Research, Akia Mugambe, Academic General Secretary in 1983; and State Secretary for Higher Education, Bayombo Mboliabwe, Director-General until 1990. *Voix des Sans Voix*.

[7] *See* "Official Assails Students' 'Unspeakable' Behavior," AFP, May 9, 1990 *as reprinted in* FBIS, May 10, 1990 at 4.

[8] *See* "Prime Minister Comments on Student 'Turmoil', "Zairian Press Agency [hereinafter AZAP], *as reprinted in* FBIS, May 14, 1990 at 1-2.

[9] Confidential material in Lawyers Committee files.

[10] Letter of 29 students detained at the central prision of Makala, dated May 18, 1990.

[11] AZAP, *Supa* note 7, FBIS, May 14, 1990 at 1.

[12] *Id.*

[13] Reports from Kisangani and Bukavu are vague. *Le Soir* reported violence during student demonstrations May 10 in Bukavu during which two people, one solider and one student were reportedly killed. *Le Soir*, May 17, 1990. At least three people were arrested in Bukavu, however, they were leaders of non-governmental, rural development organizations. The Prime Minister acknowledged that there had been disturbances in all three towns. *See* Prime Minister on Lubumbashi Student Clash," AZAP, May 23, 1990 *as reprinted in* FBIS, May 24, 1990 at 2.

The demonstrations in Lubumbashi reportedly began out of sympathy for students in Kinshasa. The students at Lubumbashi demanded that the government pardon the students in Kinshasa and fulfill the President's promises of April 24. A group of students on the campus of the University of Lubumbashi redirected traffic on the campus and commandeered a number of cars as they approached the student bloc, renamed "Perstroika Square." A vehicle belonging to the Grade civile was attacked by the students with stones. As it retreated, government agents fired shots in the air and then abducted three students. An hour later, two of the students returned to campus. They had been seriously beaten. They reported that the third was in the hospital.

According to one student report of the incidents, the students feared a retailatory attack by the Garde Civile.[14] Students discovered a student informant named Mangi in the student dorms with a walkie-talkie, allegedly used to communicate with security forces. Students threatened him and demended that he provide the names and room numbers of all the informants on campus. He gave them the names of other students. Two more suspected informers were apprehended, Messrs. Yokoto and Nzongla[15], another escaped.

The next morning, Thursday May 10, 1990, students seriously beat up the three suspected informants. Some students were reportedly prepared to burn the three alive, when a contingent of the Garde Civile arrived and took the three away, presumably to the hospital. There was no further violence that day. But a local contingent of gendarmes sealed off the campus from the outside. Professors and commuting students who tried to gain access were turned away.

On Friday, May 11, a group of students on campus decided to march into town. They intended to present three demands to the governor: (i) Resission of the measures taken against the students in Kinshasa; (ii) an explanation of the presence of armed student informers on campus; and (iii) preparation by the government of an objective report on the events that had occurred on the Lubumbashi campus. The student leaders urged their colleagues to keep the demonstration peaceful. But, as they tried to leave the campus, the gendarmes hurled tear gas and shot in the air. Students responded with stones. The sporadic confrontation lasted all day, beginning at around 9:30 a.m. and lasting until 5:00 p.m.

In the evening of May 11, the electricity on the campus was shut off. Some students reported seeing a Garde Civile jeep at the state electricity office. According to the student account, "At about 7:00 p.m., a plane landed and the students became very suspicious."[16] A sourced quoted in the Belgian daily, *Le Soir*, reported that two planes arrived, one belonging to Air Zaire and the other to a private charter company.[17] According to the Belgian source, the planes were loaded with security agents. According to Professors from the University who were later interviewed by the Lawyers Committee, the attack was carried out by a contingent of the special President Guard (DSP), flown in from Kinshasa.[18] The agents entered the campus of the University of Lubumbashi. There, they met up with a group of students whom they furnished with knives and machetes.[19] According to one student account and another account quoted in *Le Soir*, both students and security agents participated in the attack that followed. Some of the attackers were reportedly masked.

Because the electricity was cut off, a group of students gathered outside and erected a large bon-fire. The rest of the campus was entirely dark. According to a student account:

[At about 10:30 p.m.] a group of people came running out of the bush from the side of bloc K and entered the crowd which was around the bon-fire. It was *debandade* and "sauve qui peut"; hand to hand combat began, but the assailants had daggers which they stuck into the stomachs of their adversaries.[20]

The attackers pursued the fleeing students into the dorms, where some were reportedly attacked with knives and bayonets. Others were released after interrogation. According to *Le Soir*, no guns were used by the attackers.[21] One injured student who was later treated at the Princess Clinic in Johannesburg, described his experience when the attack began:

"I tried to hide in bloc 6 [of the student dorms]. They knocked me seriously on the head. I fell to the ground [*tomber a plat*]. At first I thought [my attackers] were students, because they were in civilian clothes, but afterwards I realized that they had smashed my skull with a machete. There were many of them. . . . I hid in bloc 6 with friends."[22]

A student, whose testimony was obtained by a Catholic priest residing in northern Kivu, reported:

"When the lights went out, I locked myself in my room. The commandos tried to force my door open, but they didn't succeed. Passing by the outside balcony, I went to my neighbor's room and hid under his bed. The assassins entered the room and they began to beat up the student until he died. Unfortunately I was discovered under the bed. They began to beat me up until they thought I was dead. When I came to, I realized that my neighbor was dead. I passed over his body and hid in another room."[23]

According to the priest's report, another student, who was staying in a friend's room while studying for exams fled by jumping from a second story window when he heard screams coming from neighboring rooms.[24] By 7:00 a.m. the assailants were gone and the remaining students fled the campus. Later, the students were ordered to leave Lubumbashi and return to their regions of origin.[25]

News of the attack reached downtown Lubumbashi immediately, though there were no certain estimates of the number of deaths. The government of Zaire acknowledged that one student was killed. Press reports indicated that fifty or more people were killed.[26] The campus remained closed to outsiders, as well as professors, until the following Tuesday, at which point there were few visible signs of the violent confrontation which had taken place.

On May 14, a group of 21 professors signed a letter of protest to the Governor of the region. In their letter, the professors stated:

"In light of the gravity of the situation and the silence of the media and the authorities, we, educators and parents, interrogated the victims and eye-witnesses. These unanimously affirmed the following:

"1. In the middle of the night on Wednesday, three students possessing weapons and diverse instruments of torture and military equipment, were attacked by their colleagues; they admitted among other deplorable facts, the kidnapping and assassination of 23 students.

"2. The University was cut off by the Armed Forces following this event.

"3. The electricity on the University campus was cut off during the night on Friday.

"4. A few minutes later, commandos coming from some other location attacked [the students]. . . .

"5. Boutiques, kiosks, bars and student dorms were ransacked, burned and shredded with bayonettes, knives, machetes, bullets, etc.

"6. Personal belongings and university property were pillaged.

"7. Ambulances that came to evacuate the victims were blocked.

"8. The students were evacuated in the conditions already described.[27]

"After recounting the events as they were then known, the professors concluded:

"Sickened by these facts, we Professors of the University, Deans and Parents, protest against the exercise of such murderous violence replete with threats and intimidation, perpetrated under our eyes, in our work places, and at the beginning of a process of depoliticization . . . notably of the Security, the Army and the Garde Civile."

In late April, a group of forty priests issued a letter at Sunday masses throughout Shaba.[28] According to an account of the letter in *Le Soir*, the priests affirmed that commandos who entered the campus during the night of May 11 carried a precise list of victims. The priests determined on the basis of the methods used by the commandos that they were well trained forces, rather than student marauders. Finally, the priests condemned the "prolonged silence of the zairian media which incites a climate of uncontrollable rumours."[29]

---

[14] Confidential materials received by the Lawyers Committee from Zaire [hereinafter *Student Account*]. The student report reviewed by the Lawyers Committee is consistent with the reports of students and professors which have been reprinted in the Belgian press, particularly the French-language daily, *Le Soir*. and demanded that he

[15] *La Semaine*, June 11, 1990 at 2.

[16] *Student Account*.

[17] The private charter belonged to ACS (African charter services). "De nouveaux témoignages démentent . . . les démentis," *Le Soir* May 26-27, 1990 at 10.

[18] Lawyers Committee interview with Belgian professors conducted by telephone to Louvain-la-Neuve (May 1990) [name withheld by request.]

[19] *Id.* The local gendarmes who were guarding the campus and preventing anyone of entering or leaving did not participate in the attack on the students.

[20] *Student Account*.

[21] *Le Soir*, May 26-27, 1990 at 10.

[22] *Le Soir*, "Témoignage d'un blessé".

[23] Confidential material in Lawyers Committee files.

[24] *Id.*

[25] *La Semaine*, June 11, 1990 at 1.

[26] Paper Claims Soldiers Killed over 50 Students," AFP, May 2, 1990 *as reprinted in* FBIS, May 30, 1990 at 13.

[27] Letter of University Professors, dated May 14, 1990; copy in Lawyers Committee files.

[28] *Le Soir*, May 29, 1990.

[29] *Id.*

A series of reports about the massacre appeared in the foreign press in France, Belgium and Zambia.[30] They were immediately denied by the government of Zaire. On May 17, Belgian papers reported the story of the killings. The Zairian Press Agency (AZAP) reported that two students had died and many were injured during the course of dispute between student groups.[31]

The governments of Belgium and France, as well as the European Community condemned the violence in Zaire and called for an investigation.[32] The government of Belgium suspended preparations for an economic cooperation agreement between the two countries and "froze the administrative measures that would lead to new state-to-state loans".[33] Belgium called on Zaire to allow an investigation by an international body, such as the ICRC, Anmesty International or the United Nations. The government of France suspended discussions for the planned 1991 summit of French speaking nations to take place in Zaire. [34] The European Community also protested to Zaire and asked for an inquiry.[35]

The Prime Minister, Lunda Bululu, announced that a government investigation in the cities of Lubumbashi, Kisangani and Bukavu showed no loss of life or security force involvement on the campuses. About the massacre in Lubumbashi, the Prime Minister said to the legislature, "I solemnly declare that this information is false.[36] Foreign Minister Mushobekwa Kalimba attacked the foreign press before diplomats on May 24 for their inaccurate reports. The Government of Zaire attacked the Belgian government for attempting to "undermine Zaire's development and its evolution toward democracy." [37]

On May 25, 1990, a group of government officials within the MPR contradicted the government version. In a declaration addressed to President Mobutu, 14 councilmen in Lubumbashi broke the silence. Their declaration stated:

"We, elected officials of the zone of Lubumbashi, meeting in the council of Friday May 25, have made the historic decision to break this silence verging on guilt [*frisant la culpabilite*] . . ."

Taking note of their responsibility as local elected officials, the councilmen declared:

"The elected leaders concur in the public opinion in affirming that a death commando [*commando de la mort*] did, in fact, operate during the night of May 11-12, 1990, on the campus of the university of Lubumbashi, contrary to the report of a dispute between student groups." [38]

The councilmen insisted on their right to be heard by any regional, national or international commission of investigation. The head of the local council followed the declaration with an open letter to the Governor of Shaba in which he strongly criticized the official explanation of the event and concluded:

"The only [realistic] hypothesis . . . is that there was an invasion from the outside that was organized, but whose actions were supported by masked men who must certainly have been familiar with the milieu, and were scared to be identified. We have referred to the invaders as "commandos". One can deny this, but one will not succeed, Citizen Governor, in denying the "criminal intention" at the root of the attack of May 11 to 12, 1990 on the campus of the university." [39]

An independent newsweekly in Kinshasa broke the silence of Zairian media. It reprinted the declaration and letter of the elected officials. After its own investigation into the incident, the newspaper *La Semaine*, concluded that a massacre had occurred, but that the number of victims would never be known until the students were heard.

"The question is no longer to know whether or not there was a massacre on the campus of Lubumbashi. All the hypotheses are in agreement to confirm that the students were set upon by a group of commandos who committed their attack with premeditation."

During the second week of June, the names of some students reportedly killed in the attack began to surface. Zairian activities in Belgium informed the Lawyers Committee that parents in Bukavu reported the names of the following seven students who died in the attack in Lubumbashi Faida (sociology), Santa (political science), Kilawuri (sociology), Mafua-Bule (law) Ngoy (law), Kitenge (law). The name of one other student killed in the attack, Llombe Llombe, was confirmed immediately after the attack.

Since the attack in Lubumbashi, student protests have continued and spread to most other major towns in Zaire, including Kisangani, Bukavu, Mbuji Mayi and Mbanza Ngungu. AZAP reported that one student died in Mbuji Mayi when he was trampled during the demonstration. These events reinforce a long standing pattern of serious human rights violations by the government of Zaire.●

[30] *See* "Paper Claims Soldiers Killed over 50 Students," AFP, May 22, 1990 *as reprinted in* FBIS, May 22, 1990 and *Times of Zambia*, May 18, 1990.

[31] Articles appeared in all of the major Belgian dailies, including *La Libre Belgique, Het Volk, Le Soir, De Morgen, De Standaard* on Thursday, May 17, 1990.

[32] Charles Goldsmith, "Zaire loans suspended," UPI wire service, May 25, 1990.

[33] *Id.*

[34] Reported Massacre Prompts France to Cancel Trip to Zaire," AP wire service; May 25, 1990.

[35] "EEC Protests to Zaire over Campus Bloodshed", Reuters wire service, May 30, 1990.

[36] Denies Massacre of Students," Kinshasa Domestic Service; May 23, 1990, *as reprinted in* FBIS, May 24, 1990.

[37] "Government Reacts to Loan Freeze," AFP, May 26, 1990, *as reprinted* in FBIS, Maya 30, 1990 at 11.

[38] *La Semaine*, June 11 at 2. See also *De Morgen*, "Bloedbad Bevestigd," June 7, 1990.

[39] Letter of Kapeta Kazadi, President of the Local Council of Lubumbashi; June 4, 1990, reprinted in *La Semaine*, June 11, 1990.

"SET A GOOD EXAMPLE" FIRST PLACE WINNER DELPHI ACADEMY OF PALO ALTO, CA

● Mr. WILSON. Mr. President, I rise today to commend the students and faculty of Delphi Academy for winning first place honors in the "Set a Good Example—Don't Use Harmful Drugs" contest.

The war on drugs is a multifaceted battle fought at every corner of our society. It is a war that has ravaged our streets, our schools, and our homes. Too many members of our Nation are being damaged by this war. Too many children have become casualties of this conflict. We, as a society, must fight this battle with every ounce of strength that we possess in order to rid ourselves of this scourge on our country.

The Concerned Businessmen's Association of America has responded to the drug crisis with its "Set a Good Example" Program. This consortium of business leaders have devised an effective project targeted to winning the drug war at the most tragic battlegrounds: our Nation's schools.

"Set a Good Example" is an annual contest that recognizes and awards student-designed programs to educate themselves on the evils of drug use. The contest is designed to encourage student involvement to help their peers who are prone to drug use to just say "no." For the past 3 years, this program has proven to be both a successful and inspirational way of getting students and educators behind the effort to eradicate drug abuse in our Nation.

Inspiring is certainly one way of describing the efforts of the students of the Delphi Academy, the first-place winners in the "Set a Good Example" junior high school competition. Their's was certainly a tremendous achievement.

The students of Delphi employed many effective means to get their antidrug message heard not only in their campus but in their community. The students distributed "The Way to Happiness" booklets to inform the community of how being drug-free can lead to healthier and happier lives.

Further, the students circulated a pledge sheet and obtained 2,000 signatures from people who agreed to set a good example and not use harmful drugs. Students wrote to Government leaders, sports figures, and celebrities, informing them of their campaign. The students would later receive letters of support from the Oakland A's, the San Francisco Giants, the San Francisco Forty Niners, the Palo Alto School Board, Congressman TOM CAMPBELL, and Gov. George Deukmejian.

Finally, the students planned and held an antidrug rally on April 7, 1990. These remarkable young individuals planned all facets of the rally, including writing promotional advertisements for the local media, designing T-shirts, and preparing songs and speeches to be read by the students.

In recognition for their outstanding efforts, the mayor of Palo Alto proclaimed April 7, 1990, "Set a Good Example Day" in the city.

The work of the students of Delphi Academy must certainly be commended. They have chosen to use their position as students to help their peers and the community. These young men and women have decided that drugs cannot be tolerated and have worked to help stop their use. Their program was inspirational. Their determination

was outstanding. Their message was phenomenal.

Our students will be the ones who determine our Nation's policies in the future. If Delphi Academy students are representative of the Nation's young people, then we can look toward the future with confidence that we will live in a country free of the evils of drugs.

Mr. President, I commend the Concerned Businessmen's Association of America and its chairperson, Barbara Ayash, for giving students the opportunity to play an important role in our antidrug crusade.

To the students and educators of Delphi Academy, I extend to you my congratulations for your superior achievements. Your efforts will blaze a trail that many young Americans will most certainly follow.●

TRIBUTE TO HANNAH KOMANOFF

● Mr. D'AMATO. Mr. President, it gives me great pleasure to have this opportunity to pay tribute to Hannah Komanoff, who is being honored this Saturday by the Martin Luther King Center of Long Beach, NY. Hannah Komanoff is one of those selfless Americans who make this country so great. Throughout her long and distinguished career in public service, she has always put the needs of the community foremost and is notable for her eagerness not just to share the spotlight for her achievements, but to turn it on others instead.

Hannah Komanoff was the driving force behind the development and construction of the Martin Luther King Center. Her tireless, behind-the-scenes efforts made the center possible, but she never attempted to claim the credit she rightly deserves. The Bible teaches us that we should reserve the highest acclaim for those who help others without receiving credit for their services. Clearly, Hannah Komanoff is deserving of that acclaim.

Her achievements, however, were not limited to this one act. For 12 years, from 1974 through 1985, she served as the Long Beach supervisor on the Nassau County Board of Supervisors. In fact, she is the only elected woman ever to serve on the board. In that capacity, she serves with great distinction. Although elected as a Democrat, she served all the people in a bipartisan fashion, earning a reputation as someone who always fought for Long Beach and its people. Previous to that, she served for many years on the Long Beach Board of Education, including a long and distinguished tenure as its president. In addition, the Long Beach Memorial Hospital has a Isidore and Hannan Komanoff Pavilion named in recognition of her efforts on behalf of that vital community hospital.

In conclusion, Mr. President, Hannah Komanoff serves as a proud example of what makes America great—those who give of themselves to help others. It is indeed fitting that she is honored for her work, and I am proud to join with those singing her praises.●

CONGRATULATIONS TO THE WASECA BLUEJAYS BASEBALL TEAM

● Mr. BOSCHWITZ. Mr. President, I rise today to congratulate the Waseca High School Baseball Team. The Waseca Bluejays won the 1990 Minnesota Class A Baseball Championship by defeating another tough team from Sleepy Eye by the score of 4 to 3. The Bluejays are coached by Clinton (Tink) Larson. He has been the head coach at Waseca for 23 years and has compiled an excellent record of 279 wins and 168 loses. Under his leadership the Bluejays have won six conference titles, nine district or subregion championships, four regional crowns and finished with two seconds and a third in their four previous State appearances.

Minnesota's educational excellence is recognized nationwide. I am sure Mr. President, that we all realize that educational excellence is not just limited to lessons learned in the classroom. Many students have carried throughout their lives their high school coaches' lessons about teamwork, discipline, hard work and accomplishment.

I am sure that the members of the Waseca Bluejays Baseball Team will long remember their 1990 season and their State championship. I congratulate them on their achievement and ask that a list of the players, coaches, managers and statisticians be entered into the RECORD at this time. Go Bluejays.

The list follows:

Name and number	Year	Position
Andy O'Brien (2)	11	2B
Barry Dufault (4)	12	SS
Lance Johnson (5)	11	OF
Nate Strand (6)	11	P
Tom Brown (8)	11	RF
Mike Smith (10)	12	C
Quinn Hammond	11	LF
Jeff Voshell (12)	12	P
David Moeller (13)	12	CF
Clark Christianson (14)	12	1B
Steve Moeller (16)	12	3B
Tom Holtz (17)	11	DH
Corey Holtz (18)	12	OF
Dan Eliason (19)	11	OF
Jeff Van Vyue (20)	12	OF

Tink Larson (7), head coach.
Rick Jeddeloh (9), assistant coach.
Jerry Brooks (15), assistant coach.
Marshall Cawley, manager.
Joe Wieczoreak, manager
Russ Frederick, manager.
Beth Yuzer, statistician.
Cris Schumacher, statistician.●

AUTHORITY FOR COMMITTEES TO REPORT

Mr. MITCHELL. Mr. President, I ask unanimous consent that during the recess or adjournment of the Senate that committees may file reported legislative and Executive Calendar business on Friday, July 6, from 11 a.m. until 2 p.m.

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

SEQUENTIAL REFERRAL OF S. 1245

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 1245, the Fish Safety Act of 1990, which was reported from the Committee on Agriculture, Nutrition, and Forestry on June 22, 1990, be sequentially referred to the Committee on Commerce, Science, and Transportation until the close of business on Tuesday, July 10, 1990.

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

COPYRIGHT REMEDY CLARIFICATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideratoin of Calendar No. 568, S. 497, a bill entitled the "Copyright Remedy Clarification Act."

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 497) entitled the Copyright Remedy Clarification Act.

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 the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Remedy Clarification Act".

SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF COPYRIGHT AND EXCLUSIVE RIGHTS IN MASK WORKS.

(a) COPYRIGHT INFRINGEMENT.—(1) Section 501(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'anyone' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

(2) Chapter 5 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright

"(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

"(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.".

(3) The table of sections at the beginning of chapter 5 of title 17, United States Code, is amended by adding at the end the following new item:

"Sec. 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.".

(b) INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK WORKS.—(1) Section 910(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.".

(2) Section 911 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of the owner of a mask work under this chapter, or for any other violation under this chapter.

"(2) In a suit described in paragraph (1) for a violation described in that paragraph remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include actual damages and profits under subsection (b), statutory damages under subsection (c), impounding and disposition of infringing articles under subsection (e), and costs and attorney's fees under subsection (f).".

SEC. 3. COSTS AND ATTORNEY'S FEES.

Section 505 of title 17, United States Code, is amended—

(1) in the first sentences by inserting ", a State, or an instrumentality of a State" after "thereof";

(2) by designating the text of such section as subsection (a); and

(3) by adding at the end thereof the following:

"(b)(1) In any civil action under this title against a State or an instrumentality of a State by a party described in paragraph (2)(A), the court may award fees and other expenses as defined in paragraph (2)(B).

"(2) For the purposes of this subsection—

"(A) the term 'party' means—

"(i) a sole proprietor, corporation, partnership, or private and public organization with a net worth of not more than $5,000,000 and not more than 500 employees at the time the civil action was filed;

"(ii) a tax exempt organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association, as defined in section 15(a) of the Agricultural Marketing Act with not more than 500 employees at the time the civil action was filed; and

"(iii) an individual with a net worth of not more than $1,000,000 at the time the civil action was filed; and

"(B) the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.)".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

Amend the title so as to read: "A bill to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities."

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 569, H.R. 3045, the House companion; that all after the enacting clause be stricken and the text of S. 497, as amended, be inserted in lieu thereof; that the bill be read a third time and passed; and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 3045), as amended, was passed.

Mr. MITCHELL. On behalf of Senator DECONCINI, I send a title amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 497 be indefinitely postponed.

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

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I now ask unanimous consent that Senator INOUYE be recognized to address the Senate for up to 30 minutes; that following his remarks, Senator GLENN be recognized to address the Senate for up to 20 minutes; that following Senator GLENN's remarks, Senator MCCAIN be recognized to address the Senate for up to 10 minutes; and, that upon the conclusion of Senator MCCAIN's remarks the Senate stand in recess under the order until 8:30 a.m. tomorrow.

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

Mr. CRANSTON. Mr. President, will the majority leader yield? Will the housing bill be the business after the morning hour?

Mr. MITCHELL. Yes. The housing bill will be the pending business at 10 a.m. tomorrow morning.

Mr. THURMOND. Mr. President, I would like to ask the distinguished majority leader when the crime bill will come up.

Mr. MITCHELL. Mr. President, it is my intention to bring the crime bill up as soon as possible. I understand the distinguished former chairman of the committee and the current chairman,

Senator BIDEN, have nearly completed their negotiations on an agreement.

I hope very much, and it is my intention, that we bring that bill up and complete action on it this week.

Mr. THURMOND. I thank the Senator very much.

Mr. MITCHELL. That, of course, will require completion of the agreement, and it is my hope that will occur shortly, indeed tomorrow, so we can get the agreement and then proceed to it as soon as possible.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senator from Hawaii is recognized for a period not to exceed 30 minutes.

HAWAII'S GEOTHERMAL ENERGY EFFORTS

Mr. INOUYE. Mr. President, I rise today to speak on the State of Hawaii's geothermal energy devleopment efforts. Over the past several months, we have been accused of demolishing Hawaii's rain forests, and of demolishing its picturesque skies and pristine environment. The State of Hawaii is not in the demolitation business. Rather, we are in the business of creating and building a system of environmentally acceptable and economically feasible energy alternatives to decrease our dependency on fossil fuel as we guide Hawaii into the 21st century. The State of Hawaii should be commended, not condemned for its goal of energy self-sufficiency.

Mr. President, I want to set the record straight. I want my colleagues to know that Hawaii is at the forefront of forest preservation; one-fourth of all our land is forest and park reserves, and we are actively protecting our pristine rain forests. Second, Hawaii is sensitive to the religious practices of native Hawaiians. Third, Hawaii is striving to develop all forms of alternative energy sources to achieve energy self-sufficiency and reduce our dependency on imported oil. And fourth, Hawaii is aggressively working to reduce all forms of pollution.

The Rain Forest Action Network charges that geothermal development will destroy the Wao Kele O Puna Rain Forest. This claim is totally without merit. The proposed geothermal facility would require the clearing of about 300 acres of nonpristine forest. This is one-half of 1 percent of the 60,000 contiguous acres of the Puna Forest, and eight one-hundredths of 1 percent of the total 375,000 acres of rain forest on the island of Hawaii. No pristine rain forest will be destroyed by geothermal development. In fact, some of the Ormat Energy Systems Inc. sites are on barren lava flats, removed from any type of forest.

We in Hawaii are blessed with nine rain forests. As defined by the Hawaii State Forestry Service, a rain forest is an area which receives 100 inches or more of rain per year, and a canopy consisting of 50 percent or more of native vegetation. Using this definition, the island of Kauai has 95,000 acres of rain forest, Oahu has 56,000 acres, Maui has 66,000 acres, Molokai has 19,000 acres, and the island of Hawaii has 375,000 acres. Mr. President, this is a total of 611,000 acres of rain forest in the State of Hawaii. The clearing of 300 acres of a nonpristine portion of the Puna Forest for geothermal development amounts to five one-hundredths of 1 percent of Hawaii's rain forests.

Mr. President, we would not recklessly destroy our lush tropical havens and clear blue skies that visitors from around the world come to experience and enjoy. Because of this sensitivity, the Hawaii State Legislature created geothermal resource subzones to ensure that geothermal development would not intrude on nature's precious creations. Further, it exchanged 27,000 acres of nonpristine forest, much of which has been destroyed by recent lava flows, for 25,000 acres of privately owned pristine forests. Once title was secured, the State immediately placed the 25,000 acres of pristine forest under the protection of its forest reserve. This is a net gain of pristine forest to our reserves. Within last year alone, the State of Hawaii placed an additional 14,000 acres of wooded lands on the island of Hawaii into its forest reeserves. Furthermore, it is now in the process of placing another 12,500 acres into the reserves.

The State of Hawaii is at the forefront of forest and park preservation. Of the total 4 million square acres of land, there are over 270,000 acres of national parks and wildlife refuges, and 900,000 acres of State parks and forest reserves. Another 46,000 acres of pristine land are protected under the private management of the nature conservancy. Mr. President, this amounts to 1.26 million acres. Therefore, 30 percent of Hawaii's total acreage is preserved and protected. How many other States can make this claim?

Our State motto, given to the Hawaiian Kingdom by King Kamehameha III in 1843, conveys most eloquently the importance we place upon the preservation of our land. "Ua mau ke ea o ka aina i ka pono," which translated means, "The life of the land is perpetuated in righteousness."

There has been much misrepresentation by a well-meaning, but misled, environmental movement. To suggest that the State of Hawaii is a villain for recklessly demolishing its rain forests, is insulting and unfair.

Mr. President, the State's geothermal energy initiative has also been called sacrilegious and insensitive to native Hawaiian religious practices. The basis of these practices is founded in Hawaiian legends that speak of the goddess Pele who is said to reside in the Kilauea volcano. Pele is thought of as "mother nature" with the power to create as well as destroy. Pele practitioners claim that the construction of geothermal energy plants will desecrate the body of Pele by digging into the ground and robbing her of her body heat.

When this concern was first raised, the State thoroughly studied the matter, consulting numerous experts. Geologists were consulted. They concluded that the tapping of the volcanic heat source would not diminish the eruptive nature of the Kilauea volcano.

They also consulted Hawaiian studies and religious experts. Respected Kupuna, or Hawaiian elder, Rev. Leon Sterling stated:

> Pele practitioners do not speak for all Native Hawaiians. They characterize Kilauea's eruption as Pele's anger. But how do they know this? The eruption and lava flow may be her way of creating and helping Hawaii to grow. Let us graciously accept her power as a precious gift.

Mr. President, notwithstanding the favorable recommendations and conclusions, the State of Hawaii, sensitive to the concerns of the Pele practitioners, voluntarily moved the proposed geothermal development an additional 5 to 10 miles away from the Halema'uma'u crater where tradition suggests that Pele resides. This small group of native Hawaiians was not satisfied with the State's accommodations, and sued on the grounds that the geothermal initiative violated their first amendment right to the free exercise of religion. The Hawaii Supreme Court ruled that the State's geothermal development plans did not infringe upon the Pele practitioners' freedom to exercise their religion. It was undisputed that they had never actually used the premises for religious practices, and presented no objective evidence of harm to the practice of their religion. I concur with the wisdom of Hawaii's high court.

Mr. President, I am not a stranger to the issue of protecting and preserving native Hawaiian religious practices. As chairman of the Select Committee on Indian Affairs, I introduced S. 1979, Amendments to the Native American Religious Freedom Act to restore to Native Americans, including native Hawaiians, the full scope of rights and remedies available under the free exercise clause of the first amendment of the U.S. Constitution, and to clarify, as a matter of Federal law and policy, the fundamental rights of Native Americans to practice their unique religions.

I am committed to serving our Nation's native American peoples. I have great respect for their religion, culture and values. With regard to the Pele practitioners, I believe that Mr. Abra-

ham Piiania, former director of Hawaiian studies at the University of Hawaii, and respected historian, put it most eloquently when he stated:

Pele practitioners want to return Hawaii to the days of long ago. However, those days are gone. We, as Hawaiians, have undying respect for the great power of Pele. If Pele believes that sharing her volcanic heat to provide an energy source is not in the best interest of Hawaii's people, she has the power to destroy whatever is built. If she does not destroy it, we should accept it with her blessing.

Mr. President, I state the obvious when I say that Hawaii is an island State. As such, we are dependent on 130,000 barrels of oil per day. The energy crises of the 1970's made Hawaii acutely aware of the importance of developing renewable energy sources, and of the dangers of relying on fossil fuel. We vowed to pursue every means possible to reduce Hawaii's dependence on fossil fuel. And that we did.

Today, Hawaii is a leader in developing and utilizing alternative energy sources. We are serious about harnessing the energy of the wind, Sun, sea, and Earth—abundant resources in Hawaii. In 1989, Hawaii's use of alternative energy sources saved approximately 3.5 million barrels of oil which would have produced about 1.6 million tons of carbon dioxide.

In recent nationwide study by the Public Citizen, a national consumer advocacy group, Hawaii ranked second for its production of energy from wind farms, and is among the top five States in its use of biomass energy generated from agricultural waste, which in our case is sugarcane. We have the highest per capita use of residential solar and heat-pump water heaters. We also reduced our consumer demand for energy by 21 percent over the past two decades.

Hawaii generates 13 percent of its electricity needs from alternative energy sources, and is looking to substantially increase that percentage. However, when we sought to increase it through the development of geothermal energy, we were condemned. We were condemned by the same environmentally conscious groups that urged Hawaii to reduce its dependency on fossil fuel. We were condemned by the same environmentally conscious groups that urged Hawaii to develop clean, renewable sources of energy.

Geothermal energy is a clean, safe and reliable form of renewable energy. It heats homes and fuels businesses in California, Nevada, as well as Italy, New Zealand, Japan, and the Philippines. After decades of research and experimentation, geothermal energy was determined to be the most technically and economically feasible source of alternative energy to pursue in Hawaii on a large scale basis.

Ocean Thermal Energy Conversion [OTEC], while a promising technology, is not yet ready for commercial application. It is estimated that another decade of experimentation and approximately $400 million is needed to harness the power of the sea. In fact, it would cost three times the amount to generate OTEC energy as it would geothermal energy. The same is true for solar energy.

The primary drawback of solar and wind energy is mother nature itself. Wind plants on rural Oahu operate at approximately 5 percent of capable outputs because of inconsistent wind availability. A similar situation exists with solar energy. Many Hawaii residents have solar water heaters, but must rely on fossil fuel to supplement their energy needs in the evening. Until scientists are able to make sunshine 24 hours a day, and get the wind to turn the turbine round the clock, we know that there is much to be done before we can harness the power of the Sun and the wind as reliable and sufficient sources of alternative energy.

I hope to see the day when Hawaii is able to harness mother nature's valuable resources in the ocean, sun, and wind. Until then, we must utilize and develop what we have—an energy source from the Earth which is ready to be harnessed to light up the island of Hawaii.

The first commercial geothermal plant on the island of Hawaii, a 25,000-kilowatt plant in Puna, will reduce our dependence by 480,000 barrels of oil a year. Over its 30-year lifespan, it will cut oil import costs by more than $200 million or 14 million barrels. It will keep 10 billion pounds of carbon dioxide and 60 million pounds of sulfur dioxide out of our environment, that would otherwise be produced by burning oil. This is twice the carbon dioxide reduction targets set at a recent global warming conference in Washington, DC. The generation of geothermal energy is a clean, renewable source of energy which helps to reduce the effects of global warming.

Our Nation's strategic petroleum reserve is located in Louisiana. Other states have very easy access to this reserve in the State of Hawaii. However, we cannot simply deploy a fleet of trucks to bring oil to Hawaii; we must ship it. Disastrous oilspills, the *Exxon Valdez* in Alaska and the *Mega Borg* off the coast of Texas, have further fueled our commitment to develop alternative energy sources. The *Exxon Valdez* spewed 240,000 barrels of oil onto Alaska's coastline. That was less than a 2-day supply of Hawaii's energy needs. I shudder at the thought of an *Exxon Valdez* or a *Mega Borg* disaster in Hawaii. I cannot begin to imagine the devastating effect of an oilspill on Waikiki beach or the NaPali coastline on the island of Kauai. The renowned black sands beach on the island of Hawaii would truly be black, not from sand made of finely washed particles of lava, but of the ooze of black oil. Such a spill would destroy tourism, Hawaii's number one industry, with one blow. We are constantly under this threat.

Opponents of geothermal development contend that there will be harmful chemical emissions from geothermal plants. A 25,000-kilowatt project, which will provide electrical service to approximately 18,500 houses, will emit 40 pounds of hydrogen sulfide and 75 pounds of sulfur dioxide per day. At first blush, one may say, "that is horrible, much too much to be beneficial to our environment." However, within 5 miles of this plant is the Kilauea volcano which emits 72 tons of hydrogen sulfide, not 40 tons, and 1,850 tons of sulfur dioxide per day, not 75 pounds. This is 3,600 times the amount of hydrogen sulfide and almost 50,000 times the amount of sulfur dioxide. The Kilauea volcano, like the geysers at Yellowstone, is a phenomenon of nature. The Pu'u o'o vent of Kilauea has been erupting continuously since 1986. Depending on the direction of the trade winds, Hawaii residents experience haze, ash and the smell of sulfur, which is not pleasant. There is not much that can be done about it. This is nature.

If environmentalists are serious about reducing sulfur dioxide and hydrogen sulfide emission, they should embark to contain these emissions from the Kilauea volcano. I would not recommend this, but if someone really wanted to do this, it would require the pouring of nearly 5 billion cubic yards of concrete at a cost of nearly $330 billion to cap the volcano. Mr. President, I say this to demonstrate the absurdity of the environmentalists' contention that geothermal energy causes pollution.

No scientist would suggest that the geothermal project will contribute, in any appreciable way, to pollution. Nonetheless, the State of Hawaii will demand that the geothermal powerplants meet the strictest air emissions and ground pollution standards. Only the most innovative and environmentally safe technology will be used. Virtually all gaseous and liquid byproducts will be returned to the ground.

In the wise words of President Theodore Roosevelt:

To waste our natural resource * * * instead of using it so as to increase its usefulness, will result in undermining in the days of our children, the very prosperity which we ought by right to hand down * * *.

I am convinced that the development of geothermal energy is the best means of meeting Hawaii's energy demands. It is a clean, safe, and renewable source of alternative energy which, I believe, will preserve our crisp, clean skies, and beautiful landscapes filled with flowers of every

color of the rainbow, as well as the clear, blue Pacific Ocean that surrounds us. This is what I would like to hand down to Hawaii's children.

For this reason, I find the recent attacks on the State of Hawaii's geothermal energy initiative most troubling. At the urging of environmentalists, Hawaii strived to develop alternative energy sources to reduce its dependence of imported oil. We found it in geothermal energy—the most technically and economically feasible, and environmentally safe energy source Hawaii has at its disposal.

Mr. President, I came to the Senate floor to set the record straight. I hope I have succeeded.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized for up to 30 minutes.

INVOLUNTARY SEPARATION OF MILITARY PERSONNEL

Mr. GLENN. Mr. President, I chaired a hearing of the Subcommittee on Manpower and Personnel of the Committee on Armed Services last Wednesday, June 20, 1990. The purpose of that hearing was to receive testimony from Defense and other witnesses on the need for involuntary separation compensation and benefits for military personnel who are given the "pink slip" due to reduction in military strength levels over the next few years.

I think most of us recognize that the military threat to the national security of the United States has diminished substantially as a result of developments in the Soviet Union and in Eastern Europe within the past year. I do not think there is any doubt among us that our military force structure and our military strength levels should come down in reaction to the diminished threat. In fact, the military services are already planning on a force that will be around 25 percent smaller in the aggregate according to the latest estimates we have from Secretary Cheney.

Based on this direction, we can expect our active military strength levels to come down by about 450,000 over the next 5 years. That comes out to a reduction of nearly 100,000 people a year over the next 5 years and it is more likely that the reductions could be larger than smaller if the world situation continues on its current trend.

Given this outlook and the possibility that the manpower reduction could be even bigger—30 to 40 percent by 1996—I believe we must provide military personnel managers with the necessary tools to effect these reductions prudently. At the same time, I believe we must provide fair compensation to those career military personnel who are involuntarily separated from active duty short of attaining eligibility for retirement.

Both Senator COHEN and Senator MCCAIN have introduced legislation aimed at providing such compensation. As I have indicated on the floor of the Senate, I appreciate and support their concern that we provide fair treatment to the men and women in uniform who would be forced out of active duty because the All-Volunteer Force is being reduced.

I know that we have a much different force now than we had in other periods in which our military forces were drawn down—the most recent being the post-Vietnam reduction in which the active duty force was cut back by 20 percent over 3 years. In that reduction, many of the personnel who were released from active duty were draftees who wanted to leave. They were in for a time period, they did not plan a career and wanted to get out and did. Since then, we have gone to an All-Volunteer Force and I dare say that if we still have any draftees on active duty, they converted to career status over 20 years ago. So we have an active duty force today that is much more committed to a career in the military. That tells me that as the force draws down over the next few years, that the military services cannot rely solely on the same mechanisms they used to draw down active duty strength in the past.

Mr. President, since the post Vietnam military draw down, the system of compensation for personnel who are laid-off in the civilian sector has evolved to a point now that there are substantial support systems in place for these personnel.

For example, the Employee Retirement Income Security Act [ERISA] was enacted in 1974 and has undergone several enhancing revisions. This act provides for the vesting of employees into pension plans after a minimum of 5 years employment and for the portability of this benefit. There is no similar benefit for military personnel.

Also, the Consolidated Omnibus Reconciliation Act [COBRA] of 1985 contains provisions that require private sector employers to offer a separating employee the option of continuing to be covered under the group medical insurance plan of the employer at the employee's expense. A similar plan is currently available to separating military personnel. This plan is called the Uniformed Services Voluntary Insurance [USVIP] Program. The program allows separating military personnel the option of purchasing group medical insurance coverage for themselves and their families. However, unlike the COBRA Program for civilians, the USVIP does not cover preexisting medical conditions or pregnancy as the COBRA Program does.

Also, although separated military personnel are entitled to unemployment compensation, they do not become eligible for this benefit until 1 month after their separation and can draw this compensation for only 13 weeks. An unemployed civilian is eligible for unemployment compensation 1 week after termination of employment and can draw this compensation for 26 weeks.

The point I want to make with these three examples is to highlight the disparity between the involuntary separation compensation and benefits provided for in law for civilian and military personnel. I do not argue that separated military and civilian personnel should be treated exactly alike. However, I do argue that we need to carefully consider the basic packages we provide to both groups to make sure our military personnel and their families are treated as fairly as we treat civilian employees who are given the pink slip.

After all, we are talking about men and women in uniform who answered the call to serve in our All-Volunteer Armed Forces when we needed them. These individuals chose a way of life that demanded the sacrifice of certain individual freedoms and the risk and uncertainties associated with service in the military. Now that our Nation's needs have changed—due in large measure to the service these men and women performed—we owe it to them to treat them fairly as we reduce our military forces.

With regard to the compensation of separating military personnel, I want to note that there are currently only two benefits unique to military personnel who are involuntarily separated. First, officers who have 5 or more years of service who are involuntarily separated short of attaining retirement eligibility are entitled to involuntary separation pay at a formula of 10 percent of annual basic pay times the number of years of service at the time of separation. The amount of this pay is capped at $30,000—what an 0-3 (a captain or Navy lieutenant) with 10 years of service would receive if involuntarily separated. Second, service members who are involuntarily separated for the convenience of the Government as a result of a force reduction are exempt from the active duty service requirement for the GI bill benefit. These are the only two benefits currently on the books that are unique to involuntary separations.

There are other separation benefits for both involuntary and voluntary military separatees who are not retirement eligible. These include Government shipment of household goods; travel and transportation allowances; payments for unused leave; the USVIP Program I mentioned earlier; the Transition Assistance Program [TAP]

that was authorized last year under the purview of the Veterans' Affairs Committee; and miscellaneous other services, such as legal assistance and counseling on veterans' rights and benefits, and job search. There are also benefits that are administered by the Department of Veterans Affairs, such as veterans group life insurance, GI loans, employment, job training and other services.

Mr. President, I point these services out because I think it would be unfair to imply by not doing so that we do not try to provide for our men and women in uniform and their families when they leave the service.

Having said that, I am certain that these benefits are inadequate as they currently stand especially when you take into account the potential for substantial manpower strength reductions over the next few years that could require the unprecedented force out from active duty of large numbers of military service members who were otherwise looking toward a career of active military service.

Therefore, I will recommend in the markup of the fiscal year 1991 Defense authorization request, a package of benefits that fairly treats military personnel who are involuntarily separated due to the projected military end strength reductions over the next 5 years. I will also recommend a regulated strength reduction process, something that is absent in any proposals that have been advanced so far, that would afford a responsible degree of protection to that segment of the career force in the military that is not eligible for retirement.

With regard to involuntary separation compensation and benefits, Senator McCain, working with the Military Coalition—which is composed of 22 military associations including the Non-commissioned Officers Association, the Retired Officers Association, and the National Military Families Association—has proposed an excellent package in the form of a bill, S. 2663. It is very clear to me that after reviewing the provisions of S. 2663 that Senator McCain has proposed a very comprehensive, thoughtful package of compensation and benefits to take care of military personnel who may be involuntarily separated as military strength levels are reduced over the next few years. I commend Senator McCain and the Military Coalition for their very compassionate proposal.

On the basis of my review of Senator McCain's very excellent proposal, I will recommend in our subcommittee markup that we adopt his package subject to several modifications based on testimony we received last week, that I believe will strengthen the package.

First, like Senator McCain's proposal, I will recommend extending current involuntary separation pay authority for officers to enlisted personnel. This coverage would apply to personnel who have more than 5 years of service who are involuntarily separated short of retirement eligibility. The current cap of $30,000 would be removed. Appropriate provisions would be included to ensure that personnel who are discharged because of qualitative reasons are not afforded this benefit.

Second, like Senator McCain's proposal, I will recommend extending the current Uniformed Services Voluntary Insurance Plan [USVIP] medical coverage on a 6-month premium-free basis to the same category of personnel who would be eligible for involuntary separation pay. Medical coverage would be further modified to extend coverage for 1 year to preexisting medical conditions or pregnancy.

Third, identical to Senator McCain's proposal, I will recommend providing the same unemployment compensation coverage to separated military personnel that is provided to civilian workers whose employment is terminated. This means that separated military personnel would be eligible for unemployment compensation 1 week after they are separated (either voluntarily or involuntarily) and be able to draw such compensation over 26 weeks, just like their civilian counterparts.

Fourth, identical to Senator McCain's proposal, I will recommend allowing the same category of involuntarily separated personnel who would be eligible for involuntary separation pay to elect to participate in the GI bill and Veterans Educational Assistance Program benefits by contributing into the respective programs before they separate. This would provide those who chose not to participate in these programs earlier because of an expectation of a full career in the military a fair chance to participate because of their changed circumstance over which they have no control.

Fifth, like Senator McCain's proposal, I will recommend that the military services be required to conduct a vigorous program of transition assistance to help separated military personnel find jobs and settle in the civilian sector. This effort would supplement and reinforce current transition assistance programs. And,

Sixth, I will, as an added measure, recommend removing certain restrictions on the reimbursement of travel and transportation for separating personnel. Currently certain separating military personnel may be reimbursed only for travel and transportation to their place of entry into active duty or home of record. This restriction made sense before we went to an all volunteer force. The assumption then was that separating draftees would return home. This logic does not hold water today, and that is the reason for my recommendation. Our separating military personnel should be allowed to travel to places where they can find a job and settle down or go to school, and it should be their choice as to where that area is. Not force them into either going back to where they enlisted or nothing.

With regard to the regulated strength reduction process I spoke of earlier, I will recommend that the military services be required to take actions in the following order of precedence when reducing active military strengths:

First, the military services will be required to reduce new accessions to the minimum levels required to sustain the smaller strength levels they project at the end of the next 5 years, that is about a 25-percent reduction in the aggregate;

Second, the military services will be required to reduce the retirement eligible population consistent with senior grade levels required to sustain the smaller strength levels they project at the end of the next 5 years;

Third, the military services will be required to reduce the first-term population consistent with junior grade levels required to sustain the smaller strength levels they project at the end of the next 5 years; and

Fourth, and the services can take this step only after they have taken the first three steps, the services may reduce the midcareer segment of the population in order to achieve mandated end strength levels for a given year.

I believe this regulated process is crucial to protecting the most vulnerable segment of the personnel inventory—those members who have made career commitments who could be involuntarily separated short of retirement eligibility. Quite frankly, in the rush to provide compensation and benefits to personnel in this category who are involuntarily separated, I think the basic concern of protection for this vulnerable group was overlooked. I think the process I just described puts in a reasonable form of protection for this vulnerable group. In fact, I believe that the military services can achieve most of the reduction they currently plan over the next 5 years without resorting to the fourth step in the process I just described.

Mr. President, the bottom line objective of the recommendations I will be making in the markup of the fiscal year 1991 Defense authorization request is to require the military services to follow a logical, regulated process for reducing their strength levels and at the same time provide a safety net, if needed, to those who may be involuntarily separated in the fourth step of the strength reduction process I outlined.

Mr. President, this general process must obviously be supplemented by specific analyses of the personnel skill requirements of the smaller forces that the military services are building down to. These requirements must be based on a clear definition of the threat, a clear definition of a military strategy to counter the threat, a clear definition of the forces needed to implement the military strategy, a clear definition of the allocation of these forces among the military services, and a clear definition of the mix of these forces between the Active and Reserve components.

Mr. President, I have been asking for such a total force review for a number of years now. In our hearings before the Manpower Subcommittee, we found that the total force policy that was implemented in 1973 was working well in some services and not so well in others.

Mr. President, the premise of the total force policy is that the reserve components in the military services are to be equal partners in meeting the day-to-day missions requirements of the services. Under this policy, certain missions are assigned to the reserves. For example, the Air National Guard provides 86 percent of strategic interceptor forces based in the United States; 50 percent of tactical reconnaissance forces; and 36 percent of tactical air support forces. The Air Force Reserve and Air National Guard combined provide 59 percent of the theater airlift forces; 45 percent of air rescue and recovery forces; and 40 percent of weather reconnaissance forces. In addition, they provide 93 percent of air medical evac air crews; and 38 percent of tanker cargo air crews. The combat readiness of the Air National Guard and Air Force Reserve in performing these missions is outstanding. Over 90 percent of these units are fully combat ready.

On the other hand, there have been chronic readiness problems in the combat support and combat service support elements of the Army Reserve. Specifically, the Army Reserve is relied on to provide 70 percent of the Army combat support and combat service support forces. Combat support missions include engineer, signal intelligence, and chemical activities. Combat service support missions include medical, maintenance, supply, transportation, and ammunition activities. Obviously, an army cannot fight for very long without this support, and if 70 percent of this support comes from Army Reserve forces, it is crystal clear that the Army has a big stake in the readiness of these forces.

Yet, fully 45 to 55 percent of these combat support and combat service support units have been rated as not combat ready over the last few years.

Mr. President, I make these points because we finally put into the Defense Authorization Act last year a provision requiring the Department of Defense to comprehensively review the total force policy and to report to us on the appropriate adjustment required to take advantage of the missions that the reserves do well and correct problems in mission areas where they do not do so well. Quite frankly, I wish we had put in this requirement 2 or 3 years ago because if we had such a study in hand right now we would be in a much better position to define more specifically the force structure and force mix the services should be building down to over the next few years.

However, the effort is underway and I am hopeful that when we receive our interim report in September and our final report in December that we will have a useful blueprint for us to use in deciding the long-term force build-down of our military forces.

Mr. President, before I conclude with other short remarks I want to give credit to one of our committee staff members, Fred Pang, who is with me here on the floor today, for his outstanding work, not only this year but in previous years on these manpower issues. He has done an outstanding job and has been key to working out many of the things that I have talked about here today. I want to give him full credit.

Mr. President, I want to conclude by returning to the subject of taking care of our men and women in uniform and their families as our military forces build-down over the next few years. I have described what I will recommend in our subcommittee markup. I believe my recommendations take the features of the compensation and benefits package introduced by Senator McCain in S. 2663 and marries them up with a strength reduction process that protects the most vulnerable segment of our military personnel inventory.

I want to again compliment my friend, the distinguished Senator from Arizona [Mr. McCain] for taking the lead in pressing for a compensation and benefits package for involuntarily separated personnel.

His work in this regard and as the ranking minority member of the Subcommittee on Manpower and Personnel of the Committee on Armed Services is very valued on the committee and by me personally. As I have said on previous occasions, we approach military personnel matters on a bipartisan basis in our subcommittee, the objective being to support the combat effectiveness—combat effectiveness, that is the bottom line—combat effectiveness, I repeat it for a third time, it is at the heart of all our work, the combat effectiveness of our men and women in uniform and their families to provide for their welfare and quality of life. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized for 10 minutes.

Mr. McCAIN. Mr. President, I would like to thank Senator Glenn, my friend from Ohio, for his support and kind words. It is an honor and pleasure for me to have the opportunity to work with him on the Manpower and Personnel Subcommittee of the Armed Services Committee. The men and women in the military have no greater friend, protector, nor advocate than Senator John Glenn. I know I speak for many, many servicemen and women and their families when I express my appreciation for his dedicated hard work on their behalf, not only on this issue—but many others.

I appreciate the help he has given me in bringing S. 2663, the comprehensive transition plan, forward, and in making it a part of the fiscal year 1991 Defense Authorization Act. I also appreciate his assistance in holding hearings on this bill last Wednesday, and his aid in assuring the Military Coalition, which played a critical role in helping draft this bill, would have an opportunity to testify.

As I have said, no one has done more than Senator Glenn to help our Nation's men and women in uniform and ensure we have efficient plans and policies for military personnel. Our Nation is lucky to have John Glenn's services at a time when we must make drastic changes in our force structures and drastic cuts in military manpower.

I believe Senator Glenn has made important recommendations that will provide still better protection for our military and their families. Moreover, he has added an important new dimension to our manpower policies by setting priorities as to how cuts should be made and require it be made part of an orderly plan.

I would like to take this opportunity to reinforce several points that Senator Glenn has just made. We are talking about future defense budgets that would force a cut in our military personnel of 25 to 40 percent, and we are talking about the impact of the cuts on military dependents and military families. The coming force cuts will not only affect things and theories, they will affect at least half a million of our fellow Americans. We must not try to fund some distorted version of a "peace dividend" by denying our military and dependents legitimate separation pay, unemployment compensation, medical care and the other elements of a comprehensive transition plan. We must pay the cost of what is, after all, simple human decency.

Mr. President, let me turn back to the Military Coalition, I ask unanimous consent to have the full list of the members of the Military Coalition printed in the Record.

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

MEMBERS OF THE MILITARY COALITION

Air Force Association.
Air Force Sergeants Association.
Association of Military Surgeons.
Association of U.S. Army.
Commissioned Officers Association.
Fleet Reserve Association.
Marine Corps League.
Marine Corps Reserve Officers Association.
National Association for Uniformed Services.
National Guard Association of the United States.
National Military Family Association.
Naval Reserve Association.
Naval Enlisted Reserve Association.
Navy League of the United States.
Non-Commissioned Officers Association.
Reserve Officers Association.
The Retired Officers Association.
The Retired Enlisted Association.
Society of Medical Consultants to the Armed Services.
U.S. Army Warrant Officers Association.
U.S. Coast Guard CPO Association.
CWO & WO Association, USCG.

Mr. McCAIN. Mr. President, I am very grateful to all these organizations for their assistance and their valuable assistance in coming up with this plan.

Mr. President, we need such assistance because we need to act. We are facing difficult times. In fact, we are facing an unprecedented time if one views the coming defense cuts and force reductions in light of the fact that late in the Vietnam war, this Nation made a conscious decision to go from a conscript military force to an All-Volunteer Force. Now, for the first time, we are telling men and women who volunteered to join the military for a career that their services are not needed, and that the changes in the world situation obligate us to cut short their service to our Nation.

These men and women are spread all over the globe, and they know they face a very uncertain future. They are not the kind of people who panic but they certainly face the future with deep and grave concern.

I visited several military installations, both here and overseas, during the past few weeks. During those visits, I have been besieged by officers and enlisted personnel who want to know what Senator GLENN, Senator McCAIN, and the rest of the Congress is going to do to resolve the uncertainty that besets them and their families. I believe that we are sending a message with this legislation which I think will have a tremendous calming effect on them and to their familes.

Mr. President, I will briefly review some of the highlights of this plan, including some that Senator GLENN has just stated. Among these highlights are providing separation pay for officers and enlisted personnel. Let me remind by colleagues that now there is no provisions in the law to provide such pay for enlisted personnel who are involuntarily separated. The legislation will also remove the current $30,000 cap on separation pay.

Unemployment compensation would make the military personnel released from active duty eligible for 26 weeks of unemployment and make them able to apply for such compensation at the end of 1 week of unemployment. The current law restricts military personnel released from active duty to only 13 weeks of compensation.

Relocation services will allow those members who are eligible for separation pay limited leave time, not to be charged to those individuals, to visit the areas where they may wish to relocate. The expense of the trip will be borne by the individual member, but they will be given the time by the service.

There will be outplacement services, and all can be eligible for the Montgomery GI bill if they are involuntarily separated under honorable conditions by paying $1,200 to become vested in the program. This will allow such personnel to receive the full educational benefits of the Montgomery GI bill.

It will allow those eligible for separation pay to receive continued health benefits after their separation. It will provide care for those who are pregnant and ensure a year of coverage for those with documented prior conditions.

The military services will ensure that transition briefings are available to members as well as their spouses. The briefings will, at a minimum, cover the benefits I have just listed.

We have an obligation, to our men and women in uniform, Mr. President. It is an obligation that I believe, the Congress and the people of the United States will not shirk. However, the Congress and the people of the United States needs concrete legislative proposals. They need specifics, and I believe that—with Senator GLENN's help—we have provided the proper blueprint. I am also convinced that this blueprint will be adopted by both bodies. I note with pleasure that Congressman SLATTERY has introduced basically identical legislation in the House. I suggest to all my colleagues that not only is such legislation important for the benefit of men and women who are presently serving, but we have an obligation to future generations who may wish to serve our country in times of crisis. We must set a precedent that rewards and protects national service. We must deal with the crisis the coming personnel cuts is creating for our volunteers. We must make sure they are cared for according to the Judeo-Christian ethics upon which this Nation was founded.

Mr. President, I yield the remainder of my time. I yield the floor.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 8:30 a.m. on Wednesday, June 17; that following the prayer, the Journal of proceedings be deemed approved; that the time for the two leaders be reserved for their use later in the day; that following the reservation of the leaders' time, there be a period for morning business, and that Senator BOSCHWITZ be recognized for up to 1 hour; that at 9:30 a.m., 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.

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

RECESS UNTIL 8:30 A.M. TOMORROW

The PRESIDING OFFICER (Mr. GLENN). Under the previous order, the Senate will stand in recess until 8:30 a.m. tomorrow, Wednesday, June 27, 1990.

Thereupon, at 8:38 p.m., the Senate recessed until Wednesday, June 27, 1990, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate, June 26, 1990:

DEPARTMENT OF STATE

MICHAEL MARTIN SKOL, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF VENEZUELA.

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

ELMER B. STAATE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 1995. (REAPPOINTMENT)

CONFIRMATIONS

Executive nominations confirmed by the Senate, June 26, 1990:

DEPARTMENT OF STATE

PAUL C. LAMBERT, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPULIC OF ECUADOR.

E.U. CURTIS BOHLEN, OF MAINE, TO BE ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS.

DON MELVIN NEWMAN, OF INDIANA, FOR THE RANK OF MINISTER DURING HIS TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION.

DANE FARNSWORTH SMITH, JR., OF NEW MEXICO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GUINEA.

CHARLES H. THOMAS, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MNINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF HUNGARY.

ALAN PHILIP LARSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, WITH THE RANK OF AMBASSADOR.

JAMES KEOUGH BISHOP, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SOMALI DEMOCRATIC REPUBLIC.

STEVEN E. STEINER, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE SPECIAL VERIFICATION COMMISSION.

PETER JON DE VOS, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LIBERIA.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

BOARD FOR INTERNATIONAL BROADCASTING

MALCOLM S. FORBES, JR., OF NEW JERSEY, TO BE A MEMBER OF THE BOARD FOR INTERNATIONAL BROADCASTING FOR A TERM EXPIRING APRIL 28, 1992.

INTER-AMERICAN FOUNDATION

THE FOLLOWING-NAMED PERSON TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM OF 6 YEARS:

NORTON STEVENS, OF NEW YORK.

THE FOLLOWING-NAMED PERSON TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM OF 6 YEARS:

FRANK D. YTURRIA, OF TEXAS.

WITHDRAWAL

Executive message received June 26, 1990, withdrawing from further Senate consideration the following nomination:

DEPARTMENT OF STATE

ERIC M. JAVITS, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF VENEZUELA, WHICH WAS SENT TO THE SENATE ON JULY 11, 1989.

HOUSE OF REPRESENTATIVES—*Tuesday, June 26, 1990*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Your word has commanded, O God, that justice should roll down as waters and righteousness like an everflowing stream. May we be faithful to that word and aware of our task to speak for the right, to labor for justice and to strive for equity among all people. Bless all who labor for the virtue of justice and may Your benediction never depart from us. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The gentleman from Mississippi [Mr. MONTGOMERY] will please lead us in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 5075. An act to amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2014. An act to direct the Secretary of Agriculture and the Secretary of the Interior to provide interpretation and visitor education regarding the rich cultural heritage of the Chama River Gateway Region of northern New Mexico.

The chair desires to announce that pursuant to clause 4 of rule 1, the speaker signed the following enrolled bill and joint resolutions on Monday, June 25, 1990:

S. 1999. To amend the Higher Education Amendments of 1986 to clarify the administrative procedures of The National Commission on Responsibilities for Financing Post-secondary Education, and for other purposes.

H.J. Res. 555. To commemorate the bicentennial of the enactment of the law which provided civil government for the territory from which the State of Tennessee was formed.

H.J. Res. 575. To designate June 25, 1990, as "Korean War Remembrance Day".

S.J. Res. 264. To commemorate the 50th anniversary of the National Sheriff's Association.

S.J. Res. 315. Joint resolution for the designation of July 22, 1990, as "Rose Fitzgerald Kennedy Family Appreciation Day".

S.J. Res. 320. Designating July 2, 1990, as "National Literacy Day".

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to make an announcement.

After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces that during the joint meeting to hear an address by Mr. Nelson Mandela, only the doors immediately opposite the Speaker and those on his right and left will be open.

No one will be allowed on the floor of the House who does not have the privilege of the floor of the House.

Due to the large attendance which is anticipated, the Chair feels that the rule regarding the privilege of the floor must be strictly adhered to.

Children of Members will not be permitted on the floor, and the cooperation of all Members is requested.

RECESS

The SPEAKER. Pursuant to the order of the House of Thursday, June 14, 1990, the House will stand in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 5 minutes a.m.), the House stood in recess, subject to the call of the Chair.

JOINT MEETING OF THE HOUSE AND SENATE TO HEAR AN ADDRESS BY NELSON MANDELA, DEPUTY PRESIDENT OF THE AFRICAN NATIONAL CONGRESS

The SPEAKER of the House presided.

The Doorkeeper, the Honorable James T. Molloy, announced the President pro tempore and Members of the U.S. Senate, who entered the Hall of the House of Representatives, the President pro tempore taking the chair at the left of the Speaker, and Members of the Senate the seats reserved for them.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to escort Mr. Nelson Mandela, deputy president of the African National Congress, into the Chamber:

The gentleman from Missouri, Mr. GEPHARDT;

The gentleman from Pennsylvania, Mr. GRAY;

The gentleman from Florida, Mr. FASCELL;

The gentleman from Michigan, Mr. BONIOR;

The gentleman from Maryland, Mr. HOYER;

The gentleman from Illinois, Mr. MICHEL;

The gentleman from Georgia, Mr. GINGRICH;

The gentleman from California, Mr. LEWIS;

The gentleman from Michigan, Mr. BROOMFIELD;

The gentleman from New York, Mr. FISH;

The gentleman from California, Mr. DELLUMS;

The gentlewoman from Illinois, Mrs. COLLINS;

The gentleman from California, Mr. FAZIO;

The gentleman from Michigan, Mr. WOLPE;

The gentlewoman from Illinois, Mrs. MARTIN;

The gentleman from Missouri, Mr. WHEAT;

The gentleman from Illinois, Mr. HAYES;

The gentleman from Michigan, Mr. SCHUETTE;

The gentleman from Maryland, Mr. MFUME; and

The gentlewoman from Hawaii, Mrs. SAIKI.

The PRESIDENT pro tempore. The President of the Senate pro tempore, at the direction of that body, appoints the following Senators as a committee on the part of the Senate to escort Mr. Nelson Mandela, deputy president of the African National Congress, into the House Chamber:

The Senator from Maine, Mr. MITCHELL;

The Senator from California, Mr. CRANSTON;

The Senator from Rhode Island, Mr. PELL;

The Senator from Massachusetts, Mr. KENNEDY;

The Senator from Michigan, Mr. LEVIN;

The Senator from Illinois, Mr. SIMON;

The Senator from Georgia, Mr. FOWLER;

The Senator from Kansas, Mr. DOLE;

The Senator from Wyoming, Mr. SIMPSON;

The Senator from Rhode Island, Mr. CHAFEE;

The Senator from Mississippi, Mr. COCHRAN;

The Senator from Indiana, Mr. LUGAR; and

The Senator from Kansas, Mrs. KASSEBAUM.

The Doorkeeper announced the ambassadors, ministers, and charges d'affaires of foreign governments.

The ambassadors, ministers, and charges d'affaires of foreign governments entered the Hall of the House of Representatives and took the seats reserved for them.

The Doorkeeper announced the Cabinet of the President of the United States.

The members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

At 11 o'clock and 9 minutes a.m., the Doorkeeper announced Mr. Nelson Mandela, deputy president of the African National Congress.

Mr. Nelson Mandela, deputy president of the African National Congress, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives, and stood at the Clerk's desk.

[Applause, the Members rising.]

The SPEAKER. Members of the Congress, it is my great privilege, and I deem it a high honor and personal pleasure to present to you Mr. Nelson Mandela, deputy president of the African National Congress.

[Applause, the Members rising.]

ADDRESS BY NELSON MANDELA, DEPUTY PRESIDENT OF THE AFRICAN NATIONAL CONGRESS

Mr. MANDELA. Mr. Speaker; Mr. President; esteemed Members of the U.S. Congress; your excellencies, ambassadors and members of the Diplomatic Corps; distinguished guests, ladies and gentlemen:

It is a fact of the human condition that each shall, like a meteor, a mere brief passing moment in time and space, flit across the human stage and pass out of existence. Even the golden lads and lasses, as much as the chimney sweepers, come, and tomorrow are no more. After them all, they leave the people, enduring, multiplying, permanent, except to the extent that the same humanity might abuse its own genius to immolate life itself.

And so we have come to Washington in the District of Columbia, and into these hallowed Chambers of the U.S. Congress, not as pretenders to greatness, but as a particle of a people whom we know to be noble and heroic—enduring, multiplying, permanent, rejoicing in the expectation and knowledge that their humanity will be reaffirmed and enlarged by open and unfettered communion with the nations of the world.

We have come here to tell you, and through you, your own people, who are equally noble and heroic, of the troubles and trials, the fond hopes and aspirations, of the people from whom we originate. We believe that we know it as a fact, that your kind and moving invitation to us to speak here derived from your own desire to convey a message to our people, and according to your humane purposes, to give them an opportunity to say what they want of you, and what they want to make of their relationship with you.

Our people demand democracy. Our country, which continues to bleed and suffer pain, needs democracy. It cries out for the situation where the law will decree that the freedom to speak of freedom constitutes the very essence of legality and the very thing that makes for the legitimacy of the constitutional order.

It thirsts for the situation where those who are entitled by law to carry arms, as the forces of national security and law and order, will not turn their weapons against the citizens simply because the citizens assert that equality, liberty and the pursuit of happiness are fundamental human rights which are not only inalienable but must, if necessary, be defended with the weapons of war.

We fight for and visualize a future in which all shall, without regard to race, color, creed or sex, have the right to vote and to be voted into all elective organs of state. We are engaged in struggle to ensure that the rights of every individual are guaranteed and protected, through a democratic constitution, the rule of law, an entrenched bill of rights, which should be enforced by an independent judiciary, as well as a multi-party political system.

Mr. Speaker, we are acutely conscious of the fact that we are addressing an historic institution for whose creation and integrity many men and women lost their lives in the war of independence, the civil war and the war against nazism and fascism. That very history demands that we address you with respect and candor and without any attempt to dissemble.

What we have said concerning the political arrangements we seek for our country is seriously meant. It is an outcome for which many of us went to prison, for which many have died in police cells, on the gallows, in our towns and villages and in the countries of Southern Africa. Indeed, we have even had our political representatives killed in countries as far away from South Africa as France.

Unhappily, our people continue to die to this day, victims of armed agents of the state who are still determined to turn their guns against the very idea of a nonracial democracy. But this is the perspective which we trust Congress will feel happy to support and encourage, using the enormous weight of its prestige and authority as an eminent representative of democratic practice.

To deny any person their human rights is to challenge their very humanity. To impose on them a wretched life of hunger and deprivation is to dehumanise them. But such has been the terrible fate of all black persons in our country under the system of apartheid. The extent of the deprivation of millions of people has to be seen to be believed. The injury is made that more intolerable by the opulence of our white compatriots and the deliberate distortion of the economy to feed that opulence.

The process of the reconstruction of South African society must and will also entail the transformation of its economy. We need a strong and growing economy. We require an economy that is able to address the needs of all the people of our country, that can provide food, houses, education, health services, social security and everything that makes human life human, that makes life joyful and not a protracted encounter with hopelessness and despair.

We believe that the fact of the apartheid structure of the South African economy and the enormous and pressing needs of the people, make it inevitable that the democratic government will intervene in this economy, acting through the elected parliament. We have put the matter to the business community of our country that the need for a public sector is one of the elements in a many-sided strategy of economic development and restructuring that has to be considered by us all, including the private sector.

The ANC holds no ideological positions which dictate that it must adopt a policy of nationalisation. But the ANC also holds the view that there is no self-regulating mechanism within the South African economy which will, on its own, ensure growth with equity.

At the same time, we take it as given that the private sector is an engine of growth and development which is critical to the success of the mixed economy we hope to see in the future South Africa. We are accordingly committed to the creation of the situation in which business people, both South African and foreign, have confidence in

the security of their investments, are assured of a fair rate of return on their capital and do business in conditions of stability and peace.

We must also make the point very firmly that the political settlement, and democracy itself, cannot survive, unless the material needs of the people, the bread and butter issues, are addressed as part of the process of change and as a matter of urgency. It should never be that the anger of the poor should be the finger of accusation pointed at all of us because we failed to respond to the cries of the people for food, for shelter, for the dignity of the individual.

We shall need your support to achieve the postapartheid economic objectives which are an intrinsic part of the process of the restoration of the human rights of the people of South Africa. We would like to approach the issue of our economic cooperation not as a relationship between donor and recipient, between a dependent and a benefactor.

We would like to believe that there is a way in which we could structure this relationship so that we do indeed benefit from your enormous resources in terms of your capital, technology, all-round expertise, your enterprising spirit and your markets. This relationship should however be one from which your people should also derive benefit, so that we who are fighting to liberate the very spirit of an entire people from the bondage of the arrogance of the ideology and practice of white supremacy, do not build a relationship of subservient dependency and fawning gratitude.

One of the benefits that should accrue to both our peoples and to the rest of the world, should surely be that this complex South African society, which has known nothing but racism for three centuries, should be transformed into an oasis of good race relations, where the black shall to the white be sister and brother, a fellow South African, an equal human being, both citizens of the world. To destroy racism in the world, we, together, must expunge apartheid racism in South Africa. Justice and liberty must be our tool, prosperity and happiness our weapon.

Mr. Speaker, distinguished representatives of the American people, you know this more than we do that peace is its own reward. Our own fate, born by a succession of generations that reach backward into centuries, has been nothing but tension, conflict, and death. In a sense we do not know the meaning of peace except in the imagination. But because we have not known true peace in its real meaning; because, for centuries, generations have had to bury the victims of state violence, we have fought for the right to experience peace.

On the initiative of the ANC, the process toward the conclusion of a peaceful settlement has started. According to a logic dictated by our situation, we are engaged in an effort which includes the removal of obstacles to negotiations. This will be followed by a negotiated determination of the mechanism which will draw up the new constitution.

This should lead to the formation of this constitution-making institution and therefore the elaboration and adoption of a democratic constitution. Elections would then be held on the basis of this constitution and, for the first time, South Africa would have a body of lawmakers which would, like yourselves, be mandated by the whole people.

Despite the admitted commitment of President De Klerk to walk this road with us, and despite our acceptance of his integrity and the honesty of his purposes, we would be fools to believe that the road ahead of us is without major hurdles. Too many among our white compatriots are steeped in the ideology of racism to admit easily that change must come.

Tragedy may yet sully the future we pray and work for if these slaves of the past take up arms in a desperate effort to resist the process which must lead to the democratic transformation of our country. For those who care to worry about violence in our country, as we do, it is at these forces that they should focus their attention, a process in which we are engaged.

We must contend still with the reality that South Africa is a country in the grip of the apartheid crime against humanity. The consequences of this continue to be felt not only within our borders but throughout southern Africa which continues to harvest the bitter fruits of conflict and war, especially in Mozambique and Angola. Peace will not come to our country and region until the apartheid system is ended.

Therefore we say we still have a struggle on our hands. Our common and noble efforts to abolish the system of white minority domination must continue. We are encouraged and strengthened by the fact of the agreement between ourselves, this Congress as well as President Bush and his administration that sanctions should remain in place. Sanctions should remain in place because the purpose for which they were imposed has not yet been achieved.

We have yet to arrive at the point when we can say that South Africa is set on an irreversible course leading to its transportation into a united, democratic, and nonracial country. We plead that you cede the prerogative to the people of South Africa to determine the moment when it will be said that profound changes have occurred and an irreversible process achieved, enabling you and the rest of the international community to lift sanctions.

We would like to take this opportunity to thank you all for the principled struggle you waged which resulted in the adoption of the historic comprehensive Anti-Apartheid Act which made such a decisive contribution to the process of moving our country forward toward negotiations. We request that you go further and assist us with the material resources which will enable us to promote the peace process and meet other needs which arise from the changing situation you have helped to bring about.

The stand you took established the understanding among the millions of our people that here we have friends, here we have fighters against racism who feel hurt because we are hurt, who seek our success because they too seek the victory of democracy over tyranny. And here I speak not only about you, Members of the U.S. Congress, but also of the millions of people throughout this great land who stood up and engaged the apartheid system in struggle, the masses who have given us such strength and joy by the manner in which they have received us since we arrived in this country.

Mr. Speaker, Mr. President, Senators and Representatives; we went to jail because it was impossible to sit still while the obscenity of the apartheid system was being imposed on our people. It would have been immoral to keep quiet while a racist tyranny sought to reduce an entire people into a status worse than that of the beasts of the forest. It would have been an act of treason against the people and against our conscience to allow fear and the drive toward self-preservation to dominate our behavior, obliging us to absent ourselves from the struggle for democracy and human rights, not only in our country but throughout the world.

We could not have made an acquaintance through literature with human giants such as George Washington, Abraham Lincoln and Thomas Jefferson and not been moved to act as they were moved to act. We could not have heard of and admired John Brown, Sojourner Truth, Frederick Douglass, W.E.B. DuBois, Marcus Garvey, Martin Luther King, Jr., and others—we could not have heard of these and not be moved to act as they were moved to act. We could not have known of your Declaration of Independence and not elected to join in the struggle to guarantee the people life, liberty and the pursuit of happiness.

We are grateful to you all that you persisted in your resolve to have us and other political prisoners released from jail. You have given us the gift and privilege to rejoin our people, yourselves and the rest of the interna-

tional community in the common effort to transform South Africa into a united, democratic and nonracial country. You have given us the power to join hands with all people of conscience to fight for the victory of democracy and human rights throughout the world.

We are glad that you merged with our own people to make it possible for us to emerge from the darkness of the prison cell and join the contemporary process of the renewal of the world. We thank you most sincerely for all you have done and count on you to persist in your noble endeavors to free the rest of our political prisoners and to emancipate our people from the larger prison that is apartheid South Africa.

The day may not be far when we will borrow the words of Thomas Jefferson and speak of the will of the South African Nation. In the exercise of that will by this united nation of black and white people, it must surely be that there will be born a country on the southern tip of Africa which you will be proud to call a friend and an ally, because of its contribution to the universal striving toward liberty, human rights, prosperity and peace among the peoples.

Let that day come now. Let us keep our arms locked together so that we form a solid phalanx against racism to ensure that that day comes now. By our common actions let us ensure that justice triumphs without delay. When that has come to pass, then shall we all be entitled to acknowledge the salute when others say of us, blessed are the peacemakers.

Thank you for your kind invitation to speak here today and thank you for your welcome and the attention you have accorded our simple message.

Thank you.

(Applause, the Members rising.)

At 11 o'clock and 48 minutes a.m., Mr. Nelson Mandela, deputy president of the African National Congress, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Doorkeeper escorted the invited guests from the Chamber in the following order:

The members of the President's Cabinet.

The ambassadors, ministers, and charges d'affaires of foreign governments.

JOINT MEETING DISSOLVED

The SPEAKER. The Chair declares the joint meeting of the two Houses dissolved.

Accordingly at 11 o'clock and 59 minutes a.m., the joint meeting of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The House will continue in recess until 12:45 p.m.

□ 1250

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. DURBIN] at 12 o'clock and 50 minutes p.m.

PRINTING OF PROCEEDINGS HAD DURING RECESS

Mr. BRENNAN. Mr. Speaker, I ask unanimous consent that the proceedings had during the recess be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maine?

There was no objection.

UNITED STATES SHOULD CONTINUE SANCTIONS AGAINST SOUTH AFRICA

(Mr. BRENNAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRENNAN. Mr. Speaker, we have just witnessed something very special in the history of the U.S., Congress. Nelson Mandela's moving words to us this morning show that man's yearning for freedom cannot be locked up forever, even by the cruelty of apartheid.

Mandela's long struggle for justice in South Africa, is an inspiration to those who long for freedom all around the world.

Rather than renounce his principles, Mandela remained in jail for 27 years, a living symbol of the eternal fight for freedom that we all must share.

Mandela is free. But apartheid still exists in South Africa. Some have said that now we must lift our sanctions, and meet the minority South African Government halfway. I say now is not the time to give in, to settle for half measures.

Partial freedom is not enough. We must stay the course to full freedom for all in South Africa. We must continue sanctions against South Africa, for though progress has been made, there is still far far to go. Before South Africa is truly free.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will announce, pursuant to the instructions of the Speaker, 1-minute speeches will be limited to a maximum of eight on each side.

PRESIDENT BUSH WANTS A TAX INCREASE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, surprise, surprise, surprise, the 1988 campaign is finally over. President Bush wants a tax increase.

That is right, the rhetoric has changed from "Read my lips," to now, very responsibly, "Read the bottom line."

Let's get off it. If Democrats vote for a tax increase I say today there is no Democrat Party. It is time for Congress to throw out foreign aid, cut the giveaways to the NATO countries, stop the madness at the Pentagon because this President just does not want to increase taxes, he wants to put more taxes on the American people that cannot afford it. He still wants a capital gains tax cut.

If Thomas Edison knew what a thousand points of light would have done to George Bush, he would have never sold one light bulb, folks.

S&L BAILOUT UNFAIR TO KENTUCKY

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, last year I voted against the S&L bailout, the bill we call FIRREA. I did so because there was inadequate funding for the bailout effort. That funding, also, was not considered as part of the Gramm-Rudman-Hollings calculations for deficit reduction. And, the $75 million provided in the bill to pursue those who looted and swindled the taxpayers of America and the depositors of the S&L's was inadequate to do the job, and ironically, I would say, the administration only asked for $50 million of that $75 million.

If I had known last year what I learned reading yesterday's paper, I would have had one more reason to vote against the bill.

According to the newspapers yesterday, 37 States will basically pay for 13 States. By that I mean that 37 States, including the State of Kentucky, which ran a generally good S&L system, will pay the bill for the 13 States, which along with the inadequate Federal regulations, let these S&L's be run like casinos.

I do not think that is fair, Mr. Speaker. I do not think it is equitable, and I think definitely this points out the reason that we ought to do everything possible to put in jail and to prosecute vigorously all of the people who are responsible for the S&L debacle.

JAIL THE S&L CROOKS

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, I have made no secret of my outrage at the Justice Department for its lackluster performance in prosecuting the savings and loan crooks. These people are thieves, and the American people want to see them behind bars.

Unfortunately, the administration has been slow to act. Last week, the President finally jumped on the bandwagon after it almost rolled over him. He launched an offensive against financial institution fraud and white collar crime after we in the Congress made it a priority.

On Thursday, the Financial Institutions Subcommittee will hear testimony from the Department of Justice to give it a chance to explain why it has not given this matter the attention it deserves. Attorney General Thornburgh was asked to testify, but so far has not seen fit to appear and explain the record of his department.

Today I have sent all Members a button, like I am wearing, which says "Jail the S&L Crooks." I hope Members will take this opportunity to join me in wearing the button to express the outrage of the American people over this crisis. Wearing the button will help remind everyone that the American people want the Justice Department to put the savings and loan crooks in jail.

RESIDENTS OF THE DISTRICT OF COLUMBIA NEED REPRESENTATION ALONG WITH SOUTH AFRICANS

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, it is appropriate that President Bush and our elected leaders meet with Nelson Mandela of South Africa to celebrate his release from prison and his lifelong commitment toward ending the racist policy of apartheid. But the meeting should never have been held in Washington, DC.

You see, it is hard to argue that blacks in South Africa deserve representation in their national government if the meetings take place here in the District of Columbia.

Over 800,000 Americans, primarily black, live in Washington, DC, our Nation's Capital. These D.C. residents, like Mr. Mandela's brothers and sisters in South Africa's tribal lands are virtually voiceless in the national legislature.

It might be embarrassing to tell Mr. Mandela how committed we are to representative government if he should ask when we plan on giving the benefits of democracy and a voice in the Congress to residents of our Nation's Capital.

If Mr. Bush and the Congress want to deliver a sermon on democracy to Mr. Mandela, it is a mistake to set up the pulpit in the District of Columbia.

NO NEW TAXES

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, this morning the White House issued a statement indicating that they would be willing to accept tax revenue increases as a part of a budget summit package. There are many of us who believe that that would be the wrong kind of economic signal to send to the country right now, that tax increases at the present time would undermine the economy and substantially weaken it. And so, therefore, we regard a tax increase as unacceptable.

We would say to the President that we would vote against a budget package that increases tax rates for the American people. I have a letter to that effect that I am circulating on the floor this afternoon. Members interested in signing on to such a letter telling the President we would be unwilling to accept tax increases as a part of the budget process are invited to sign on.

TRIBUTE TO DAVID JAN MITCHELL

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, I rise today to commend David Jan Mitchell, a very special friend who, as an exemplary chairman of the new leadership division of the State of Israel Bonds, has made a lasting contribution to Israel's future. Having first conceived legislation which I introduced to create a Middle East Development Bank, David has a long view toward security in the region.

For one so young in age, he has a truly remarkable record of achievement. David is the managing principal at Rodman & Renshaw, a securities firm which he and his partners recently converted from a Chicago based regional firm, into an international company with offices in New York, Chicago, Kansas City, Buenos Aires, and London.

Since its inception in 1951, the bonds organization has raised over $10 billion in investment capital for the State of Israel. In the past 2 years, as the extraordinarily accomplished chairman of the Manhattan new leadership division, David's vision and know-how propelled the organization to new heights. Promoting the notion that we should all be "partners in nation building," David significantly broadened the scope of the campaign, increasing sales by more than 50 percent and expanding active membership by 70 percent.

During his tenure as chairman, he initiated a series of high level discussions for the King David Honor Society, which includes buyers of $5,000 or more. Many well known figures in New York's business community gave their time to address the King David Society, including Alan "Ace" Greenberg, chairman and CEO of Bear Stearns, Asher Adelman, controlling partner of the Edelman Group, Michael Steinhardt, managing partner of Steinhardt Partners, Jeffrey Steiner, CEO of Banner Industries, and Stephen Swid, chairman and CEO of SCS Communications.

In addition, international guest speakers at new leadership events have included the distinguished former Prime Minister, Shimon Peres, then Defense Minister Yitzhak Rabin, and Deputy Foreign Minister Benjamin Netanyahu.

As chairman, David revitalized the entire division with unique and spectacular gala events. New leadership's annual Cultural Award Dinner became one of the most eagerly awaited spectacles in New York, showcasing superstars such as Ron Silver, Jackie Mason, and Wendy Wasserstein as award participants.

Active in a long list of philanthropic organizations, David is on the boards of Bezalel Academy of Art & Design, Bar-Ilan University, and the Jerusalem College of Technology. He is also chairman of the National Leadership Circle of NATPAC, the National Political Action Committee.

Mr. Speaker, I commend David Mitchell for his many accomplishments and his genuine leadership. We in Congress, and friends of Israel everywhere, offer our heartfelt congratulations as he takes on even larger responsibilities, assuming the Chair of the Greater New York New Leadership Division for the State of Israel Bonds.

□ 1300

PRESIDENT BUSH WILL NOT HAVE THE LAST WORD ON TAXES

(Mr. TORRICELLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TORRICELLI. Mr. Speaker, the other shoe, raised in the 1988 Presidential campaign, just dropped. George Bush has announced that he is raising taxes. The charade is finally over.

But what a price the American people have paid for this masquerade.

In the 2 years that it took George Bush to find the means of eating his own words, a hemorrhaging deficit consumed billions of dollars of interest payments. The S&L crisis went unanswered, weakening our economy and stealing from our savings.

The President, Mr. Speaker, may have had the first word on raising new taxes; but be certain of this: He will not have the last.

Any Bush tax initiative is certain to include new privileges and tax breaks for the wealthy, certain to increase the burden on the middle class and working families. One can see from his statement today a new means of attacking entitlement programs for senior citizens and for students.

If that is his intention, Mr. Speaker, let the President be on notice he is in for the fight of his life.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT ON DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND SUNDRY INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1991

Mr. TRAXLER. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on the bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes.

Mr. GREEN reserved all points of order on the bill.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Michigan?

There was no objection.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1991

Mr. SMITH of Iowa. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5021) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by this gentleman from Iowa [Mr. SMITH].

The motion was agreed to.

□ 1303

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5021, with Mr. BROWN of California in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, June 20, 1990, the bill had been read through page 31, line 10.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wish to insert some remarks at this point regarding some New Mexico land grants.

The CHAIRMAN. The Chair would say to the gentleman that he may insert his own remarks, but not colloquy.

Mr. SMITH of Iowa. These are my own remarks, Mr. Chairman.

The text of the remarks is as follows:

NEW MEXICO LAND GRANTS

My distinguished colleague from New Mexico, Mr. Richardson, has been working on resolving an ongoing dispute in his district on the issue of land grants. It has reached a point where Congressional action is needed to resolve the dispute.

As you know, before the state of New Mexico became incorporated into the United States, it was a territory of Mexico. In an effort to promote colonization of this territory, the Governments of Mexico and Spain granted land to those willing to settle there.

However, in 1845 the U.S. attempted to annex this territory and war with Mexico broke out. The war ended three years later with the treaty of Guadalupe Hidalgo. Under this treaty, the U.S. agreed to recognize all valid Spanish and Mexican land grants, which by then had become part of the U.S., as vested in title.

Because the titles to many of these land grants were never recorded, and because many substantiating documents have been destroyed or lost over time, disputes over the transfer and ownership of land continue to arise in northern New Mexico.

Many of the disputes involve land that is now owned by the Federal government, to which many land grant heirs have laid claim. These heirs have many questions about the ways in which the lands have passed from the original grantees to the present day owners.

Mr. Richardson has long sought a study by the U.S. Attorney Generals Office into the history of the land grants, so that questions and disputes over proper ownership may be answered. As the Chairman of the Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, I agree with Mr. Richardson that a study is needed to help resolve this ongoing dispute. I am willing to work with Mr. Richardson to obtain a study of the legal history of Spanish and Mexican land grants in northern New Mexico during the conference on Commerce, Justice, State, and Judiciary Appropriations.

Mr. FALEOMAVAEGA. Mr. Chairman, I rise today in support of H.R. 5021, the fiscal year 1991 appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies.

Last February, the territory of American Samoa was hit by a hurricane which completely disrupted life for the residents of the territory.

I arrived in Samoa shortly after the hurricane struck. Surprised by the lack of preparation taken before the hurricane, I asked members of the American Samoa Government and other residents what happened. I found out that two things went wrong. First, weather reports received by the news media from the weather station in Nadi, Fiji, in the important hours before the hurricane struck led the residents to believe that Hurricane Ofa was heading away from Samoa, rather than toward Samoa, which was actually the case. Second, because there is inadequate emergency—back up—power to the weather station in Samoa, the station was without electrical power for 6 of the most crucial hours when the hurricane was closest to Samoa.

I have been aware for some time that the NOAA Weather Office in Samoa needs to be upgraded. This bill will provide for repair of the damage done to Weather Service equipment in Samoa by Hurricane Ofa, for the addition of a meteorologist to the local staff, and for the addition of automated observing stations which will enable the National Weather Service to provide weather forecasts prepared in Samoa for the local area. Presently, all weather forecasts come from either Fiji or Hawaii.

Mr. Chairman, I believe the experience provided by Hurricane Ofa amply shows the need for these improvements to the weather office in Samoa.

Mr. Chairman, the legislation which will provide funding for the improved Weather Service facilities in Samoa would not have been possible without the support of Mr. Neal Smith, chairman of the Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and related agencies; Mr. Richard Hagemeyer, Pacific Region Director, National Oceanic and Atmospheric Administration, Department of Commerce; and Mr. Thomas Tatekawa, Manager, American Samoa Weather Station.

Mr. Chairman, H.R. 5021 includes an appropriation for the upgrading of the weather station in Samoa and I urge my colleagues to support these needed improvements.

The CHAIRMAN. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DANNEMEYER: Page 31, insert after line 10 the following new section:

SEC. 604. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available by this Act that is not required to be appropriated or otherwise made available by a provision of law is reduced by 5 percent.

Mr. DANNEMEYER. Mr. Chairman, this appropriation bill for Commerce, Justice, State, and the Judiciary is a little difficult to get a handle on for the reason that, in effect, it is only presented to the House in about half-baked form.

I do not understand why it is presented this way, but my suspicion is that the rationale of the Committee on Appropriations was that the only appropriation that is contained in the measure is for programs that have been authorized. In other words, we are not appropriating money for unauthorized programs.

The given idea of what this means is that in fiscal year 1990, we appropriated, initially, and with the supplementals, some $19.8 billion for this program or this appropriation bill.

Now, the Bush administration requested for fiscal year 1991 some little over $20 billion, and the appropriation bill before us proposes to appropriate a little over $11 billion, $11.086 billion, to be precise. Or that was the request. Then the appropriation was $10.5 billion.

So what we have before us is a clear road indication that at some point later in this year there will be another request for an appropriation for these categories to provide funding for the unauthorized programs that are included in these departments.

What that amount will be nobody knows. But I believe that with this amendment, it is appropriate to suggest that all categories of spending for this bill can be reduced by 5 precent. That is what this amendment is all about.

I do not think there is a program functioning in the Government of the United States that cannot be reduced by 5 percent, including the appropriation for the legislative branch of the House of Representatives and the U.S. Senate.

So, this is what this amendment is all about. I suspect that there will be Members offering amendments of this type to each of the appropriation bills that come through the House. And the motivation behind our actions is very simple: We seek to say to the American people that there are some here who seek to resolve the deficit problem that we are facing in this Nation, not through raising our taxes but through cutting spending.

That is the reason that this amendment is being offered.

I note that with the President's announcement this morning that the existing tax revenue system of this Government will produce $82 billion more than that same system produced in the last fiscal year. That is enough of revenue growth in 1 year over a preceding year.

We do not need tax increases in this country. We need spending reductions. We need Members of Congress with the courage to say to their constituents, the special-interest groups, "We will reduce spending in a modest way."

I think a 5-percent reduction is a rational way to proceed.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. SMITH of Iowa. Mr. Chairman, I would like to point out a few things here. I will be very brief.

The total amount in this bill for authorized programs is $570,791,000 less than the enacted amount for those same programs in 1990.

Now in this bill we have funded only authorized programs, and we reserved the balance of our section 302(b) allocation for unauthorized programs.

□ 1310

When we add together the amount of discretionary budget authority in the bill for authorized programs and the funds reserved for unauthorized programs, we are $976,481,000 below the amount that all these agencies received in fiscal year 1990.

Now, with regard to the 302(b) allocation, the allocation for discretionary programs is $198,600,000 below the total discretionary funds enacted for these programs for 1990. The fact of the matter is we are well within our 302(b) allocation. We are well within any kind of a reasonable comparison someone could make with fiscal year 1990. The fact of the matter is that most of the programs in the bill are either at no more than the administration's request or less than the administration's request. I cannot imagine that the administration would be very happy with more cuts in the programs that they have asked money for.

Also, virtually every program in here is funded at less than the Members of the House, in great numbers, wanted for programs that were their high priorities. So I cannot imagine that Members of the House are interested in cutting these programs any more. We are well within our parameters.

In addition to that, I just point out that last Wednesday, when this bill was on the floor, $75 million was added for S&L prosecutions, investigations, et cetera. We could not shut off debate. Every Member on the floor wanted to talk about how we needed more than $75 million. This amendment, of course, will cut that $75 million back by $3.75 million. The Marshals Service is involved in these investigations. The FBI, which would receive a large part of this $75 million, would be cut back. The Department of Justice's Civil Division and Tax Division will be cut back. The Tax Division and the Criminal Division are following leads not only for the purpose of prosecuting those people who perpetuated fraud, but also to recover property. The tens of millions or maybe billions of dollars that could be recovered depend upon the ability of the FBI investigators and Justice Department attorneys to follow these leads. It does not make any sense to me to be cutting these funds back any more. The U.S. attorneys would also be cut back by this amendment as well as the Criminal Division. Last year we built more prisons that have to be manned now with guards. This cut would reduce the number of guards available to support those new prisons. When these prisoners get out, there is a probation service that becomes very important and that would also be cut.

This is the only appropriations bill in which we are going to deal with the S&L fraud, because the Congress, with the urging of the administration, has placed the Resolution Trust Corporation off budget. This is the place where S&L fraud is addressed on budget. The Resolution Trust Corporation can spend as much as they want and we cannot influence it. This is the only place where we will deal with the S&L fraud. It is on budget here. This amendment would cut funds for dealing with S&L fraud by $3.75 million, and that is too much.

We will come out of conference with more money than is currently in this bill. We will have to when we add in the unauthorized programs. It will be interesting to see how many Members want to cut back the bill instead of add to it by the time we are done. A lot of the Members around here wanted money for different programs, very good programs, that are in this bill. It will be interesting to see on a rollcall vote how many want to cut back and get less than what they said they wanted. Nevertheless, I just think that this is not the right amendment on this bill. I emphasize this bill is under its 302(b) allocation.

Mr. ROGERS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, there are places where the budget needs to be cut, but I ask the Members of this body, is this the place where Members want to cut? Do Members want to cut money from the prosecution of the savings and loan criminals? I say no. Do Members want to cut money from the drug war? I say no. Do Members want to cut money from the USIA that is trying to send America's message of freedom around the world? I say no. Do Members want to cut NOAA programs? I say no. Do Members want to cut the programs that the Justice Department funds? I say no. If Members want to go back home and defend themselves to those back home who are clamoring for Members to do something about the savings and loan criminals, then go ahead and vote for this bill or this amendment.

I urge the Members to be careful where they do the cutting. Now, we have already cut this bill below what the President requested. We are upward of a billion dollars less than what the administration wants in this

bill. We are below where we were last year in this bill by almost a billion dollars. We are below the 302(b) allocation, and we have already done the cutting. I think it would be very, very unwise for this body to cut on this bill those programs that right now are absolutely vital in so many areas of the work that needs to be going on.

Just last week on this bill, the Members overwhelmingly voted to increase the funding for the savings and loan prosecutions. Do Members want to go back now and say, "No, I only wanted to Indian give, so I take it back? We want to cut that spending?"

I hope that Members will not take that course. I am not going to take my full 5 minutes under this debate, and therefore I urge Members to reject the cut against the effort to prosecute the savings and loan criminals, cutting the drug war, cutting the Justice Department, cutting the Commerce Department. That means that we can sell more of our goods overseas. I urge Members to reject this amendment.

Mr. DANNEMEYER. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Chairman, I thank the gentleman for yielding, and I will not take a lot of the time, but I want to point out to my colleagues in the House there is plenty of room to cut from this appropriation bill, because in 1989 we appropriated for all these just causes $14.8 billion. Then by the time we got finished with 1990, 1 year later, that $14.8 billion had raised from $19.8 billion. That is an increase of about $5 billion, about 30 percent increase in spending in just 1 year, 1990 over 1989.

I am saying there is plenty of room in these areas to shave off 5 percent.

Mr. ROGERS. Mr. Chairman, reclaiming my time, Members have to remember, and the gentleman will recollect, that we increased funding for the drug war, and the gentleman voted for it, no doubt; we increased funding for the Census Bureau. We had to. I am sure the gentleman voted for that, too. Those are the things we have no choice about.

If the gentleman wants to cut the drug war, and he wants to cut the prosecution of savings and loan criminals, he will persist in this amendment.

Mr. EARLY. Mr. Chairman, I rise in opposition to the amendment.

This amendment, whether 5 percent or 2 percent or 1 percent, illustrates better than any other across-the-board cut, what is wrong with across-the-board cuts. People in this country are clamoring about the savings and loan swindle; everyone is saying the S&L fraud was the biggest swindle ever perpetuated on the U.S. people.

□ 1320

It has been suggested that, over the years, recouping from the S&L swindle will cost in excess of $500 billion. Now, as the subcommittee chairman, the gentleman from Iowa [Mr. SMITH], said—and I speak directly to the sponsor of the amendment—again, whether it is a 5-percent cut, or a 2-percent cut, this is the only vehicle to address the S&L fraud. If we really want to get the ones that stole the money, we have to have money to indict them, to try them, to incarcerate them. We have given the American public a chance, through the civil court process, to recoup the money.

This across-the-board cut really says that the S&L scandal is no different from anything else. This is the only vehicle to address the S&L fraud.

Mr. Chairman, this amendment for a 5-percent cut, at a time when everyone is clamoring for the Attorney General to do more, would cut more than 500 FBI agents. That only sends one message, and I know the sponsor does not intend that, whether it is a 5-percent cut or a 2-percent cut, and this says that the S&L swindle is no different from any other swindle.

Mr. Chairman, that is wrong. We talk about civil courts; let me state that during the hearings the distinguished gentleman from Arizona [Mr. KOLBE], a distinguished Republican Member, asked the Federal judges how much of a delay there would be in the civil trials. They suggested in the testimony that by the end of this year it is going to be up to an average of 10 months. When the gentleman from Arizona [Mr. KOLBE] pursued the subject with William Young, a Federal judge of Massachusetts, he asked him how many criminal trials are proceeding to a jury trial, and he said, "Ten percent."

This amendment wants to make that list. This amendment says we will not prosecute the S&L's, and in civil cases, as far as the number of civil cases that go to trial, it would be 2.5 percent.

Now, I am sure that the gentleman from California [Mr. DANNEMEYER] or the gentleman from Minnesota [Mr. PENNY] or anyone else does not think they should not be tried if they break the law. Let me state that these S&L's are our biggest abuse, and we should not vindicate it or whitewash it or do whatever they want. There is no other bill that will come on the floor that will address this S&L issue.

Is the S&L scandal the same as everything else? Should it be treated as the same in an across-the-board amendment? This Member, the chairman of the subcommittee, and the ranking member do not think so.

The chairman of the subcommittee, the gentleman from Iowa [Mr. SMITH], recently had a letter from Ralph Mecham, the director of the Administrative Office of the United States Courts, and, Mr. Chairman, the Members should read it. I will just quote one paragraph:

> The Committee on Criminal Law and Probation Administration of the Judicial Conference of the United States has been studying the operation of detention in the federal criminal justice system. The members, twelve federal judges and one magistrate, note that the problems of overcrowding in jails, and lack of available jail space for federal prisoners, have contributed to a crisis situation in federal courts.

The letter goes on to state what is not being done, and the impact it is having on the judiciary and Federal criminal justice system generally. And these are only a few of the problems we face. On the S&L abuse, the S&L fraud, over 200 Members have sent communications to the President, saying, "You are not doing enough." How many have said that the Attorney General is not doing enough? If there is anything that says the S&L is nothing different, it is an across-the-board cut. I do not care if it is 5 percent, 2 percent, or 1 percent, the S&L swindle is different. The Members want the abusers to be indicted, prosecuted, and incarcerated. They want to recover as much of the money as they can.

Mr. Chairman, I hope this amendment and any other amendment that protects the S&L swindle is defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. DANNEMEYER].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. DANNEMEYER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently, a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 194]

Ackerman	Ballenger	Bilbray
Anderson	Barnard	Bilirakis
Andrews	Bartlett	Bliley
Annunzio	Barton	Boehlert
Anthony	Bateman	Boggs
Applegate	Bates	Bonior
Archer	Beilenson	Borski
Armey	Bennett	Bosco
Aspin	Bentley	Boucher
Atkins	Bereuter	Boxer
Baker	Berman	Brennan

Brooks
Broomfield
Browder
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell (CA)
Campbell (CO)
Cardin
Carper
Carr
Chandler
Clarke
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins
Combest
Condit
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Craig
Crane
Dannemeyer
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Douglas
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Ford (MI)
Frenzel
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hoagland
Hochbrueckner
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
Lagomarsino
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken, Thomas
Lukens, Donald
Machtley
Madigan
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal (MA)
Neal (NC)
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Parris
Pashayan
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schneider
Schroeder
Schuette
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stangeland
Stearns
Stenholm
Stokes
Studds
Stump
Swift
Synar
Tallon
Tanner
Tauke
Tauzin
Taylor
Thomas (GA)
Thomas (WY)
Torricelli
Towns
Traficant
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Walsh
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)

□ 1345

The CHAIRMAN. Four hundred one Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California [Mr. DANNEMEYER] for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Members will have 5 minutes on this vote.

The vote was taken by electronic device, and there were—ayes 88, noes 323, not voting 21, as follows:

[Roll No. 195]

AYES—88

Armey
Baker
Ballenger
Bartlett
Barton
Bennett
Bentley
Bilirakis
Bliley
Bunning
Burton
Callahan
Campbell (CA)
Coble
Combest
Conyers
Cox
Crane
Dannemeyer
Dornan (CA)
Douglas
Dreier
Duncan
Erdreich
Fawell
Fields
Frenzel
Gallegly
Gekas
Gingrich
Goss
Gradison
Hamilton
Hammerschmidt
Hancock
Hansen
Hefley
Henry
Herger
Hiler
Hopkins
Huckaby
Hunter
Ireland
Jacobs
Johnson (CT)
Kasich
Lagomarsino
Laughlin
Lewis (FL)
Madigan
McCandless
McEwen
McMillan (NC)
Michel
Miller (OH)
Moorhead
Nielson
Packard
Parker
Parris
Pashayan
Petri
Ravenel
Ridge
Roberts
Robinson
Rohrabacher
Sarpalius
Schaefer
Sensenbrenner
Sharp
Shays
Shumway
Shuster
Slaughter (VA)
Smith, Robert (NH)
Solomon
Stenholm
Stump
Tauzin
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walgren
Walker
Wylie

NOES—323

Ackerman
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
Barnard
Bateman
Bates
Beilenson
Bereuter
Berman
Bilbray
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bustamante
Byron
Campbell (CO)
Cardin
Carper
Carr
Chandler
Clarke
Clay
Clement
Clinger
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crockett
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Frank
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Glickman
Gonzalez
Goodling
Gordon
Grandy
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horton
Houghton
Hoyer
Hubbard
Hughes
Hutto
Hyde
Inhofe
James
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
LaFalce
Lancaster
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken, Thomas
Lukens, Donald
Machtley
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Morella
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Pallone
Panetta
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Rangel
Regula
Rhodes
Richardson
Rinaldo
Ritter
Roe
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Savage
Sawyer
Saxton
Schiff
Schneider
Schroeder
Schuette
Schumer
Serrano
Shaw
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Denny (OR)
Smith, Robert (OR)
Snowe
Solarz
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stearns
Stokes
Studds
Swift
Synar
Tallon
Tanner
Tauke
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Walsh
Washington
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolf
Wolpe
Wyden
Yates
Yatron
Young (AK)

NOT VOTING—21

AuCoin	Manton	Schulze
Bevill	Marlenee	Sundquist
Chapman	Morrison (CT)	Thomas (CA)
Flippo	Nagle	Udall
Ford (TN)	Nelson	Whittaker
Hall (TX)	Ray	Wise
Holloway	Scheuer	Young (FL)

□ 1352

The Clerk announced the following pairs:

On this vote:

Mr. Thomas of California for, with Mr. Wise against.

Messrs. LEHMAN of California, BROOMFIELD, STEARNS, and INHOFE changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. PENNY

Mr. PENNY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PENNY: Page 31, insert after line 10 the following new section:

SEC. 604. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available by this Act that is not required to be appropriated or otherwise made available by a provision of law is reduced by 2 percent, except that this reduction shall not apply with respect to amounts appropriated or otherwise made available by this Act for investigations, prosecutions, and civil proceedings involving financial institutions, as authorized by section 966 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Mr. PENNY. Mr. Chairman, with my friend, the gentleman from Michigan [Mr. UPTON], I rise to offer an amendment to cut each program funded by H.R. 5021, the Commerce, Justice, State appropriation bill be 2 percent.

If adopted, this 2 percent across-the-board amendment would result in approximately $200 million in deficit reduction. While the debate over the spending levels in this bill is murky, it is apparent that once transfers from last year's transportation appropriations bill and accommodation of spending in the recently adopted supplemental spending measure are taken into account, we still have in this measure an increase of somewhere in the neighborhood of 2 percent beyond last year's actual nominal spending levels for these various programs.

I would say in deference and respect to the gentleman from Iowa, Chairman SMITH, that compared to most other appropriation bills, this bill provides for relatively modest spending level increases, and for that reason I am a bit less concerned about the prospect of this bill being approved by the House with those spending increases. But nonetheless, there are additional dollars here, and at a time that we are trying to reduce the deficit it seems prudent for us to scale back spending in each appropriation bill by at least 2 percent.

Since the committee did not provide funding for unauthorized and expiring programs, my amendment will not affect, I repeat will not affect, funding for the FBI, LSC, the INS, U.S. attorneys, the Drug Enforcement Administration, and a few other smaller programs. Though authorized, we would also exempt from this 2 percent cut all funds for the enforcement and prosecution relating to the S&L crisis. It is my understanding that with the exception of the Bureau of the Census, which naturally requires less money this year than last year, most programs within this bill are still authorized at a higher level than they were authorized in the previous year.

As I said during consideration last week of the energy and water appropriation bill, a 2-percent reduction is the least we can do. It will send the right signal to the American people of our budget resolve and our support for the negotiators who are now attempting to achieve a more far-reaching deficit reduction plan than the 2-percent amendment would achieve.

□ 1400

Mrs. JOHNSON of Connecticut. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

Mr. Chairman, I recognize the good work of the chairman of this committee and his colleagues. However, I do not believe that we can increase spending in the double-digit range and credibly address the single issue that endangers our national economy, therefore the well-being of our Nation.

I come from Connecticut. New England's economy is under siege. We feel the shock, the pressure of rapidly reducing employment opportunities, of a constrained credit market, of reduced defense spending, and I can tell you the taxpayers in my district are rejecting with great anguish much smaller increases in education budgets affecting their own children's schools, of local town budgets. I simply cannot in good conscience support the kinds of increases that we have been considering today and last week and at the same time assure my constituents that I will deal with the one thing that threatens the quality of their lives and their economic opportunity the most, the Federal deficit.

If we are going to cut $50 billion this year, this is not a way to start that inspires the trust and confidence of the people that I represent.

So with real concern for the relationship between this part of our process and our long-term goals and responsibilities this year, I respectfully support the Penny amendment and urge my colleagues to do likewise.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, yesterday CNN kicked off an investigative series on the savings and loan scandal. They called Colorado ground zero in the scandal.

What has been the Bush administration's response to this unprecedented financial swindle, which could end up costing the taxpayers over a trillion dollars? Next to nothing.

Last year, as we all know, President Bush rejected an additional $25 million that Congress attempted to appropriate for the Justice Department to clean up the savings and loan swindle.

Now we are seeing the results of the Bush administration's passivity.

In this morning's Wall Street Journal, Robert Pence, the FBI's agent-in-charge in Denver, complained that "the Federal Bureau of Investigation doesn't have 'anywhere near the people we need to keep up'."

What is the Denver FBI office trying to keep up with? There are 30 failed financial institutions in Denver under criminal investigation. One institution alone, Silverado, stung the taxpayers for $1 billion.

In last Friday's Washington Post Pence said the FBI in Denver had 56 inactive investigations of fraud involving more than $100,000.

Even the President's own appointee in Denver, U.S. attorney Michael Norton, admitted to the Wall Street Journal, "Yes, we have a big backlog."

Nationally, the Bush administration's inaction is just as bad. The FBI asked for 425 new agents to work on some 2,300 fraud and embezzlement cases. They only gave them 202.

Meanwhile, President Bush is hiding in Washington, waving flags and organizing pep rallies at the Justice Department.

Mr. President, I'm here to tell you that it's the fourth quarter, the taxpayers are behind a trillion to nothing, and it's a little late for a pep rally.

Besides, what's the point of a pep rally when you won't send all your players out on the field?

But it gets worse. It's bad enough that President Bush is not fielding the FBI and U.S. attorney resources required to clean up the scandal. He won't use all the plays in the play book.

The Bush administration is lobbying to weaken the RICO law, one of the most effective tools government agencies and private citizens can use to go after the savings and loan swindlers.

Attorney General Dick Thornburgh, who also participated in last Friday's Justice Department pep rally, has made minimal use of the RICO law to go after the swindlers' financial assets. Now he wants to make it more difficult for private citizens and other gov-

ernment agencies like RTC and FDIC, to file RICO suits and to obtain damages.

The RICO law is the law that scores points, that recovers financial assets. Every dollar recovered under RICO is a dollar saved to the taxpayers.

Last March, the National Thrift & Mortgage News warned "changes in RICO would hobble antifraud effort. The Government will lose a major weapon to fight fraud at financial institutions if Congress approves proposed changes in the Federal racketeering law."

Earlier this year, FDIC chairman L. William Seidman, who is lobbying against weakening the RICO law, said, "The essence of RICO serves as a powerful deterrent to criminal fraud in financial institutions.* * * The best and most recent example of the use of RICO is an attempt to recover * * * losses in the action brought against various directors, officers and other interested parties of Lincoln Savings and Loan. Similar actions to recoup losses for the benefit of taxpayers could be precluded * * *" if the RICO law is weakened.

Now, what happened to Mr. Seidman? According to the New York Times, John Sununu forced him out.

Here we are in the super bowl of American scandals, the taxpayers are behind a trillion to nothing, and President Bush benched his starters, sidelined the replacements, and won't play offense.

I do not understand why President Bush is organizing pep rallies in Washington, when he has already thrown in the towel in Colorado.

Mr. McMILLAN of North Carolina. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, with all due respect to the distinguished gentleman from Iowa [Mr. SMITH], who heads the subcommittee, and the fine work that they are doing, and the preceding speaker, I think we have a problem of not being able to see the forest for the trees. This body is like a drowning man in 20 feet of water who does not have the will to come up for air and sinks further and further with each passing moment.

The latest CBO numbers, if anyone has looked at them, estimate a deficit of $159 billion in fiscal year 1990. That is not counting the funds required for the RTC bailout of the S&L's.

That is $49 billion over the Gramm-Rudman-Hollings target of $110 billion.

The CBO baseline estimate for the fiscal year 1991 deficit is $164 billion before looking at the RTC bailout numbers. That is $96 billion over the Gramm-Rudman-Hollings target for that year, next year.

The projected total outlays for next year based on existing law plus inflation is for $1,287,000,000,000.

It would require a reduction of 7.5 percent, or $96 billion, to achieve the Gramm-Rudman-Hollings deficit reduction target before RTC funding. That is 7.5 percent over projected outlays for next year to meet the Gramm-Rudman deficit reduction target without a tax increase.

The amendment offered by my colleague from Minnesota and my colleague from Michigan is a bare minimum, despite the good work of this committee that this House should do as a step toward rising up to the fresh air of a balanced budget.

This amendment may save only $200 million, peanuts when you are talking about what we really need to do. I would suggest that if you or any of you are serious about reducing this deficit and meeting the Gramm-Rudman deficit reduction target without a tax increase or even if you are willing to accept a moderate tax increase but are seriously interested in addressing the spending problem in this country, then you are compelled to support this amendment.

If you are not willing to support this kind of a reduction, then you had better be prepared to vote for something like a 10-percent tax increase, which it would take to do the same thing without the spending restraint.

So I urge my colleagues to support this amendment.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I will be brief with my remarks. Some may not have heard the remarks I made on the previous amendment. The fact of the matter is we have money in this bill only for authorized programs. The funds in this bill for the authorized programs represent a net reduction of $570,791,000 below the amounts appropriated for those authorized programs in fiscal year 1990.

When you add together the discretionary new budget authority for the authorized programs in the bill and the discretionary new budget authority reserved for the unauthorized programs, we are $976,481,000 below the amounts enacted for all of those programs for fiscal year 1990.

Now with regard to the section 302(b) allocation of discretionary new budget authority for this bill, when you compare the allocation with the amounts enacted for the bill for fiscal year 1990, the 302(b) allocation is $198,698,000 below the amounts enacted for the bill for fiscal year 1990.

□ 1410

If this amendment is adopted, 25 programs would be below last year's dollar level. Not the program level, but the actual dollar level.

Now, the gentleman did exempt the $75 million we just added last Wednesday for S&L fraud, but it does not exempt other funds that are in this bill, especially for the war on drugs, but also for the S&L investigations and prosecutions. For example, there is $482 million in the bill for the U.S. Marshals Service and the support of prisoners. Those programs are obviously involved in both the S&L fraud cases and also the drug war. This amendment would cut $10 million out of those programs. Now, do Members want to cut those programs where we are annualizing what we did last year in the drug program? A vote for this amendment means Members do not want to annualize the expenses we voted for last year, that Members do not want to go ahead with the S&L investigation. We cannot investigate and prosecute S&L fraud without the Marshals Service. If we prosecute, we have to have a place to put the prisoners. If we open the prisons, we have to have guards to operate the prisons. That is what these accounts are for.

The bill contains $400 million in drug grants going to State and local governments to carry out their drug programs. We have the programs geared up; they have started. We would cut that program by $8 million with this amendment. Funding for juvenile justice programs which increased by $5 million, would be cut. These programs help teenagers picked up on the street, with no place to go, who get in some kind of trouble with drugs. This cut would deny somebody the chance to help take care of them. That is what is involved in the cuts. Federal courts—we have emergency recommendations from the court describing their dire circumstances. We have added more and more caseload onto the courts, but have not given them the additional personnel they need. This amendment would cut the Courts back by $36 million. These funds are needed if we believe in the war on drugs. Then we have programs such as weather station modernization. The Census Bureau: every Member here, I think, has written to us one way or another about the Census. They want the Census completed. They wanted the results of the 1990 census out of the State legislators on time. They want more money for the Census. What this amendment does is to cut the Census Bureau by $9 million. I hear about the sea lamprey and zebra mussel problems in the Great Lakes and they are a threat. We do not save any money by cutting the funds for research on zebra mussels, so should we cut that? Embassy security, Southwest border flood control, Small Business Administration business loans for business and minorities, the

Asia Foundation, EEOC, and NED all would be affected by this amendment. The administration has asked for a big increase for the National Endowment for Democracy. Talk about not having increases in anything, the administration wants this increase. With what is happening in Eastern Europe and what is happening in the Pacific, they need the money. The exchange programs in USIA, now is the time they need that money. Exchange programs are important.

Now, if Members want to oppose everything the administration asks for, go ahead and vote for this amendment. We have not included any more money than they asked for in hardly any program in the bill, and some they have already cut. If we want to cut them more, I cannot see how the administration would be very happy.

On the other hand, dozens of Members of the House have written to Members and presented good arguments in favor of some programs. We have squeezed around and made room for many of these programs, and have still stayed within our 302(b) allocations. If Members want to cut those things, go ahead and do it. It would be interesting to have a rollcall as we just did to determine who it is that wants to cut back on the things they have already asked for. I say vote against this amendment.

Mr. UPTON. Mr. Chairman, I move to strike the last word.

My good friend, the gentleman from Minnesota [Mr. PENNY] likes to describe this amendment as providing earnest money toward the budget summit. I would like to put the emphasis on "earnest." We in Congress, indeed, must get serious about the deficit. We are not serious when we use gimmicks to make the deficit seem smaller, and we are not serious when we move ahead in adopting spending bills without authorization behind them. We are not serious when we all admit that the deficit must come down by at least $50 billion this year, and yet we keep increasing spending.

How much does this bill raise? Well, let Members take a close look at some of those numbers. In the Commerce Department, the only authorized program that would have reduced spending in this bill is the Census Bureau. That is not because the committee really tried to save any money, it is because the Census is over, and there is nothing to spend the money on, 1991. All the other authorized programs in Commerce increased, some by more than 20 percent. Surely we can do better at saving money here. In the judiciary, the only savings that I can identify is a $1.4 million reduction in judicial retirement fund. All other programs increased, and the total increase is 15.8 percent. We can do better. The Department of Justice has a 40.9-percent increase. I fully endorse providing the Justice Department with the resources needed to do its work, particularly with the S&L which is one of the reasons that the gentleman from Minnesota exempted that department or that category. But can we really justify that large an increase when we are facing a deficit crisis?

When we do these kinds of things, how can we expect the American people to take Congress seriously in its efforts to reduce the deficit. Surely we can reduce the spending in this bill by 2 percent. It is, as my friend the gentleman from Minnesota says, a modest but earnest amount. It is a figure that will say to our constituents and to all persons and to the budget summiteers that we are, indeed, serious about reducing the deficit. I do not want to see taxes raised. A 2-percent reduction exempting S&L is the best that we can do, and the least that we can do.

Mr. ROGERS. Mr. Chairman, I rise in opposition to the amendment.

I hope not to take the full time, but let me say this. I will be voting for some of these 2-percent cuts, on some of the bills where it is over last year's amount, or where it is over the President's request. Neither one of those apply to this bill.

This subcommittee has already cut enough from this bill to where we cut the President's request. We are below what the President requested. We are below what last year's spending level was. We are below the Congressional Budget Office numbers, the CBO baseline. We are below all of those, even on the amounts that are appropriated in the bill.

Now, Members are going to get their chance later this year to make a great big killing in all the bills when the Senate conference comes back with a big "whack" and Members will have a lot of funds if they like cuts later this year. But please do not cut the work of a subcommittee who has already done the cutting. Frankly, cutting on things that I would not like to cut anyway—the Justice Department, the war on drugs, and the savings and loan prosecutions, and the Commerce Department, that tries to sell American goods overseas. Please do not cut this bill. There will be plenty of opportunities later on.

Now, as the chairman has indicated, to the extent that the Marshal Service is involved in the savings and loan prosecution effort, we are cutting the savings and loan prosecutions here. Make no mistake about it, if Members want to go back home and defend themselves on it, go ahead and cut this amount of money from the prosecution of savings and loan criminals. No 2, if Members want to go home and defend themselves on cutting moneys from the drug war, vote for this amendment, because that is precisely what Members are doing. Members are cutting $8 million from where the money needs to go, and that is to the local communities, to your police force, and to your sheriff's departments. These State and local drug grants will cut $8 million by this amendment. So Members are cutting the drug war. Members are cutting international trade promotion because the International Trade Administration, carrying America's trade war overseas, will be cut by this amendment. Members will be cutting weather service, cutting the U.S. Information Agency, sending America's message of freedom around the world.

We will have a chance to vote for cuts later on. Please do not cut the programs that mean so much to Members and their constituents in America at this moment.

□ 1420

Mr. THOMAS of Wyoming. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment.

I will speak very briefly, and I do not rise to talk about the details but only to suggest, as do other Members, that I go home every weekend and I talk to people about spending, and they say that we need to be responsible, they say we need to slow down our spending, and they say we need to cut our spending.

We find ourselves here surrounded by agencies that, of course, never have enough money and never will. But our job is that of selecting alternatives. There is not one of us in our families or in our businesses who cannot adjust to a 2-percent cut.

Mr. Chairman, I commend this amendment to my colleagues, and I support it strongly.

Mr. BALLENGER. Mr. Chairman, I rise today in strong support of the amendment of my good friends and colleagues, Mr. UPTON and Mr. PENNY. The amendment would make a 2 percent across-the-board cut in the discretionary accounts in the Commerce-State-Justice appropriations bill (H.R. 5021).

With more than a $160 billion Federal budget deficit for this fiscal year, we in Congress should relish the opportunity to trim these spending bills in a fair and prudent manner. The 2-percent cut would achieve savings of approximately $200 million. While this may seem like peanuts compared to the billions of dollars appropriated every year, it is one step in the right direction.

Remember that we have to be held accountable for our actions. And quite frankly, I do not want to be left carrying the water for all the spendaholics who refuse to face the cold hard facts that the House overspends. Every appropriation bill can stand this modest cut.

It's time to put up or shut up.

I urge my colleagues to vote for the Penny-Upton amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. PENNY].

The amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

This Act may be cited as the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991".

Mr. SMITH of Iowa. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with an amendment, with the recommendation that the amendment be agreed to, and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. McCURDY] having assumed the chair, Mr. BROWN of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5021) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes, had directed him to report the bill back to the House with an amendment, with the recommendation that the amendment be agreed to, and that the bill, as amended, do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROGERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—ayes 358, nays 55, not voting 19, as follows:

[Roll No. 196]

YEAS—358

Ackerman
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
Baker
Ballenger
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bustamante
Byron
Campbell (CO)
Cardin
Carper
Carr
Chandler
Chapman
Clarke
Clay
Clement
Clinger
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crockett
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Frank
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Glickman
Gonzalez
Goodling
Gordon
Grandy
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Hertel
Hiler
Hoagland
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Machtley
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Morella
Morrison (WA)
Mrazek
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Pallone
Panetta
Parker
Parris
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Petri
Pickle
Porter
Poshard
Price
Quillen
Rahall
Rangel
Ravenel
Regula
Rhodes
Richardson
Rinaldo
Ritter
Robinson
Roe
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Schaefer
Schiff
Schneider
Schroeder
Schuette
Schumer
Sharp
Shaw
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Denny (OR)
Smith, Robert (OR)
Snowe
Solarz
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stearns
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tanner
Tauke
Tauzin
Taylor
Thomas (GA)
Thomas (WY)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walsh
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—55

Armey
Bartlett
Barton
Bentley
Bunning
Burton
Callahan
Campbell (CA)
Coble
Combest
Conyers
Cox
Crane
Dannemeyer
Douglas
Duncan
Fawell
Fields
Ford (TN)
Frenzel
Gekas
Gingrich
Goss
Gradison
Hancock
Hansen
Henry
Herger
Jacobs
Johnson (CT)
Lent
Luken, Thomas
Lukens, Donald
McCandless
McEwen
McMillan (NC)
Michel
Moorhead
Murphy
Nielson
Packard
Pashayan
Pickett
Pursell
Roberts
Rohrabacher
Sensenbrenner
Shays
Shumway
Shuster
Slaughter (VA)
Smith, Robert (NH)
Solomon
Stump
Walker

NOT VOTING—19

AuCoin
Barnard
Bevill
Flippo
Ford (MI)
Hall (TX)
Marlenee
Morrison (CT)
Nelson
Ray
Ridge
Scheuer
Schulze
Serrano
Sundquist
Thomas (CA)
Washington
Whittaker
Wise

□ 1442

The Clerk announced the following pair:

On this vote:

Mr. Barnard for, with Mr. Thomas of California against.

Mrs. JOHNSON of Connecticut and Mr. SHAYS changed their vote from "yea" to "nay.".

Messrs. GIBBONS, HASTERT, ROTH, and APPLEGATE changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS TO SIT DURING 5-MINUTE RULE TODAY

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance and Urban Affairs may have permission to sit during the 5-minute rule today for the purpose of marking up H.R. 5153.

The SPEAKER pro tempore (Mr. McCURDY). Is there objection to the request of the gentleman from Texas?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Kalbaugh, one of his secretaries.

NIOBRARA SCENIC RIVER DESIGNATION ACT OF 1990

The SPEAKER pro tempore. Pursuant to House Resolution 410 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 280.

□ 1445

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 280) to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System with Mr. ERDREICH in the chair.

The Clerk read the title of the Senate bill.

The CHAIRMAN. Pursuant to the rule, the Senate bill is considered as having been read the first time.

Under the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 30 minutes, and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 1 hour.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

□ 1450

Mr. VENTO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, S. 280, which unanimously passed the Senate in November 1989 was one of four legislative proposals in this Congress that have been submitted with regards to the Niobrara River in the State of Nebraska. As reported by the Committee on Interior and Insular Affairs, S. 280, as amended, designates a 76-mile segment and a 25-mile segment of the Niobrara River and a 39-mile segment of the Missouri River as components of the National Wild and Scenic Rivers System. The bill also authorizes a national recreational area study and a national park study of certain lands in the State of Nebraska.

While S. 280 is a comprehensive measure dealing with several important natural resource issues in the State of Nebraska, the controversy that has been primarily generated with the proposed legislative designation of 76 miles of the Niobrara River as a national scenic river. Strong public feelings and views, both pro and con, have been attendant with the proposal and the Interior Committee received considerable public input on this matter in hearings I chaired here in Washington, DC and in Nebraska.

Unfortunately, needless worry and fear has been generated with this proposal. I have encouraged participants to keep this matter in perspective and separate the fiction from the fact and fear from reality. It has not been easy to do with the volume of conflicting voices that have weighed in.

Designation of the Niobrara River was not a step taken lightly by the committee. The Niobrara is an important national resource. It has the support of Nebraska's two Senators and two of the three House Members from the State on a bipartisan basis. We received petitions signed by over 20,000 Nebraskans supporting designation and a poll done by the State's largest newspaper found 74 percent in favor of designation of the Niobrara as a scenic river. Local landowners initiated this legislation and the Senate sponsor, Senator EXON, put it in at their request. The Nebraska Game and Parks Commission is on record endorsing scenic river designation of the Niobrara as well as numerous groups in the State. Major national conservation organizations, with a combined membership of nearly 8 million people support scenic designation of the Niobrara River.

This outpouring of support reflects just what a national treasure the Niobrara River is. The scenic and recreational designation of the river has been sought since the Basic Wild and Scenic River Act was written.

The 1982 nationwide rivers inventory, prepared by the National Park Service, found significant portions of the Niobrara River including those designated by S. 280 to contain outstandingly remarkable scenic, recreational, geological, fishery, wildlife, historical and cultural values. Several distinct ecosystems converge within the river valley and it provides important habitat for endangered bald eagles, whooping cranes and sandhill cranes. Because of its ecological diversity and migratory habitat, the Niobrara River valley is noted as one of the biological crossroads of North America, the place where east meets west. The joining of Rocky Mountains and the Great Plains. It is a very special national resource. While enjoying its scenic and natural wonders, thousands of Nebraskans and others annually make use of the superb recreational values of the river, including its excellent canoeing.

But lest you make a mistake, the Niobrara River today is vulnerable to adverse development and degradation of its splendid resource values. Congress, in 1982, took the extraordinary step of defeating the Nordem Dam project, which would have been an environmental disaster for the Niobrara River and a financial disaster for U.S. taxpayers. But many opponents of S. 280 still harbor notions of damming the river and flooding significant portions of the river valley. Apparently some bad ideas die hard, Mr. Chairman.

The Nebraska Natural Resources Commission noted in their 1986 study of the Niobrara that State law is lacking in the basic governmental structure and direction to apply management tools toward the goal of river preservation. Further, none of the 4 affected counties having zoning and county officials have testified they see no need nor do they have any intention to develop zoning in their counties. Only in the last 2 months has an attempt at a local plan for the Niobrara River been initiated. This proposal, which is of dubious legal authority, is too little and too late and should be seen for what it really is—an excuse to ward off the national scenic and recreational river designations and obviously, not a good faith effort to protect the river but an excuse to oppose this legislation! In the absence of effective long-term management the Niobrara remains vulnerable. In 1982, Congress had to act once on an emergency basis and mustered the votes to stop the destruction of this river. How many times will we be challenged before action is taken; before the issue falls between the cracks and this pristine Niobrara River resource is lost forever?

The heart of this matter boils down to a choice: Do we designate the Niobrara River or should we direct yet more study? Contrary to the assertion of opponents, a formal wild and scenic river study is not a prerequisite for designation. In all the testimony presented no one has said that the Niobrara is not a significant riverine resource. On the contrary, all parties have extolled its natural, recreational and scenic qualities, the very qualities for which we designate components of the wild and scenic rivers system. Another study cannot add to that simple fact. I thought it was telling that when opponents were asked if another study recommended designation whether they would then support such action they said no. With such a position a study will not be used to enlighten, rather it appears that for opponents of designation its purpose is to delay and defeat. No one is suggesting that national designation overrun the local community. The Wild and Scenic Rivers Act goes to great lengths to preserve and enhance the river in a nonconfrontational manner.

Proponents have been accused of moving too fast on designation. Nothing could be farther from the truth. Many have been waiting fully 25 years since the Niobrara was first proposed. Local landowners who initiated legislation have been waiting for a decade and formal legislation to designate the

Niobrara has been before the Congress since 1985. The time has come to make a decision and I believe that decision should be scenic river designation for the Niobrara today.

It is unfortunate that controversy on 76 miles of the Niobrara has overshadowed the other valuable components of S. 280. This legislation is a significant natural resource initiative that is responsive to the local as well as the national interest in these matters. It represents the work of many at the local, State and national levels who care about the nationally significant resources found in the State of Nebraska.

I want to note the work of my colleague, PETER HOAGLAND a new Member of Congress from Nebraska, who has been a tireless advocate of sound natural resource policy. Congressman HOAGLAND has demonstrated a willingness to take on tough resource issues and see them through. I would also note that this bill reflects the work of Representative DOUG BEREUTER who is no stranger to this matter having warded off the Nordem Dam Water Project, and finally, Senator J. EXON who is the principal architect of the heart of this river designation measure, enlisting Senator KERRY they represent all Nebraskans in the Congress. Senator EXON truly reflects the strong support and willingness to act, designating this magnificant Niobrara River as a scenic and recreational resource for all Americans.

Mr. Chairman, I support S. 280, as amended, and urge its adoption by the House.

Mr. Chairman, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to S. 280. This is a bill which would provide for the instant designation of a portion of the Niobrara River as a unit of the Nation's wild and scenic river system.

The rivers of this country are truly one of our greatest natural resources. I am pleased to be able to participate in the protection of these rivers by serving on the subcommittee which is charged with implementing the Wild and Scenic River Act of 1968. That law was enacted to protect these precious river resources. In the 22 years since passage of that act, it has been very successful in protecting critical values of rivers throughout the country. Many scenic areas, important wildlife resources, and needed recreational boating opportunities have been spared from the permanent alteration which would have resulted from dam construction. I have proposed designation of several river segments in my own district because I believe they would benefit by being named as units of this system.

However, in recognizing the success of this program, I would surely not advocate that the identical formula should be applied to every single eligible river segment in the country. In the case of the 76-mile segment of the Niobrara River, all located in Mrs. SMITH's district, proponents have yet to advance a single solid reason why this river segment should be added to the system at this time.

This river segment is not threatened by dam construction or development along its banks. In fact, the 4 counties along the river have lost 35 percent of their population in the last 50 years. According to the Nebraska director of natural resources, the values of this river which make it eligible for consideration are currently in better condition today than they were 50 years ago. The local people are in the process of developing a plan to ensure that the resources of this river are protected into the future. In short, there appears to be no reason to reward the local people who have taken such good care of the river resources by removing it from their control.

As we look back at the suitability studies conducted by the various land management agencies over the years, we find that roughly half of the rivers studied under section 4(a) of the act were recommended by the administration for designation. Reasons for nondesignation were many; not the least of which was that the rivers could be better protected by entities other than the Federal Government. In fact, when the GAO reviewed those undesignated rivers in 1986, they found that they retained their original resource values.

In the Niobrara situation, we find strong sentiment in the local area and throughout the State in opposition to a Federal designation of the river. At the same time, we find a majority of Nebraskans favor protecting the important values of the river. This is a situation which will be fully addressed by the amendment that will be offered by the gentlewoman who represents western Nebraska, Mrs. Smith. In her bill, detailed studies for protection of river values would precede any designation. This is exactly what Federal agencies and conservation groups have recommended for rivers with similar amounts of privately owned shoreline in other States.

The solution proposed to this dilemma by proponents of this bill is to instantly designate this river as a component of the Wild and Scenic Rivers System under control of the Federal Government. Such an instant designation of a river segment with substantial private interests is without precedence in the 16 years that I have been serving on the Parks Subcommittee. Because this approach is so likely to cause adverse public reaction and make future management of this river segment extremely difficult, the National Park Service, which would be charged with administering this river, is adamantly opposed to it. In fact, I believe that such an approach will do much to undermine the credibility and future success of the wild and scenic river program on a nationwide basis.

The National Park Service has determined that 61,700 river miles in 1,524 segments are eligible for designation under the act. If Congress tries to protect all of these river segments by forcing every single river segment into the framework established by this act we will build a house of cards that will surely fall. Therefore, I urge my colleagues to use the designation process under the act judiciously and vote against designating the Niobrara as a component of the Wild and Scenic Rivers System. This is the best course of action for the National Wild and Scenic Rivers System and this is the best course of action for the Niobrara River.

Mr. LIGHTFOOT. Mr. Chairman, will the gentleman yield?

Mr. LAGOMARSINO. I am happy to yield to the gentleman from Iowa.

Mr. LIGHTFOOT. Mr. Chairman, I rise in opposition to efforts to add the Niobrara River to the Wild and Scenic Rivers System at this time. My opposition is due to several reasons. First, nobody disputes that the Niobrara River and the surrounding region are rich in beauty and resources. However, I have not seen any irrefutable evidence that the Niobrara is facing imminent and grave danger. Also, the people of the region have spoken in large numbers about their opposition to the wild and scenic designation. I have in my office literally hundreds of letters from people in Nebraska who are opposed to the action prescribed in S. 280. I attended both the hearing conducted in Ainsworth, NE, and the one conducted here in Washington by the National Parks and Public Lands Subcommittee on this issue. On both occasions, I was impressed by the strength of the opposition to the scenic designation.

There are many organizations and agencies such as the National Park Service, Office of Management and Budget, the National Cattlemen, the National Water Resources Association, and the American Farm Bureau who are on record as opposing this legislation. In addition, the Department of the Interior has stated that every other river in the Wild and Scenic Rivers Systems has undergone some kind of in-depth study. The Department goes on to state that no such in-depth information on the Niobrara exists.

Finally, the alternative to S. 280, which my colleague VIRGINIA SMITH has sponsored, calls for a 30-month study of the Niobrara before any des-

ignation takes place. Congresswoman SMITH's alternative allows the National Park Service to determine with this information in hand, to determine what is in the best interests of the Niobrara. This, to me, seems a reasonable alternative to legislation which I believe is ill-conceived, vehemently opposed by the people who will be directly affected by it, and takes an unjustifiably unusual action. For these reasons, I urge the defeat of S. 280.

Mr. LAGOMARSINO. Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield 7 minutes to the gentleman from Nebrasaka [Mr. HOAGLAND], a sponsor of the measure in the House.

□ 1500

Mr. HOAGLAND. Mr. Chairman, we are here today to debate a bill that comes to us from the U.S. Senate where this bill originated, where it was passed last fall by voice vote, and where it had come out of committee unanimously.

This is a bill to protect a beautiful national treasure in my State of Nebraska. It has bipartisan support here in the House of Representatives, and it should be a noncontroversial bill.

The main thrust of the bill is to protect 76 miles of the Niobrara River in north central Nebraska as a scenic river, to make it part of the Wild and Scenic Rivers System, which is a tremendous and valuable designation for the State of Nebraska if we can get this done. Nebraska has never before had that privilege.

It also designates stretches of the Niobrara and Missouri Rivers as recreational rivers, and authorizes a study of a Buffalo Prairie National Park proposal.

The Niobrara River has been called by biologists and others as the biological crossroads of America. I am not a biologist nor a scientist. I am not a schoolteacher. I do not know a whole lot about these things, but I think it is worth taking a little bit of time to point out some of the unique ecological features of this area.

In that connection we have had this chart prepared to enable Members to see exactly what we are talking about. What I would like to do is refer to this chart and try to describe why this is such a unique area. Please bear with me, because I do not have a whole lot of scientific grounding in this area, but I would like to point out a few things.

We see here a cross-section of the Niobrara River Valley. This is the north side of the cross-section of the valley. This is the south side over here.

What we see is eastern and western woodlands overlapping. We see here on the north side of the valley a Ponderosa pine forest that extends on down from the Black Hills of South Dakota. We are told by the scientists and the biologists, and so forth, that this is one of the furthest extensions of this range of Ponderosa woodlands.

On the south side of the river we have Sand Hills Prairie over here. You can see there is Sand Hills brush and Sand Hills vegatation on top of the sand dunes that compose the great Sands Hills of Nebraska. We have the Sand Hills Prairie again at the extension of the range south of the river.

As a result of that, we have plant and wildlife and animals from all of these various ecological areas that are coming together in the Niobrara River Valley.

Just a few years ago a scientist, John Farrar, wrote in Arbor Day Magazine that nowhere else do eastern and western woodlands overlap so dramatically.

On the east side of the river we have deciduous forests, as I indicated earlier, of slippery elm and ash and linden and ironwood, along with honeysuckle and black walnut, kinds of trees and vegetation that extend across our arid Great Plains in Nebraska to the south, to the east, and to the west.

On the other hand, north of the river we have these Ponderosa forests that I talked about, with all of the accompanying bird life and wildlife and plant life that is characteristic of that forest.

We also have a situation where there are a lot of endangered species that are found along this river valley. Those include the whooping crane, bald eagles winter here. The river provides nesting habitat for the endangered interior least tern and the federally threatened piping plover. So it is a uniquely diverse ecological area, again with forms of vegetation, with forms of animal life, with forest that are right up at the edge and the fringe of their ecological area.

The Niobrara River also has a unique place in the history of Nebraska. William Clark wrote about this river during his 1804 Lewis and Clark Expedition, and that great American author, Marie Sandoz, grew up along the Niobrara and describes it in her novels.

Thousands of Nebraskans, indeed thousands of Americans, recognize the Niobrara as a unique and beautiful national treasure.

Canoers, campers, hikers, fishermen, fisherwomen alike, flock to north central Nebraska every year to enjoy this magnificent resource.

According to Backpacker magazine, it is 1 of the 10 best canoeing rivers in the country. Outside magazine lists the Niobrara as one of the nationwide special camping areas. So this really is a remarkable river, an area that needs to be preserved for Nebraskans, for Americans, and for future generations.

When we debated this bill earlier on the floor of the House, during a debate on the rule, I pointed out at length at that time about how this proposal to designate the Niobrara came from landowners along the Niobrara, that they generated that proposal themselves in 1980, that they worked with a lot of their fellow landowners, that they went to Senator EXON in the spring of 1985, and that this indeed is a proposal that comes from the people and from the landowners along the river itself.

S. 280 that we are debating today, as introduced in the Senate and passed by the Senate Committee on Energy and Natural Resources unanimously, and in a voice vote in the Senate last year, is a bill that will protect the Niobrara, and that protection today is in our hands. It is in our hands here in the House of Representatives.

Mr. Chairman, I would implore Members on both sides of the aisle not to let down those local residents, those Nebraskans everywhere who have asked us to preserve this very special and very precious piece of America.

Mr. LAGOMARSINO. Mr. Chairman, I yield 13½ minutes to the gentlewoman from Nebraska [Mrs. SMITH], in whose district this river lies.

Mrs. SMITH of Nebraska. Mr. Chairman, I rise today to tell my colleagues about a beautiful and valuable river that flows through northern Nebraska. But because I want as much as anyone to preserve and protect this natural resource in the best possible manner, I rise in opposition to the bill before us, S. 280, which would immediately designate, contrary to present law, 76 miles of the Niobrara River in the heart of my congressional district as a scenic river.

This is a bad bill, an irresponsible and dangerous bill and would cause an unprecedented break from past practices.

Do I stand alone in opposing this legislation as I will be accused of during this debate. No, I do not.

Nebraska Gov. Kay Orr, Secretary of the Interior Manuel Lujan, the Office of Management and Budget, the National Park Service, the American Farm Bureau Federation, the National Cattleman's Association, the National Water Resources Association, and the majority—an overwhelming majority—of Nebraskans join me in strongly urging the House to oppose S. 280 as reported by the House Interior Committee.

Also, our former Nebraska Congressman Hal Daub, now candidate for the U.S. Senate, the Democrat candidate for my seat in the House, and speaker of the unicameral Bill Barrett—the Republican candidate for my seat—oppose S. 280.

In a June 8, 1990, letter, the Democrat nominee for my seat, State Senator Sandra Scofield, said:

I have not supported Federal legislation given my preference for local control and because I share concerns about easements, water rights, and the future management of any land that might fall under Federal designation.

The bill we have before us today is a bad bill that would set bad policy if enacted. This is not just another simple scenic river designation. Because the land along the Niobrara River is extensively privately owned, this is a precedent-setting piece of legislation.

S. 280 is being driven by bad politics and misguided, misinformed good intentions that are simply steamrolling over reason, logic, and the citizens of Nebraska's Third District. And for no reason.

The Niobrara is not threatened by any immediate or near-term development or other adverse uses. We have plenty of time to do this the right way. We have plenty of time to put in place the most logical and environmentally sound protection plan for the Niobrara River.

The solution is the amendment I will offer in the nature of a substitute at the appropriate time. My amendment easily fixes S. 280.

My amendment would simply conform this bill with the rules established by Congress in the Wild and Scenic Rivers Act of 1968. I propose that the entire 253-mile length of the Niobrara River listed by the National Park Service in its river inventory as potentially suitable for designation be studied, in depth, and a management plan be developed by the professionals, with local and State input, before Federal designation.

I look forward to the full and open debate we are going to have on this bill today. And I thank Chairman VENTO for agreeing to bring the bill up under an open rule and at a time when our colleagues are here and ready to listen and consider the facts of the issue.

On the other hand, I know that this will not be the most pleasant debate of my 16 years in this House. as I have been in "Dear Colleague" letters, in position papers of certain organizations, and in press statements, I expect to be accused of vindictiveness, of being out of touch and out of step on this issue, and of being unwittingly used to promote a hidden agenda for building a long-ago abandoned dam.

Well, bunk.

I am in the well today representing my constituents, representing the overwhelming majority of all Nebraskans. And I am here to set the record straight on this issue with the indisputable facts.

First, my Nebraska colleagues and other misguided proponents of S. 280 are fond of continually telling you that there is overwhelming support in Nebraska for immediate scenic designation of the Niobrara River. Time and time again they have cited for you an Omaha World Herald poll.

But their poll is outdated. And it is their position that is out of touch with the majority of Nebraskans.

I call to your attention the information on the poster I have here with me. This summarizes the results of a statewide poll of Nebraska voters conducted June 11 and 12, 1990.

Please take note; 78 percent of Nebraskans said they support putting management and preservation of the Niobrara River under local and State control, not Federal.

Asked to choose between instant scenic designation as proposed in S. 280 and the study, as I propose in my amendment, prior to any Federal designation, 63 percent were in favor of first studying the river.

I simply will not let anyone dismiss this poll as biased and invalid and allow them to continue to cite a 15-month-old poll.

This new poll was conducted by a nationally recognized and respected firm, the Wirthlin Group—former President Reagan's pollster. The questions were straightforward and were carefully drafted to give those polled the same choices the House has before it today.

This new poll reflects the current status of this issue in Congress and back home in Nebraska. The old newspaper poll was conducted in March 1989—before the Senate committee hearings on the bill, before Senate passage of S. 280, before the committee field hearing, and before the House committee hearing and markup.

It has been more than a year since that poll, and Nebraskans have had this issue debated in the press, in campaigns, in the papers, on TV, and they have opinions now. They want to know the details and impact of scenic designation before we dive into it and invite the Federal Government to manage private property.

It is worth repeating, and I hope my Nebraska colleagues are listening carefully. Sixty-three percent in a statewide poll of 500 Nebraskans, divided equally between the three congressional districts, preferred my study proposal.

During debate on the rule for this bill my distinguished colleague from Nebraska read for the House a long chronology of the Niobrara River debate in Nebraska. He is likely to repeat that litany today. I will take this opportunity now to thank him for that bit of history.

But I say to my colleague, this is now. Nebraskans understand the issue as it stands today and the consequences for tomorrow should S. 280 be enacted without my amendment. They understand the choices before us now. And they have said no to S. 280 no matter what was suggested, offered, or discussed 15 or 20 years ago.

I think most of my colleagues on the other side of the aisle will agree that just because we have been discussing and debating the MX missile for about the same length of time is no reason to move forward with it. An issue's longevity argues neither pro or con.

Before leaving the subject of Nebraskans' position about managing and protecting the Niobrara River—and before a colleague from more than 300 miles away from his district tries to speak for my constituents—let me tell you that there is virtually no local support for immediate designation of the Niobrara.

Not one elected official in the area supports S. 280. Now, 39 recognized organizations including every chamber of commerce, every city council, and every natural resource district in the area have adopted formal positions in opposition to immediate designation as proposed in S. 280.

In addition, chambers of commerce, veterans organizations, and other groups from outside of the affected area have also adopted resolutions opposed to immediate designation.

With this united show of opposition to immediate designation, you may have seen a letter signed by 16 supposed landowners in the area, who supposedly collectively own 55 miles of the river we are discussing today. This is not the case.

With this letter inserted into the CONGRESSIONAL RECORD discredited, proponents of immediate designation may read you an editorial from a paper located nearly 300 miles away from the area.

This editorial and its attack on me and the recent poll conducted by the Wirthlin Group does not surprise me. The Omaha newspaper has been one of the most outspoken proponents of immediate scenic designation. And since the new poll invalidates the newspaper's own 15-month-old poll, and points out that the paper has failed to keep in touch on the current status of this issue in the State, of course the paper wants to discredit it.

There are several problems with this editorial. First, it charges me and others with fighting Federal scenic rivers protection for parts of the Niobrara River.

That is simply wrong. As too many people are doing, the editorial misses the point of this debate. It is not whether we want to protect and preserve the river; it is whether we should do it according to law and in a manner that produces that most logical and environmentally sound management plan.

The editorial goes on to challenge the fairness and validity of Wirthlin's poll's questions. This is a nationally recognized and respected polling firm. I will put this poll up against any. I simply will not allow anyone to just

dismiss the results because they do not like the numbers. The fact is the Wirthlin poll asked straightforward questions that were carefully drafted and gave those polled the same choices about the river that the House has before it.

Sixty-three percent of those polled support my study amendment, and I am sure that my proposal will be attacked again and again today because, you will be told, the Niobrara River has already been studied relevant to scenic river designation. Again, you are being misled.

Proponents try to argue their position on the fact that when Senator Frank Church introduced the concept of wild and scenic rivers in 1968, the Niobrara was on his list. Indeed it was, but to be studied—I repeat on a list to be studied—and it was a segment of the river upstream of that stretch named in S. 280.

Also, proponents spuriously cite as a study a 1971 report by the Nebraska Soil and Water Conservation Commission—when in fact it just recommended the Niobrara should be subjected to a formal National Park Service study as a potential wild and scenic river.

In a cursory 1982 investigation for its nationwide rivers inventory, the National Park Service identified 253 miles of the Niobrara as having outstanding natural values. This is the mileage figure used in my amendment. The 76-mile stretch named in S. 280 was arbitrarily selected.

In 1986, the Nebraska Natural Resources Commission did a report—in no way a study as proponents are likely to tell you—that included a brief overview of the law and an inconclusive landowner opinion poll.

So let's get to the bottom line here—there has been no comprehensive study of the Niobrara.

Let me quote a June 5, 1990, letter from Connie Harriman, Assistant Secretary of Fish and Wildlife:

> Out of 108 rivers designated by Congress since 1968 as components of the National Wild and Scenic Rivers System, none has been designated without some form of study by the National Park Service, Forest Service, Bureau of Land Management, or other agency. The Niobrara has had no formal study whatsoever.

I will quote Secretary of the Interior Manual Lujan who says:

> We strongly oppose enactment of S. 280 * * * The President has stated his firm belief that, to protect the integrity and viability of the park system, a new area study should be a prerequisite for the establishment of any new unit of the National Park System. Unless S. 280 is amended—as specified in your amendment—to provide for a study of possible future designation of the Niobrara as part of the National Wild and Scenic River system, I will recommend that the President veto the bill.

Let me quote the National Park Service in April 5, 1989, Senate testimony:

> We recommend that Congress follow the practice established under the Wild and Scenic Rivers Act and provide for a study of the river to determine its suitability for addition to the National Wild and Scenic Rivers System. We cannot support the bill, S. 280, in its present form.

Without first requiring a study before designation, S. 280 flies in the face of the law. Further, immediate designation would penalize these citizens for being proper, conscientious, and effective stewards of the river by removing it from their control. In fact, the director of the Nebraska Natural Resources Commission was in Washington earlier this year and told the Nebraska delegation that the Niobrara River is in better shape now, its resources better protected, than it was 50 years ago.

Even so, proponents of S. 280 will come to the floor today to tell you that, while the local people have now drafted a formal local protection plan, to back up their love and stewardship of the area, they have waited until the 11th hour to formulate that plan.

Faced with being steamrolled with legislation that ignores their concerns and the threat of having thousands of acres of their farmland and ranchland condemned by the Federal Government, the local people have adopted formal interim protection measures for the river and adjacent lands. Many of these measures are much more restrictive than those on scenic rivers, and a long-term protection plan for the river is in the works.

My study amendment would give the National Park Service the chance to consider this local plan as a possible protection alternative.

At some point today, I expect you will also hear others who will tell you that opposition to immediate designation as proposed in S. 280 is really a plot to revive at some point in the future the Norden Dam.

Don't buy it. This is nothing but a smokescreen from people who have nothing solid on which to base their support for this bill.

This is not a debate about the Norden Dam. I inherited the Norden Dam issue when I came to Congress. In fact, the building of the dam has been abandoned for years in lieu of a ground water recharge project that is supported by irrigators and environmentalists.

Nevertheless, because of a colleague's concerns and our longstanding working relationship in behalf of Nebraska, I have addressed his concerns about the Norden Dam, particularly as he presented them in a press statement dated June 18. The amendment I will offer later has been changed to meet his charge that a loophole exists to ensure future construction of the Norden Dam.

Further, there is a bottom line to this part of the debate also that urban-oriented Members fail to recognize. That is, water resource conservation and development and environmental protection are not mutually exclusive. The two must go hand in hand if we are to pass on to future generations a nation in better condition and capable of sustaining its population.

This debate today is not about the Norden Dam. It is not about who is the better environmentalist. It is about Congress enacting laws and adhering to those laws, it is about procedure, it is about the political steamroller.

Today, it impacts my district, my constituents. If my colleagues do not want it to be theirs tomorrow, they will oppose S. 280 as reported and support my amendment.

In closing, as you all know, I am retiring at the end of this term, so I have nothing to gain politically from my position on this issue. I simply want to represent my Nebraska constituents and to find the most reasonable and environmentally sound approach for managing and preserving one of our most beautiful natural resources.

Nebraskans now fully understand that there are likely unpleasant, economically adverse, and environmentally irresponsible consequences to immediate designation of the Niobrara without first having a proper study according to current law, practice, and policy. Remember 63 percent of Nebraskans said study the river first.

Please help me do what we were all sent here to do—represent our constituents. Mine, and the people of Nebraska, say no to S. 280. Please do the same.

□ 1520

Mr. VENTO. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Chairman, let me just briefly, because I think the gentlewoman's comments, the gentlewoman from Nebraska's comments, do require a response because if that is all that individuals viewing this debate were to hear on the subject of public opinion and polling and so forth, they would be legitimately distressed.

Let me, if I may, just give the other side of the story because it indeed is more complex. Let me start with a March 1989 poll conducted by the Omaha World Herald, an impartial organization, of course, on an issue like this, which shows that 74 percent of all Nebraskans are in favor of a scenic river designation and only 15 percent are against it.

Now, on top of that, environmental groups, conservation groups in Nebraska have collected somewhere between 20,000 and 30,000 signatures in support of this scenic river designation.

Four out of five Members of the Nebraska delegation in the U.S. Congress, that is of three Congresspeople and two U.S. Senators, four out of five support this designation.

With respect to the recent poll that was undertaken by an opponent, was financed and conducted by an opponent of the scenic river designation, the one on the chart now in the well, we have some editorial opinion from both North Platte and Omaha, the Omaha World Herald, making very effective arguments that this poll was basically designed to bring about the outcome that it in fact brought about.

Let me read, if I might, a couple of sentences from a North Platte, NE, editorial. Now, North Platte is rural Nebraska; the values of rural Nebraska are as staunchly upheld by the newspapers in North Platte as anywhere else in Nebraska. That editorial says: "If you frame the questions, you can get an opinion survey to come up with just about the answers you want. So it was with a poll the Nebraska Water Resources Association commissioned dealing with proposed protection of part of the Niobrara River."

Now that is the poll which is now being taken down, taken off the easel.

Now the editorial goes on two paragraphs later to say: "It is all baloney. There is no prospect for real protection of any part of the Niobrara outside the Federal Scenic Rivers Program. Given the real choice—scenic river designation or no protection—Nebraskans would vote overwhelmingly to preserve at least part of this unique resource for future generations."

Mr. Chairman, that represents the public opinion, the true public opinion from the great State of Nebraska on this issue of the scenic river designation for the Niobrara River.

Mr. VENTO. Mr. Chairman, I yield myself 1 minute.

I just want to comment on this because it has been suggested that a good objective poll that was taken last year by one of the leading newspapers in Nebraska is not accurate but this poll taken by the Water Resources Association, a group that is opposed to the river, somehow has validity. I might say that a 15-months-old poll that is valid is a lot better than one that is designed to come up with a certain result, even if taken yesterday.

It seems to me that it adds an old adage which says if you have the facts, you argue the facts; if you have the law, you argue the law.

It seems to me in this case if you do not have the facts, you invent some new ones, is what we see occurring here.

I just think if you are going to have polls, they have to be objective.

There have been a number of editorials that have taken after this particular tactic. Obviously, I think it is inappropriate to represent the poll results in the way they are being represented.

I understand there is opposition in the area concerning this that Congresswoman SMITH represents, and I respect that.

I also understand there is substantial support in the State.

This issue has become greatly politicized. It is not a question of what candidates want and what I want. It is up to us as individual representatives here today to make this decision. That is, of course, what Senators EXON, and KERREY and Representatives HOAGLAND and BEREUTER and others are all about here today, trying to make that decision. That is why they were elected, to do that and not to pass it off to somebody else.

That is what this study does. When you are against something and you do not want to oppose it outright, you say, "Let us study it."

The fact of the matter is over a third of the rivers that have been designated, and there are significantly more rivers designated than the assistant secretary reports, but more than a third of them, 122 rivers, over a third of them have not received the study the gentlewoman proposes. They have not received the basic 5(a) or 4(a) studies before they were designated.

So we are not doing anything unusual. We are doing something that is controversial, Mr. Chairman, but that is what we are supposed to do in Congress is face issues and make decisions.

Mr. LAGOMARSINO. Mr. Chairman, I yield such time as he may consume to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Chairman, I rise in opposition to the bill.

Mr. LAGOMARSINO. Mr. Chairman, I yield such time as he may consume to the gentleman from New Mexico [Mr. SKEEN].

Mr. SKEEN. Mr. Chairman, I rise in support of the Smith amendment.

Mr. Chairman, I rise in support of the amendment being offered today by the gentlelady from Nebraska [Mrs. SMITH].

This is an issue that should concern us all, because we all have an interest in protecting the great natural resources found across the country. But it should also concern us in how local interests and local opinion can be ignored.

Let's get to the heart of the matter. What is best for the Niobrara River and the people of Nebraska who live near its banks?

I am sure you have all received the same information I have received during the past few weeks regarding the legislation we are considering today. It is interesting to note that in all that information I have not seen any one mention that the Niobrara is imminently endangered or threatened in any way.

The League of Conservation Voters does not state the river is being threatened, nor does the Wilderness Society, the Nebraska Chapter of the Sierra Club or the Save the Niobrara River Association. No, not once do they state the river is threatened at all! The Nebraska Audubon Council even acknowledges that the local owners along the Niobrara are good stewards of the land.

So what is the rush with this designation?

What is wrong with requiring an adequate study of the river to determine the best way to protect the valuable natural resources found along the Niobrara?

What is wrong with determining which parts of the river are truly deserving of protection, what type of protection may be necessary and who is capable of providing that protection?

I see no compelling reason to support the legislation as currently written. I see every reason why an appropriate study of the issues is essential.

Since I am not personally familiar with the Niobrara, I put a great deal of weight in the opinion of the Member of Congress who represents this area. Who would know more about this issue and the impacts this legislation would have on her constituents than Mrs. SMITH?

Let us listen very closely to what she has to say on this extremely important matter.

I ask my colleagues if we are going to ignore local concerns and forge ahead and designate a portion of the Niobrara River as a scenic river?

Or are we going to follow appropriate procedures and determine what is the best course of action to take? I say lets take the time to find what will be best for the Niobrara and the people of Nebraska.

I urge my colleagues to support the Smith amendment.

Mr. LAGOMARSINO. Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in the strongest possible support for S. 280. It is not a bad and irresponsible bill. It is an excellent bill, and I urge my colleagues to support it.

Someone suggested a few minutes ago that my colleague on the other side of the issue has antagonists here. That is not true, in my judgment.

All admit that the Niobrara should be preserved and protected; it is a difference of opinion as to how we should proceed and what the timing should be.

That is the way that I approach this issue today. I think it is an important contribution that has been made by the chairman and my colleagues from Nebraska when they do talk about the polls.

As you know, the recent poll was financed by the Nebraska Water Resources Association. They have contained within that organization, strong supporters of the once proposed O'Neil reclamation project. These are, I would suggest, the core of the most vehement support to the scenic river designation in that 76-mile stretch of the Niobrara which is only a part of this legislation.

Of course, the Niobrara River is in both the districts of my colleague, Mrs. SMITH, and myself. The 76-mile stretch is totally within her district.

I want my colleagues to know that the Omaha World Herald, which, I think, has the most respected polling in our State. That newspaper had this to say in a June 18 editorial:

> Members of the House of Representatives and the White House staff won't, we hope, be taken in by a late-in-the-game tactic used to fight Federal scenic river protection for parts of the Niobrara River. Use of the Wirthlin poll adds nothing to the debate over how to protect the unique Nebraska River. * * *
>
> We urge fairminded people on both sides of the issue to reject this attempt to influence the outcome.

□ 1530

I have deleted any references in that editorial comment which could be construed as derogatory about opponents to the scenic river designation. There is in my judgment, no place in the RECORD for such remarks, and the Members will not engage in such remarks.

First, in my substantive comments, I want to say this about the Niobrara River. I have no doubt whatsoever, and I say categorically that the majority of Nebraskans in all three congressional districts, Nebraskans of both parties, support designation of the Niobrara River as a scenic river. I say that without fear of being refuted. Of those people who have an opinion on this matter, fairly put in a question, they will be found to support the designation of this stretch of the Niobrara River as a scenic river.

Now, we will look at the river and its characteristics for a few minutes. In part they have been explained already. This river received the highest ranking possible during the National Rivers Inventory. It would be the first river in the entire Great Plains designated as a national scenic river. Indeed, many people believe it is the most scenic river in the Great Plains.

A survey taken for the Nebraska Natural Resources Commission, a State agency, by a Lincoln polling firm, showed that landowners in the immediate area were rather evenly split on this issue, even after substantial debate and a very negative campaign that was waged.

The CHAIRMAN. The time of the gentleman has expired.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER], a supporter of the bill.

Mr. BEREUTER. Mr. Chairman, I thank the chairman of the subcommittee for yielding me this time.

Even after substantial controversy, really raised in significant part by a hired gun, Mr. Cushman, of the National Inholders Association, who was hired by opponents to come in and generate opposition, even after his activities the landowners in the immediate area, are still rather split on this issue. This is the case despite a great amount of very unfortunate tactics and intimidation tactics that some of the more outspoken opponents in the immediate area have used. Petitions signed by 37,000 Nebraskans who support the scenic river protection proposal were introduced for the record at hearings at various stages. A letter from the National Audubon Society, the National Wildlife Federation, and the Wilderness Society and the National Park and Conservation Association said,

> Studies and recommendations for the last 25 years have all found the Niobrara qualified for designation and protection. Local, State, and national organizations have been working for over a decade to protect the ecologically unique and scenic river.

I could go on with other quotes from other national State and environmental and conservation and game and parks agencies. The Nebraska Game and Parks Commission supports a scenic river designation. In fact, the Niobrara was one of the first 12 rivers recommended for designation under the Wild and Scenic Rivers Act, the generic act, back in 1968. Only because of opposition by a Member of Congress or several at that time which related to a proposed reclamation project, was the Niobrara deleted from that list with that 1968 legislative effort.

This is truly a national treasury that deserves to be protected and preserved. More about the study will be coming up in the future. All the national environmental and conservation groups I am aware of, a very long list, do support this legislation. The Nebraska Farmers Union does. I mention to Members that the Nebraska Game and Parks Commission support the scenic river designations. It has been said a few minutes ago that Ms. Harriman of the Department of Interior suggests that no rivers have been designated without a 5(a) study. I do not know where she has been working, but as the chairman pointed out, one-third of the rivers have not had that formal 5(a) study, and if any Members would like to have a list of some of the rivers not receiving such a 5A study, I will give it to Members.

Overall, in all the studies that have been conducted by national organizations—both governmental and nongovernmental—and local organizations, I suggest to Members that this is one of the most studied rivers in the United States. It is clearly eligible for designation—253 miles of the Niobrara, in fact, have been deemed eligible for some category of designation under the Wild and Scenic River Act according to a component of the National Department of Interior. I urge my colleagues to support the legislation.

Mr. VENTO. Mr. Chairman, I yield 2½ minutes to the gentleman from Iowa [Mr. NAGLE].

Mr. NAGLE. Mr. Chairman, many things about America separate America from the rest of the world and make it a special place on a very special planet: Our freedom, the spirit of our people, and the abundance and beauty of America's natural resources, are but just a few.

Those things that are most precious about America are, in one form or another, all gifts, handed down from one generation to the next. Each generation has the responsibility to—yes, use those gifts wisely—but also to conserve them and preserve them so that the next generation may have the opportunity to do the same.

One of the great legacies we received—first from the Creator, and then from those who used it wisely and delivered it safely to our generation—is the magnificent Niobrara River Valley in northwestern Nebraska.

Located at the point where the Great Plains lap up against the Rockies, its rich animal and plant life reflects the beauty and abundance of both ecosystems. The mighty conifers of the West and the grasslands of the Plains overlap in the Niobrara River Valley to form a botanical and zoological crossroads. As species of plants and animals which are seldom found together intermingle, a natural, constantly changing, daily laboratory in evolution has been created.

The River Valley's bird population, alone, contains more than 250 different species, which are supplemented by a huge population of migratory birds.

Clearly this is a place worth protecting. People have thought so for generations, and have actively worked in the Congress to enlist the Federal Government's help in doing so since the early 1960's. At least three separate studies, two conducted by the State of Nebraska and one by the National Park Service have come to this conclusion. So have a majority of the people who live in the area, according to opinion polls.

Opponents insist that if the Niobrara River is added to the National Wild and Scenic Rivers System, thousands of acres of productive farmland would be taken out of production, as adjacent farmers are forced to sell their land to the Government. As a member of the House Agricultural Committee, that's a complaint I take most seriously. So I looked into it.

It is utterly without foundation.

The legislation limits government easements to no more than 50 percent of private land within the river's corridor, and then, only in very specific situations. By far the vast majority of farmers in the area—probably all of

them, in fact—will be able to continue farming just as they do today.

Ironically, many would not be able to continue farming operations under the substitute amendment offered today. For that substitute would allow construction of a giant dam on the Niobrara River, flooding thousands of acres of farmland and permanently removing it from production.

If you are interested in preserving farming operations, vote for the designation. If you want to preserve the land and keep it so that the abundant and varied plant and animal life which thrives there now can continue to do so, vote for the designation.

If you want to flood farmland, and relegate this natural wonder to the bottom of a giant pond, vote for the substitute.

Mr. LAGOMARSINO. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri [Mr. EMERSON].

Mr. EMERSON. Mr. Chairman, I begin by saying the gentleman from Nebraska [Mr. HOAGLAND] cites a poll that was taken to support his point of view, but the fact of the matter is that poll is 15 months old. He cites editorial opinion. Editorial opinion, yes, but a newspaper that has consistently opposed the proposition of the gentlewoman from Nebraska [Mrs. SMITH]. After all, what is an editorial worth? It is the judgment of the person who writes the editorial. Editorials do not necessarily bespeak public opinion.

Some have said that asking for a study of the designation here is an effort to stall this proposition. Nonsense. This is simply not so. Why do we have a system, one that allows for weighing and balancing all points of view, if we are not going to use it? We have established proper channels for proceeding with Federal land designations. This bill has not been through the proper channels. If the proponents of this bill are so all-fired sure that scenic river designation is best for the river, why are we circumventing a well-established process? What have they to fear from proceeding in an orderly way by having the Interior Department go through normal and acceptable procedures?

I urge all my colleagues, every colleague, to think very carefully about how they would feel if they were in the gentlewoman from Nebraska [Mrs. SMITH's] shoes. Mrs. SMITH has served here for 16 years. She has an impeccable reputation for service, for diligence, for being a thorough and outstanding legislator, thoughtful, considerate of all of her colleagues. Very, very regretfully she is not returning for reelection. So what could she possibly be seeking to gain by this designation—there are not any votes for her to gain, because she is not looking for any. She is retiring and acting out of altruism. The gentlewoman has been returned here by a margin of 75 to 80 percent the last 15 years, and I would pay very close attention to what she says on this issue, and that the area in question lies entirely within her district.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the gentleman from South Carolina [Mr. RAVENEL].

Mr. RAVENEL. Mr. Chairman, first let me say to Miss VIRGINIA, Miss VIRGINIA, you are such a gentle and kindly and mannerly lady, so soft-spoken, that for a long time when I first met you, I thought you must have been from somewhere down South, and no way in the world I want the gentlewoman to find me adversarial.

□ 1540

I am just for designating this river a Wild and Scenic River because I know what would have happened to our Chattooga River down there in South Carolina years ago. That river was in the movie, "Deliverance," and a lot of us saw it in that movie. If it had not been designated, the edges of it would have been just old tires, used cars, and mobile homes, and what have you.

If you do not know exactly what to do in a situation, then you ought to listen to the people you respect and whom you have high regard for. I am, of course, a member of a number of environmental groups, but for 40 years I have been a member of the National Audubon Society. I feel they are the most responsible and reliable of the environmental groups, and I would just like to share with the Members what they have said about this river. Of course, most of us got this letter, and most of the Members probably did not read it because we just cannot read everything that comes into our offices. This is what it says: "The Niobrara River was recommended for inclusion in the system when the Wild and Scenic Rivers Act was passed in 1968."

Gracious goodness, that is 22 years ago.

"Ranch and farm families owning a vast majority of the riverfront along the 76-mile stretch of river requested scenic river designation in letter to Congress in 1980 and 1985. An unbiased independent survey commissioned by the State Natural Resources Commission in 1986 found support among those who owned 62 percent of the land, even after water development interests carried out a 6-month campaign against the bill introduced by Senator EXON in 1985:

"Attempts to substitute a study are simply attempts to stall and defeat designation."

We are all politicians here in the Congress, and we know what we want to do if we want to kill something—we study it to death.

"There have been a variety of formal studies of the Niobrara. It qualifies in every respect. The river valley is a national treasure worthy of this recognition. It is time for the Niobrara to be designated."

Mr. Chairman, I say to my colleagues that if there ever was an environmental vote, this vote for S. 280 and against Darling Miss VIRGINIA's amendment are litmus tests today for the environment.

Mr. LAGOMARSINO. Mr. Chairman, I yield 3 minutes to the gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. Mr. Chairman, I am a little stunned. I did not know I was going to have this much time to wax somewhat in eloquence for my dear colleague. Even then, I yielded a minute's time so the gentleman from South Carolina [Mr. RAVENEL] could pay her a compliment and he talked about tires and things in South Carolina and about a river there that was designated as wild and scenic.

There are no tires in this particular area that I am aware of. As a matter of fact, the farmers have taken very good care of this particular area.

Mr. Chairman, I rise to support the gentlewoman from Nebraska [Mrs. SMITH]. I have the utmost respect and admiration for all my colleagues from Nebraska, more especially Mr. BEREUTER and Mrs. SMITH, who are directly north of me and I south of them. I do not think there is a question about the intent of the Members in regard to this legislation, but there is an old rule that I have tried to follow in matters of this nature, and that is to at least pay attention to the Member whose district is involved, and 90 percent of this particular area is in the district of the gentlewoman from Nebraska [Mrs. SMITH].

There has already been mention made by my dear friend and colleague, the gentleman from Missouri [Mr. EMERSON], about the homework that Mrs. SMITH has done in her 16 years of service in this body on behalf of the citizens of Nebraska. Everybody does homework here, but almost no one that I know of does their homework to the extent that Mrs. SMITH does. She is not only thorough but she is patient, and she perseveres.

There have been several instances when I thought I was right on a subject when the gentlewoman from Nebraska has set me right. And I can say that not one local elected official—let me underscore elected—supports this particular designation.

What is wrong with the study? Oh, I know others have said that if you want to kill something, you are going to study it. That is not what we want to do. After 30 months of this study, it could be designated wild, which would be more restrictive, it could be designated scenic, or it could be designated recreational.

There are 7,600 acres here that are in question. My friend, the gentleman

from Iowa, who serves with me on the Agriculture Committee, says there is something very precious about what we do in the Agriculture Committee, that every farmer is a conservationist. That is true. But also what is precious in this country and also what is very precious about the Committee on Agriculture of the House is that local people make local decisions. I can say that farmers are indeed conservationists, and this river is protected somewhat. There are 7,600 acres here that are in question.

In summing up, I would simply say that issues like these should be determined at least in some degree by the Members whose districts are involved. I see nothing wrong with the study. Let us support the gentlewoman from Nebraska [Mrs. SMITH] and give her the benefit of this particular issue.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, there are remarks being made on this legislation on the personal level and on the political level. Let me deal with the substantive level, and let us consider all these factors, because when we vote, all those factors will be taken into account.

I join with my colleagues in their very strong admiration of the gentlewoman from Nebraska [Mrs. SMITH]. I do not think that necessarily is the issue, though, that you should go with the Member always who represents a particular area, although that is, I think, a very strong factor. I would go also with another factor, and that is the two Senators that represent the entire State of Nebraska, who are for this legislation. They were both elected in very difficult races.

Second, there are other players here, and they are individuals like the gentleman from Nebraska [Mr.BEREUTER]. I supported the Bereuter amendment in committee which extended the Niobrara 25 miles, and 39 miles for the Missouri, and we studied it in part. I did that partially because it is my view that only two-tenths of 1 percent of all rivers in the United States are protected.

In addition, what we have is the fact that this precious river, according to responsible environmental organizations, is 1 of the 10 most viable and environmentally sound rivers that deserves to be protected, and they are all on a hit list because of potential problems like erosion, grazing, et cetera.

So on the substantive basis, I think there are lot of reasons to protect this designation. I do think that if we study something to death, that is a favorite way to proceed with not taking action. I think there is enough substantive, compelling evidence, and there are enough responsible Members on both sides of the aisle who would like to see this river designated.

I have worked with the gentleman from Nebraska [Mr. BEREUTER] on the Committee on Foreign Affairs and on many issues. I think there is no more credible Member. I would refer also to the gentleman from Nebraska [Mr. HOAGLAND], a freshman Member, a dignified, serious, cooperative Member, and, yes, the gentlewoman from Nebraska [Mrs. SMITH] is a legend here. I think all those factors have to be properly balanced.

A majority of the congressional delegation of Nebraska is for this. That is on the personal and the political level. On the substantive level, the fact is that responsible environmental groups claim that this river is endangered and it should be protected.

So I submit to my colleagues, yes, none of us want bills in our own district that necessarily conflict with our objectives, but it could be that sometimes we may be wrong and we need a little boost or a little improvement. I do not think that what we are trying to do with this legislation is in that category, and I say that with great respect to the gentlewoman from Nebraska [Mrs. SMITH] and my colleagues who have spoken. I speak very earnestly, very passionately, and very seriously on this subject.

Four of the five Members of the Nebraska congressional delegation support S. 280.

Strong local and statewide support:

Local landowners intitated scenic river designation.

74 percent of the respondents to a statewide newspaper poll favored designating the 76 mile stretch of the Niobrara River.

Over 20,000 Nebraskans signed petitions favoring scenic designation.

Biological crossroads of the Rocky Mountains and Great Plains:

Approximately 160 plant and animal species from across the Rockies and Great Plains converge within the river valley.

Niobrara provides migratory habitat for endangered bald eagles, whooping cranes, and sandhill cranes.

S. 280 is supported by major conservation organizations with a combined membership of nearly 8 million:

National Audubon Society, The Nature Conservancy, National Wildlife Federation, Sierra Club, Izaak Walton League, The Wilderness Society, and National Parks and Conservation Association.

More study is not needed:

Proposals to designate the Niobrara go back a quarter of a century.

The Nationwide Rivers Inventory prepared by the National Park Service found the Niobrara to contain outstandingly remarkable values.

The Nebraska Game and Parks Commission supports scenic designation of the Niobrara and noted: "the aesthetic, scientific recreational and fish and wildlife values of the Niobrara River in its free flowing state and its associated terrestrial ecosystem have long been recognized."

Don't be mislead by opponents:

Key opponents testified that even if another study recommended designation they would oppose such action.

A much touted river protection plan recently adopted by local governments which are opposing S. 280 is a paper tiger—it has no teeth without adoption of local zoning controls.

Currently there are no local zoning controls and local county government officials testified that they see no need nor do they have any intention to develop zoning to protect the river.

□ 1550

Mr. LAGOMARSINO. Mr. Chairman, I yield the balance of my time to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Chairman, I thank the gentleman from California [Mr. LAGOMARSINO] for yielding, and I would like to use my time to correct some misinformation, some mistaken information, and let me say to my good friend, the gentleman from South Carolina [Mr. RAVENEL] who spoke so nicely, that our area is very different from the area he spoke about. Those people have protected that river so well that now the State director of natural resources says the river is in better shape than it was 50 years ago.

Mr. Chairman, the people should not be penalized because they have done such a great job of protecting the river, and then I note that someone quotes from two editorials in Nebraska from papers that say they prefer instant designation. Well now, that is perfectly all right. One of those papers has always been the chief proponent of instant designation.

Let me say, Mr. Chairman, there are 130 papers in my district. I do not know of 1 other paper among those 130 that supports instant designation, but I do know of a very important paper in the district of the gentleman from Nebraska [Mr. BEREUTER], my good friend, that has just editorialized, and since my colleagues have been reading editorials, let me read from this one, the Norfolk Daily News.

It says:

As a Representative, Virginia Smith proceeds with her efforts to work with the delegation, Governor Orr and State officials on the Niobrara River issue, the desires of those who spent their lives and made their livelihoods in that region need to be given top consideration. That would be helped by adoption of the bill, which Mrs. Smith has introduced, to require a study—

Mr. Chairman, is my time up?

The CHAIRMAN. The time of the gentlewoman from Nebraska [Mrs. SMITH] has expired.

Mr. VENTO. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we will have more time to debate this. I just want to say that the Wild and Scenic Rivers Act is one of the lightest touches in terms of management that we have from the national level. That is, it takes into consideration the concerns of local individuals and landowners. It is very restricted in that particular sense, and I want to say one thing more.

Mr. Chairman, rivers tend to evoke a great deal of controversy. Rivers are where the action is. Rivers are also endangered.

Mr. Chairman, when the gentleman from New Mexico [Mr. RICHARDSON], my colleague, commented about 1 of the top 10 rivers, this is 1 of the top 10 endangered rivers in this Nation, and it needs the help of this Congress and this House today which I hope the Members of this House will give to it.

Mr. JONES of North Carolina. Mr. Chairman, today I support S. 280, a bill to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System.

The Committee on Merchant Marine and Fisheries which I chair was granted a sequential referral of S. 280. In seeking a referral of this bill, I set forth three separate reasons why S. 280 addressed matters within the jurisdiction of my committee.

First, the bill would designate as a scenic river a portion of the river that flows through the Fort Niobrara National Wildlife Refuge, one of the oldest refuges in the National Wildlife Refuge System. A scenic river designation within a wildlife refuge affects the management of refuge lands located within the scenic river corridor. Under the Wild and Scenic Rivers Act, such a designation reduces the management discretion and authority that a refuge manager would otherwise have under the National Wildlife Refuge System Administration Act.

Second, the bill would create a Citizen Advisory Commission for the scenic river and insert it into the middle of the refuge manager's decisionmaking process for the management of the refuge. Congress has historically insisted that the refuge management authority of the Fish and Wildlife Service remain unfettered and unrestricted.

Finally, the bill as ordered reported from the Interior Committee directed the National Park Service to conduct a study regarding the feasibility of establishing a large national park out of an area which includes the existing Fort Niobrara National Wildlife Refuge. It also directed that the study consider the possibility of joint management of the new park area by the National Park Service and the U.S. Fish and Wildlife Service. Any study or proposal which could result in the eventual loss of a unit of the National Wildlife Refuge System is of deep concern to my committee. Moreover, my committee has previously amended the Refuge System Administration Act to expressly prohibit the joint management of refuge areas. We were thus concerned about the implications of this Park Service study for the future of this Nebraskan wildlife refuge.

In response to my concerns regarding these provisions of S. 280, Chairmen UDALL and VENTO agreed to amendments to the bill. The first amendment clarifies that the designation of a scenic river corridor within the wildlife refuge does not displace the Director of the U.S. Fish and Wildlife Service as the Interior Department official responsible for the management of the river corridor running through the refuge. The second amendment clarifies that the Citizen's Advisory Commission shall not address management issues within that part of the scenic river corridor lying within the wildlife refuge. Finally, the last two amendments exclude the existing Fort Niobrara National Wildlife Refuge from the feasibility study area for the proposed new national park. Thus, any new park proposed for the area can not include part or all of the existing national wildlife refuge.

In light of the acceptance of these amendments by Chairmen UDALL and VENTO, I now fully support the passage of S. 280 on the floor of the House of Representatives under the rule that was granted by the Rules Committee. Since these modest amendments were designed essentially to protect the existing wildlife refuge, they should not be considered controversial in and of themselves.

I urge Members to support S. 280 as it has now been amended to address my committee's concerns. I thank Chairmen UDALL and VENTO for their cooperative assistance in accommodating the concerns of my committee. This bill deserves our strong support.

The CHAIRMAN. Pursuant to the rule, the amendment in the nature of a substitute consisting of the text printed in House Report 101-530 shall be considered by sections as an original bill for the purpose of amendment, and each section is considered as read.

The clerk will designate section 1.

Mr. VENTO. Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The text of the amendment in the nature of a substitute is as follows:

S. 280

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Niobrara Scenic River Designation Act of 1990".

SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The segment from Borman Bridge southeast of Valentine approximately seventy-six miles downstream to the bridge crossing the Niobrara on State Highway 137 (as generally depicted on the map entitled 'Boundary Map, Proposed Niobrara Scenic River Valley Corridor', 1985), to be classified as a scenic river and administered by the Secretary of the Interior.

'(B) The twenty-five-mile segment from the western boundary of Knox County to the confluence of the Niobrara River with the Missouri River as a recreational river, including Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara River. After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.".

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The thirty-nine-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river.".

SEC. 3. NIOBRARA SCENIC RIVER ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Niobrara Scenic River Advisory Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall advise the Secretary of the Interior (hereinafter referred to as the "Secretary") on matters pertaining to the management and operation of that seventy-six-mile portion of the Niobrara River designated by section 2 of this Act.

(b) MEMBERSHIP.—The Commission shall consist of eleven members appointed by the Secretary—

(1) three of whom shall be owners of farm or ranch property within the upper portion of the designated river corridor between the Borman Bridge and the Meadville Bridge.

(2) three of whom shall be owners of farm or ranch property within the lower portion of the designated river corridor between the Meadville Bridge and the bridge on Highway 137;

(3) one of whom shall be a canoe outfitter who operates within the river corridors;

(4) one of whom shall be chosen from a list submitted by the Governor of Nebraska;

(5) two of whom shall be representatives of the affected county governments or natural resources districts; and

(6) one of whom shall be a representative of a conservation organization who shall have knowledge and experience in river conservation.

(c) TERMS.—Members shall be appointed to the Commission for a term of three years. A member may serve after the expiration of his term until his successor has taken office.

(d) CHAIRPERSON; VACANCIES.—The Secretary shall designate one of the members of the Commission, who is a permanent resident of Brown, Cherry, Keya Paha, or Rock Counties, to serve as chairperson. Vacancies on the Commission shall be filed in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation, but the Secretary is authorized to pay expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act on vouchers signed by the Chairperson.

(e) TERMINATION.—The Commission shall cease to exist ten years from the date of enactment of this Act.

SEC. 4. MISSOURI RIVER PROVISIONS.

(a) ADMINISTRATION.—The administration of the Missouri River segment designated by the amendment made by section 2 of this Act shall be in coordination with, and pursuant to the advice of, a recreational river advisory group to be established by the Secretary. Such group may include in its membership representatives of the affected States and political subdivisions thereof, af-

fected Federal agencies, organized private groups, and such individuals as the Secretary deems desirable.

(b) BRIDGES.—The designation of the Missouri River segment by the amendment made by section 2 of this Act shall not place any additional requirements on the placement of bridges other than those contained in section 303 of title 49, United States Code.

(c) RIPRAPPING.—Riprapping using rocks from the region in as inconspicuous and harmonious a manner as practicable related to natural channels along shorelines of the Missouri River segment designated by the amendment made by section 2 of this Act to preserve and protect agricultural, residential, and commercial land uses shall not be considered inconsistent with the values for which such segment is designated.

SEC. 5. NATIONAL RECREATION AREA STUDY.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, shall undertake and complete a study, within eighteen months after the date of enactment of this Act, regarding the feasibility and suitability of the designation of lands in Knox County and Boyd County, Nebraska, generally adjacent to the recreational river segments designated by the amendments made by section 2 of this Act and adjacent to the Lewis and Clark Reservoir, as a national recreation area. The Secretary may provide grants and technical assistance to the State or Nebraska, the Santee Sioux Indian Tribal Council, and the political subdivisions having jurisdiction over lands in these two counties to assist the Secretary in carrying out such study. The study under this section shall be prepared in consultation with the Santee Sioux Tribe, affected political subdivisions, and relevant State agencies. The study shall include as a minimum each of the following:

(1) A comprehensive evaluation of the public recreational opportunities and the flood plain management options which are available with respect to the river and creek corridors involved.

(2) An evaluation of the natural, historical, paleontological, and recreational resources and values of such corridors.

(3) Recommendations for possible land acquisition within the corridor which are deemed necessary for the purpose of resource protection, scenic protection and integrity, recreational activities, or management and administration of the corridor areas.

(4) Alternative cooperative management proposals for the administration and development of the corridor areas.

(5) An analysis of the number of visitors and types of public use within the corridor with the full protection of its resources.

(6) An analysis of the facilities deemed necessary to accommodate and provide access for such recreational uses by visitors, including the location and estimated costs of such facilities.

(b) SUBMISSION OF REPORT.—The results of such study shall be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 6. STUDY OF FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.

(a) IN GENERAL.—The Secretary of the Interior shall conduct a study of the feasibility and suitability of establishing a national park in the State of Nebraska to be known as the Niobrara-Buffalo Prairie National Park within eighteen months after the date of enactment of this Act.

(b) AREA TO BE STUDIED.—The areas studied under this section shall include the area generally depicted on the map entitled "Boundary Map, Proposed Niobrara-Buffalo Prairie National Park", numbered NBP-80,000, and dated March 1990, and such other lands in the immediate area that are relevant to such study.

(c) RESOURCES.—In conducting the study under his section, the Secretary shall conduct an assessment of the natural, cultural, historic, scenic, and recreational resources of such areas studied to determine whether they are of such significance as to merit inclusion in the national park system.

(d) STUDY REGARDING MANAGEMENT.—In conducting the study under this section, the Secretary shall study the feasibility of managing the area by various methods, including the alternative of joint management by the National Park Service and the United States Fish and Wildlife Service, with consultation by those agencies with the Nature Conservancy and the Nebraska Game and Parks Commission.

(e) SUBMISSION OF REPORT.—The results of the study shall be submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

The CHAIRMAN. Are there any amendments to section 1?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MRS. SMITH OF NEBRASKA

Mrs. SMITH of Nebraska. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by

Mrs. SMITH of Nebraska: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Niobrara River Protection Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the 253-mile segment of the Niobrara River, Nebraska, included in the National Park Service's 1982 Nationwide Rivers Inventory contains outstanding natural, recreational, and scenic resources;

(2) there is a national interest in protecting these outstanding resources for the benefit of residents and visitors to the area;

(3) adequate studies which evaluate the potential role of the local, State, and Federal Governments in protecting these resources have not yet been completed;

(4) the State of Nebraska and its local units of government have the authority to prevent adverse impacts on the resources, and local development restrictions are already being prepared; and

(5) typical river suitability studies provided for in section 4(a) of the Wild and Scenic Rivers Act have proven inadequate in addressing all the important management issues in situations where significant private land interests are involved.

SEC. 3. COMPREHENSIVE PLAN.

(a) CONTENT REQUIREMENTS.—(1) During the 30-month period beginning on the date of enactment of this Act, the Secretary of the Interior, acting through the Director of the National Park Service, shall complete a comprehensive river protection plan for the 253 miles or segments thereof determined to be suitable for inclusion in the National Wild and Scenic Rivers System. The plan shall be completed in a manner consistent with the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). The plan shall include a detailed analysis of the role and ability of the local, State, and Federal Governments to accomplish the resource protection goals of the plan. This analysis shall serve as the primary basis for determining whether the local, State, or Federal Government shall have primary responsibility for implementation of the plan and whether the river shall be designated as a unit under the Wild and Scenic Rivers Act. Additionally, the plan shall address each of the following:

(A) The specific boundaries which are needed to protect the resources of the river corridor and the visitor experience.

(B) Any restrictions on development or land use practices within the river corridor which are considered necessary to protect the river.

(C) Identification of all facilities and access points which are necessary to support recreational use of the river corridor.

(D) A detailed recreational use plan which addresses such issues as carrying capacity, camping, trash and human waste removal, and any restrictions on types of craft to be used.

(E) An estimate of the instream flow requirements necessary to protect river resources and ensure a quality recreational experience.

(F) An analysis of any streambank erosion control practices which are needed to protect the resources of the river corridor.

(G) An analysis of economic benefits of recreational use of the river.

(2) The plan shall provide, to the greatest extent possible consistent with resource protection, for the continuation of all existing uses of private land along the river corridor, including agricultural and livestock operations, timber management activities, operation of private campgrounds, hunting, fishing, trapping, camping, and repair and replacement of residences, farmsteads, agricultural and recreational facilities, bridges and fish hatcheries. The plan shall also provide for the least possible adverse impact to the local property tax base. The plan shall provide for the continuation of all existing water development projects in the Niobrara River basin which have been developed or are under construction as of the date of enactment of this Act. For purposes of this paragraph, the construction of a bridge designed for heavy equipment over Plum Creek at Johnson Road shall not be construed to mean that the Norden Dam is under construction.

(b) CONSULTATION REQUIREMENTS.—The plan shall be prepared in consultation with appropriate local, State, and Federal elected officials and agencies which have jurisdiction over lands and waters within the area. The Secretary shall also consult with interested professional, scientific, and citizen organizations. To provide the residents of the affected area an opportunity to help in shaping the management plan, the Secretary shall hold at least two hearings in the area of Nebraska through which the river segments flow.

SEC. 4. STUDY OF NIOBRARA RIVER.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is

amended by adding at the end the following new paragraph:

"( ) NIOBRARA RIVER, NEBRASKA.—The 253-mile segment included in the National Park Service's 1982 Nationwide Rivers Inventory.".

(b) REPORT.—Section 5(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(b)) is amended by adding at the end the following new paragraph:

"( ) The study of the Niobrara River, Nebraska, shall be completed and the report thereon submitted not later than 30 months from the date that funds are made available by Congress for the study.".

SEC. 5. SPRINGVIEW PROJECT.

The Secretary shall undertake a detailed feasibility and cost-benefit study of the Springview project as authorized by Public Law 98-63. Information regarding the viability of this project shall be considered in development of the comprehensive river protection plan under section 3.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mrs. SMITH of Nebraska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Nebraska?

There was no objection.

Mrs. SMITH of Nebraska. Mr. Chairman, the amendment in the nature of a substitute that I am now offering to S. 280 fixes a bad, irresponsible bill.

My amendment conforms with current law by providing for a usual and customary study, pursuant to sections 5(a) of the Wild and Scenic Rivers Act, of the entire length of the Niobrara River included in the 1982 National Park Service "Nationwide Rivers Inventory."

My amendment is environmentally sound and logical. It proposes that 253-miles, not just an arbitrarily named 76 miles, of the unique Niobrara River be studied for designation in the Wild and Scenic Rivers System.

In addition, because 5(a) studies have most often failed to answer all of the questions surrounding a potential designation, especially in cases like the Niobrara where a majority of private land is involved, my amendment also provides for a thorough management plan to be formulated for the area.

The administration supports this amendment. Interior Secretary Lujan and OMB Director Darman will recommend that S. 280 be vetoed should this amendment fail today.

This is not just another simple scenic river designation. Because the land along the Niobrara River is extensively privately owned, it is a precedent-setting piece of legislation.

My amendment is supported by an overwhelming majority of Nebraskans. In a statewide poll conducted June 11-12, 1990, 63 percent favored studying the river, as I propose, before designation. Only 27 percent favored instant designation and immediate Federal intervention.

As I do, the majority of Nebraskans want to be sure that the Department of the Interior, the agency to be charged with managing the river as a national component, has the information it needs to effectively and correctly administer the river or portions thereof as components of the national system.

My amendment gives the National Park Service 30 months to complete a comprehensive, formal, and useful study of the Niobrara River. The agency said in testimony and consultations that it recommends, and I quote from a April 5, 1989, Senate hearing, "two to three complete fiscal years" to conduct the normal suitability study set forth in the law.

If my study amendment is enacted, I fully expect that 30 months from now, we will be designating parts of the Niobrara River as components of the Wild and Scenic Rivers System.

But my amendment provides mechanisms for making sure the concerns of all will have been appropriately addressed in a carefully developed management plan.

The study provided for in my amendment also may determine that portions of the river are so ecologically fragile that they should be designated as wild, a designation that would involve more restrictions and protections than a scenic label.

A study may determine that some segments should be designated as recreational, a designation that would entail less restrictions and protections than a scenic label.

The bottom line is that a study must be performed to determine which segments of the river need formal protection, how best to protect those segments, and who—local, State, or Federal Government—should be responsible for managing and implementing the protection plan.

In my statement during general debate, I offered the hard, indisputable evidence—the Niobrara River has not been studied for the purpose before us today. But let me repeat to drive this important point.

Quoting from a Department of the Interior letter written earlier this month: "Out of the 108 rivers designated by Congress since 1968 as components of the National Wild and Scenic Rivers System, none has been designated without some form of study by the National Park Service, Forest Service, Bureau of Land Management, or other agency. The Niobrara has had no formal study whatsoever."

I want to point out for my colleagues that this is not the identical amendment offered and defeated in both subcommittee and full committee markups. I have made minor, but significant improvements.

Most significantly, I have changed the amendment to meet the charge that it contained a loophole that would allow for the Norden Dam to be constructed along the Niobrara River in the future.

The Norden Dam is a long-dead project being used by proponents of immediate designation as a smokescreen to detract from the issue and provide a tenuous and irrelevant argument to further their position.

Although this is not a debate about the Norden Dam, I have made every effort to address the concerns of my colleagues.

I urge support for my amendment.

Everyone agrees the river should be protected; that is not the debate before us today.

This is a crucial procedural debate about fairness and conforming with current law, which my amendment does.

The Niobrara River is not threatened by any immediate or near-term development or adverse uses. We have time to follow the law we enacted and do this the right way.

Let me close by summarizing why you should vote yes on this amendment:

Vote "yes" for expert study before "instant" Federal designation.

Vote "yes" for studying 253 miles of a beautiful river—not just blindly designating 76 miles.

Vote "yes" to do the job we were sent here to do—represent our constituents—and to save your district from the political steamroller driving this bill.

Vote "yes" on the Smith amendment.

□ 1600

Mr. VENTO. Mr. Chairman, I rise in opposition to the Smith amendment. This amendment is designed to once again postpone and defeat the protection and designation of the Niobrara River. Not content with trying to eliminate the 76-mile scenic designation of the Niobrara, Mrs. SMITH's amendment would strike all the provisions of the bill, including those unrelated to the 76-mile designation.

Opponents of designating the Niobrara Scenic River have taken to calling this "instant" designation. Well, 25 years is anything but instant and that is exactly how far back proposals to designate the Niobrara River go. The gentlewoman would have us believe designation just came up and is now suddenly being thrust upon the area. The fact of the matter is Federal and State agencies have inventoried and studied this river for many years and reported on its outstanding resource values.

Local landowners petitioned their elected Representatives in 1980 for scenic river designation and legislation has been pending before the Congress since 1985. Scenic river designation for the Niobrara is neither new, unknown, or unheard of.

Let me also set the record straight. Contrary to the assertion of opponents, a formal wild and scenic river study is not a prerequisite for designation. Very few rivers have undergone the type of study the gentlewoman proposes. In fact, of the 122 rivers nationwide that are components of the National Wild and Scenic Rivers System, over one-third have never undergone a section 4(a) and section 5(a) wild and scenic rivers study. More information is known and available on the Niobrara than on some of the prominent wild and scenic rivers in the country and its designation would violate no law, policy, or practice.

So we have to ask ourselves, why another study? Don't be mislead, many opponents of scenic river designation are hiding behind a call for another study of the Niobrara River. In reality they oppose designation under any circumstances. In testimony before the Interior Committee key opponents testified that even if another study recommended designation they would oppose such action.

Opponents in the area have hired Mr. Cushman of the National Inholders Association to fight designation. Mr. Cushman's tactics are well known. I have here letters from elected officials in the neighboring State of Kansas. They note that when the National Park Service initiated a study in their area "* * * Cushman and his followers have simply tried to obstruct its progress" and that "* * * community leaders have been busy ever since trying to counter misinformation, false rumors, and attempts to split the communities."

There is no doubt in my mind that opponents intend to use the study to delay in the hopes of permanently defeating designation. While I respect Mrs. SMITH's advocacy of this matter, I strongly disagree with her views of the results. Another study won't change the simple fact that the Niobrara possesses outstanding resource values that merit protection. Rather than engaging in further study and delay, I believe efforts would be better spent implementing a mutually beneficial management partnership among local landowners, State and local governments, and the Federal Government, as provided for in the Wild and Scenic Rivers Act and this legislation.

I urge rejection of the Smith amendment.

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Chairman, I thank the gentleman for yielding.

I do want to point out, I believe the gentleman mentioned that key people up there would still oppose it. One person testified that he would oppose it, and I guess one person would testify anything.

I just rose to make this point, that it is an open rule, Mr. Chairman, and any amendment that anyone wants to put in, any amendment that the gentleman from Nebraska [Mr. BEREUTER] wants to put in about his district would be perfectly free to put the amendment in.

Mr. VENTO. Well, Mr. Chairman, I appreciate the gentlewoman's observation. I think, though, these individuals are representing larger groups, as we know. So I think they are speaking for many of their groups and not just themselves when they are testifying before the committee, so I think they were stating that their organization would still not support it, even if the study provided that it was necessary.

I would just point out that the last minute efforts that have been made I think do not sit well with the chairman in terms of some of these private polls that have been conducted and the questions asked are not really publicized. That is why we referred to and have criticized to some extent the Wirthlin Group.

Mr. Chairman, I ask the Members to opposed the amendment of the gentlewoman from Nebraska [Mrs. SMITH].

Mr. YOUNG of Alaska. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of the amendment of the gentlewoman from Nebraska [Mrs. SMITH]. I also oppose the bill. Primarily, I want my colleagues to understand one thing. This is in one Member's district. If there is a section that is not in that Member's district, then that amendment should be offered. If you believe in this body as a representative form of government, and most of you have heard me say this time and time again, you will support the Smith amendment. You will support it because it is right.

The gentlewoman said she is not against, with proper methods, of having a scenic river designation. The Park Service is against the bill as brought to us that came out of the committee. The Secretary of the Interior is against it. OMB is against it, and the President of the United States is against it.

In this era of time, we just had a joint session today to listen to the so-called leader talking about freedom and helping the people. We have had the Eastern bloc collapse. We have had much talk from that side of the aisle about liberal land reform internationally, and yet I see the same people taking lands from American citizens that opposed taking it by the Federal Government, taking lands that were given to them through the generations that have inherited it and protected it and have in fact used it so well that it is now designated possibly by this bill as a wild and scenic river. That means that they are good stewards. It does not need the Federal Government to make sure that things are done correctly.

Where does this Federal Government come from saying they have the answer to all things? Where do we come from saying we have the answer to all things?

The amendment of the gentlewoman from Nebraska [Mrs. SMITH] was offered in the committee and it was ignored by the chairman of the full committee and that side of the aisle. Not one vote on our side of the aisle supported this bill. Not one person on that side of the aisle supported the amendment of the gentlewoman from Nebraska [Mrs. SMITH].

Also, not one person on that side of the aisle, the so-called party of the people, supported my amendment that did not allow condemning the lands, did not allow this Government of ours to take those lands from individuals. Not one of you supported that amendment.

Yet here we hail the gentleman from South Africa as a great leader of the free people. We hail the Eastern bloc for them turning down communism and trying to accept capitalism, and yet I see on that side of the aisle, no consideration for the people who are affected.

This is a national jewel? Yes, it may be, but there are other people involved. We are going to condemn land for scenic value against those who have it for years and were stewards of the land?

The amendment of the gentlewoman from Nebraska [Mrs. SMITH] gives us the opportunity to do what is right. It is not a delaying tactic. The chairman of the committee will be here next year and you will have the same amount of proxies. What is the rush? You will not listen to us next year. You did not listen to us this year. So what changes? What should change, you should accept the gentlewoman's amendment now.

I am asking my colleagues on this side of the aisle to accept the gentlewoman's amendment now, today. I am asking my colleagues on this side of the aisle to do what is right.

I heard the gentleman in the well awhile ago talking about the Audubon Society, the Sierra Club, the Friends of the Earth, and all the other highway bandits that reside within the beltway in Washington, DC. They are supposed to be representatives of the people. What about the farmers? What about the man that is on that

land and his wife and his kids that inherited that land? Yes, that is our system, from his father and his father inherited it from his grandfather, and because of you, because this is supposedly a national issue, a national jewel, you are going to condemn that individual for being a good steward, and this is America?

I say no, it is not America. We have swept over the edge if we do not accept the amendment of the gentlewoman from Nebraska [Mrs. SMITH]. We have gone beyond what is decent. We are really accepting the power, because we have got the vote.

Mr. Chairman, if I may say, you may have the votes now, "but you ain't going to have the votes later on down the road."

□ 1610

Mr. LAGOMARSINO. Mr. Chairman, I move to strike the requisite number of votes.

Mr. Chairman, I rise in strong support of the amendment offered by the gentlewoman from Nebraska who represents the district that would be the most affected by this legislation.

While I do not agree completely with what the gentleman who just spoke said, I do not think that just because a problem or an area is in someone's district that they have an absolute veto power over what happens to that. But I think that certainly they should be listened to, and if everything else is equal, they should prevail.

I would take some exception to what the chairman of my committee said, too, about opponents. It may be, as the chairman said, that some opponents have ulterior motives; maybe they do want to build a dam on that river. I am an opponent. I do not want to build a dam on that river.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LAGOMARSINO. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I appreciate that. I understand what the gentleman's concern is, and I think he is an opponent of the dam, and I appreciate it.

Mr. LAGOMARSINO. Mr. Chairman, as a matter of fact, if the study that we are asking for and that the gentlewoman from Nebraska [Mrs. SMITH] is asking for that I am supporting comes back indicating that this should be wild and scenic or part of it should be wild and part scenic, that would be perfectly all right with me. It might or might not be all right with the bulk of the landowners.

I would point out, too, that, contrary to a lot of the bills that we have considered here on the floor seeking wild and/or scenic status for rivers, this one is composed of 85 percent private ownership. It does put it in a slightly different category than many of those we consider.

The chairman has said several times this afternoon that about one-third of the rivers were not studied under the specific formal provisions of the Wild and Scenic River Act. I would read once again, and it will be the third time, I think, also, a letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of Interior. "Out of 108 rivers designated by Congress since 1968 as components of the National Wild and Scenic River System, none has been designated without some form of study by the National Park Service, the Forest Service, the Bureau of Land Management, or other agency. The Niobrara has had no formal study whatsoever." She goes on to say, "A study is particularly important where, as on the Niobrara, the river crosses lands that are almost exclusively privately owned."

Mr. Chairman, I would suggest that what we need to study for here is to determine what kind of a management plan we should have if, indeed, it is determined it should be wild and/or wild and scenic.

I would urge my colleagues very strongly to support the gentlewoman's amendment.

Mr. Chairman, I rise in strong support of the amendment offered by the gentlewoman from Nebraska who represents the district which would be most affected by this legislation. The substitute bill which she has offered is one which will better achieve the resource protection goals which have been agreed to in principle by all parties to this discussion.

The bill offered by the gentleman from Minnesota simply designates portions of the Niobrara River in accord with the general principles of the 1968 Wild and Scenic River Act. Two segments of the Niobrara River would be instantly designated. The bill purports to provide for protection of the resource values along those river segments. The apparent rationale for this belief is that resource values will be protected simply through Federal designation. In fact, it will not be until several years after the river is designated and the Federal Government completes a general management plan that any river protection measures are likely to be undertaken.

By comparison, the bill authored by Mrs. SMITH would provide for the immediate preparation of a plan to protect important resources along the entire 253-mile stretch of the Niobrara River which has been included on the nationwide river inventory, instead of several arbitrarily selected sections. At the same time, a study would be conducted to determine which agency is best suited to implement this plan and whether or not the river should be designated under the Wild and Scenic River Act.

This approach of study followed by designation is the one outlined in the Wild and Scenic River Act. When this approach has been followed in the past, the administration has determined that about half of the rivers studied could be better managed by local or State agencies. Mr. Chairman, it is prudent that we follow normal procedures to determine the management entity best able to protect the resource values of this river. The National Park Service is already strapped for financial resources. In the decade of the 1980's, the over 100 units of the NPS lost ground to inflation. Let me give you a specific and highly relevant example of that funding shortfall.

In 1978, Congress designated the Missouri River national recreation river under the Wild and Scenic River Act and directed the NPS to manage the site. NPS has yet to spend any funds for the protection or management of this resource or to assign any personnel there. In fact, NPS has delegated its management presence to the U.S. Army Corps of Engineers, hardly an agency known for its environmental protection record. It would appear to make little sense to simply add another unit to an already underfunded agency, especially if there is a better way to manage it at no cost to the Federal taxpayer.

The basic question up for consideration on this measure is whether the Federal Government is the only entity capable of protecting natural resource values. Proponents of this measure would have you believe that instant designation is synonymous with automatic protection. Not only is that underlying philosophy faulty, but it is a genuine discredit to private landowners throughout the country. I urge my colleagues to support the amendment offered by Mrs. SMITH.

Mr. HOAGLAND. Mr. Chairman, I rise in opposition to the Smith amendment.

Mr. Chairman, let me start out, if I might, by addressing some of the concerns raised by the gentleman from Alaska and by the gentlewoman from Nebraska.

First of all, the gentleman from Alaska points out once again that this is in a Member's district, that a Member ought to be able, by inference, to make the ultimate decisions on things of that sort, so, therefore, this House should vote against it.

Let me remind my colleagues that in Nebraska we have only three congressional districts, and those three congressional districts are also represented by two U.S. Senators, and both of those U.S. Senators, forthright public servants, courageous public servants, in my opinion, are cosponsors of S. 280, and passed the bill through the U.S. Senate with no dissenting votes in the committee and by a voice vote on the floor of the Senate. Those two U.S. Senators represent the men and women who live up and down the Niobrara River Valley every bit as much as the Member from the Third Congressional District. Two out of the three Members of the Nebraska delegation that represent those folks directly are in support of this bill.

Let me say, secondly, that the gentleman from Alaska, and I believe I heard him say, he indicated that the President is against it. The President is against it now. That is new information from my point of view, because we

had a reporter from the Omaha World Herald that asked the President at a press conference 2½ weeks ago, "Mr. President, what is your position on this bill?" The President indicated that, well, it had not reached his desk yet; and, frankly, he did not know about the issue in detail. That was the President himself speaking.

Maybe there has been a development since that press conference I do not know about, but if there has, I am not familiar with it.

Third, the study amendment has really changed over and over. I think it is important to point that out. When the bill requesting a study was first introduced, it covered the entire river, 350 miles in the State of Nebraska. When it was then resurrected in the subcommittee, it pertained only to 76 miles for a 30-month study. Then in the full committee, it was 76 miles, a 30-month study. Then when first introduced on the floor of Congress, it was a 253-mile, 30-month study including language about the Norden Dam. It has now been modified once again to be a 253-mile study for 30 months. The Members can see the study proposal itself has changed from time to time.

I think that the important point is that we do not need to study it any more. As has previously been indicated, when Senator Frank Church introduced in 1965 the bill that later became the wild and scenic river bill, while he included the Niobrara on the list of rivers with great potential, then in 1968, when a refined version of that legislation was introduced, why the Member who then represented the Third Congressional District struck the Niobrara from the list so that a dam could be built, so the possibility a dam could be built.

In 1971 a study by the State of Nebraska Soil and Water Conservation Commission concluded the Niobrara had sufficient scenic, recreation, and environmental value to warrant a study for designation as a protected river reach.

In 1982 a nationwide rivers inventory published by the National Park Service found the Niobrara to have outstandingly remarkable values based on the seven standard categories. The Niobrara is one of only a few rivers in the Midwest that is rated outstanding in all seven categories.

Then in August 1986, after Senator EXON had first introduced the bill in 1985, the Nebraska Natural Resources Commission published an extensive study entitled "The Niobrara River: A Proposal for Scenic River Designation," concluding that the Niobrara River had special values and indicating that the most appropriate way to preserve shifted back to locally elected officials, locally elected officials, my colleagues, that have taken no effective steps in the intervening years to protect the river.

The short of it is, as the chairman of the subcommittee had indicated, studies and recommendations made over the past 25 years have all found the Niobrara River worthy of recognition and protection.

Let me just say this, and that is, Mr. Chairman, that the essential point is that the Niobrara has been studied as much as it needs to be, as much as it needs to be. I have been up on the river, and many hundreds of Nebraskans have been up on the river. We feel that the time is right now for designation, and I urge my colleagues to do that.

Mrs. VUCANOVICH. Mr. Chairman, I move to strike the requisite number of words.

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentlewoman yield?

Mrs. VUCANOVICH. I am happy to yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Chairman, I would like to tell my colleague and friend from Nebraska who just spoke that I changed the amendment to meet his concerns, to ensure that the Norden Dam could not be included in a loophole. I am not a member of the committee, and I was doing it to help the gentleman.

Mrs. VUCANOVICH. Mr. Chairman, and Members of the House, I rise today in strong support of the amendment offered by my colleague from Nebraska, Mrs. SMITH, to the Niobrara Wild and Scenic River bill before us.

I was fortunate enough to attend the Interior Committee's field hearing held in Ainsworth, NE, in March of this year. There I listened to VIRGINIA SMITH's constituents speak from their hearts about the issue of protecting the scenic character of the Niobrara River and its banks. In most of the 76-mile stretch of the Niobrara included in this bill the banks of the river and the quarter-mile corridor to either side of the river are privately owned farmlands. The farmers who testified before us that day are strongly opposed to instant designation.

They have signaled this opposition in a bipartisan fashion. Though Mrs. SMITH is retiring after this Congress, after many years of fine service, both the Republican and Democratic nominees for her seat have gone on record as opposing S. 280. So has Governor Orr and former House Member Hal Daub. It is interesting, I am told that even Sentor EXON who sponsored this bill has expressed concern about the manner in which this bill was amended in the Interior Committee of this body.

Mr. Chairman, I support the amendment offered by Mrs. SMITH because it authorizes the Secretary of the Interior to study the suitability of a reach of the Niobrara River for designation. No such formal study has yet occurred, and the public has had little opportunity for input into a study plan. I'm told that a recently conducted survey in Nebraska reveals that an overwhelming majority of the citizens polled in the entire State are opposed to an instant designation of the Niobrara as a Federal wild and scenic river. The citizens of the gentlelady's district have spoken. The citizens of the rest of Nebraska agree. Study first—act later after the facts are in hand and the affected public has had proper opportunity to provide input and to review a plan that may likely affect their private property.

□ 1620

CHANGE OF SCHEDULE IN MEETING WITH MANDELA

(By unanimous consent, Mr. WOLPE was allowed to speak out of order.)

Mr. WOLPE. Mr. Chairman, I ask unanimous consent to speak out of order for 1 minute simply to advise Members that the scheduled meeting with Mr. Mandela at 5 o'clock this afternoon has been canceled because Mr. Mandela is exhausted at this point and needs time to rest. I am sure that all Members will be understanding of this request. Because there were so many Members intending to participate in that meeting, I thought it would be easiest to communicate the cancellation of that session in this fashion.

Mr. KANJORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am from Pennsylvania and not Nebraska. Normally we have a rule in the Pennsylvania delegation not to tread where angels should fear to tread, but I am going to tread anyway.

Mr. Chairman, as you and I know, Pennsylvania had a very wealthy son of Pennsylvania, not only in personal wealth but in understanding the resources of this country, by the name of Gifford Pinchot. He was really the father of Theodore Roosevelt's concept that America's prized possessions and resources should be conserved and held for future generations.

I have made it a practice that wherever I go and in whatever Member's district I go to, to examine what resources they have in the nature of conservation and what they do with them.

Last summer I had the pleasure of canoeing down the Chena River in Alaska, something that now I dream about going back in future years and doing again.

Mr. Chairman, as you know, this weekend you and I had the great pleasure of rafting down the Lehigh River in Pennsylvania for 16 miles, where one could hardly see the

scratch of man on the natural resources of that river.

Just a few years ago the railroads and the coal companies of Pennsylvania had owned that as private land. Over the years we have acquired thousands of acres of private land and have now put that in the bank of the Scenic River so that untold future generations of Americans can see what it was like when the Indians lived in America and they had this magnificent beauty.

I actually rise to support Senate bill 280 and oppose this amendment, because I agree with my friend, the gentleman from Nebraska [Mr. HOAGLAND], who has taken an outstanding leadership role. As a matter of fact, I would like to comment on that. The gentleman from Nebraska [Mr. HOAGLAND], being here less than one full term as a freshman Member, has seized upon very important issues that affect his State, his district, and this Nation, and this is just one example of that outstanding leadership.

What the gentleman said is right. What we tend to do in America is study, study, and study things to death. There are certain natural resources and certain things of value, and one of them is our natural rivers, that should be preserved for future generations.

So although I do not like to rise in opposition to an opponent of the gentlewoman from Nebraska [Mrs. SMITH's] long tenure in this House, and understand her feelings on the matter, being in her district, but I agree that two U.S. Senators from Nebraska and the rest of the Nebraska delegation to represent Nebraska and the interests, but more than that, they represent the interests of the Nation, this magnificent country. If Nebraska can put into a National Scenic deposit a river of this nature, we in the Congress should encourage them to do it, and not study further, and study this thing to death, but do it today.

I urge my colleagues in the Pennsylvania delegation and the entire Congress to be opposed to this amendment and see that we can capture some of the natural resources for future Americans.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. Last week we had a rather emotional discussion on the House floor about preservation of the American flag. During that discussion we had numerous people parade to the floor telling us of their reverence for the Bill of Rights.

I thought it was a very good debate, and I thought it made a lot of fine points on both sides of the aisle.

Well, today we come to the floor, and some of those Members seem to have lost a little bit of reverence for the Bill of Rights on this issue. There is an amendment to the Bill of Rights known as the 10th amendment. The 10th amendment reserves to the States and localities those powers that the Federal Government does not have specified in the Constitution. Our forefathers did that, understanding that only those very, very key items that were defined in the Constitution ought to become so-called national issues.

Now we have heard a series of speakers tell us that the local people should be ignored, the States should be ignored, and that we ought to address this as a national issue. It may well be that this is a matter of national significance, and it may well be that we ought to address it from that standpoint. But at this point, other than hearing from a lot of outside groups who do not live in the district, we do not know.

It is not as though the gentlewoman from Nebraska [Mrs. SMITH] is asking us to go out and rape the river. What she is suggesting is that we ought to study it, that we ought to have a study to find out whether or not it is in the national interest to proceed.

The gentlewoman from Nebraska [Mrs. SMITH] is not asking anything great. She is asking something that within the scope of deciding national issues ought to be done anyhow. The local people in this regard, in this particular instance, have made it clear that they do not think this is a very good idea. Well, fine. They may be wrong. I do not know. I am not certain anybody here knows. But the fact is that is their determination.

Now, one of the reasons why they may have made that determination is because a large percentage of the land that is going to be usurped here belongs to them. The Federal Government is going to go in and condemn their private property.

I go back again to our forefathers. Our forefathers thought private property was pretty sacred, and they believed very thoroughly that Government power ought not be used against private property. But in this case we have decided there are national interests involved, without even a study. And without even a study we are going to go in and seize that private property in the name of something that the Government wants.

I think that raises some questions, and maybe we ought to at least study it.

I am a little confused. What is wrong with having a study? If every other project that we have ever done has had at least some kind of a study, what is wrong with having one here? Why in the world can we not have just a little study to find out whether or not this is in the national interest before we proceed?

The gentlewoman from Nebraska [Mrs. SMITH] is not asking you to not go ahead with this at some point. All she is saying is if you are going to go ahead with it, at least let us study it first. I think that is an entirely reasonable request, and it is something that should be done without too much hesitancy in this House.

Mr. KANJORSKI. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Pennsylvania.

Mr. KANJORSKI. Mr. Chairman, I think there have been 122 rivers nationwide that have been taken into the National Wild and Scenic Rivers System, and the information that I possess is that a third of them never underwent a study.

Mr. WALKER. Mr. Chairman, reclaiming my time, the gentleman from Pennsylvania [Mr. KANJORSKI] is talking about formalized studies. The Department of Interior will quarrel with that and say there was at least some kind of a study done on virtually every one of them. It may not be the formal study that the gentlewoman from Nebraska [Mrs. SMITH] is proposing here, but there was at least some kind of a study done on each of them.

In this particular instance, it is my understanding that no study has been done. We do not have any of the technical information before us. So therefore we do not have the kind of information that we need in order to make this decision. The committee has made this decision on its own. The committee has decided on the basis of a few Members in the other body, and at least one or two Members of our body, to go ahead and do this. That is their choice to make, but I would suggest that within the bounds of the Constitution, that maybe it might be nice to have a little bit of a study before we proceed ahead.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I will stipulate we are not trying to amend the Constitution with this bill.

□ 1630

Mr. WALKER. I did not suggest you were. I simply suggested if we are going to have reverence for the Bill of Rights, we ought to have reverence for the 10th amendment.

Mr. VENTO. The fact is there has been ample study done on this of the informal type that the gentleman referred to in terms of the one-third.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(By unanimous consent Mr. WALKER was allowed to proceed for one additional minute.)

Mr. WALKER. The only point that I would make is that evidently the Department of Interior and the chairman

of the committee have some differences of opinion on that. Maybe at least that ought to be studied to find out why we have these differences of opinion about the nature of what it is we are dealing with. But at the present time, it seems to me that what the gentlewoman from Nebraska asks is not too much.

Mrs. SMITH of Nebraska. May I add that the gentleman from Pennsylvania is absolutely correct. There has been no study of this river.

Mr. WALKER. I thank the gentlewoman.

Mr. DENNY SMITH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is extremely important that we analyze the national wild and scenic river situation. We in Oregon added about 40 river segments, mostly on public lands, or almost entirely if I remember correctly last year. I was pleased to be a cosponsor of that bill.

But I am particularly bothered by this bill, and I intend to support the gentlewoman from Nebraska and her amendment. I think it is important that this be studied. I see no reason why we should not study before the designation. I think particularly that it is important.

I know the gentleman from Minnesota [Mr. VENTO] will say we have had lots of hearings, and we have had lots of situations, but I think in this instance we need to go to what the administration is saying. I would quote out of a letter to Congressman DON YOUNG from the Interior Department. it says:

> The Niobrara has had no formal study whatsoever. A study is particularly important here as the Niobrara River crosses lands that are almost exclusively privately owned.

I do agree with the gentleman from Pennsylvania that private ownership of land is one of the most sacred things that we have in this country. Recently we have seen more and more intrusion into private lands.

Just this last week we had the labeling of the northern spotted owl as endangered in the Northwest, and because of that we are going to be unable to operate privately held lands that have forests on them without fish and wildlife concerns taken into account. I do not think that was the original intent of the law when it was passed in 1973. I think many times we have these laws which are going to impinge on the freedom of one segment of society or another.

It is my understanding that the gentlewoman from Nebraska [Mrs. SMITH] has the bulk of the river in her district, and that she and her constituents are opposed to it. I see no reason why the Congress should turn this over to the National Park Service or do anything that would impinge on these private property ownerships.

So I intend to vote for the Smith amendment and to try to provide for a study. I will vote against the bill. I think the bill is a bad bill. I think it deserves a veto, and I hope the President will consider that when the bill comes before him for his signature.

The thing that bothers me about this is that it seems to have turned into a partisan battle in many ways with the majority party here in the House in turn trying to save something that does not need to be saved. We have seen that in Oregon where we have done a good job managing our resources and are proud of the fact of what we have done in our national resources or on the Federal lands with our rivers and with our trees and our beaches. Yet we seem to have more and more attention from other parts of the country trying to tell us how to run our lives and our own lands.

If those lands were owned by the State of Oregon, they would not be badly managed, and they are not badly managed. I would say that these lands owned by Nebraskans are not poorly managed, and I understand that most of this is private farmland.

So we are not talking about something that is wild or necessarily from a wilderness area. We are talking about something that is in privately owned lands, that is next to farm communities.

Is that not true? I would like to ask the gentlewoman from Nebraska if she could just confirm that. These are not lands through any of this kind of area that are wild, but there is human habitation right around them?

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. DENNY SMITH. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Chairman, indeed not. This is agricultural land, farmland, ranch land, privately owned, and it has been protected by those farmers and ranchers for 100 years, since their ancestors.

Mr. DENNY SMITH. If we have this kind of protection, we have cattle down near the stream, is that correct?

Mrs. SMITH of Nebraska. The gentleman is correct.

Mr. DENNY SMITH. What will happen with the grazing and potential water rights on this river with this designation in the bill?

Mrs. SMITH of Nebraska. I am so glad the gentleman asks the question. This is the question that folks out there are asking. This is why they want a study. They are afraid of what will happen.

It was said here this afternoon that only 5 percent of the land along the river corridor could be condemned. That is not correct. In this bill 31 percent of the land along the corridor could be condemned.

Mr. DENNY SMITH. And whose 31 percent are we going to get? Are we going to get 31 percent of everyone's land? This is the kind of trampling on the Constitution that the gentleman from Pennsylvania [Mr. WALKER] was talking about, where people do have the right to own and use property as long as they do not misuse it. It seems to me these Nebraskans have not misused it.

Mrs. SMITH of Nebraska. Our Director of Natural Resources said in my office to all of our delegation that the river is in better shape than it was 50 years ago.

The CHAIRMAN. The time of the gentleman from Oregon [Mr. DENNY SMITH] has expired.

(By unanimous consent, Mr. DENNY SMITH was allowed to proceed for 2 additional minutes.)

Mrs. SMITH of Nebraska. If the gentleman will continue to yield, those people are being penalized because they have cared for the river and protected it so well.

Mr. DENNY SMITH. It seems to me that if they have taken such good care of the river, why do you think we are having a bill like this at this time?

Mrs. SMITH of Nebraska. I cannot understand it. This poll, taken on June 10 and 11, shows only 13 percent want Federal control of that river; 78 percent want it protected by the local or the State people.

Mr. DENNY SMITH. It is interesting, I represent a State where we have 53 to 56 percent of the land owned by the Federal Government. I look with envy on the States in the East which control their land and have the ability through their legislative process, through the lowest level, the ability of taking care of the land. I think most Americans are very sensitive to the environmental concerns, very sensitive to what the forefathers have done, and what hopefully our children and grandchildren are going to enjoy.

So I will vote against the bill and for the gentlewoman's amendment, and I appreciate her courage in standing up and offering this amendment.

Mrs. SMITH of Nebraska. I appreciate the gentleman's comments.

Mr. BEREUTER. Mr. Chairman, I move to strike the requisite number of words and I rise in strong opposition to the Smith amendment.

Mr. Chairman, there are several items upon which I would like to comment. It has been said, a few minutes ago, and it has been said repeatedly today, that there has been no study of the Niobrara River. Ms. Harriman of the Interior Department is quoted as saying there has been no Department of Interior study of the Niobrara River. It has been mentioned by the distinguished chairman, Mr. VENTO, there has been extensive study of the Niobrara by various groups. I think,

and most members of the environmental and river community believe, that such studies in combination more than constitute what would ordinarily take place in a 5(a) study.

But let me give four specific examples of how the Department of Interior has already studied this river.

First of all, in 1982 the National Park Service said, and I am referring to this 76-mile stretch of the river that is the most controversial element, they said the Niobrara River deserves to be recognized as "outstandingly remarkable values in all categories," after considering the same sort of categories of facts and natural resources that are considered, I would mention, in a 5(a) study.

Second, the Fish and Wildlife Service, also a component of the Department of Interior, proposed much of the 76-mile stretch of the river as critical habitat for the whooping crane which uses the Niobrara as migratory roosting areas, again addressing a factor of resource like the elements required in a 5(a) study.

Third, the same agency in the Interior Department, in another study, identified the Niobrara as the highest priority fishing resource.

Fourth, the Park Service again in 1982 underscored the exceptional qualifications of 194 miles of the Niobrara as a candidate for wild and scenic river designation by specifying that it had "outstandingly remarkable values in the scenic, recreational, geological, fish, wildlife, historical, cultural, and other categories," and that is like a repetition of the elements that must be considered in a 5(a) study.

A second major point I would mention in response to something that was said a few minutes ago. I think it is important to remember that the generic Wild and Scenic River Act sharply limits the use of eminent domain or condemnation. In most cases, of course, such authority has not been used at all, but indeed there is this limitation on its use in the generic act.

I come to the more basic question of why not a study.

□ 1640

Why not, as the gentleman from Alaska put it, just a little study at this point?

Well, that sounds like a reasonable question or request, but it is a bad idea. I do not suggest anything about the motives of the people who raise the study proposal. But let me give you my judgment about what will happen if we have a 30-month study as proposed in the amendment offered by my colleague, Mrs. SMITH. This 30 months, 2½-year study, I believe will only further polarize the situation that has already turned neighbor against neighbor, rancher against rancher and persons outside who are pro-irrigation against people living in the valley that would be flooded by an irrigation project.

We have received in our office an unsolicited letter from the mayor of Strong City, KS, pointing out how the representatives of the inholder association, like Mr. Cushman, who has now been hired to come into the area by opponents to the designation to create opposition and to add to the arguments of the opposition.

The mayor warns that his whole community has been torn apart by that type of outrageous studies used by some opponents to a title study.

Now, if we had not had a study on the Niobrara then I suppose that might make sense to have that title study. But indeed Niobrara has been studied. This 2½-year time will really, I think, only tear people apart.

I received mail from some ranchers and farmers in the area saying, "I am intimidated. I feel threatened. I want you to know I am for the scenic river designation, Congressman BEREUTER, but I can't come out and say it except in this letter to you. And I hope you will continue to support S. 280."

Indeed that is the beginning of a very unfortunate process or set of tactics led by hardcore, die-hard proponents of the Norden Dam.

I reached this judgment not out of thin air but on the basis of precedent and, unfortunately, the history of what has happened in other areas.

Let us go beyond this point and see what happens after any scenic river designation. There is a management study of 18 months or more in length that takes a look carefully at how a scenic or recreational wild river should be managed by the National Park Service, another agency, and by local officials.

So it is not as if landholders are not going to have still another extensive opportunity to see what is being proposed, to react to it and have that process go on and on.

The CHAIRMAN. The time of the gentleman from Nebraska [Mr. BEREUTER] has expired.

(By unanimous consent Mr. BEREUTER was allowed to proceed for 2 additional minutes.)

Mr. BEREUTER. I thank my colleagues.

Finally, during this period of time when I think we are going to have intense polarization and intense difficulty. Given the fact that we have had this type of 5(a) study and designation delayed by opponents and Members of Congress previously, I think that is an unnecessary trial or ordeal to put these people through, particularly since we have the 18-month management study coming up as required by generic law after a designation.

Let me point out one other aspect of the amendment offered by the gentlewoman from Nebraska. She actually proposes a study of a very large 253-mile stretch of the Niobrara River. That has to take such an area well beyond or west of Valentine.

During this 2½-year period of time, I think this study proposal will create a firestorm all up and down the river. As a result of such a large and long study, people are going to be increasingly concerned about the fact that there may be a wild river designation in their area. In the meantime, the misinformation and tactics of intimidation will only intensify.

I think, therefore, that such a long study would create not only a firestorm but a great deal of apprehension up and down the river.

I would ask my colleagues not to put the people in that region, or for that matter, Nebraskans who are here in the congressional delegation, through that difficult period of time and situation. People all up and down this 250-mile stretch will be wondering whether or not the recommendation will be for designation of various parts of the river.

Mr. ROBERT F. (BOB) SMITH. Mr. Chairman, I move to strike the last word, and I rise in support of Mrs. SMITH's substitute.

I feel great sympathy for her position.

I was under a similar situation in the State of Oregon, which designated, by edict of this Congress, some 1,400 linear miles of wild and scenic river, the largest of any designation at any time.

I think the rest of the Nation kind of stepped back and took a deep breath because of all the argument you have heard here today. Many of them came true in that delineation.

These questions raised about water rights and about easements and about the future of agriculture are all real, real arguments, happening to real people. And it is a shame to me that suddenly the rest of the Nation is making deliberations for Mrs. SMITH's district because, as you have heard, it is almost unanimous in her district by elected people, they do not want anything to do with this wild and scenic designation.

Again, it impacts a huge amount of private land along the 76 miles of stream.

I understand the gentleman from Nebraska being concerned about studying an addition, or the inclusion of 276 miles. It would bring heartburn to people in Nebraska, there would be great concern, and I do not blame them.

There is great concern about 76 miles being designated. Of course, that is what we have been talking about.

So I understand that point of view. I am here simply to say if there is no danger of development, which I understand there is none, that a 30-months' study surely could not impair the 76

miles of river and surely this lady who has served her Nation magnificently is deserving of having this small tribute to her great leadership.

The CHAIRMAN. The time of the gentleman from Oregon [Mr. ROBERT F. (BOB) SMITH] has expired.

(On request of Mrs. SMITH of Nebraska and by unanimous consent, Mr. ROBERT F. (BOB) SMITH was allowed to proceed for 3 additional minutes.)

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield to me?

Mr. ROBERT F. (BOB) SMITH. I yield to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. I thank the gentleman for yielding.

I would just like to use a little of the gentleman's time to answer some of the comments made by my colleague from Nebraska.

Not all opponents of designation are associated with the inholders. I am not. I do wish Mr. BEREUTER had given me the courtesy of sharing his mail with me. I have had over 750 letters. Fewer than 10 of them supported immediate designation.

Then I am concerned about all this comment about the study that has been made on the Niobrara River.

Now, DOUG is entirely correct in saying there has been a lot of comment about the beauty of the river. And there has been.

Way back in the 1960's, Senator Church suggested that we ought to consider an entirely different segment of the river for study. Back in 1982, they had an inventory of all the rivers. That was not any study. It was just a checklist of the natural resources of the river.

Then my own State, the Natural Resources Commission made a report at the request of Senator EXON and Governor Kerrey. It was no study; it was just providing an overview of the law.

The Secretary of the Interior says there has not been sufficient study and he will recommend a veto of the bill. The Fish and Wildlife Department says there has not been sufficient study.

I listened myself to the National Park Service testify. They say they would not know how to manage a river because there has not been adequate study.

During the 30 months of study, I do not think there will be any polarization because our State legislature has voted to study how the State could protect the river.

The local people have already worked out a plan how they could protect the river.

At the end of the 30 months we will know how we can protect the river in a way that the 78 percent who want it protected, State or locally, will understand.

If I have time for one more point, it has been suggested that some many thousand people signed the petition about the Niobrara River. The last time I heard that figure, it was 20,000. Today it has jumped to 35,000. But that does not matter.

I would have been delighted to sign that petition. That petition only says Nebraskans want and deserve the right to protect a segment of this State's beautiful river. We all want that.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. ROBERT F. (BOB) SMITH. I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Chairman, I just want to point out that with regard to jurisdiction, who runs the river, there is a Missouri River National Recreation Area, established in 1978, as a wild and scenic river under the jurisdiction of the National Park Service. In 12 years, the National Park Service has developed no management plan, allocated no funds, assigned no personnel to manage a river. In fact, it has delegated its management responsibility to the Army Corps of Engineers.

Therefore, contrary to what you have heard, there is clearly no guarantee that the National Park Service will do anything to provide for protection and management of these resources. That is why we need this study, to see who should manage this resource.

The CHAIRMAN. The time of the gentleman from Oregon [Mr. ROBERT F. (BOB) SMITH] has expired.

(On request of Mr. BEREUTER and by unanimous consent, Mr. ROBERT F. (BOB) SMITH was allowed to proceed for 1 additional minute.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. ROBERT F. (BOB) SMITH. I yield to the gentleman from Nebraska.

Mr. BEREUTER. I thank the gentleman for yielding.

Mr. Chairman, I just want to point out to the gentleman that the Missouri River study to which reference was made was a unique creation of Congress and it was certainly before my arrival here. But the 1978 law itself specified that the Corps of Engineers and the Department of the Interior were jointly responsible for managing that stretch of the river.

□ 1650

I think that was an unfortunate mistake and it has created all kinds of difficulties. Fortunately, no one has again followed that precedent.

Mr. EMERSON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Smith amendment.

Mr. Chairman, I want to state for emphasis that the proposed designated area here lies entirely within the gentlewoman from Nebraska Mrs. SMITH's congressional district, and I think that irrespective of one's political affiliations we owe it to the wishes of another Member of this body when it comes to legislating against the will of the Member in that Member's own district. I always personally pay very high regard to what the local Representative has to say. I have had these sorts of issues before myself. I think that the person who is elected to represent that particular area should be given some credence in the argument.

The designation of this river may at some future time be added into the Wild and Scenic River System. However, the bill has not been through the established legitimate processes, a study does need to be undertaken before we jump into a designation without full consideration of all factors involved.

If I may ask the gentleman from Nebraska [Mr. BEREUTER] a question, I was curious to hear the gentleman say that he would oppose the study for 200-plus miles, but would jump right into a designation of these 76 miles. Am I to assume by that we are getting into the gentleman's district, when we get into the 200-plus miles?

Mr. BEREUTER. Mr. Chairman, the gentleman is wrong. First of all, I did not say that. I am concerned about the firestorm of opposition that would be created. The 25-mile stretch of the Niobrara River in my district, the First District, is already designated by this bill as a recreational river. So I have no reservations about that part of the Niobrara River in my district being affected by a recreation river designation.

Mr. EMERSON. Why would there be a firestorm simply by studying, when we are following the designated procedures?

Mr. BEREUTER. When we have well-organized opposition to an issue, and I count the Inholders Association as among the most avid opponents to the Wild and Scenic River Act, then I expect these opponents will assume that people will inevitably become quite concerned and agitated about the possibility that certain areas might be designated as a wild river or a scenic river. I am making a prediction.

Mr. EMERSON. Mr. Chairman, I thank the gentleman for his comments, and I think that it adds to the argument as to why we should have a study. The gentleman is saying profoundly that there is serious opposition to the designation as a wild and scenic river, and I think that is why we need to abide by the established process and complete this study as provided for in the Smith amendment before we move to the designation.

As I said in an earlier statement, there are not any votes for the gentlewoman from Nebraska [Mrs. SMITH]

to gain here. Regrettably, the gentlewoman is retiring from the Congress. She is following her altruistic instincts here in serving her people with great diligence. I think that we should defer to the Representative who represents the district of the project in question.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentlewoman from Nebraska [Mrs. SMITH].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mrs. SMITH of Nebraska. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 115, noes 302, not voting 15, as follows:

[Roll No. 197]

AYES—115

Anderson
Annunzio
Armey
Baker
Bartlett
Barton
Bateman
Bentley
Bevill
Broomfield
Brown (CA)
Brown (CO)
Bunning
Burton
Callahan
Campbell (CO)
Clinger
Coleman (MO)
Combest
Condit
Craig
Crane
Dannemeyer
Davis
DeLay
Dickinson
Dixon
Dorgan (ND)
Dornan (CA)
Duncan
Emerson
English
Fawell
Fields
Gallegly
Gallo
Gekas
Gillmor
Gingrich
Gonzalez
Goodling
Gradison
Grandy
Hammerschmidt
Hancock
Hansen
Hastert
Herger
Holloway
Hopkins
Houghton
Hunter
Hyde
Inhofe
Johnson (CT)
Kolbe
Kyl
Lagomarsino
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lukens, Donald
Madigan
McCrery
McDade
McHugh
Meyers
Michel
Miller (OH)
Molinari
Morrison (WA)
Myers
Natcher
Nielson
Oakar
Olin
Oxley
Packard
Parris
Pashayan
Quillen
Regula
Rhodes
Roberts
Robinson
Rogers
Rohrabacher
Roukema
Schaefer
Schiff
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Snowe
Stangeland
Stenholm
Stump
Tauke
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Whitten
Wolf
Wylie
Young (AK)

NOES—302

Ackerman
Alexander
Andrews
Anthony
Applegate
Archer
Aspin
Atkins
Barnard
Bates
Beilenson
Bennett
Bereuter
Berman
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Browder
Bruce
Bryant
Buechner
Bustamante
Byron
Campbell (CA)
Cardin
Carper
Carr
Chandler
Chapman
Clarke
Clay
Clement
Coble
Coleman (TX)
Collins
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Darden
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dicks
Dingell
Donnelly
Douglas
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Engel
Erdreich
Evans
Fascell
Fazio
Feighan
Fish
Flake
Flippo
Foglietta
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Glickman
Gordon
Goss
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Hertel
Hiler
Hoagland
Hochbrueckner
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Ireland
Jacobs
James
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken, Thomas
Machtley
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDermott
McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Moorhead
Morella
Mrazek
Murphy
Murtha
Nagle
Neal (MA)
Neal (NC)
Nowak
Oberstar
Obey
Ortiz
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Rahall
Rangel
Ravenel
Ray
Richardson
Ridge
Rinaldo
Ritter
Roe
Ros-Lehtinen
Rose
Rostenkowski
Roth
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Schneider
Schroeder
Schuette
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Robert (NH)
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stokes
Studds
Sundquist
Swift
Synar
Tallon
Tanner
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Walgren
Walsh
Watkins
Waxman
Weiss
Weldon
Wheat
Williams
Wilson
Wolpe
Wyden
Yates
Yatron
Young (FL)

NOT VOTING—15

AuCoin
Ballenger
Crockett
Edwards (OK)
Espy
Hall (TX)
Marlenee
Morrison (CT)
Nelson
Scheuer
Schulze
Schumer
Washington
Whittaker
Wise

□ 1715

The Clerk announced the following pair:

On this vote:

Mr. Marlenee for, with Mr. Wise against.

Messrs. RANGEL, TOWNS, MARTINEZ, LAUGHLIN, McCANDLESS, PAXON, and CHANDLER changed their vote from "aye" to "no."

Mr. BEVILL and Mr. OLIN changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Alaska: In Section 2, at the end of paragraph (A) designating a portion of the Niobrara River as a scenic river, insert the following:

"Notwithstanding any other provisions of law, the Secretary may not acquire lands, scenic easements, or other interests in lands with respect to the segment designated by this paragraph without the consent of the owner."

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Chairman, I rise to thank all my colleagues who participated in the debate. I think it has been a good debate on both sides of the aisle. I wish it had turned out differently, but I do appreciate the patience and cooperation of my colleagues.

□ 1720

Mr. YOUNG of Alaska. Mr. Chairman, the hour is late and I know most of you would like to go down to the White House. The simplest way to do that in a quick fashion would be to adopt my amendment.

Mr. Chairman, this is a very simple amendment. It simply states that the Federal Government may not condemn and take land and homes of innocent people living along the river.

It amazes me that this amendment is even necessary to bring to the floor. Most Americans do not realize that the Federal Government can take their land solely to maintain a scenic view for visitors.

In this part of America's heartland, family farms have been passed down for generations. The families who own these lands have been good stewards of the land, as the debate has testified to, and have maintained the scenic character which the sponsors of the legislation are seeking to protect; however, unfortunately, the sponsors are not content solely to protect the land. They insist on going further and authorizing the Federal Government to invoke the power to condemn and take the land from these innocent people. There are over 80 families who own land in this region, small in number. These people are not in default on loans and have not run drugs into the country. They are law-abiding citizens. Their sole mistake is that their parents and grandparents settled on the

land which urban people find to be scenic.

It is simply wrong to allow the Government to take these homes and this land in the name of scenic preservation.

Mr. Chairman, in general debate I discussed what America is and what America is not. I do not know how many of you own your own land. You may own your little lot or your little condominium where you live or your apartment, but how many of you came from the earth and how many of you have your roots in the ground?

To have the American Government condemn your land because somebody likes to look at it is not America. My God, we are ships at sea. Russia is coming this way in the Communist countries, and we are going that way.

To take land from people by an action of this Congress, for the Government to take it from them when they have been good stewards of the land is unconstitutional. It is illegal and this Government should be ashamed of itself.

How can we sit here and say this is the right thing to do? Even the Senate has some language in there that said condemnation would not take place, and this committee on which we serve would not accept it and you are about to, and in fact adopt that type of bill if you do not adopt this amendment, a simple amendment that says that this Government cannot condemn a farmer's land.

Yes, there are only 80 families. These farms were inherited. Those farms were lands taken, yes, from nature's standard and put into farm activities by grandfathers and great-grandfathers, and you and this Congress are going to take those lands away from those 80 families. Shame on you, and I need not say shame on my Republican side, because we got 115 votes up there, because you are afraid of the environmental community. It is disgusting and wrong.

If you do not vote for this amendment, then you have kissed America goodbye. You have kissed it goodbye because you do not believe in individuals anymore. You do not believe in the rights of the one, you believe in the rights of the national interests, and I have heard that before.

Mr. Chairman, if this amendment is not adopted, we have stepped off the edge. We have gone beyond what we are sworn to uphold, and that is the Constitution of the United States of America and the individual rights which we represent.

I think it is time this body starts growing up. I think it is time we start accepting our responsibility to those individuals who have a right, not because they are in the majority, but they are in the minority. If you do not protect these people's rights, if you do not protect them from the action of this Government condemning those lands as they own them outright as law-abiding citizens, I say shame on you.

Mr. VENTO. Mr. Chairman, I rise in opposition to this amendment.

I would just say that we just decided in the last amendment to designate a section of the Niobrara River and some other areas as scenic and recreational river.

The gentleman from Alaska now would propose that we designate this, but provide no tools, no ability to protect that resource.

Now, every major classification of land that we have in the National Park Service has a type of mechanism, the tools in order to provide for the protection of that resource. That is why we designate. It would be like designating Yosemite Park and not providing any means for the National Park Service to protect it.

The fact is the protection authority here, the authority to condemn, the provisions provided in this act are simply to protect the resource that we are designating. If someone begins a development on private land that does not fit in with the general managment plan that is adopted, after a 3-year period, the NPS would have the ability then to use that power of condemnation to stop that type of improper action. That is why this power is needed. It is not there, in other words, necessarily to purchase any type of land. As a matter of fact, when that development plan comes through I expect that most of the purchases of land for access and easement for people for public use would be on a willing seller, willing buyer basis, and that is the way it is designed to function.

The gentleman from Alaska has had to create a straw man in order to advance his particular amendment; but the fact is he would deny any type of protection for the resource. There are in the Wild and Scenic law already very stringent provisions for the use of condemnation, much more so than any of the other conservation laws we have.

I would just remind my colleagues, they have decided to designate this river. Let us give the Park Service the tools that they need to do the job. Let us be certain that we do not deny them those tools.

I would point out that there is every reason to believe that there would be no problems with this particular provision.

I would point out that the major conservation organizations all oppose this amendment. The gentleman has persisted in trying to offer this amendment in a different contexts. All of our park units, all of our river units have this particular authority and they need the ability to use it. Local governments have it.

The gentleman from Alaska himself has been a champion of, for instance, the coal slurry pipeline which had the ability to run across State lines and for other purposes and to provide eminent domain. He is a champion of that, of highways, of water projects, and other public purpose activities. So this is just one more public purpose of preserving very special natural resources of our Nation for today and tomorrow's generations our national heritage. I think it is a very important purpose. It is a very limited function. I would ask, therefore, to defeat the Young amendment.

Mr. VENTO. Mr. Chairman, all Federal land agencies have condemnation authority in varying degrees and under different circumstances. The condemnation authority in the Wild and Scenic Rivers Act is already more restrictive than that found in many conservation laws. The act limits the amount of land that can be acquired by any means in fee to less than one-third of the total acreage. Further, condemnation in fee can only be used where there is less than 50 percent public ownership of the river corridor. While the act does allow condemnation of easements it also specifically stipulates that easements cannot restrict current uses of the property without the owner's consent. The Secretary is directed by law to protect the river's resource values. This amendment takes away a seldom used but necessary tool to do that job. This easement leaves the river open to unfettered development with no recourse.

It is certainly ironic that the gentleman from Alaska and many opponents of S. 280 supported construction of the Norden Dam which would have condemned and flooded four times the amount of land along the Niobrara than could be acquired by the Federal Government under S. 280. Those family farms the gentleman now says he wants to protect would now be under water if the gentleman and others had succeeded in their past efforts to construct the Norden Dam.

The Young amendment also proposes to create a double standard when it comes to conservation purposes. Acquisition on solely a willing seller basis is not a requirement for other public purposes, like highways, pipelines, and water projects. I have not seen the gentleman propose such an amendment to the highway bill or the Water Resource Development Act. No doubt he recognizes such a requirement is unworkable and would grind these public purposes to a halt. Make no mistake if a Member has ever voted for a highway bill or a water project bill he or she has voted for condemnation. To make these public projects a reality our laws allow for the acquisition of land by condemnation. This is not to say that it can be used more than is necessary. We have enacted laws, principally, the Uniform Acquisition and Relocation Assistance Act, to provide an overall policy on the use of condemnation to encourage negotiation and avoid litigation. Federal agencies administering the Wild and Scenic Rivers Act are bound by that law as well as the Constitution which requires just compensation. The Federal Government does not have zoning

powers—its only means to address adverse developments and degradation of resources in a federally designated area is through fee or easement acquisition.

The Young amendment is a gutting amendment that would make the Niobrara a scenic river in name only. This would amount to telling the Federal land agencies to do a job and then not giving them the tools to do it. It's not the farmers and ranchers along the Niobrara who need fear condemnation. Contrary to what the gentleman would have you believe, homes have been built and lands are farmed in designated scenic river corridors where there is private ownership.

I would hope the House would reject this extreme and unworkable amendment and reaffirm the reasonable public policy provided for by the Wild and Scenic Rivers Act.

□ 1730

Mr. KOSTMAYER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we ought to understand exactly what this amendment says, that if in the middle of Yellowstone Park there is a single acre right in the middle of that great national park and the fellow who owns it says, "By God, I am not going to sell it to the Federal Government," the Federal Government has the right under the law to offer him a fair price. If he still refuses to sell it to the Federal Government, the Federal Government then, and only then, in an authority almost never used, has the right to condemn that acre.

If we adopt this amendment, we are gutting this legislation, and we are denying the Federal Government the right it has always had to condemn property, but pay a full and fair price for it. This amendment guts the bill.

It is essential that the Federal Government have this authority, and it is essential to understand that the Government hardly ever uses this authority. It is very, very rare, in fact.

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. KOSTMAYER. I am happy to yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, when he says not been used, there are 24,000 acres already, 773 families, that has already been condemned by the Park Service, so do not tell me it has not been used.

Mr. KOSTMAYER. Reclaiming my time, I said rarely used. I said very rarely used.

Mr. YOUNG of Alaska. If the gentleman will yield further, and by the way, I am not talking about Yellowstone Park. I am talking about a river that is not wild and scenic at this time. I am talking about 80 families. That is all I am asking.

Mr. KOSTMAYER. Reclaiming my time, Mr. Chairman, this authority is almost never used. It would be a terrible mistake to deny the Federal Government this authority.

I urge the committee to reject this amendment.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. KOSTMAYER. I am happy to yield to the gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I just wanted to stress the point the gentleman from Pennsylvania is trying to make here and he is making very well.

Mr. Chairman, within the State of West Virginia, we have created, and this body has unanimously supported, the largest system of federally protected rivers east of the Mississippi. Within the 100 miles of this designated river status, the condemnation route has never once been used. It has never been once used by the National Park Service in order to acquire land.

I think the bottom line here is that negotiation is pursued by the Park Service, not condemnation.

The Park Service, with its very limited budget, with its constraints under which it operates, does not want to go out paying three and four times the normal market value of land. They do not have that type of money. The Park Service would much rather negotiate with landowners than to go in and condemn the land. That has been the route pursued in the vast majority of cases. It is negotiation that is the rule of thumb, not condemnation.

Mr. LAGOMARSINO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the full 5 minutes.

Mr. Chairman, I just want to say that while I agree that condemnation is not used very often, I suspect that in this case there will be a lot of it because of the strong local opposition to this bill. There is the possibility of condemnation of over 50,000 acres of land.

The treatment provided in this bill is inconsistent, I would point out, with treatment afforded the landowners on similar river designations; for example, at the Mississippi River National Recreation Area, the Secretary may not undertake any condemnation unless he first determines that there is "no feasible alternative available to prevent uses which would be substantially incompatible."

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LAGOMARSINO. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, those same provisions really are in the Wild and Scenic Rivers Act. They are really in all of the Park Service policies, in other words, that there is no feasible alternative is one of the standard languages we used in terms of the Park Service, so they have to explore all the others.

Mr. LAGOMARSINO. Why do we have the special designation here then?

Mr. VENTO. If the gentleman will yield further, because it was desired to repeat it. In other words, it needed to be repeated in that particular bill.

Mr. LAGOMARSINO. Mr. Chairman, I would point out that in the Senate-passed version of this Niobrara bill, condemnation of lands in fee simple is also precluded, and that is the reason Senator EXON, the primary sponsor of this legislation, has stated that he is publicly concerned with the House version of the bill.

I would urge support of the amendment offered by the gentleman from Alaska.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Alaska. This amendment raises an important issue which many Members may not be fully aware of. I'm sure we all realize that the Federal Government condemns lands for highways, water projects and other public works, but many Members may not be aware that each year hundreds of families across the country are directly impacted by condemnation proceedings initiated by the National Park Service.

For those Members who have experienced condemnation of private landowners in their district, I'm sure they can relate to the human trauma which often results. The bill brought to the floor today provides for the possibility of condemnation of over 50,000 acres of land. Since there is such strong local opposition to wild and scenic river designation, it is logical to expect that willing sellers will be very few.

Despite the strong local sentiment against the bill and the significant concerns regarding condemnation, authors of this bill have provided for absolutely no consideration of the local landowners. This is inconsistent with treatment afforded landowners on similar river designations. For example, at the Mississippi River National Recreation Area the Secretary may not undertake any condemnation unless he first determines that there is "no feasible alternative available to prevent uses which would be substantially incompatible." In the Senate-passed version of this Niobrara bill, condemnation of lands in fee simple was also precluded. That is the reason Senator EXON has publicly expressed his concern with the House version of the bill, provision of condemnation authority has even less justification in this case since there are no threats to the resource. This rural area has been carefully preserved by local ranchers and farmers who have been in the area for generations. It is unnecessary to arm Federal bureaucrats with condemnation authority which can be used as a threat over hundreds of private landowners whose only crime has been careful stewardship of their lands.

I urge my colleagues to join me in support of the amendment offered by the gentleman from Alaska.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska [Mr. YOUNG].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. YOUNG of Alaska. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 93, noes 323, not voting 16, as follows:

[Roll No. 198]

AYES—93

Archer
Armey
Baker
Barton
Bateman
Bentley
Brown (CO)
Bunning
Burton
Callahan
Campbell (CO)
Combest
Craig
Crane
Dannemeyer
Davis
DeLay
Dickinson
Dorgan (ND)
Dornan (CA)
Duncan
Early
Emerson
Fields
Gallegly
Gekas
Grant
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Herger
Holloway
Hopkins
Houghton
Hunter
Johnson (CT)
Johnson (SD)
Kolbe
Kyl
Lagomarsino
Lewis (CA)
Lightfoot
Livingston
Lowery (CA)
Lukens, Donald
Madigan
Martinez
McCandless
McCollum
McCrery
Michel
Miller (OH)
Morrison (WA)
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Paxon
Penny
Pickett
Pickle
Quillen
Rhodes
Roberts
Robinson
Rogers
Rohrabacher
Roth
Schaefer
Shaw
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Spence
Stallings
Stangeland
Stearns
Stump
Sundquist
Tauzin
Thomas (WY)
Vucanovich
Walker
Young (AK)
Young (FL)

NOES—323

Ackerman
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Ballenger
Barnard
Bartlett
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Bruce
Bryant
Buechner
Bustamante
Byron
Campbell (CA)
Cardin
Carper
Carr
Chandler
Chapman
Clarke
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Darden
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Douglas
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Eckart
Edwards (CA)
Engel
English
Erdreich
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Foglietta
Ford (MI)
Ford (TN)
Frenzel
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Hiler
Hoagland
Hochbrueckner
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lipinski
Long
Lowey (NY)
Luken, Thomas
Machtley
Manton
Markey
Martin (IL)
Martin (NY)
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Perkins
Petri
Porter
Poshard
Price
Pursell
Rahall
Rangel
Ravenel
Ray
Regula
Richardson
Ridge
Rinaldo
Ritter
Roe
Ros-Lehtinen
Rose
Rostenkowski
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Schiff
Schneider
Schroeder
Schuette
Sensenbrenner
Serrano
Sharp
Shays
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Robert (NH)
Snowe
Solarz
Solomon
Spratt
Staggers
Stark
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tanner
Tauke
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Walsh
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron

NOT VOTING—16

AuCoin
Crockett
Edwards (OK)
Espy
Frank
Hall (TX)
Lloyd
Marlenee
Morrison (CT)
Nelson
Scheuer
Schulze
Schumer
Washington
Whittaker
Wise

□ 1752

The Clerk announced the following pair:

On this vote:

Mr. Marlenee for, with Mr. Wise against.

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to the bill?

If not, the question is on the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MURTHA] having assumed the chair, Mr. ERDREICH, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 280) to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System, pursuant to House Resolution 410, reported the Senate bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. VENTO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 358, noes 59, not voting 15, as follows:

[Roll No. 199]

AYES—358

Ackerman
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
Ballenger
Barnard
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bustamante
Byron
Callahan
Campbell (CA)
Campbell (CO)
Cardin
Carper
Carr
Chandler
Chapman
Clarke
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Craig
Darden
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Douglas
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Engel
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Foglietta
Ford (MI)
Ford (TN)
Frenzel
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Geren

Gibbons
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Hertel
Hiler
Hoagland
Hochbrueckner
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lipinski
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken, Thomas
Lukens, Donald
Machtley
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Porter
Poshard
Price
Pursell
Rahall
Rangel
Ravenel
Ray
Regula
Richardson
Ridge
Rinaldo
Ritter
Robinson
Roe
Ros-Lehtinen
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Schaefer
Schiff
Schneider
Schroeder
Schuette
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Robert (NH)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Studds
Sundquist
Swift
Synar
Tallon
Tanner
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Walsh
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolf
Wolpe
Wyden
Yates
Yatron
Young (FL)

NOES—59

Armey
Baker
Bartlett
Barton
Bentley
Bunning
Burton
Combest
Crane
Dannemeyer
Davis
DeLay
Duncan
Emerson
Fields
Gallegly
Gekas
Grandy
Hammerschmidt
Hancock
Hansen
Herger
Holloway
Hopkins
Hunter
Kyl
Lagomarsino
Lewis (CA)
Lightfoot
Livingston
Madigan
McCandless
Michel
Miller (OH)
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Pickle
Quillen
Rhodes
Roberts
Rogers
Rohrabacher
Shumway
Shuster
Skeen
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Stangeland
Stump
Thomas (WY)
Vucanovich
Walker
Wylie
Young (AK)

NOT VOTING—15

AuCoin
Crockett
Edwards (OK)
Frank
Hall (TX)
Marlenee
Morrison (CT)
Nelson
Rose
Scheuer
Schulze
Schumer
Washington
Whittaker
Wise

□ 1812

The Clerk announced the following pair:

On this vote:

Mr. AuCoin for, with Mr. Marlenee against.

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. WISE. Mr. Speaker, I rise today to explain why I was not present to vote on final passage of H.R. 5021, the Commerce, Justice, State, and the Judiciary Appropriation bill—rollcall No. 196—and S. 280, the Niobrara Scenic River Designation Act—rollcall No. 199. I was in my district attending the first West Virginia Defense Procurement Opportunities Fair. As a main sponsor of the event it was necessary for me to be present.

Had I been present I would have voted in favor of final passage of H.R. 5021. This measure contains funding for critical law enforcement activities conducted by the U.S. Marshals Service, the Federal Corrections System and the Office of Justice Programs. These funds will also further important research into all areas of crime prevention and drug addiction.

The Commerce Department funds contained in this bill will benefit my home State of West Virginia because of the money earmarked for the Economic Development Administration, an agency vitally important to the rural economy of America. The Commerce funding also provides money for the Census Bureau which is working on its decennial accounting of the population. The results of this census will be used to formulate the distribution of Federal funds for the next 10 years.

Had I been present I would have also voted in favor of final passage of S. 280. I have always supported measures to preserve and protect historic and scenic areas in this country and I believe the Niobrara River in Nebraska is deserving of such protection. The Niobrara River possesses such scenic, recreational, and environmental value to warrant designation by Congress as a protected river reach. I am also aware of the overwhelming support among the people of Nebraska for protection of the Niobrara River, and it is also for that reason that I would have cast my vote in support of S. 280.

PERSONAL EXPLANATION

Mr. NELSON of Florida. Mr. Speaker, had I been present, I would have voted "aye" on rollcall No. 196 and No. 199 and "nay" on rollcall No. 195, No. 197, and No. 198.

PERSONAL EXPLANATION

Mr. MORRISON of Connecticut. Mr. Speaker, I was unavoidably absent and missed rollcall votes. On H.R. 5021, the bill making appropriations for fiscal year 1991 for the Departments of Commerce, State, and Justice and the Judiciary, I would have voted "no" on rollcall vote 195, on the amendment offered by Mr. DANNEMEYER, and "yea" on rollcall vote 196, final passage. On S. 280, concerning Nebraska scenic and recreational rivers, I would have voted "no" on rollcall votes 197 and 198, on the amendments offered by Mrs. SMITH and Mr. YOUNG, and "yea" on rollcall vote 199, on final passage.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on S. 280, the Senate bill just passed.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4329, AMERICAN TECHNOLOGY PREEMINENCE ACT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 101-557) on the resolution (H. Res. 422) providing for the consideration of the bill (H.R. 4329) to enhance the position of United States industry through application of the results of Federal research and development, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR COMMITTEE ON RULES TO FILE PRIVILEGED REPORT ON H.R. 5114, FOREIGN OPERATIONS APPROPRIATIONS ACT FOR FISCAL YEAR 1991

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent that the Committee on Rules have until midnight, tonight to file a privileged report on H.R. 5114, the Foreign Operations Appropriations Act for fiscal year 1991.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CONFERENCE REPORT ON S. 933, AMERICANS WITH DISABILITIES ACT OF 1990

Mr. HOYER submitted the following conference report and statement on the Senate bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

CONFERENCE REPORT (H. REPT 101-558)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(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 use of drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

SUBTITLE A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Enforcement.
Sec. 204. Regulations.
Sec. 205. Effective date.

SUBTITLE B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

Part I—Public Transportation Other Than by Aircraft or Certain Rail Operations

Sec. 221. Definitions.
Sec. 222. Public entities operating fixed route systems.
Sec. 223. Paratransit as a complement to fixed route service.
Sec. 224. Public entity operating a demand responsive system.
Sec. 225. Temporary relief where lifts are unavailable.
Sec. 226. New facilities.
Sec. 227. Alterations of existing facilities.
Sec. 228. Public transportation programs and activities in existing facilities and one car per train rule.
Sec. 229. Regulations.
Sec. 230. Interim accessibility requirements.
Sec. 231. Effective date.

Part II—Public Transportation by Intercity and Commuter Rail

Sec. 241. Definitions.
Sec. 242. Intercity and commuter rail actions considered discriminatory.
Sec. 243. Conformance of accessibility standards.
Sec. 244. Regulations.
Sec. 245. Interim accessibility requirements.
Sec. 246. 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 and alterations in public accommodations and commercial facilities.
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. Examinations and courses.
Sec. 310. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.
Sec. 402. Closed-captioning of public service announcements.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.
Sec. 502. State immunity.
Sec. 503. Prohibition against retaliation and coercion.
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 use of drugs.
Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Alternative means of dispute resolution.
Sec. 514. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The 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, color, 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 the 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) DIRECT THREAT.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

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

(5) EMPLOYER.—

(A) IN GENERAL.—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.

(6) Illegal use of drugs.—

(A) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) 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).

(8) 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. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) 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.

(10) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

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

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

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, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminate" 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 covered entity's 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)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability 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; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise 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;

(6) using qualification standards, 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 standard, 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

(7) 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 as to whether such applicant 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 examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not 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 EXAMINATIONS AND INQUIRIES.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

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, as required under this title.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual 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) RELIGIOUS TENETS REQUIREMENT.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL USE OF 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 currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) AUTHORITY OF COVERED ENTITY.—A covered entity—

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

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of 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.);

(4) may hold an employee who engages in the illegal use of drugs or who is an 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; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the illegal use of 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 for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) TRANSPORTATION EMPLOYEES.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

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.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE.

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

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SEC. 201. DEFINITION.

As used in this title:

(1) PUBLIC ENTITY.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable

modifications to rules, policies, or practices, the removal of architectural, communication, or 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 public entity.

SEC. 202. DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS.

(a) IN 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 subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) RELATIONSHIP TO OTHER REGULATIONS.—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act 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). 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 such section 504.

(c) STANDARDS.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. 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(a) of this Act.

SEC. 205. EFFECTIVE DATE.

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

(b) EXCEPTION.—Section 204 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SEC. 221. DEFINITIONS.

As used in this part:

(1) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) DESIGNATED PUBLIC TRANSPORTATION.—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) OPERATES.—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) PUBLIC SCHOOL TRANSPORTATION.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from

traveling to a boarding location or from a disembarking location on such system;

(B) to 1 other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(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, electromechanical, 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.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

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

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES.

For purposes of section 202 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 construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES.

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) 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, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, 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 altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon com-

pletion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purposes of section 202 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 that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID RAIL AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid 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 the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least two-thirds of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 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 a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 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 fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS.

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 231. EFFECTIVE DATE.

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

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SEC. 241. DEFINITIONS.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to

individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the

Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system 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.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation 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 after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to 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 altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242(a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

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

(b) EXCEPTION.—Sections 242 and 244 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) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) PUBLIC ACCOMMODATION.—The following private 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 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, lecture hall, or other place of public gathering;

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

(F) a laundromat, dry-cleaner, 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 service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

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

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

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

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

(8) RAIL AND RAILROAD.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) READILY ACHIEVABLE.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

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

(11) VEHICLE.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

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, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a 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, or 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, or 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.

(iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.—For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations 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, 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.—For purposes of subsection (a), discrimination includes—

(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, or 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, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or 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, or 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 an 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 and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(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, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) DEMAND RESPONSIVE SYSTEM.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations

are made after the 30th day following the effective date of this subparagraph, 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, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) 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; and

(2) 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. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, 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 altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(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 SPECIFIED 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 specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) 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 specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such 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) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required. (2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals; (B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and (C) which—

(i) has a consequential association with events or persons significant to the past; or (ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

SEC. 305. STUDY.

(a) PURPOSES.—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 over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(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 and manufacturers of over-the-road buses;

(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, including manufacturers of boarding assistance equipment and devices.

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 Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 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) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 302(b)(2) (B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

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

(c) CONSISTENCY WITH ATBCB GUIDELINES.—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 of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—

(1) FACILITIES.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) VEHICLES AND RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

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(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of sections 302(b)(2)(A)(iv) 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.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement pro-

ceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination 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)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(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) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) PUNITIVE DAMAGES.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), 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. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

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

(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

(c) EXCEPTION.—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY 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) and any common carrier engaged in intrastate communication by wire or radio, 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) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(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 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 failing to fulfill the obligations of common carriers by 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, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, 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 all subscribers for

every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(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.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(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. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(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".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows:

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) IN GENERAL.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than 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) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any 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. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(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; or

(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.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) ACCOMMODATIONS AND SERVICES.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction 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. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such 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 individual 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 individual 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, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

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

(a) ISSUANCE OF GUIDELINES.—Not later than 9 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 of this Act.

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

(c) QUALIFIED HISTORIC PROPERTIES.—

(1) IN GENERAL.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7 (1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall

establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

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 Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair 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, and other Federal agencies, in understanding the responsibility of such entities and agencies 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 subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may 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) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) TITLE II.—

(i) SUBTITLE A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) SUBTITLE B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(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.

(3) TECHNICAL ASSISTANCE MANUALS.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(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 compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by 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.

(c) SPECIFIC WILDERNESS ACCESS.—

(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

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. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the provisions of this Act shall apply in their entirety to the Senate, except as provided in paragraph (2).

(2) EXERCISE OF AUTHORITY.—Authorities granted under this Act to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation shall be exercised by the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundredth First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) APPROVAL.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Ar-

chitect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) IN GENERAL.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) HEALTH AND OTHER SERVICES.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) DEFINITION OF ILLEGAL USE OF DRUGS.—

(1) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

SEC. 511. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) CERTAIN CONDITIONS.—Under this Act, the term "disability" shall not include—

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) DEFINITION OF HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

"(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

"(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under title I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) 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 is engaging in the illegal use of drugs or in the use of 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.

"(v) For purposes of sections 503 and 504 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) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term '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).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 514. 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.

And the House agree to the same.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
MAJOR R. OWENS,
MATTHEW G. MARTINEZ,
STEVE BARTLETT,
HARRIS W. FAWELL,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

JOHN D. DINGELL,
EDWARD J. MARKEY,
THOMAS A. LUKEN,
NORMAN F. LENT,
BOB WHITTAKER,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

MAT. RINALDO,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
BOB KASTENMEIER,
HAMILTON FISH, Jr.,
F. JAMES SENSENBRENNER, Jr.
(agrees to the conference report with the exception of "Item 13. Health and Safety" (Sec. 103(d))),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

STENY H. HOYER,
Managers on the Part of the House.

EDWARD M. KENNEDY,
TOM HARKIN,
HOWARD M. METZENBAUM,

PAUL SIMON,
ORRIN HATCH,
DAVE DURENBERGER,
JAMES M. JEFFORDS,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

FRITZ HOLLINGS,
DANIEL K. INOUYE,
JOHN C. DANFORTH,

Managers of the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Short title

The Senate bill titles the Act the Americans with Disabilities Act of 1989. The House amendment changes the date of 1990.

The Senate recedes.

1A. Finding and purposes

The House amendment, but not the Senate bill, includes the term "color" in its list of factors which have been the basis of discrimination for which there is legal recourse to redress such discrimination.

The Senate recedes.

TITLE I OF THE ADA (EMPLOYMENT)

2. Definition of the term "direct threat"

The House amendment, but not the Senate bill, defines the term "direct threat" to mean a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

The Senate recedes.

3. Definitions of terms "illegal use of drugs" and "drugs"

The Senate bill uses the phrase "illegal drug" and explains that the term means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act, the possession or distribution of which is unlawful under such Act and does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act.

The House amendment uses the phrase "illegal use of drugs" and defines the term to mean the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act and does not mean the use of controlled substances taken under supervision by a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law. The House amendment defines the term "drugs" to mean a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

The Senate recedes.

4. Essential functions of the job

The Senate bill defines a qualified individual with a disability as a person who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

The House amendment adds that consideration shall be given to the employer's judgment as to what functions of a job are essential and if an employer had prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

The Senate recedes.

5. Definition of the term "undue hardship"

(a) The Senate bill defines an "undue hardship" to mean an action requiring significant difficulty or expense and then list the factors that must be considered in determining whether an accommodation would impose an undue hardship.

The House amendment specifies that the term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors listed in the statute.

The Senate recedes.

(b) In determining whether accommodating a qualified applicant or employee with a disability imposes an "undue hardship," the Senate bill requires that the following factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity; and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the accommodation needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) the overall financial resource of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

6. Discrimination

The Senate bill and House amendment use the same terms but in a different order.

The Senate recedes.

7. Contract liability

The Senate bill specifies that covered entities cannot discriminate directly or indirectly through contracts with other parties.

The House amendment clarifies that a covered entity is only liable in contractual arrangements for discrimination against its own applicants or employees.

The Senate recedes.

8. Reasonable accommodation

The Senate bill specifies that it is discriminatory for a covered entity to deny an employment opportunity to a qualified job applicant or employee with a disability if such denial is based on the need of the covered entity to make reasonable accommodations. In a separate section, the Senate bill specifies that reasonable accommodations need not be provided if they would result in an undue hardship.

The House amendment clarifies the relationship between the obligation not to deny a job to an individual with a disability who needs a reasonable accommodation and the undue hardship limitation governing the covered entity's obligation to provide the reasonable accommodation by including these provisions under the same paragraph.

The Senate recedes.

9. Employment tests

The House amendment adds the term "qualification standards" to the phrase "employment tests or other selection criteria."

10. Preemployment inquiries

The House amendment deletes the world "employee" from the preemployment inquiry provision.

The Senate recedes. The conferees note that in certain industries, such as air transportation, applicants for security and safety related positions are normally chosen on the basis of many competitive factors, some of which are identified as a result of post-offer pre-employment medical examinations. Thus, after the employer receives the results of the post-offer medical examination for applicants for safety or security sensitive positions, only those applicants who meet the employer's criteria for the job must receive confirmed offers of employment, so long as the employer does not use those results of the exam to screen out qualified individuals with disabilities on the basis of disability. The conferees do not intend for this Act to override any legitimate medical standards or requirements established by Federal, state or local law, or by employers for applicants for safety or security sensitive positions, if the medical standards are consistent with the Act.

11. Postemployment medical examinations

The Senate bill specifies that an employer shall not conduct or require a medical examination of an employee unless such examination or inquiry is shown to be job-related and consistent with business necessity.

The House amendment deletes the term "conduct" and adds that a covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site so long as the information obtained regarding the medical condition or history of any employee are kept confidential and are not used to discriminate against qualified individuals with disabilities.

The Senate recedes.

12. Defenses, in general

The Senate amendment includes a reference to "reasonable accommodations." The House adds the following phrase "as required under this title."

The Senate recedes.

13. Health and safety

The Senate bill includes as a defense that a covered entity may fire or refuse to hire a person with a contagious disease if the individual poses a direct threat to the health

and safety of other individuals in the workplace.

The House amendment makes this specific defense applicable to all applicants and employees, not just to those with contagious diseases.

The Senate recedes. The conferees intend that the term "qualification standard" as used in section 103(b) permits a requirement that an individual with a disability not pose a direct threat to the health or safety of other individuals in the workplace if reasonable accommodation will not eliminate the direct threat. In addition, the conferees concur with the House provision that defines "direct threat" to mean "significant risk" (section 101(3). The qualification standard in section 103(b) and the definition in section 101(3) clearly spell out the right of the employer to take action to protect the rights of its employees and other individuals in the workplace. Such employer action would include not assigning an individual to a job if such an assignment would pose a direct threat to individuals in the workplace and such a threat could not be eliminated by reasonable accommodation. The conferees incorporate by reference the explanations of the term "direct threat" set out in Senate Report No. 101-116. Consistent with this explanation, in determining what constitutes a significant risk, the conferees intend that the employer may take into consideration such factors as the magnitude, severity, or likelihood of risk to other individuals in the workplace and that the burden would be on the employer to show the relevance of such factors in relying on the qualification standard.

14. Religious tenet exemption

The Senate bill specifies that a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenents of such organization.

The House amendment deletes the phrase "as a qualification standard to employment."

The Senate recedes.

15. Food handlers

The House amendment, but not the Senate bill, specifies that it shall not be a violation of this Act for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance to a job involving food handling, provided that the employer shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic damage.

The House recedes. Consistent with section 103(b), the conferees note that nothing in the Americans with Disabilities Act shall require an employer to assign, or to continue to assign to a job any employee with a communicable or infectious disease who by reason of such disease poses a significant risk to the health or safety of others which cannot be eliminated by reasonable accommodation. The conferees acknowledge that such reasonable accommodation is not required if it imposes an undue hardship (as defined in section 101(10)) on the operation of the business.

Different types of contagious diseases pose different kinds of risks; some contagious diseases may pose a significant risk which cannot be eliminated by reasonable accommodation in certain job categories, such as food handling. The conferees do not intend to imply that a person with an infectious disease necessarily poses a health threat to others. Rather, the conferees intend for this policy to meet the legitimate concerns of employers that are based on health and safety concerns. The determination whether a particular individual poses a significant risk of transmitting an infection to others must be based on the facts applicable to that individual and be based on current and objective public health standards.

16. Illegal use of drugs and use of alcohol

(a) The Senate bill specifies that the term "qualified individual with a disability" does not include employees or applicants who are current users of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of the Act if such individual also uses or is addicted to drugs.

The House amendment specifies that "qualified person with a disability" does not include any applicant or employee who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes. The provision excluding an individual who engages in the illegal use of drugs from protection is intended to ensure that employers may discharge or deny employment to persons who illegally use drugs on that basis, without fear of being held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the definition of the term "qualified individual with a disability": (1) an individual who has successfuly completed a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) an individual who is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) an individual who is erroneously regarded as engaging in such use but is not engaging in such use.

The Senate recedes. Section 104(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both in-patient and outpatient programs, as well as appropriate employee assistance programs that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment, but not the Senate bill, specifies that it is not a violation of title I of the Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual involved in rehabilitation programs is no longer engaging in the illegal use of drugs.

The Senate recedes. Conferees note that, for purposes of this title, an individual covered by the regulation described in section 104(c)(5) who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 104(b)(3). The conferees do not intend to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 104(b)(3). The ADA itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances, employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(d) The Senate bill specifies that the covered entity may require that employees behave in conformance with the requirements of the Drug-Free Workplace Act of 1988 and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol.

The House amendment also includes reference to positions defined by the Department of Defense and the Nuclear Regulatory Commission.

The Senate recedes.

(e) The House amendment adds that nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by railroads of authority to: (1) test railroad employees in, and applicants for, positions involving safety-sensitive duties, as determined by the Secretary of Transportation, for the illegal use of drugs and for on-duty impairment by alcohol; and (2) remove such persons who test positive from safety-sensitive duties.

The Senate recedes with an amendment. The amendment substitutes the phrase "entitles subject to the jurisdiction of the Department of Transportation" for the word "railroad" in the House amdendment; substitutes the pharase "employees of such entities" for the term "railroad employees" in the House amendment; deletes the phrase "as determined by the Secretary of Transportation" in subsection (e)(1) of the House amendment; and adds the phrase "for illegal use of drugs and on duty impairment by alcohol" after the word "positive" in subsection (e)(2) of the House amendment. The conferees agree that, separate and apart from Department of Transportation regulations, nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise (e.g., as a result of collective bargaining agreements) by entities subject to the jurisdiction of DOT of authority to test employees of such entities in, and applicants for, positions involving safety sensitive duties

for the illegal use of drugs and for on duty impairment by alcohol, and to remove such persons who test positive from safety sensitive duties. The conferees intend that the authority for transportation entities to remove persons who test positive includes authority for dismissal or disqualification, consistent with the provisions of this title. The conferees do not intend to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act, from challenging a positive drug test by invoking the protection of section 104(b)(3). The ADA itself, does not provide any standard by which the accuracy or validity of a drug test result is to be determined.

The conferees note that there was a typographical error in part 2 (Education and Labor Committee) of the House Report No. 101-485. The language in the last paragraph on page 81 should have appeared as follows: "The Act is not intended to disturb the legitimate and reasonable disciplinary rules and procedures established and enforced by professional sports leagues; nor is it intended to disturb collectively bargained policies that have been entered into between league management and its players association that are not inconsistent with this Act."

17. Enforcement

(a) The House amendment adds "powers" to the phrase "remedies and procedures" to conform the ADA to title VII.

The Senate recedes.

(b) The House amendment adds to the enforcement section a reference to section 705 of title VII of the Civil Rights Act of 1964 (authority of the Equal Employment Opportunity Commission).

The Senate recedes.

(c) The House amendment adds a reference to "the Attorney General."

The Senate recedes.

(d) The House amendment substitutes the term "person," which is used and defined in title VII of the Civil Rights Act of 1964 for the term "individual" included in the Senate bill.

The Senate recedes.

(e) The Senate bill includes the phrase any individual "who believes he or she is being subjected to discrimination." The House amendment substitutes "any person alleging discrimination."

The Senate recedes.

18. Relationship with the Rehabilitation Act of 1973

The House amendment, but not the Senate bill, directs administrative agencies to develop procedures and coordinating mechanisms to ensure that ADA and Rehabilitation Act of 1973 administrative complaints are handled without duplication or inconsistent, conflicting standards. Further, agencies must establish the coordinating mechanisms in their regulations.

The Senate recedes with an amendment. The amendment specifies that "The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Momorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and the Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act."

TITLE II OF THE ADA (PUBLIC SERVICES)

19. Structure of title II

The Senate bill includes one set of standards applicable to all public entities providing public services, including entities providing public transportation.

The House amendment includes subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions and subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory. Two parts are included under subtitle B: part I covers public transportation other than by aircraft or certain rail operations (intercity and commuter rail) and part II covers public transportation by intercity and commuter rail.

The Senate recedes.

SUBTITLE A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

20. Definition of public entities

The Senate bill specifies that the public entities subject to the provisions of title II include: any state or local government or any department, agency, special purpose district, or other instrumentality of a State or local government. The accompanying report makes it clear that AMTRAK and commuter authorities are considered public entities.

The House amendment defines the term "public entity" to mean any state or local government or any department, agency, special purpose district, or other instrumentality of a state or states or local government; a commuter authority (as defined in section 103(8) of the Rail Passenger Service Act); and the National Railroad Passenger Corporation (AMTRAK).

The Senate recedes.

21. Qualified individual with a disability

The House amendment uses the term "public entity" in lieu of the list of entities covered by subtitle A.

The Senate recedes.

22. Discrimination, in general

The Senate bill specifies the general and specific prohibitions against discrimination by public entities.

The House amendment retains the general prohibition and clarifies that this general prohibition is subject to the other more specific provisions in title II. The House amendment also includes grammatical changes.

The Senate recedes. Questions have been raised regarding the obligation under this legislation of local and state governments to make 911 telephone emergency services available to hearing impaired and speech impaired persons. It is the intent of the conferees that the telephone emergency services operated by local and state governments be accessible to such individuals. This means that such telephone emergency systems must be equipped with technology that gives these individuals direct access to emergency services. For the present, this would require that local emergency systems provide a direct telephone line for individuals who rely on telecommunications devices for the deaf (the Baudot format) and computer modems (the ASCII format) to make telephone calls. In the future, new technology, such as speech-to-text services, may require other forms of direct access for such individuals. With this title II mandate, individuals with hearing and speech impairments will finally join the rest of us in having immediate access to assistance from police, fire, and ambulance services.

23. Enforcement

The Senate bill specifies that the remedies, procedures, and rights set out in section 505 of the Rehabilitation Act of 1973 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.

The House amendment provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

The Senate recedes.

24. Regulations and standards

The Senate bill specifies that the Attorney General shall issue regulations implementing title II with the exception of section 203 pertaining to public transportation provided by public entities.

The House amendment, consistent with the revised structure used by the House, specifies that the Attorney General shall promulgate regulations that implement subtitle A. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223 (paratransit), section 229 (regulations relating to part I of subtitle B), and section 244 (regulations relating to part II of subtitle B).

The House amendment also specifies that regulations shall include standards applicable to facilities and vehicles covered by subtitle A, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B.

The Senate recedes.

SUBTITLE B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

Part I—Public Transportation Other Than by Aircraft or Certain Rail Operations

25. Definitions

The Senate bill uses the following phrases: "demand responsive system," "fixed route system," "operates," and "public transportation."

The House amendment adds definitions for the terms "demand responsive system," "fixed route system" and "operates." The House amendment also substitutes the phrase "designated public transportation" for the phrase "public transportation" and includes the following definition: transportation (other than public school transportation) by bus, rail, or by other conveyance (other than transportation by aircraft, or intercity or commuter rail) that provides the general public with general or special service (including charter service) on a regular and continuing basis. The House amendment also includes a definition for the term "public school transportation.

The Senate recedes.

26. Purchase or lease of new and used fixed route vehicles

With slightly different wording, the Senate bill and the House amendment require that all new vehicles purchased or leased by a public entity which operates a fixed route system be accessible and require such public entity to make demonstrated

good faith efforts to purchase or lease used vehicles that are accessible.

The Senate recedes.

27. Remanufactured and historic vehicles

The Senate bill specifies that if a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more, the vehicle must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

With slightly different phrasing, the House amendment includes the policy in the Senate version applicable to remanufactured vehicles and adds a specific provision in the legislation for historic vehicles. Under the provision, if making a vehicle of historic character (which is used solely on any segment of a fixed route system that is included on the National Register of Historic Places) readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or purchase or lease a remanufactured vehicle with) those modifications which do not significantly alter the historic character of such vehicle.

The Senate recedes.

28. Paratransit

The Senate bill specifies that if a public entity operates a fixed route system, it is discrimination for a public transit authority to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using the fixed route transportation to individuals with disabilities who cannot otherwise use fixed route transportation and individuals associated with such individuals with disabilities unless the public transit authority can demonstrate that the provision of paratransit or other transportation services would impose an undue financial burden on the public transit entity. If the provision of comparable paratransit services would impose an undue financial burden on the public entity, such entity must provide such service to the extent that provision of such services would not impose an undue financial burden on such entity. The Senate version specifies that the definition of undue financial burden may include reference to a flexible numerical formula that incorporates appropriate local characteristics such as population.

The House amendment includes the following changes.

(a) The House amendment clarifies that a public entity that only provides commuter bus service need not provide paratransit.

The Senate recedes.

(b) The House amendment specifies that comparable level of service must be provided but in the case of response time, it must be comparable, to the extent practicable.

The Senate recedes.

(c) Under the House amendment, paratransit and other special transportation services must be provided to three categories of individuals with disabilities:

to any individual with a disability who is unable as a result of a physical or mental impairment (including a vision impairment) without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device) to board, ride, or disembark from any vehicle on the system which is accessible;

to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is accessible if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such an accessible vehicle is not being used to provide designated public transportation on the route; and

to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

For purposes of the first two categories of individuals with disabilities, boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

The Senate recedes.

(d) The House amendment clarifies that paratransit and special transportation services need only be provided in the service area of each public entity that operates a fixed route system and not in any portion of the service area in which the public entity solely provides commuter bus service.

The Senate recedes.

(e) The House amendment deletes the permissive reference to flexible numerical formula.

The Senate recedes.

(f) The House amendment requires that paratransit be available to one other person accompanying the individual with a disability.

The House recedes with an amendment. The amendment provides that in addition to the one individual specified in the House amendment, paratransit services must be available to other individuals accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individual will not result in a denial of service to individuals with disabilities. Throughout this section, the conferees intend that individuals accompanying the individual with a disability travel between the same boarding and disembarking locations as the individual with a disability.

(g) The House amendment specifies that each public entity must submit plans for operating paratransit services to the Secretary. The plan must include, among other things, the identity of any other public entity or person providing paratransit service and provide that the public entity does not have to provide directly under the plan the identified paratransit services being provided to others.

The Senate recedes.

(h) The House amendment includes a statutory construction provisions that makes it clear that nothing in the ADA should be construed as preventing a public entity from providing paratransit services at a level which is greater than the level required by the ADA, from providing paratransit services in addition to those services required by the ADA, or from providing such services to individuals in addition to those individuals to who such services are required to be provided by the ADA.

The Senate recedes.

29. Demand responsive systems operated by a public entity

With slightly different wording, the Senate bill and the House amendment specify rules for public entities operating demand responsive systems.

The Senate recedes.

30. New facilities

The House amendment substitutes the phrase "designated public transportation services" for the phrase "public transportation services" used in the Senate bill.

The Senate recedes.

31. Alterations to existing facilities

(a) The House amendment adds a reference to "designated public transportation."

The Senate recedes

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations as determined under criteria established by the Attorney General.

The Senate recedes

32. Key stations in rapid and light rail systems

(a) The Senate bill provides an extension of up to 20 years for making key stations in rapid rail or light rail systems accessible where extraordinary expensive structural changes are required.

The House amendment permits 30 years where extraordinary expensive structural changes are required except that by the last day of the 20th year at least two-thirds of such key stations must be readily accessible.

The Senate recedes

(b) With slightly different wording, both the Senate bill and the House amendment require the development of plans and milestones.

The Senate recedes

33. Access to non-key stations

With slightly different phrasing, the Senate bill and the House amendment specify rules governing non-key existing stations.

The Senate recedes with an amendment. In section 228(a), strike out paragraph (2) and insert in lieu thereof the following new paragraphs:

"(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) and section 227(b) (relating to key stations).

"(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchair services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities."

34. One car per train rule applicable to rapid rail and light rail systems

The Senate bill provides that as soon as practicable, but in any event in no less than 5 years, rail systems must have at least one car per train that is accessible to individuals with disabilities.

The House amendment specifies that the one car per train rule only applies with respect to trains that have two or more vehicles and includes a special provision applicable to historic trains.

The Senate recedes.

35. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary.

The Senate recedes.

36. Effective date

The Senate bill specifies that the section in title II pertaining to new fixed route vehicles shall become effective on the date of enactment.

The House amendment specifies that sections concerning fixed route vehicles, demand responsive, stations, one car per train and regulations become effective on the date of enactment.

The Senate recedes.

Part II—Public Transportation by Intercity and Commuter Rail

37. Definitions

The House amendment but not the Senate bill includes definitions of the following terms: "commuter authority," "commuter rail transportation," "intercity rail transportation," "rail passenger car," "responsible person," and "station."

The Senate recedes.

38. One car per train rule for intercity rail transportation

With slightly different wording, the Senate bill and the House amendment specify a one car per train rule for intercity rail transportation.

The Senate recedes.

39. New intercity cars

The Senate bill provides that all new intercity vehicles must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment includes a general obligation to make new intercity cars accessible that is identical to the provision in the Senate bill but includes special rules of accessibility applicable to people who use wheelchairs for specific categories of passenger car.

The Senate recedes.

40. One car per train rule and new commuter rail cars

(a) With slightly different wording, the Senate bill and the House amendment specify the one car per train rule for persons providing commuter rail transportation.

The Senate recedes.

(b) The Senate bill provides that all new commuter rail cars must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment adopts the same standard and specifies that the term "readily accessible to and usable by" shall not be construed to require: a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger; space to store and fold a wheelchair; or a seat to which a passenger who uses a wheelchair can transfer.

The Senate recedes.

41. Used and remanufactured rail cars

The Senate bill includes special rules for the purchase of all types of used and remanufactured vehicles.

The House amendment includes special provisions applicable to the purchase of used rail cars and remanufactured rail cars similar to the provisions included in the Senate bill applicable to all vehicles (the time period for remanufacture is 10 years for rail cars instead of 5 years for other vehicles).

The Senate recedes.

42. New and existing stations

(a) With respect to commuter rail, the Senate bill specifies that existing key stations must be made accessible as soon as practicable but in no event later than 3 years after the effective date, except that the time limit may be extended to 20 years after the date of enactment in a case where extraordinarily expensive structural changes are necessary to attain accessibility.

The House amendment provides that the extension to 20 years applies where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

The Senate recedes.

(b) The Senate report explains the criteria used to determine which stations are considered "key." The House amendment places these criteria in the legislation. The factors that must be taken into consideration, after consultation with individuals with disabilities and organizations representing such individuals include: high ridership and whether such station serves as a transfer or feeder station.

The Senate recedes.

43. Alterations of existing facilities

(a) The Senate bill specifies that 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 must be altered in such a way that it is readily accessible to and usable by individuals with disabilities.

The House amendment adopts the same standard but substitutes for the phrase "public entity" the phrase "responsible person, owner, or person in control of the station."

The Senate recedes.

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or acess to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the part of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes.

(c) The House amendment also specifies that it is considered discrimination for an owner or person in control of a station to fail to provide reasonable cooperation to a responsible person with respect to such station in the responsible person's efforts to provide accessibility. An owner, or person in control of a station is liable to a responsible person for any failure to provide reasonable cooperation. The House amendment also makes it clear, however, that failure to receive reasonable cooperation shall not be a defense to a claim of discrimination by an individual with a disability.

The Senate recedes.

44. Interim accessibility standards

The House amendment, but not the Senate bill, specifies the standards that would apply to stations and rail passenger cars during an interim period between the effective date and the date regulations are issued in final form.

The Senate recedes.

TITLE III OF THE ADA

45. Definitions

(a) The Senate bill includes the term "potential places of employment" to describe facilities subject to the new construction requirements.

The House amendment substitutes the term "commercial facilities" for the phrase "potential places of employment." The House amendment also specifies that the term does not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under title II, or railroad rights-of-way.

The Senate recedes.

(b) The House amendment, but not the Senate bill, includes definitions for the following terms: "demand responsive system," "fixed route system," and "over-the-road bus."

(c) The House amendment, but not the Senate bill, defines the term "private entity" to mean any entity other than a public entity, as defined in title II.

The Senate recedes.

(d) The Senate bill lists a number of specific types of entities that are considered public accommodations and then includes the following catch-all phrase "and other similar places."

The House amendment deletes the term "similar." In addition, the House amendment makes several technical changes to the categories.

The Senate recedes.

(e) The House amendment, but not the Senate Bill, defines the term "rail" and "railroad."

The Senate recedes.

(f) In determining whether making changes to existing facilities are "readily achievable," the Senate bill requires that the following factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity, and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the action needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility; (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of

its facilities; and (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

(g) The House amendment substitutes the term "specified public transportation" for the term "public transportation" with no change in the definition.

The Senate recedes.

(h) The House amendment, but not the Senate bill, defines the term "vehicle" as not including a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under title III.

The Senate recedes.

46. Entities subject to the prohibitions against discrimination

The Senate bill specifies that 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.

The House amendment clarifies that this prohibition applies to any person who owns, leases (or leases to), or operates a place of public accommodation.

The Senate recedes.

47. Contract liability

The Senate bill specifies that covered entities cannot engage in discrimination indirectly through contracts with other parties.

The House amendment specifies that covered entities are only liable in contractual arrangements for discrimination against the entity's own customers and clients and not the contractor's customers and clients.

The Senate recedes.

48. Readily achievable changes to existing barriers

The House amendment adds rail passenger cars used by an establishment for transporting individuals to the list of vehicles from which barriers must be removed.

The Senate recedes.

49. Fixed route and demand responsive systems

With slightly different wording, the Senate bill and the House amendment specify standards for fixed route and demand responsive systems operated by private entities.

The Senate recedes.

50. Health and safety

The House amendment, but not the Senate bill, specifies that nothing in title III requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

The Senate recedes.

51. New construction and alterations to existing facilities

(a) The Senate bill includes in separate sections the requirements that alterations and new construction be readily accessible to and usable by individuals with disabilities.

The House amendment places these two requirements in the same section.

The Senate recedes. Section 303(b) of the Act provides that discrimination as set forth in section 303(a) concerning new construction and alterations in public accommodations and commercial facilities 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. The exception does not affect the requirement that every newly constructed facility subject to the Act shall have at least one ground story that is readily accessible to and usable by individuals with disabilities. Accessibility requirements shall not be evaded by constructing facilities in such a way that no story constitutes a "ground floor", for example, by constructing a building whose main entrance leads only to stairways or escalators that connect with upper or lower floors; at least one accessible ground story must be provided.

(b) The Senate bill specifies that when major structural alterations are made to public accommodations operated by private entities, the alterations as well as the path of travel and facilities must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function," for the Senate language, "major structural alteration," and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes. The conferees note that in part 2 (Education and Labor Committee) of House Report No. 101-485, language following the word "alteration" at the end of the third line of the second full paragraph on page 113 was inadvertently omitted. This language specifies that the parameters of the concept of disproportionality of section 303(a)(2) of the bill will be set forth in the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board and in the regulations promulgated by the Attorney General. The conferees wish to indicate their understanding that the requirement of an accessible path of travel, accessible restrooms, drinking fountains, and telephones serving the altered area would be disproportionate if the inclusion of such features would be so large an undertaking, in expense or scope of work, as to be disproportionate to the remainder of the contemplated alteration project.

52. Discrimination and construction

With slightly different wording, the Senate bill and the House amendment specify the general prohibition of discrimination and specific constructions of such discrimination.

The Senate recedes.

53. New vehicles other than new rail passenger cars

The Senate bill specifies that new vehicles other than automobiles purchased by a private entity in the principal business of transporting people must be readily accessible to and usable by individuals with disabilities.

The House amendment includes a special rule for vans with a seating capacity of less than 8 passengers. Such vans need not be accessible if the van is to be used solely in a demand responsive system and if the private entity can demonstrate that the system for which the van is being purchased or leased, 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.

The Senate recedes.

54. New rail passenger cars

The Senate bill specifies that all new vehicles purchased by a private entity in the principal business of transporting people must be readily accessible.

The House amendment includes a separate provision applicable to new rail passenger cars purchased by such entities and includes the same standard set out in the Senate bill.

The Senate recedes.

55. Remanufactured rail passenger cars

The House amendment, but not the Senate bill, specifies that the remanufacture of a rail passenger car so as to extend its usable life for 10 years or more must be remanufactured in a manner to make it readily accessible "to the maximum extent feasible."

The Senate recedes.

56. Historical or antiquated rail passenger cars and stations serving such cars

The House amendment, but not the Senate bill, specifies that historical or antiquated vehicles that are currently in use or are remanufactured by private entities need not be made accessible to the extent that compliance would significantly alter the historic or antiquated character of such a car or rail station served exclusively by such cars or would result in a violation of safety rules issued by the Secretary of Transportation.

The Senate recedes.

57. Over-the-road buses

The Senate bill specifies that over-the-road buses must be readily accessible to and usable by individuals with disabilities within 7 years for small providers and 6 years for other providers. Further, the Senate bill specifies that the Office of Technology Assessment must conduct a study to determine the access needs of individuals with disabilities and the most cost efficient methods of making such buses readily accessible to and usable by individuals with disabilities.

The House amendment deletes the specific obligation to make each bus "readily accessible to and usable by" individuals with disabilities at the end of the 6 or 7 year period, whichever is applicable. Instead, the House amendment specifies that the purchase of new over-the-road buses must be made in accordance with regulations issued by the Secretary of Transportation. In issuing final regulations, the Secretary must take into account the purposes of the study and any recommendations resulting from the study. The obligations set out in the final regulations go into effect in 7 years for small providers and 6 years for others. The final regulations may not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

In the interim, regulations issued by the Secretary may not require any structural changes to over-the-road buses in order to provide access to individuals who use wheelchairs and may not require the purchase of

boarding assistance devices to provide access.

With respect to the study, the purpose of the study is revised to include a determination of the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service and the most cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options. The study must analyze, among other things, the effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

The Senate recedes.

58. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary. The House amendment also includes interim policies applicable to vehicles and rail passenger cars.

The Senate recedes.

59. Enforcement in general

(a) The Senate bill makes reference to the remedies available to an "individual" under title II of the Civil Rights Act of 1964.

The House amendment substitutes the term "person" for the term "individual" since "person" is used in title II.

The Senate recedes.

(b) The Senate bill specifies that remedies and procedures of the 1964 Civil Rights Act will be available to any individual who is or is about to be subjected to discrimination on the basis of disability.

The House amendment specifies that the remedies and procedures of title II of the 1964 Civil Rights Act shall be the powers, remedies, and procedures title III provides to any person who is being subject to discrimination on the basis of disability in violation of title III or any person who has "reasonable grounds" for believing that he or she is about to be subjected to discrimination with respect to the construction of new or the alteration of existing facilities in an inaccessible manner.

The Senate recedes.

(c) The House amendment, but not the Senate bill, includes in the legislation the following policy set out in the Senate report: nothing in the enforcement section shall require an individual with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that state and local governments can apply to the Attorney General to certify that state or local building codes meet or exceed the minimum accessibility requirements of the ADA. In ruling on such applications from state or local governments, the Attorney General will consult with the Architectural and Transportation Barriers Compliance Board and consider the testimony of individuals with disabilities at public hearings about the state or local building code application.

The Senate recedes.

(e) The Senate bill specifies that the courts may assess civil penalties against an entity not to exceed $50,000 for the first violation and $100,000 for any subsequent public accommodation discrimination violation.

The House amendment specifies that when there are multiple violations that make up a pattern or practice suit brought by the Attorney General, all violations count as a first violation for the purpose of assessing the maximum civil penalty of $50,000. The maximum penalty of $100,000 for a subsequent violation can be applied only in a subsequent case.

The Senate recedes.

(f) The Senate bill specifies that the Attorney General may seek "monetary damages" on behalf of an aggrieved party in Title III public accommodation civil actions.

The House amendment clarifies that "monetary damages" and other relief available to aggrieved persons under Title III public accommodation suits brought by the Attorney General do not include punitive damages.

The Senate recedes.

(g) The Senate bill specifies that the courts may give consideration to an entity's "good faith" efforts to comply with the ADA in considering the amount of civil penalty.

The House version elaborates on the issue of good faith by requiring that the court consider whether an entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the particular needs of an individual with a disability.

The Senate recedes.

60. Examinations and courses

The House amendment, but not the Senate bill, specifies that any persons that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

The Senate recedes.

61. Effective date

(a) The House amendment, but not the Senate bill, precludes suits against small businesses for 6 months or 12 months (depending on the size of the small business and its gross receipts) after the effective date of title III of the Act (18 months after date of enactment) for all violations except those relating to new construction and alterations.

The Senate recedes with an amendment. The amendment deletes the introductory phrase in section 310(b) and substitutes in lieu thereof the following: "Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—". The purpose of the amendment is to make it clear that in order for an individual with a disability to bring a civil action against a small business meeting the criteria set out in the provision, the discriminatory act must occur after the applicable period has expired. The conferees note that this section gives small businesses additional time to learn the requirements of the ADA and to come into compliance with the Act before they will be subject to a civil action. The conferees fully expect that businesses will, however, make good faith efforts to comply with the Act during this additional phase-in period.

(b) With slightly different wording, the Senate bill and the House amendment provide that certain provisions of title III go into effect on the date of enactment.

The Senate recedes.

TITLE IV OF THE ADA (TELECOMMUNICATION RELAY SERVICES)

62. Definition of "common carrier" or "carrier"

The House amendment deletes the phrase "and any common carrier engaged in both interstate and intrastate communication."

The Senate recedes.

63. General authority and remedies

The Senate bill specifies that the same remedies, procedures, rights, and obligations applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication.

The House amendment clarifies, without changing the meaning or intent of the Senate language.

The Senate recedes.

64. Provision of telecommunication services

The Senate bill specifies that each common carrier providing telephone voice transmission services shall provide telecommunication relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment.

The House amendment makes several clarifying changes.

(a) The House amendment specifies that a common carrier must only provide relay services "within the area in which it offers service" to ensure that a common carrier on one side of the country is not held responsible to provide services for consumers in a state on the other side of the country.

The Senate recedes with an amendment. The amendment deletes the word "within" and substitutes in lieu thereof the term "throughout."

(b) The House amendment specifies that common carriers may provide relay services "through a competitively selected vendor" in addition to providing such services through designees or in concert with other carriers.

The Senate recedes.

(c) The House amendment specifies that a common carrier is considered in compliance with FCC regulations if the common carrier is either in direct compliance itself with those regulations, or if the "entity through which [it] is providing such relay services" is in compliance with the Commission's regulations. Further, the common carrier is considered in compliance with the FCC's regulations with respect to intrastate relay services when they or their designees are in compliance with a state certified program.

The Senate recedes.

65. Regulations

The Senate bill directs the FCC to issue regulations covering, among other things, minimum standards for the relay systems, conduct by relay operators, separation of costs, and delay in the implementation date.

The House amendment includes two clarifying changes.

(a) The Senate bill requires the FCC to establish minimum standards that would be met "by common carriers" in providing relay services. The House amendment deletes the language in quotas.

The Senate recedes.

(b) With respect to the conduct of relay operators, the House amendment specifies that a relay operator is subject to the same standards of conduct that operators are subject to under the Communications Act of 1934.

The Senate recedes.

66. Technology

The House amendment adds a reference to section 7(a) of the Communications Act of 1934.

The Senate recedes.

67. Recovery of costs

The House amendment includes the following changes applicable to recovery of costs.

(a) The House amendment specifies that costs caused by interstate relay services will be recovered from all subscribers for every interstate service, thereby ensuring that even those businesses that have private telecommunications systems will contribute to the cost of providing interstate relay services.

The Senate recedes.

(b) The House amendment authorizes State commissions to permit recovery by common carriers of costs incurred in providing intrastate relay services in states that are certified.

The Senate recedes.

(c) The Senate bill prohibits the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate relay services.

The House amendment deletes this provision.

The Senate recedes.

(d) The Senate bill extends the implementation period to three years for all common carriers and includes authority to extend it one additional year if a common carrier can demonstrate undue burden. The House amendment deletes the undue burden provision.

The Senate recedes.

68. Requirements for State certification

The Senate bill specifies that each State may submit documentation to the FCC that describes the program of such state for implementing intrastate relay services.

The House amendment specifies that such documentation must also include the procedures and remedies available for enforcing any requirements imposed by the State program. The House amendment also provides that in certifying the program the FCC must determine that the program makes available adequate procedures and remedies for enforcing the requirements of the State program. The House amendment also specifies that in a State whose program has been suspended or revoked, the Commission must take such steps as may be necessary to ensure continuity of telecommunications relay services.

The Senate recedes.

69. Closed-captioning of public service announcements

The House amendment, but not the Senate bill, adds a provision requiring the closed-captioning of all television pubic service announcements produced or funded by the Federal government.

The Senate recedes.

TITLE V OF THE ADA
(MISCELLANEOUS PROVISIONS)

70. Construction

(a) The House amendment adds the phrase "except as otherwise provided in this Act" as a qualification to the provision construing the interpretation of the ADA.

The Senate recedes.

(b) With slightly different wording, the Senate bill and the House amendment specify the relationship between the ADA and other Federal laws (including the Rehabilitation Act) and state laws. The House amendment also specifies that nothing in the ADA shall be construed to preclude the prohibition of, or the imposition of restriction on, smoking in places of employment, in transportation providing by public and private entities, and places of public accommodations.

The Senate recedes. In light of the concerns raised by some conferees with regard to individuals with contagious diseases of public health significance who work in food handling jobs, the conferees note certain points with regard to this section. First, if a state or locality has a disease control law, or any other public health law, which places certain requirements on certain employees, employers or businesses, but which does not discriminate against people with disabilities, such laws would not be affected by or preempted in any way by the ADA. For example, if a state disease control law requires certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA. In addition, if a state or locality has a disease control law or any other public health law, which applies to certain people with disabilities (for example, if a state has a law which required people with certain contagious diseases, such as tuberculosis, to take certain precautions), that law would also not be preempted by the ADA as long as the requirements of that state or local law were designed to protect against individuals who pose a direct threat to the health or safety of others. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in a public accommodation (as "direct threat" is defined in the statute), a state public health law that similarly guarded against such threats would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

(c) The section in the Senate bill concerning insurance includes the proviso "Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III." The House amendment includes the following phrase "Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of titles I and III."

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that nothing in the Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

The Senate recedes.

71. State immunity

The House amendment adds states courts of competent jurisdiction to the reference to federal courts included in the Senate bill.

The Senate recedes.

72. Prohibition against retaliation and coercion

With slightly different wording, the Senate bill and the House amendment include prohibitions against retaliation and coercion.

The Senate recedes.

73. Guidelines by the ATBCB

The Senate bill provides 6 months for the issuance of guidelines. The House amendment provides 9 months.

The Senate recedes.

74. Historic buildings

The House amendment, but not the Senate bill, includes specific provisions applicable to historic building.

The Senate recedes.

75. Technical assistance manuals

(a) The Senate bill, but not the House amendment, includes, among others, the National Council on Disability, as an agency responsible for the development of a technical assistance plant.

The Senate recedes. The conferees intend to recognize the National Council on Disability as the impetus, force, and originator of the initial legislation for the Americans with Disabilities Act, reflected in the Council's report, *Towards Independence*, published in February, 1986. Therefore, the conferees agree that the National Council on Disability should be one of the federal agencies with which the Attorney General consults in developing a plan to assist entities covered under this Act. The experience, expertise, and commitment of the Council will ensure that the technical assistance activities mandated under section 506 will be comprehensive, focused, and timely.

(b) With slightly different wording, the Senate bill and the House amendment provide for the implemenation of the technical assistance plant.

The Senate recedes.

(c) With slightly different wording, the Senate bill and the House amendment authorize the entering into of grants and contracts.

The Senate recedes.

(d) The Senate bill includes a section requiring agencies to provide technical assistance to covered individuals and entities.

The House amendment makes several technical and conforming changes and adds a requirement that appropriate departments and agencies develop and disseminate technical assistance manuals to those who have rights and responsibilites under the ADA no later than six months after ADA regulations are published. However, a covered entity is not excused from complying with the ADA because of any failure to receive technical assistance, including any failure in the development or dissemination of a technical assistance manual.

The Senate recedes.

76. Wilderness areas

The Senate bill specifies that the National Council on Disability shall conduct a study regarding the effect of wilderness designations on access for people with disabilities.

The House amendment adds that the Wilderness Act is not to be construed as prohibiting use of a wheelchair in a wilderness area by an individual whose disability requires the use of a wheelchair but no modifications of land are required.

The Senate recedes with an amendment.

The new subsection reads:

"(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act shall be con-

strued as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act, no agency shall be required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

"(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-imparied person for locomotion, that is suitable for use in an indoor pedestrian area."

Consistent with this section and the Wilderness Act of 1964, the conferees intend that, where appropriate and consistent with the management objectives and maintenance of the wilderness character of the area, the land management agencies charged with the management responsibilities for wilderness areas designated under the authority of the Wilderness Act of 1964 should, when constructing or reconstructing a trail, bridge or facility, comply with the intent of this Act. In cases where the Agencies have delegated or subcontracted their responsibilities, the intent of this section shall apply to the designee or contractor.

77. Congressional coverage

The Senate bill makes the provisions of the legislation applicable to Congress and the instrumentalities of Congress.

The House amendment also covers Congress and the instrumentalities of Congress but delegates to the House and the instrumentalities of Congress the responsibility to develop applicable remedies and procedures.

The House recedes to the Senate on coverage of the Senate with an amendment. The amendment specifies that authorities granted under the ADA to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation shall be exercised by the Senate. The Senate recedes to the House on coverage of the House. The Senate recedes to the House on coverage of instrumentalities of the Congress. The conferees add the following construction clause: "Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act."

78. Illegal use of drugs

The Senate bill specifies that an individual with a disability does 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. The Senate bill also makes it clear that an individual who uses illegal drugs may not be denied the benefits of medical services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

The House amendment includes clarifying and conforming changes to make this provision consistent with other provisions in the legislation concerning the treatment of users of illegal drugs:

(a) The House amendment specifies that an individual with a disability does not include an individual who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes.

The provision excluding an individual who engages in the illegal use of drugs from protection (other than an individual described in section 510(c)) is intended to ensure that covered entities may deny services to or take other actions against persons who illegally use drugs on that basis, without fear of being held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the term "individual with a disability"—an individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; an individual who is participating in a supervised rehabilitation program and is no longer engaged in such use; or a person who is erroneously regarded as engaging in such use, but is not engaging in such use.

The Senate recedes.

Section 510(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Covered entities are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both in-patient and outpatient programs that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment specifies that it shall not be a violation for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual is no longer illegally using drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

The Senate recedes.

(d) The House amendment specifies that an individual shall not be denied health services or other services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

The Senate recedes.

(e) The House amendment includes the same definition of "illegal use of drugs" and "drugs" set out in title I of the Act.

The Senate recedes.

79. Exclusions from the term "disability"

The Senate bill restates current policy under section 504 of the Rehabilitation Act of 1973 that the term "disability" does not include homosexuality and bisexuality. The Senate bill also excludes from the term "disability" the following mental impairments: transvestism, pedophilia, transsexualism, exhibitionism, voyeurism, compulsive gambling, kleptomania, or pyromania, gender identity 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.

The House amendment lists the various exclusions by category. The first category specifies that homosexuality and bisexuality are not impairments and as such are not disabilities under the ADA. The second category includes transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. The third category compulsive gambling, kleptomania, or pyromania. The final category includes psychoactive substance use disorders resulting from current use of illegal drugs.

The Senate recedes.

80. Amendments to the definition of the term "handicapped individual" under the Rehabilitation Act of 1973

(a) The Senate bill includes amendments to the definition of the term "handicapped individual" used in the Rehabilitation Act of 1973 to exclude current users of illegal drugs which are consistent with the changes made to the definition of the term "individual with a disability" used in the ADA. The Senate bill also specifies that the exclusion does not apply to medical services for which the individual is otherwise entitled. The Senate bill also states that 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.

The House amendment includes the same type of conforming changes to the Rehabilitation Act which are made to the ADA (see above). However, with respect to the provision that specifies that an individual shall not be excluded from medical services on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services, the category is limited to health services and services provided under titles I, II, and III of the Rehabilitation Act of 1973.

The Senate recedes.

The conferees incorporate by reference the statement of intent set out in item 16. Conferees note that, for purposes of this title, an individual covered by Executive Order 12564 who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 7(8)(C)(ii)(III) of the Rehabilitation Act. The conferees do not intend to prevent individuals covered by Executive Order 12564 or any other individuals covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 7(8)(C)(ii)(III). The Rehabilitation Act itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances, employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally

using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(b) The House amendment specifies that the term "drugs" and the phrase "current illegal use of drugs" have the same meanings as such terms have under the ADA.

The Senate recedes.

81. Alternative means of dispute resolutions

The House amendment, but not the Senate bill, provides that where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the ADA.

The Senate recedes.

It is the intent of the conferees that the use of these alternative dispute resolution procedures is completely voluntary. Under no condition would an arbitration clause in a collective bargaining agreement or employment contract prevent an individual from pursuing their rights under the ADA. The conferees adopt by reference the statement of the House Judiciary Report regarding this provision.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
MAJOR R. OWENS,
MATTHEW G. MARTINEZ,
STEVE BARTLETT,
HARRIS W. FAWELL,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

JOHN D. DINGELL,
EDWARD J. MARKEY,
THOMAS A. LUKEN,
NORMAN F. LENT,
BOB WHITTAKER,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

MATT RINALDO,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
BOB KASTENMEIER,
HAMILTON FISH, Jr.,
F. JAMES SENSENBRENNER, Jr.
(agrees to the conference report with the exception of "Item 13. Health and Safety" (Sec. 103(d))),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

STENY H. HOYER,
Managers on the Part of the House.

EDWARD M. KENNEDY,
TOM HARKIN,
HOWARD M. METZENBAUM,
PAUL SIMON,
ORRIN HATCH,
DAVE DURENBERGER,
JAMES M. JEFFORDS,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

FRITZ HOLLINGS,
DANIEL K. INOUYE,
JOHN C. DANFORTH,
Managers on the Part of the Senate.

ESTABLISHING POSITION OF DIRECTOR OF EMPLOYMENT PRACTICES UNDER THE CAPITOL POLICE BOARD

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the resolution (H.Res. 420) establishing the position of Director of Employment Practices, under the Capitol Police Board, with respect to members of the Capitol Police assigned to the House of Representatives and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. ROBERTS. Mr. Speaker, reserving the right to object, and I will not object.

I would add to Chairman OAKAR's comments by saying that this resolution is a positive step in ensuring fair opportunity for all Capitol Hill Police Force officers involved in the grievance process.

Mr. Speaker, after serving on the House Administration Subcommittee on Personnel and Police for 6 years, and after nearly 3 years of studying the force and ways to improve the current system, we have prepared a multilevel reform package to further the betterment and professionalism of the force.

This resolution creates a civilian position, the Director of Employment Practices, to assist individuals involved in the grievance process.

The House Committee on Administration has reviewed the current grievance process, recommended modification, and is creating this position to see that fairness and efficiency is brought effectively into the system.

I believe that individuals on the Capitol Hill Police Force and their supervisors have acted in the past in the most fair and equitable ways possible. This civilian position is intended to ease and assist these efforts in the future. I fully support the creation of this position.

Again, I wish to thank my current and past colleagues for their assistance in reaching this day. Chairman ANNUNZIO, Congressman BILL THOMAS, Congresswoman OAKAR, and Congressman DICKINSON deserve special recognition and much appreciation.

Ms. OAKAR. Mr. Speaker, first I would like to take this opportunity to thank my respected colleague, the Honorable PAT ROBERTS, whose steadfast and faithful belief in fair and equitable personnel practices for the U.S. Capitol Police brought about the legislation we are considering today. Further, let me state for the record that without our chairman, the Honorable FRANK ANNUNZIO's constant and unwavering support for the Capitol Police, legislation of this type would not be possible.

Mr. Speaker, House Resolution 420 will create a civilian position within the U.S. Capitol Police Force entitled "Director of Employment Practices." This position will be created with the purpose of enhancing the integrity and credibility of the grievance procedures process for the U.S. Capitol Police.

This person will have the authority to explain and discuss the rights and procedures to alleged grieved employees, and will also serve in an oversight capacity to insure smooth and efficient operation of the grievance procedure.

Mr. Speaker, to clarify any ambiguity which may exist concerning the purpose of this resolution, it is intended that this civilian employee, as with others who have been created by the respective bodies in the past, will function for the benefit of all Capitol Police personnel regardless of their current payroll status.

Mr. Speaker, this resolution constitutes one part of a reform package that Chairman ANNUNZIO, Congressman ROBERTS, and I have introduced. This position arose out of the committee's concern that allegations were being made by members of the Capitol Police Force regarding promotion, mobility, and possible bias against members of the force. The creation of this civilian position will enhance the integrity of the grievance procedure by insuring thoroughness and fairness in all steps of the process.

Mr. ROBERTS. Mr. Speaker, under my reservation, I want to inform my colleagues that the minority stands in full support of House Resolution 420.

Mr. ROBERTS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 420

Resolved, That the position of Director of Employment Practices is established with respect to members of the Capitol Police assigned to the House of Representatives.

SEC. 2. Each appointment to the position under the first section shall be made—

(1) by the Capitol Police Board, with prior approval of the Committee on House Administration; and

(2) without regard to political affiliation and solely on the basis of fitness to perform the functions of the position.

SEC. 3. The pay for the position under the first section—

(1) shall be at the appropriate rate under level HS-11 of the House Employees Schedule, as provided for in section 4 of the House Employees Position Classification Act (2 U.S.C. 293); and

(2) until otherwise provided by law, shall be paid from the contingent fund of the House of Representatives or from amounts appropriated for the Capitol Police with respect to the House of Representatives.

AMENDMENT OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. OAKAR: Page 1, line 3, strike out "assigned to the House of Representatives".

Ms. OAKAR (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment offered by the gentlewoman from Ohio [Ms. OAKAR].

The amendment was agreed to.

The resolution was agreed to.

TITLE AMENDMENT OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Ms. OAKAR: Amend the title so as to read: "Resolution establishing the position of Director of Employment Practices, under the Capitol Police Board, with respect to members of the Capitol Police.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material on House Resolution 420, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

CORRECTING THE ENGROSSMENT OF H.R. 4653, EXPORT FACILITATION ACT OF 1990

Mr. GEJDENSON. Mr. Speaker, I offer a resolution (H. Res. 423) to provide for the correction of the engrossment of H.R. 4653, and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 423

Resolved, That the Senate is requested to return to the House of Representatives the bill (H.R. 4653), to reauthorize the Export Administration Act of 1979, and for other purposes, and that the Clerk be authorized to reengross the bill with the following correction:

Page 21, strike line 23 and all that follows through page 22, line 20, and insert the following:

"(i) the term 'telecommunications equipment' includes—

"(I) telephone switching systems and stored program controlled communications switching systems, including related features and components that provide services and management of telecommunications networks;

"(II) telecommunications transmission equipment;

"(III) microwave, light wave, and other radio relay, transmitting, or test equipment, including communication satellite earth stations, and components and accessories related to such equipment;

"(IV) telecommunications cables and components, including optical fibers and optical cables;

"(V) equipment containing frequency synthesizers when used in land-based mobile communications systems;

"(VI) equipment described in any of subclauses (I) through (V), or any other telecommunications equipment, that contains lasers;

"(VII) computer hardware and application specific software which are related to any of the items described in subclauses (I) through (IV) and are required for data communications; and

"(VIII) all spare parts, components, and measuring or test equipment related to any of the items described in subclauses (I) through (IV);

"(ii) the term 'telecommunications technology' means technology related to telecommunications equipment;

"(iii) the term 'telecommunications networks' includes local area, intracity, intercity, and international telecommunications networks; and

"(iv) the term 'telecommunications' means voice, video, and data communications over any public or private network or broadcasting system, and services related to such communications.".

Mr. GEJDENSON (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Connecticut?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4 of rule XV. Such rollcall votes, if postponed, will be taken tomorrow, June 27, 1990.

NATIONAL SPACE COUNCIL AUTHORIZATION ACT OF 1990

Mr. ROE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2124) to authorize appropriations for the National Space Council and for other purposes.

The Clerk read as follows:

S. 2124

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Space Council Authorization Act of 1990".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, fiscal year 1989 (42 U.S.C. 2471), $1,200,000 for fiscal year 1990. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

STAFFING

SEC. 3. (a) Not more than six individuals may be employed by the National Space Council without regard to any provision of law regulating the employment or compensation of persons in the Government service, at rates not to exceed the rate of pay for level VI of the Senior Executive Schedule as provided pursuant to section 5382 of title 5, United States Code.

(b) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following: "Executive Secretary, National Space Council".

EXPERTS AND CONSULTANTS

SEC. 4. The National Space Council may, for purposes of carrying out its functions, employ experts and consultants in accordance with section 3109 of title 5, United States Code, and may compensate individuals so employed for each day they are involved in a business of the National Space Council (including traveltime) at rates not in excess of the daily equivalent of the maximum rate of pay for grade GS-18 as provided pursuant to section 5332 of title 5, United States Code.

REVIEW OF LAUNCH INDUSTRY

SEC. 5. (a) The National Space Council is requested to initiate a review of United States launch policy, including the Nation's expendable launch vehicle and satellite industries, their current and projected markets, the existing and projected level of foreign competition in these industries, the extent and level of support from foreign governments in these markets and industries, the consequences of the entry of nonmarket providers of launch services and satellites into the world market, restrictions on the use of foreign launch services and the export of United States satellites, and the importance of the United States launch vehicle and satellite industry to the national and economic security.

(b) The findings of this review and any policy recommendations are to be submitted

to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Reprsentatives by August 1, 1990.

EFFECTIVE DATE

SEC. 6. The Provisions of this Act are effective as of October 1, 1989.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. ROE] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. WALKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I rise in strong support of S. 2124, the National Space Council Authorization Act of 1990. The bill provides authorizations in the amount of $1.2 million to pay the salaries of the National Space Council staff and other necessary expenses.

The National Space Council was established in the NASA Authorization Act of fiscal year 1989 in order to address issues of national space policy and to resolve interagency disputes. Since its inception, the Council has successfully dealt with national space policy issues such as Landsat funding. And the Council continues to work to resolve the Nation's mission to inhabit the Moon and to explore Mars. The Science, Space, and Technology Committee hopes that the National Space Council will continue its best efforts in this area, and also that it will apply the Council's resources to better resolve interagency disputes. Members of the National Space Council include the Administrator of NASA and the Secretaries of State, Defense, Commerce, Transportation, and Treasury as well as the Director of the Office of Management and Budget, the Chief of Staff to the President, the Assistant to the President for National Security Affairs, the Director of Central Intelligence and the Assistant to the President for Science and Technology.

S. 2124 also requests the Council to conduct a review of United States launch policy, including the Nation's expendable launch vehicle and satellite industries. It is expected that the result of the review will be a clear path that ensures the Nation will maintain its leadership role in space.

Mr. Speaker, S. 2124 is an important statement of support by this Congress. I urge my colleagues to join me in voting for this bill.

□ 1820

Mr. Speaker, I would like to make one clarifying point. I particularly want to thank the distinguished chairman of the Committee on Post Office and Civil Service, the gentleman from Michigan [Mr. FORD], who was very helpful in getting this bill to the floor. I want to express my deep appreciation to him.

Mr. Speaker, I reserve the balance of my time.

Mr. WALKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2124, the National Space Council Authorization Act of 1990. This bill is noncontroversial, yet urgently needed. It should be supported by both sides of the aisle.

The National Space Council was resurrected in the NASA Authorization Act of 1989 at the initiative of the House Science, Space, and Technology Committee. Its purpose is to serve as a principal adviser to the President on space-related issues and to coordinate the space-related activities across the various Government departments and agencies.

The Senate passed S. 2124 by unanimous consent in February. S. 2124 is virtually identical to section 14 of H.R. 1759, the House-passed fiscal year 1990 NASA authorization bill. Unfortunately, because the House and Senate failed to enact a NASA authorization bill for fiscal year 1990, the Space Council has been operating so far this year without any budget authority. This situation has made the Space Council's existence very tenuous and has complicated its hiring and business activities.

Today we have the opportunity to pass this stand-alone National Space Council authorization bill, and in doing so, enhance the stature and efficiency of the Council. I urge my colleagues to support S. 2124.

Mr. ROE. Mr. Speaker, I yield myself an additional 2 minutes.

Mr. Speaker, I want to expand a little bit on the comment I made about the chairman of the Committee on Post Office and Civil Service, the gentleman from Michigan [Mr. FORD].

This particular bill that we are working on tonight is an extremely important bill, because in effect the Space Council would not even operate and it could not operate effectively without the added help that is needed here.

The chairman of the Committee on Post Office and Civil Service is also working on a major piece of legislation that will start to bring into clear focus the absolutely essential need of the House and Senate, and the Government for that matter, to have adequate resources to engage people who are technically trained and technically capable of carrying out the work that is needed here in the House.

I think sometimes that being pennywise and pound foolish is a big mistake. I hope that when we get to that bill and that bill is debated, we will have the chance, at least from the perspective of the Committee on Science, Space, and Technology, to bring into sharp focus the need for proper resources to engage the qualified people who are needed to fill the important roles we have in the various space and technology areas.

Mr. WALKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and pass the Senate bill, S. 2124.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2124, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

INCLUSION OF OVERSEAS MILITARY PERSONNEL IN CENSUSES OF POPULATION

Mr. SAWYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4903) to amend title 13, United States Code, to ensure that military personnel stationed outside the United States are not excluded from any census of population, as amended.

The Clerk read as follows:

H.R. 4903

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCLUSION OF CIVILIAN AND MILITARY PERSONNEL STATIONED ABROAD.

Section 141 of title 13, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

"(g) Effective beginning with the 1990 decennial census of population, in taking any tabulation of total population by States for purposes of the apportionment of Representatives in Congress among the several States, the Secretary shall take appropriate measures to ensure that—

"(1) each member of the armed forces assigned to a post of duty outside the United States shall be included, together with any of the member's dependents who reside at or near the same post; and

"(2) each member of the armed forces, and any dependent of any such member, included in accordance with paragraph (1) shall be enumerated as if residing at such member's 'home of record', as defined by

the Department of Defense for administrative purposes.".

SEC. 2. ADDITIONAL REPORTING REQUIREMENT.

Not later than 6 months after submitting the report required under section 141(b) of title 13, United States Code, with respect to the 1990 decennial census of population to the President, the Secretary of Commerce shall submit to the appropriate committees of Congress a report setting forth—

(1) for each State, what portion of the total population reported for such State under such section 141(b) consisted of—

(A) members of the armed forces (or their dependents) stationed (or living) abroad; or

(B) civilian employees of the Federal Government (or their dependents) stationed (or living) abroad;

(2) which departments or agencies of of the Federal Government participated in any program or measures designed to provide for the inclusion of individuals described in paragraph (1) (A) or (B) in the 1990 decennial census of population; and

(3) what criteria were used by each such department or agency in attributing individuals described in paragraph (1) (A) or (B) to particular States for purposes of such census.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Ohio [Mr. SAWYER] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. RIDGE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SAWYER].

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 4903, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SAWYER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am grateful for the opportunity to bring before the House H.R. 4903, a bill requiring the Secretary of Commerce to include members of the Armed Forces and their dependents, stationed or living overseas during the census, in the State population totals used for apportionment of the House of Representatives.

The bill further requires that those individuals will be counted in the State designated as their home of record.

Home of record is a Department of Defense term that refers to the State in which the member of the Armed Forces enlisted in the service.

It most closely approximates the home State of individuals who are highly mobile, not by choice, but by virtue of their service to the Nation.

Last August, the Commerce Department decided to include military personnel, Federal civilian employees, and their dependents, stationed or living overseas, in the census counts used for apportionment. I applaud the Department for its action, because it recognizes the unique position of this population.

However, the Commerce Department recently decided that overseas militry personnel would be counted in the State where they last resided for 6 months or longer. That decision ignores previous direction by Congress on this issue.

In 1988, the House overwhelmingly defeated legislation that would have required the inclusion of overseas military personnel in the State where they last lived for 6 months.

In addition, there is precedent for the criteria required by H.R. 4903.

In 1970, the only other time overseas military personnel were included in the apportionment counts, those individuals were attributed to the state designated as their home of record.

The Constitution gives Congress the authority to take the census. It is Congress that is affected by the process of apportionment, the only constitutional purpose of the census.

I regret that the Commerce Department made its decision without carefully considering the wishes of Congress. But that oversight makes our legislation necessary, to ensure the most equitable distribution of overseas military personnel and their dependents for apportionment purposes.

I want to commend Mr. RIDGE, the ranking minority member of the Subcommittee on Census and Population, for his leadership and persistence on this issue over the past several years.

I urge quick passage of H.R. 4903.

Mr. Speaker, I reserve the balance of my time.

Mr. RIDGE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, our service personnel stationed overseas won an important victory last year. The Department of Commerce announced that they would be counted in the census and included in the count for apportionment.

Unfortunately, our overseas service personnel won the battle but lost the war. The Department of Commerce has announced that these men and women will be counted at the last stateside location where they were stationed for 6 months. In September 1988, 316 of my colleagues joined me in defeating this very approach.

Previously, our service men and women were not counted at all. Now, they will be counted in the wrong location! Each and every one of us have received calls from overseas service personnel needing assistance. They do not call the district where they were last stationed—they call home.

There are no figures, no estimates nor even and educated guess as to the accuracy or availability of the figures necessary to determine where these people were last stationed for 6 months prior to being sent overseas. The only figures to emerge, to date, pertain to last duty station in the United States. Last duty station could be for 1 week or 1 year. According to CRS, the only way to move from last duty station to the last place stationed for 6 months is to review pay and other records.

How accurate is checking pay records? After all, would we count the service person where the check was issued or actually received? What if my check was issued in the District of Columbia, but I legally resided in Virginia for 6 months prior to being stationed overseas? There are many questions to be answered when looking at the method currently proposed.

In determining home of record, there are no questions. Home of record is designated by the enlistee, not by an arbitrary determination by a Government entity. It has the closest relationship to legal residence possible since an actual enumeration is impossible at this time.

Today, we will be voting on legislation to count service personnel. H.R. 4903 reaffirms our intent to make certain our overseas military personnel are counted where they should be counted—at their home of record. Service personnel declare their home of record upon entry into the service and upon reenlistment. Home of record follows the enlistee throughout his or her tour and is used to determine the travel stipend granted upon discharge. It is not a tax home—which is designated on a separate form in most instances. Once again, I urge my colleagues to support the most sensible, most logical and most equitable approach to counting our overseas service personnel—H.R. 4903.

Mr. Speaker, I reserve the balance of my time.

Mr. SAWYER. Mr. Speaker, it is my privilege at this time to yield such time as he may consume to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I am pleased to be a cosponsor of H.R. 4903 because I firmly believe that our military personnel stationed outside the United States should not be excluded from any census of population. Our fighting men and women, and their dependents, deserve to be counted.

It will surprise most Americans that our overseas military personnel were counted for reapportionment purposes only in 1970, at the height of the Vietnam war. Military dependents have never been counted.

For 1990, the Census Bureau independently decided to count our overseas military personnel, presumably in response to criticism that illegal aliens were being counted while the Nation's fighting men and women were not. The Bureau is to be commended for this decision, but it must be criticized for its proposal to count overseas mili-

tary personnel according to their most recent place of stateside residence lasting six months. This proposal, it is estimated, will place 1.5 to 2 million persons into States having military staging bases, even though those individuals don't consider these States to be their home, nor do they plan to return to those areas after military service.

The Bureau intends to use the overseas count only for congressional reapportionment. However, it is likely that a local jurisdiction containing a major military base will sue to obtain increased representation in its State legislature and increased Federal and State aid based on the enumeration submitted for Congress. Why, we must ask, should those States with large military installations be entitled to extra representation and the chance to litigate for additional Federal aid?

Mr. Speaker, H.R. 4903 corrects these distortions by specifying that overseas military personnel and dependents be counted according to their "home of record." The home of record State was the last location at which these military employees and their dependents chose to reside. It is to where they are given an allowance to return after their service. It is the place they consider to be home.

Mr. Speaker, I wish to commend my colleagues, Mr. SAWYER, Mr. RIDGE, Mr. FORD, and Mr. GILMAN for their leadership on this issue. The bill before us would guarantee that our military personnel stationed overseas are not discriminated against. Moreover, it would ensure that the count of this unique population is fair and free of distortion.

□ 1830

Mr. RIDGE. Mr. Speaker, I just want to again commend the chairman and thank him for all his good work.

Mr. Speaker, I neglected to mention that we are not only going to count overseas personnel, but their dependents as well, and I think that was an important inclusion that the subcommittee provided last week during markup.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SAWYER. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. Mr. Speaker, I rise for myself and on behalf of the entire Wisconsin congressional delegation in strong support of H.R. 4903 to ensure the U.S. military personnel now serving overseas and their dependents, are properly and fairly counted in the 1990 census.

I commend the chief sponsor of H.R. 4903, Representative TOM RIDGE, and also the chairman of the Subcommittee on the Census, Representative TOM SAWYER, for their response to the serious problem of census undercounting of military personnel overseas.

In the last Congress, legislation to require overseas military personnel be counted in the State of their last stateside duty station, rather than their home State of record, was decisively defeated in the House. It was done so because the policy created serious distortions in census enumeration. That argument still holds.

With one exception overseas members of Armed Forces were not counted. They should be. The Commerce Department seeks to ensure that overseas military and Federal civilian personnel, and their dependents, be counted in the current census—a commendable decision. Unfortunately, the Commerce Department chooses to achieve that goal by counting military and civilian personnel as residents of the State of their last duty stations—precisely the policy the House has overwhelmingly rejected.

H.R. 4903 achieves two objectives. First, it ensures once and for all that military personnel stationed overseas are counted in the census. Second, of equal importance, the bill provides that military personnel and their dependents are counted in the census for their home of record.

The home of record policy makes infinitely more sense than current Commerce Department policy. Census numbers have implications for Federal aid—which should be keyed to actual population—not phantom citizens who passed through a State merely because they were stationed in a State.

Out-of-country personnel of Federal Departments other than DOD are routinely counted in their home States—not the State in which they may have last resided before going overseas. Counting overseas Americans by home State will distribute these citizens fairly among the States, with no State receiving special advantage or disadvantage.

The current Commerce Department policy would cause serious inaccuracies in the census count for many States especially in the Northeast and Midwest. It shortchanges most States by giving a few States with large military installations artificially inflated census counts for a population which does not really live in the State.

Census officials admit that the Commerce Department's duty station policy concentrates 1.5 to 2 million persons into the counts for just three States—which contain most of the major military bases in the United States.

Nowhere are the effects of the Commerce policy clearer than in Wisconsin. Using the home of record approach in H.R. 4903, Wisconsin would have its 12,189 overseas military personnel enumerated in its census. But using the Commerce duty station policy, the number falls to 319—a 97-percent reduction. These figures reflect only military personnel, not their dependents of DOD civilian personnel and their dependents. Their inclusion would make the undercounting problem with the Commerce Department duty station policy even more severe.

The consequences of the Commerce policy are severe. As many as 18 seats in the U.S. House could be affected by the census final count, and some of those may be changed by a shift of as few as 1,000 individuals.

The DOD personnel issue has a direct bearing on apportionment, and on representation in the House itself. Adopting by executive fiat, a policy which threatens to undercount any State's military personnel by an astounding 97 percent is simply not acceptable.

Mr. Speaker, H.R. 4903 offers a clear-cut and simple remedy to a serious problem. I commend its author, and urge adoption of the bill.

Mr. SAWYER. Mr. Speaker, let me in closing just say how much the subcommittee and the full committee appreciate the effort that the gentleman from Pennsylvania [Mr. RIDGE] has made in bringing this matter before us in this fashion today, in addition to his leadership on this issue over the last several years which has been exemplary.

Mr. GILMAN. Mr. Speaker, as an original cosponsor of H.R. 4903 I rise in strong support of this legislation. I would also like to take this opportunity to commend my good friend and colleague, Mr. FORD, the chairman of the House Committee on Post Office and Civil Service for the expeditious handling of this bill.

H.R. 4903 would amend title 13 of the United States Code and would require the Bureau of the Census to count members of Armed Forces stationed outside of the United States and to include them in State population totals for apportionment purposes. H.R. 4903 would also require the Census Bureau to enumerate overseas military personnel in the State designated as their "home of record." The home of record is the location declared upon entry into the service by the enlistee and is considered by the enlistee and his respective military branch as home.

Mr. Speaker, I believe H.R. 4903 would provide a fair and equitable way of counting our overseas military personnel and their dependents. Accordingly I urge my colleagues to join me in supporting this legislation.

Mr. KLECZKA. Mr. Speaker, today, I rise in strong support of legislation, H.R. 4903, to ensure the accuracy of the census.

American service men and women, and their dependents stationed overseas, should not be excluded from the census. This group numbers almost 1,100,000. H.R. 4903 provides a fair solution to this situation.

The bill requires that members of the Armed Forces and their dependents assigned to a duty post outside of the United States be included in the State population totals used to

apportion seats in the U.S. House of Representatives. According to the bill, they would be counted by their home of record rather than their last duty station in the United States.

In 1988, the House defeated a bill which would have counted overseas military personnel based on where they were last stationed in the United States for at least 6 months. Then as now, this method has several problems.

First, Department of Defense information concerning the home of record of soldiers is much more accessible than that on the most recent stateside duty post. A solidier's home of record, declared when he or she enlists, is carried permanently in his or her military personnel files. It rarely changes. But the Pentagon must check through mountains of payroll records to find the U.S. base where a soldier was last stationed for 6 months. This method is very costly and time consuming.

Moreover, counting overseas pesonnel based on their last U.S. duty station is of dubious accuracy for the purpose of apportioning seats in the U.S. House of Representatives. The Wisconsin example illustrates this well. Only 319 of the 12,189 Wisconsinites—2.6 percent—stationed overseas were serving at a base in their homestate before being reassigned overseas.

However, a strong correlation exists between the home of record and the State overseas personnel consider to be their legal residence for purposes of paying Federal income taxes. Of the 12,189 personnel stationed overseas who claimed Wisconsin as their home of record, 9,895—81.2 percent—also claimed the State as their legal residence for paying Federal taxes.

Counting overseas military personnel in the State totals of the places they consider to be home is fair. Not going so will hamper the ability of the Federal Government to plan ahead for the health, housing, and educational assistance these soliders may claim.

For these reasons, I urge my colleagues to adopt H.R. 4930. It is the fair way of counting our Armed Forces in the census.

Mr. SAWYER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from Ohio [Mr. SAWYER] that the House suspend the rules and pass the bill, H.R. 4903, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

FLIGHT ATTENDANT SAFETY PROFESSIONALS' DAY

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S. J. Res. 278) designating July 19, 1990, as "Flight Attendant Safety Professionals' Day," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so in order to yield to the gentleman from Oregon [Mr. DEFAZIO] who is the chief sponsor of this resolution.

Mr. DEFAZIO. Mr. Speaker, will the gentleman yield?

Mr. RIDGE. I yield to the gentleman from Oregon.

Mr. DEFAZIO. Mr. Speaker, as my colleagues know, many of us here in the Congress fly nearly every week, a round trip to our district, and in doing that I think we do not quite often enough think about the thousands of men and women who work as flight attendants. They are just the people we think that perhaps bring the food or serve the drinks, but they do a lot more than that.

Mr. Speaker, when it comes to catastrophes, like last year's flight 232, the DC-10 that had problems in the Midwest, it was the flight crew and the attendants that saved many lives on that flight. We have got to remember that every time we fly.

Mr. Speaker, flight attendants are not just there for providing those services. Yes, that is important. It is important that we are comfortable when we fly, but it is even more important that they are there to provide for us in the times of emergency, to provide those life-saving and life-giving services that only highly trained and skilled flight attendants can provide.

So, Mr. Speaker, I would ask my colleagues that we move forward and favorably consider this commemorative so that we can at least on one day in 1990, on July 19, say to those thousands of men and women who spend their lives and dedicate their lives to making it safer and more comfortable to fly, "We recognize the tremendous service that you are providing to us and other members of the American public who fly so often."

Mr. RIDGE. Mr. Speaker, further reserving the right to object, I do so in order to yield to my friend and colleague, the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield?

Mr. RIDGE. I yield to the gentleman from Indiana.

□ 1840

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding to me.

I just want to say to the gentleman from Oregon, this is a good resolution. My daughter is a flight attendant. I never appreciated the hard work of these people half as much as when she came back and started telling me the stuff she has to put up with. In addition to providing for the safety and comfort of the passengers, they have to take a lot guff.

So I just want to say on behalf of this resolution that for all those flight attendants out there who are taking guff tonight, we are thinking of you and we understand.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 278

Whereas Federal aviation regulations, since 1952, have required flight attendants on board all commercial airlines to safeguard the well-being of passengers;

Whereas flight attendants are trained to respond to medical emergencies and have assisted in saving passengers' lives in emergencies caused by strokes, heart attacks, and so forth;

Whereas flight attendants' professionalism and calmness in evacuations of crashed airplanes have saved thousands of lives that otherwise would have been lost;

Whereas flight attendants have given their lives to save passengers in emergency evacuations, sustaining an on-the-job fatality rate higher than that of police officers;

Whereas flight attendants have assisted in hundreds of in-flight emergencies due to hijackings, terrorist acts, decompressions, and severe turbulence; and

Whereas flight attendants have vigorously strived for safety improvements at their airlines and the Federal Aviation Administration and have worked diligently to educate the flying public of safety procedures: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That July 19, 1990, is designated as "Flight Attendant Safety Professionals' Day", and the President is requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

This Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIVE AMERICAN INDIAN HERITAGE MONTH

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 577) to authorize and request the President to proclaim the month of November 1990, and therafter as "Native American Indian Heritage Month," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so in order to yield to the gentleman from American Samoa [Mr. FALEOMAVAEGA], who is the chief sponsor of this resolution.

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today in support of House Joint Resolution 577, National American Indian Heritage Month.

This resolution has three purposes. First and foremost is to acknowledge the contributions that American Indians have made to this Nation. Second, by passing this resolution the Senate and House of Representatives will enable other Americans to learn more about and better understand their American Indian brothers. Third, we as a Congress will be providing young American Indians the positive benefits of self-esteem, pride and self-awareness.

House Joint Resolution. 577 will set aside the month of November of this year as a time that we as a Nation may honor past and present American Indians. This resolution will not make up for past actions, but it does honor the contributions that American Indians have given to our Nation and indeed the world, for the past five centuries.

As the original inhabitants of this land, the American Indians were made up of many unique cultures that we as a Nation have benefited from and continue to benefit from. Had it not been for the American Indians, the first Pilgrims would not have survived. I realize that this may seem trivial to much of the public, as it is something that all American children learn in grade school; but, it is a sad fact of human nature that many of the residents of North America take for granted some of the most important things in life. Having said that, I would like to remind my colleagues of a few important facts pertaining to our history and the American Indians.

It was through the Indians' knowledge of hunting, fishing, and farming that the first settlers learned to exist in this land, and it was through the generous nature of the Indians that those early European settlers were able to make a home on this continent. One of our first history lessons is how the Indians came to welcome the Pilgrims and shared with them their knowledge of how to grow corn and squash, how to fertilize the ground, and how to make different foods with what they produced. Children all learn how their friendship helped save the early settlers. Often what is not taught is that many social events of those early colonists can be traced back to American Indian origins. Even that first famous Thanksgiving Dinner was not only shared with the American Indians, but was a direct result of their kindness and a tradition that they had practiced for centuries.

The second purpose of this resolution is that it will enable other Americans to learn more and better understand their American Indian brothers. For centuries now American Indians have been a mystery to the majority of the American public. When asked to picture an Indian in their mind's eye, most Americans might describe them as stoic, solid, and devoid of humor.

Mr. Speaker, this image of American Indians could not be farther from the truth, and it is sad that most of our Nation's people view the Indian this way; however, I believe that many Americans have this view subconsciously as a way to protect themselves. In acknowledging the American Indians and the contributions that they have made to this Nation we must also acknowledge our own mistakes and those of our forefathers. The taking of land, the long list of broken treaties and promises, the unkind acts of violence and oppression that have been inflicted on American Indians, are actions most of us are not proud of. The result is that contemporary public response is either to pity the Indians or ignore them completely.

Today I ask that we acknowledge and honor the American Indian people for their acts of loyalty, heroism, and patriotism that they as individuals and as a people have shown toward this country.

The third purpose of this resolution is to help the young generation of American Indians to stand tall and be ever proud of a rich and unique cultural heritage.

By setting aside a special period of time this year to honor American Indians and their heritage, we will also be letting the present generation of American Indians of today know that we as a Nation have not forgotten them, but honor them as a great people.

I believe that by doing this we will be able to let the future generations of American Indians know that we respect who they are; that we take pride in their contributions; and that we can give back to these people what history has for so long tried to deny them—their tremendous humility, self-esteem, and self-dignity.

Mr. Speaker, collecting enough cosponsors to pass a resolution through the U.S. House of Representatives takes much effort, and this resolution is not an exception. I would not be standing here today without the active support of the American Indian heritage. Their suggestions on improvements to this bill and their many, many man-days of effort in soliciting additional cosponsors have produced a resolution worthy of this august body, and I commend the board of directors of the foundation, its president, Princess Pale Moon, and their staff for their many long hours of work.

Mr. Speaker, I have with me today letters supporting this House joint resolution, and I submit them for insertion in the RECORD at this point.

CHEYENNE RIVER SIOUX TRIBE
Eagle Butte, SD, June 26, 1990.

Hon. ENI E.F. FALEOMAVAEGA,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN FALEOMAVAEGA: I am pleased to support passage of your bill, H.J. Res. 577, to authorize and request the President to proclaim the month of November 1990 and thereafter "Native American Indian Heritage Month". I think it is important that this nation recognize the contribution that the Indian tribes and people have made to this Nation and their continuing importance in the political framework of the United States. You are to be commended for your role in furthering this bill and your continuing interest in, and support for, Indian interests. As Chairman of the Cheyenne River Sioux Tribe and President of the National Congress of American Indians, I thank you for your sponsorship of H.J. Res. 577.

Sincerely,

WAYNE DUCHENEAUX,
Chairman.

BILLINGS AMERICAN INDIAN COUNCIL,
Billings, MT, March 28, 1990.

To whom it may concern:

On behalf of the Billings American Indian Council, a private non-profit organization representing the interests, issues, and goals of the approximate 7,000 American Indians in the greater Billings area, I would like to add our endorsement to the proposition of November being designated at National American Indian Heritage Month, beginning in 1990.

In addition, I feel it would be beneficial to have one day of that month to continue as American Indian Day. This would serve as a focal point for schools, groups, and other such entities.

Sincerely,

JOHN ROBINSON,
Director.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 577

Whereas Native American Indians were the original inhabitants of the lands that now constitute the United States of America;

Whereas Native American Indians have made an essential and unique contribution to our Nation, not the least of which is the contribution of most of the land which now comprises these United States;

Whereas Native American Indians have made essential contributions to the world, including prehistoric cultivation and harvesting of corn and sweet potatoes;

Whereas the people of the United States should be reminded of the assistance given to the early European visitors to North America by the ancestors of today's Native American Indians, including knowledge and

training provided to the pilgrims in survival, hunting, and cultivation, and fertilization of indigenous crops;

Whereas the people and Government of the United States should be reminded of the assistance given to this country's Founding Fathers by the ancestors of today's Native American Indians, including the support the original inhabitants provided to George Washington and his troops during the winter of 1777-1778, which they spent in Valley Forge;

Whereas the people and Government of the United States should be reminded that certain concepts such as freedom of speech, the separation of powers in government, and the balance of power within government, all of which were found in the political systems of various Native American Indian nations, influenced the formulation of the Government of the United States of America;

Whereas the Members of the Senate and House of Representatives believe that a resolution and proclamation of the nature requested in this resolution can encourage activities which provide positive benefits of enhanced self-esteem, pride, and self-awareness to young Native American Indians;

Whereas the approaching 500th anniversary of the arrival of Christopher Columbus to the Western Hemisphere provides an opportunity for the people of the United States to consider and reflect on our Nation's current relationship with our Native American Indians; and

Whereas the month of November concludes the traditional harvest season of Native American Indians and was generally a time of celebration and giving thanks: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That beginning in 1990 and thereafter, the month of November is designated as "National American Indian Heritage Month", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local governments, interested groups and organizations, and the people of the United States to observe the month with appropriate programs, ceremonies, and activities.

AMENDMENT OFFERED BY MR. SAWYER

Mr. SAWYER. Mr. Speaker, I offer an amendment.

The clerk read as follows:

Amendment offered by Mr. SAWYER: Page 2, in each whereas clause beginning on that page, strike "Native" each place it appears.

Page 3, in each whereas clause beginning on that page, strike "Native" each place it appears.

Page 3, line 3, strike "beginning in 1990 and thereafter,".

Page 3, line 4, insert "1990" before "is designated".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Ohio [Mr. SAWYER].

The amendment was agreed to.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. SAWYER

Mr. SAWYER. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. SAWYER: Amend the title so as to read: "Joint Resolution designating the month of November 1990 as 'National American Indian Heritage Month'.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

REQUEST FOR CONSIDERATION OF SENATE JOINT RESOLUTION 336, SOUTH AFRICAN FREEDOM WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate joint resolution (S.J. Res. 336) designating the week in 1990 which coincides with the first visit of Nelson Mandela to the United States after his release from prison in South Africa as "South African Freedom Week" and ask for its immediate consideration in the House.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Illinois [Mr. HAYES], the chief sponsor of this resolution.

Mr. HAYES of Illinois. Mr. Speaker, today when brother Nelson Mandela spoke before this body we witnessed a historic event. Many of us have worked so diligently for this day to come and in one way or another we have all been part of the struggle to free Mr. Mandela and the other 28 million black brothers and sisters in South Africa. Although he is now free from the prison walls that held him for 27 years, he is by no means a free man. Until the bondage of apartheid is erased from the South African society, Nelson Mandela and his 28 million brothers and sisters who make up the black majority in that country, will never enjoy true freedom.

The examples Nelson Mandela has set, both by his actions before being jailed, and now, after being released, are a statement of his unyielding commitment to freedom and democracy—values which Americans have cherished since the founding of this country over 200 years ago.

In celebration of Mr. Mandela's visit, I have introduced and bring to the floor today a resolution designating the week of his visit as "South African Freedom Week." This resolution recognizes Mr. Mandela's struggle for freedom as well as acknowledges the recent government reforms in his country.

It is my hope that this Congress, the representative body of the World's most progressive democracy, will take time to officially recognize one of the World's foremost freedom fighters, Nelson Mandela. Just as we have welcomed freedom fighters in the past, including most recently Lech Walesa, it is only fitting that we do the same for one who champions the dreams and aspirations of the 28 million black South Africans who long for true democracy. I encourage all of my colleagues to join me in this salute to a true champion of democracy and vote in support of this resolution.

Mr. RIDGE. Mr. Speaker, I yield to the gentleman from Ohio [Mr. SAWYER].

Mr. SAWYER. Mr. Speaker, I am pleased to rise in support of Senate Joint Resolution 336, to designate the week that coincides with the first visit of Nelson Mandela to the United States, following his release from prison, as South African Freedom Week.

I want to congratulate the sponsor of the companion House resolution, Mr. HAYES of Illinois, for successfully obtaining the support of a majority of the House for this important resolution.

We are honored to have Mr. Mandela visit the United States. His countenance, dignity, and demeanor belie the nearly 28 years he spent imprisoned in South Africa.

The warm reception Americans have extended to Mr. Mandela is indicative of the widespread support and sympathy for the cause of freedom in South Africa to which he has dedicated his life.

But, like Walesa and Vaclav Havel before him, Nelson Mandela also has struck a chord of harmony with the American people. For his goal is one with which we can identify closely: The establishment of a democratic system of governance based on the principle of one person, one vote.

The paths taken by Lech Walesa, Vaclav Havel, and Nelson Mandela have been determined by differing circumstances. But a common destination, based on a common belief in the dignity and worth of each individual, have earned them the admiration and respect of the people of the United States.

This week, we have opened our hearts to Nelson Mandela and his wife, Winnie, because the future they seek for all people of South Africa encompasses the values we cherish most in our country today.

Mr. RIDGE. Mr. Speaker, continuing my reservation of objection, I yield to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, I thank my colleague, the gentleman from Pennsylvania, for yielding to me.

I would like to start off by saying that along with so many others, I was very happy to see Nelson Mandela walk out of prison as a free man and I look forward to seeing him play a positive role in the negotiations leading to a nonracial democratic South Africa; but after having said that, I have some

concerns about what is taking place in Washington and around this country during the visit of this gentleman.

There are a lot of things that need to be brought to light, brought to the attention of the American people and the world about what is going on vis-a-vis Mr. Mandela and the struggle for an end to apartheid in South Africa. Some questions need to be answered by Mr. Mandela and his supporters.

First of all, why does Mr. Mandela support the radical terrorist elements in the world?

Mr. Mandela has embraced Yasir Arafat. He has called him a humanitarian. He has embraced Mu'ammar Qadhafi and called him a humanitarian. Mr. Qadhafi has been one of the major enemies of the United States and the free world and a supporter of terrorism. Anybody who has been watching the news media over the past several years knows that.

□ 1850

He has embraced people like Mr. Mengistu, Colonel Mengistu, of Ethiopia, who is a butcher. Mr. Mengistu has caused hundreds of thousands of people to go to their death through government imposed famine and government policies. Recently in one of the port cities up there, Massawa, they have been using cluster bombs to kill innocent men, women, and children, and he is a hardcore Marxist Communist being supported, or has been supported, by the Soviets, and Mr. Mandela has embraced him.

Mr. Mandela has said that as soon as he leaves here he wants to go visit one of the great humanitarians of our time, Fidel Castro, in Cuba. Fidel Castro was recently condemned by the U.N. Human Rights Commission, and yet Mr. Mandela has said that he is a titan as far as being a humanitarian is concerned. Ask anybody who has fled Cuba, or ask the Cuban Americans in Miami or in Southern America, and they will tell you what kind of a fellow Castro is.

The Heritage Foundation put out a publication this week, and I would like to quote from that, stating what Mr. Mandela has said. They said:

> He repeatedly, Mr. Mandela, has supported terrorism. Since Mandela's release from prison and his subsequent refusal to renounce violence, the Marxist-dominated ANC has launched terrorism and violence against civilians, claiming several hundred lives. Further, the ANC, in which Mandela serves as deputy president, has tortured and executed its own members when they have refused to toe the party line, a fact Mandela conceded in a press conference on April 14. ANC dissidents who escaped to Kenya in April contend that at least 120 political prisoners are being detained and tortured in ANC camps in Angola and Uganda. Because of its support for violence against civilians, Mandela's ANC appropriately was labeled a "terrorist" organization last January in the U.S. Defense Department's Terrorist Group Profiles.

In addition to that, since the first of this year in January, 19 people have had tires put around their necks, their hands tied behind them, the tires filled with kerosene and gasoline and set afire in front of their families because they did not toe the ANC line. One of these people was a real threat to the ANC; she was a 9-year-old girl.

I think that Mr. Mandela, who came to this Chamber today and spoke to America and to our body, ought to answer these questions. These questions are these: Why, Mr. Mandela, are you supporting terrorist organizations? Why are you supporting people who are enemies of freedom and support terrorism around the world? Why are you embracing a man you call humanitarian who has been sending troops to other parts of the world to repress people and take away their freedoms? I am talking about Fidel Castro. Why are you talking about nationalizing industry and taking that country, South Africa, into a one-party state not unlike what Eastern Europe is trying to get away from, a Communist Socialist state?

All of these things need to be answered by Mr. Mandela, and I hope he will answer them. I think some of the things he has said and some of the things he has advocated have merit. I was pleased that some of the things he said smacked of patriotism and democracy here today, but there are many questions that need to be answered.

The United States has a vested interest in what goes on in the southern tier of Africa. Minerals that come from only two major sources of the world, southern Africa and the Soviet bloc, have a great deal to do with the security of this Nation and the economic health of this Nation. If that southern tier of Africa were to go Communist or be controlled by anti-American elements, we would be in big trouble.

So Mr. Mandela, I hope, before he leaves this country or at some point in the future, will address these issues, because they are not only important to South Africa, they are important to the United States of America as well.

Mr. HAYES of Illinois. Mr. Speaker, will the gentleman yield?

Mr. RIDGE. Further reserving the right to object, I am happy to yield to the gentleman from Illinois.

Mr. HAYES of Illinois. Mr. Speaker, I would just like to respond to two things that the gentleman from Indiana raises.

Perhaps he does not really understand what the meaning of terrorism is.

I do not support or advocate terrorism. How can we be so one-sided in our views? Does the gentleman know how many of those black Africans have been slaughtered over there by the Botha regime before he left, and now by the antiapartheid system?

This man spent 27 years in jail and trying to fight for democracy, which we espouse here in this country, and I think it is time that we stop talking out of both sides of our mouth and speaking against terrorism, say something about the slaughter of blacks, women, and children included, over there by that apartheid regime.

When Mandela now speaks out for that, I do not think he should be characterized as one being terroristic necessarily. He is defending the right of his people, which we will do here. We have done that. He mentioned that. He went all the way back to the Declaration of Independence in his speech here today.

I do not think we ought to think those people over there in Africa ought to be any different.

So far as the communistic leanings, we are sitting down and dealing today from the top of this Government, the President of this country, President Bush, who has met with the top Communist in the Soviet Union trying to see if we can preserve peace in the world. This, I think, is the way we ought to be.

I do not think we can, as a country, select who Mandela is going to admire or suggest who he is going to follow. All we can do is support what we believe in, the principles we stand for. We stand for democracy. And democracy has got to be a two-way street, not one-way.

Those people want freedom over there, and we ought to stand up and fight for it here in this country, put our actions where our mouth is.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield further?

Mr. RIDGE. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, I would just like to say that President de Klerk of South Africa in the past 2 to 3 months has taken quantum leaps away from apartheid. He has said publicly time and again, "Our road away from apartheid and to a multiracial democracy is irreversible." They are heading in the right direction, yet yesterday at the White House Winnie Mandela came out to the rose garden with the President with a clenched fist, and Nelson Mandela said he would not renounce the use of violence until all the things that they want have been achieved.

Here is Mr. de Klerk, the President of that country heading away from apartheid, asking all the interested parties to sit down and adopt a multiracial democracy constitution, and Mr. Mandela is continuing to advocate violence. I think that sends the wrong signal, and a signal that should be corrected.

In addition to that, Winnie Mandela, his wife, has said that she believes the necklacing is a useful tool. As I said, 19 people have been necklaced and burned to death in front of family members this year. That kind of terrorism should be renounced by Mr. Mandela and the ANC as rapidly as possible.

If those things were to happen and if they would take steps toward true democracy and away from the Socialist Communist approach that they have talked about in the ANC, I think many in this Congress who are reluctant to embrace the ANC and Mr. Mandela right now would take a different view of the situation.

Mr. RIDGE. Mr. Speaker, further reserving the right to object, I yield to our colleague, the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, I have read the resolution, and it is not very long.

If the resolution language were limited to expressing disapproval on the part of the United States Congress for apartheid which exists in South Africa, I would have no problem with it. When it goes on to include Mr. Mandela, I believe that we then are condoning many of the activities, if not expressly at least inferentially, that Mr. Mandela has said in terms of what comments he has made in this country in his visit, and that is the reason that I am interposing this reservation and this objection.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. LEHMAN of California). Is there objection to the request of the gentleman from Ohio?

Mr. DANNEMEYER. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolutions just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

REVISED DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 101-206)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of today, Tuesday, June 26, 1990.)

PERMISSION TO VACATE SPECIAL ORDER AND REQUEST FOR SPECIAL ORDER

Mr. BURTON of Indiana. Mr. Speaker, I ask unanimous consent to vacate the 60-minute special order granted for today to the gentleman from California [Mr. DANNEMEYER] and to replace that with a 5-minute special order.

The SPEAKER pro tempore (Mr. LEHMAN of California). Is there objection to the request of the gentleman from Indiana?

There was no objection.

□ 1900

H.R. 5150

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. MICHEL] is recognized for 5 minutes.

Mr. MICHEL. Mr. Speaker, it has become increasingly clear that more serious measures are needed to address the savings and loan disaster. The Department of Justice and Treasury have made great progress, with limited resources, in prosecuting those persons who are responsible for this mess. Unfortunately, this progress is not enough.

The American people demand that we step up our efforts to get to the bottom of the problem, and that means giving the prosecutors more resources and more authority to untangle the complicated web of intrigue and corruption that characterizes the S&L crisis.

I, along with Mr. WYLIE and Mr. HILER, have introduced the Savings and Loans Prosecution Facilitation Act to address this very serious problem. This bill will provide the additional resources needed by the Department of Justice and the Department of the Treasury to help them prosecute those directors and officials of the savings and loans that bilked this country of billions of dollars. It will also facilitate procedures to bring these people to justice.

Mr. Speaker, when it comes to the savings and loan crisis, we cannot delay any longer. We must give the Attorney General and the Internal Revenue Service the ability to conduct a proper and detailed investigation that will net all those responsible.

The following is a section-by-section analysis of the Savings and Loan Prosecution Facilitation Act, and the bill itself.

SECTION-BY-SECTION ANALYSIS OF SAVINGS AND LOAN PROSECUTION FACILITATION ACT

TITLE I—AMENDMENTS RELATING TO BANKRUPTCY

Proceedings

Section 101. This section identifies more clearly the types of actions in which a finding of a breach of fiduciary duty would act as a bar to a bankruptcy discharge of any damages, penalty, fine, forfeiture, restitution, reimbursement, indemnification, or guarantee against loss, ordered or approved by a court, issued by a Federal financial regulatory agency, or contained in any settlement agreement entered into by a debtor who committed fraud while acting in a fiduciary capacity to an insured financial institution.

Section 102. This section lists those definitions, procedures and special rules that apply to Section 101.

Section 103. This section lists those conforming amendments that apply to Section 101.

TITLE II—PERSONNEL FOR INVESTIGATION AND PROSECUTIONS

Section 201. This section authorizes appropriations for additional resources for the investigation of fraud and other violations of law concerning the thrift industry. This includes an additional $15 million for 160 special and/or revenue agents for the Internal Revenue Service, and $9 million to the Department of Justice for purposes of investigations, prosecutions, and civil proceedings.

Section 202. This section authorizes the Attorney General to accept (and departments and agencies to provide) services, without reimbursement, to assist in the investigation and prosecution of fraud and other criminal or unlawful activity in or against the savings association industry. The section provides that attorneys so provided may perform the duties and functions of U.S. Attorneys, under the general supervision of the Attorney General, and that law enforcement personnel, and other employees, so provided shall also serve subject to the general supervision of the Attorney General.

TITLE III—AMENDMENTS RELATING TO POWERS AND PROCEEDINGS OF FEDERAL BANKING AGENCIES

Section 301. This section provides that any finding that a depository institution insider has breached a fiduciary duty to the institution constitutes a defalcation for purposes of the bankruptcy code and that the resulting liability is not dischargeable in bankruptcy.

Section 302. This section prospectively grants priority to claims of government agencies over those of depositors, shareholders and other creditors in actions against directors, officers, attorneys, accountants and other S&L-related parties responsible for losses. Consistent with the interests of justice, the amendment directs U.S. courts to give FDIC and RTC cases expedited consideration and docket priority.

Section 303. This section authorizes Federal banking agencies to receive assistance from, and provide assistance to, foreign banking authorities to detect violations of banking law and regulations.

Section 304. This section, in order to prevent the dissipation or concealment of assets prior to judgement in civil recovery cases, authorizes the FDIC, RTC and OTS to seek ex parte Federal Court orders to freeze the corporate and personal assets of defendants in civil money penalty cases and civil liability cases; and authorizes Federal courts to appoint receivers to administer frozen assets.

Section 305. This section expands the subpoena authority of the FDIC and the RTC.

Section 306. This section enables the FDIC and RTC to void and recover fraudulent transfers intended to hinder, delay, or defraud an insured depository institution.

TITLE IV—AMENDMENTS TO CRIMINAL PROVISION APPLICABLE TO DEPOSITORY INSTITUTIONS

Section 401. This section, in order to prevent the dissipation or concealment of assets prior to judgement in court enforcement actions, authorizes the Attorney General to seek ex parte court orders to freeze the corporate and personal assets in criminal cases; and authorizes Federal courts to appoint receivers to administer frozen assets.

Section 402. This section makes it a Federal criminal offense, punishable by a fine of up to $1 million and imprisonment for up to 5 years, to knowingly conceal assets or property subject to a claim by a Federal banking agency.

Section 403. This section expands the list of crimes under which the U.S. Government can seek civil forfeitures.

Section 404. This section contains a number of nonsubstantive technical and conforming provisions.

Section 405. This section includes additional bank fraud and related offenses as predicates for wiretaps.

Section 406. This section would partially overcome the recent Supreme Court decision in Haghey v. U.S. by permitting the government's ability to seek restitution for victims not specifically included in a count of conviction. The Haghey decision can adversely impact the government's ability to obtain restitution in S&L enforcement actions involving multiple parties.

H.R. 5150

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Savings and Loan Prosecution Facilitation Act".

TITLE I—AMENDMENTS RELATING TO BANKRUPTCY PROCEEDINGS

SEC. 101. EXCEPTIONS TO DISCHARGES FOR CERTAIN DEBTS CONNECTED WITH LOSSES TO DEPOSITORY INSTITUTIONS.

Section 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

"(11) for restitution that the debtor has been ordered to pay by any court of the United States, or of any State, in any criminal proceeding arising from any act that caused loss to any depository institution or insured credit union; or

"(12) for any damages, penalty, fine, forfeiture, restitution, reimbursement, indemnification, or guarantee against loss, provided in any judgment, order, or consent order or decree entered in any court of the United States or of any State, issued by the appropriate Federal financial institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institition or insured credit union.".

SEC. 102. DEFINITIONS, PROCEDURES, AND SPECIAL RULES.

Section 523 of title 11, United States Code, is amended by adding at the end the following new subsections:

"(e) Any institution-affiliated party of a depository institution or insured credit union shall be considered to be acting in a fiduciary capacity with respect to such depository institution or insured credit union for purposes of paragraphs (4) and (12) of subsection (a).

"(f) Notwithstanding subsection (a)(2)(B)(iii) of this section, reliance by a creditor will not be required to establish an exception to discharge under subparagraph (A) or (B) of subsection (a)(2) if the creditor is the appropriate Federal financial institutions regulatory agency that is a successor to a depository institution or insured credit union.

"(g)(1) Notwithstanding any other provision of law, a complaint objecting to the discharge of any debt owed to any depository institution or insured credit union that is closed, is in receivership or conservatorship, is sold to (or has its assets and liabilities assumed by) another depository institution or insured credit union in a transaction assisted by the appropriate Federal financial institutions regulatory agency, or to any appropriate Federal financial institutions regulatory agency, may be filed on or before the end of the 120-day period beginning on the later of—

"(A) the date of the debtor's first meeting of creditors, as provided under section 341 of this title, or

"(B) the date of the appointment of a conservator or receiver by the appropriate Federal financial institutions regulatory agency for the depository institution or insured credit union with respect to which the debt arises.

"(2) No provision of this subsection shall be construed as extending any period of limitations prescribed by section 11(d)(4) of the Federal Deposit Insurance Act.

"(h) For purposes of subsections (a)(11), (a)(12), (e), (f), and (g) of this section—

"(1) The terms 'depository institution' and 'insured depository institution' have the meanings given such terms in section 3(c) of the Federal Deposit Insurance Act.

"(2) The term 'insured credit union' has the meaning given such term in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)).

"(3) The term 'appropriate Federal financial institutions regulatory agency' has the meaning given to such term in section 8(e)(7)(D) of the Federal Deposit Insurance Act.

"(4) The term 'institution-affiliated party'—

"(A) when such term is used with respect to a depository institution, has the meaning given to such term in section 3(u) of the Federal Deposit Insurance Act without regard to whether the depository institution is an insured depository institution; and

"(B) when such term is used with respect to an insured credit union, has the meaning given to such term in section 206(r) of the Federal Credit Union Act.";

SEC. 103. CONFORMING AMENDMENTS.

(a) EXCEPTIONS TO DISCHARGES UNDER CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) of a kind specified in—

"(A) section 523(a)(5); or

"(B) paragraph (2), (4), (6), (7), (11), or (12) of section 523(a), including debts owed to the appropriate Federal financial institutions regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act), or a conservator or receiver of an insured depository insititution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) or insured credit union (as defined in section 101(7) of the Federal Credit Union Act).".

(b) EXCEPTION TO EXEMPTIONS FOR CERTAIN PROPERTY.—Section 522(c)(1) of title 11, United States Code, is amended to read as follows:

"(1) a debt of a kind specified in—

"(A) paragraph (1), (5), (11), or (12) of section 523(a); or

"(B) paragraph (2), (4), or (6) of section 523(a) which is owed to an appropriate Federal financial institutions regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act) or a conservator or receiver of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) or insured credit union (as defined in section 101(7) of the Federal Credit Union Act); or".

TITLE II—PERSONNEL FOR INVESTIGATIONS AND PROSECUTIONS

SEC. 201. ADDITIONAL RESOURCES FOR THE SECRETARY OF THE TREASURY AND THE ATTORNEY GENERAL.

There is authorized to be appropriated for fiscal year 1991 the following amounts, to remain available until expended:

(1) To the Secretary of the Treasury, for the Internal Revenue Service, to hire and train 160 special agents or revenue agents and for investigating violations of the Internal Revenue Code of 1986 and related statutes involving the thrift industry: $16,000,000.

(2) In addition to amounts authorized by section 966 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, to the Attorney General, for the purpose of investigations, prosecutions, and civil proceedings involving financial institutions: $9,000,000.

SEC. 202. INTERAGENCY COORDINATION.

(a) IN GENERAL.—The Attorney General may accept, and Federal departments and agencies (including the United States Secret Service, the Internal Revenue Service, and the Office of Thrift Supervision) may provide, without reimbursement, the services of attorneys, law enforcement personnel, and other employees of any other departments or agencies of the Federal Government, to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against the savings associations industry.

(b) AUTHORITY AND SUPERVISION OF DETAILED PERSONNEL.—Any attorney of any Federal department or agency whose services are accepted pursuant to subsection (a), may, subject to the general supervision of the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, and perform any other investigative or prosecutorial function, which United States attorney are authorized by law to conduct or perform, whether or not the attorney is a resident of the district in which the proceeding is brought. Any law enforcement personnel or other employees of a Federal department or agency whose services are accepted pursuant to subsection (a) shall also serve subject to the general supervision of the Attorney General.

TITLE III—AMENDMENTS RELATING TO POWERS AND PROCEEDINGS OF FEDERAL BANKING AGENCIES

SEC. 301. BREACH OF FIDUCIARY DUTIES.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by

adding at the end the following new subsection:

"(p) BREACH OF FIDUCIARY DUTIES.—Any finding by a Federal court, State court, or the appropriate Federal banking agency, in connection with any action or proceeding which has become final, that an institution—affiliated party has breached any fiduciary duty to the insured depository institution (of with which such party is affiliated) shall constitute a defalcation while acting in a fiduciary capacity for purposes of paragraphs (4) and (12) of section 523(a) of title 11, United States Code. The liability arising from such breach shall constitute a debt not dischargeable in a case under title 11, United States Code.".

SEC. 302. PRIORITIES AND PROCEDURES FOR CERTAIN CLAIMS.—

(a) PRIORITY OF CERTAIN CLAIMS.—

(1) IN GENERAL.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (p) (as added by section 301 of this title) the following new subsection:

"(q) PRIORITY OF CERTAIN CLAIMS.—

"(1) IN GENERAL.—In any proceeding related to any claim acquired under section 11 or 13 of this Act against any director, officer, or employee of, or any agent, attorney, accountant, or appraiser for, an insured depository institution or any other party employed by or providing services to an insured depository institution, any suit, claim, or cause of action brought by the Corporation shall have priority over any other suit, claim, or cause of action asserted by depositors, creditors, or shareholders of such institution, except for claims of other Federal agencies or the United States.

"(2) SCOPE OF APPLICATION.—The priority established under paragraph (1) shall apply to both the prosecution of any suit, claim, or cause of action, and the execution or any subsequent judgment resulting from such suit.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to proceedings commenced on or after the date of enactment of this Act.

(b) EXPEDITED PROCEDURES.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (q) (as added by subsection (a) of this section) the following new subsection:

"(r) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

"(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of any appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against any director, officer, or employee of, or any agent, attorney, accountant, or appraiser for, an insured depository institution or any other party employed by or providing services to an insured depository institution shall be filed within 10 days of the entry of that order. Hearing of the appeal shall be within 60 days of filing of the notice. The appeal shall be decided within 90 days of the notice.

"(2) SCHEDULING.—Consistent with section 1657 of title 28, United States Code, the courts of the United States shall expedite the consideration of any case brought by the Corporation against any director, officer, or employee of, or any agent, attorney, accountant, or appraiser for, an insured depository institution or any other party employed by or providing services to an insured depository institution. As far as practicable, the courts will give such cases priority on their dockets.

"(3) JUDICIAL DISCRETION.—Any judge may modify the schedule and limitations of paragraphs (1) and (2) as applied to a specific case, based on a specified finding that the end of justice served by making such a modification outweigh the best interest of the public in having the case resolved expeditiously.".

SEC. 303. FOREIGN INVESTIGATIONS BY FEDERAL BANKING AGENCIES AND INVESTIGATIONS ON BEHALF OF FOREIGN BANKING AUTHORITIES.

(a) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

"(v) FOREIGN INVESTIGATIONS.—

"(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, any appropriate Federal banking agency may—

"(A) request the assistance of any foreign banking authority; and

"(B) maintain an office outside the United States on a temporary or permanent basis for such purposes.

"(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

"(A) IN GENERAL.—On request from a foreign banking authority, the appropriate Federal banking agency may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters administered or enforced by the requesting authority.

"(B) INVESTIGATION BY BANKING AGENCY.—The appropriate Federal banking agency may, in its discretion, conduct investigations to collect information and evidence pertinent to the request for assistance.

"(C) STANDARDS.—Any investigation under this paragraph shall be conducted in accordance with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

"(D) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider whether—

"(i) the requesting authority has agreed to provide reciprocal assistance in banking matters within the jurisdiction of any appropriate Federal banking agency; and

"(ii) compliance with request would prejudice the public interest of the United States.".

(b) FOREIGN INVESTIGATIONS BY FDIC AND RTC AS CONSERVATOR OR RECEIVER.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (r) (as added by section 302(b) of this title) the following new subsection:

"(s) FOREIGN INVESTIGATIONS.—The Corporation and the Resolution Trust Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to the insured depository institution—

"(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

"(2) may each maintain an office on a permanent basis to coordinate foreign investigations or investigations on behalf of foreign banking authorities.".

(c) TECHNICAL CORRECTION TO PROVISION RELATING TO CERTAIN FOREIGN ENTITIES.—Section 8(b)(4) of the Federal Deposit Insurance Act is amended by striking "subsections (c), (d), (h), (i), (k), (l), (m), and (n)" and inserting "subsections (c) through (s) and subsection (u)".

SEC. 304. PREJUDGMENT ATTACHMENTS UPON APPLICATION BY APPROPRIATE FEDERAL BANKING AGENCY.

Section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)) is amended by adding at the end the following new paragraphs:

"(4) PREJUDGMENT ATTACHMENT.—In any action brought by an appropriate Federal banking agency pursuant to paragraph (1), the court may, upon application of the agency, issue a restraining order ex parte which—

"(A) prohibits any party subject to the action from withdrawing, transferring, removing, dissipating, or otherwise disposing of any funds, assets, or other property; and

"(B) which appoints a temporary receiver to administer such restraining order.

"(5) PERMANENT INJUNCTION OR RESTRAINING ORDER.—Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.".

SEC. 305. SUBPOENA AUTHORITY FOR FDIC AND RTC ACTING AS CONSERVATOR OR RECEIVER.

Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by redesignating subparagraph (I) as subparagraph (J) and by inserting after subparagraph (H) the following new subparagraph:

"(I) SUMMONS AUTHORITY.—

"(i) IN GENERAL.—The Corporation may, as conservator or receiver of any insured depository institution, exercise any power described in section 8(n) in the same manner as provided in such section.

"(ii) AUTHORITY LIMITED TO BOARD OF DIRECTORS.—A summons may be issued under clause (i) only by, or with the written approval of, the Board of Directors and such authority to issue or authorize a summons may not be delegated by the Board of Directors.".

SEC. 306. FRAUDULENT CONVEYANCES AVOIDABLE BY RECEIVERS.

Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d) is amended by adding at the end the following new paragraph:

"(17) FRAUDULENT TRANSFERS.—

"(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, may avoid any transfer of any interest of any institution-affiliated party, or any person who the Corporation determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with actual intent to hinder, delay, or defraud the insured depository institution.

"(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property from—

"(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

"(ii) any immediate or mediate transferee of any such initial transferee.

"(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B) from—

"(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

"(ii) any immediate or mediate good faith transferee of such transferee.".

TITLE IV—AMENDMENTS TO CRIMINAL PROVISIONS APPLICABLE TO DEPOSITORY INSTITUTIONS

SEC. 401. LIMITATION ON DISPOSITION OF CERTAIN ASSETS.

Section 1345 of title 18, United States Code, is amended by striking the 1st sentence and inserting "Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a violation of this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title or a banking law violation (as defined in section 3322(d) of this title) or is engaged or intends to engage in any alienation or disposition of any property, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such violation or such alienation or disposition of property or equivalent assets. In any such case, where the Attorney General deems appropriate, the Attorney General may petition ex parte for a restraining order to prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such funds, assets, or other property and to appoint a temporary receiver to administer such restraining order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.".

SEC. 402. CONCEALMENT OF ASSETS FROM FEDERAL BANKING AGENCIES ESTABLISHED AS CRIMINAL OFFENSE.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

§ 1032. Concealment of assets from Federal banking agencies.

"Whoever knowingly conceals from any appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) or the Resolution Trust Corporation, whether such agency is acting as an agency, in any corporate capacity, or as any conservator or receiver for any insured depository institution, any assets or property against which the appropriate Federal banking agency, as conservator or receiver, may have a claim shall be fined not more than $1,000,000 or imprisoned not more than 5 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code is amended by inserting after the item relating to section 1031 the following new item:

"1032. Concealment of assets from Federal banking agencies.".

SEC. 403. AMENDMENTS RELATING TO CIVIL FORFEITURE.

Section 981 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(C), by inserting "or a violation of section 1341 or 1343 of such title affecting a financial institution" before the period;

(2) in subsection (b), by inserting "the Attorney General or" after "property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by";

(3) in subsection (e)(3), by striking "(if the affected financial institution is in receivership or liquidation)"; and

(4) in subsection (e)(4), by striking "(if the affected financial institution is not in receivership or liquidation)".

SEC. 404. TITLE 18, UNITED STATES CODE, AMENDMENTS RELATING TO REFERENCES TO BANKING INSTITUTIONS AND AGENCIES.

(a) IN GENERAL.—

(1) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended—

(A) by inserting "depository institution holding company," before "national bank" the 1st place such term appears in the 1st sentence;

(B) by inserting "or holding company" after "such bank" each place it appears in the 1st paragraph; and

(C) by adding at the end of the 2d paragraph the following new sentence: "For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.".

(2) LENDING, CREDIT, AND INSURANCE INSTITUTIONS.—Section 657 of title 18, United States Code, is amended—

(A) by striking 'Home Owners' Loan Corporation," and inserting "Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance Board,"; and

(B) by striking "institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting "institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation".

(3) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended—

(A) by inserting "or company" after "such bank" each place such term appears in the 1st paragraph;

(B) by striking "bank or savings and loan" and inserting "depository institution"; and

(C) by adding at the end of the 6th undesignated paragraph the following new sentence: "For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.".

(4) FEDERAL CREDIT INSTITUTION ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended—

(A) by striking "Home Owners' Loan Corporation," and inserting "Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation,"; and

(B) by striking "institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting "institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation".

(5) LOANS AND CREDIT APPLICATIONS GENERALLY; RENEWALS AND DISCOUNTS.—Section 1014 of title 18, United States Code, is amended—

(A) by striking "the Federal Home Loan Bank System," and inserting "the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board,"; and

(B) by inserting a comma after "Resolution Trust Corporation".

(6) FRAUDS AND SWINDLES.—Section 1341 of title 18, United States Code, is amended by inserting ", credit," after "money".

(7) FRAUD BY WIRE, RADIO, OR TELEVISION.—Section 1343 of title 18, United States Code, is amended—

(A) by inserting ", credit," after "money";

(B) by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce"; and

(C) by inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(8) TRANSPORTATION OF STOLEN GOODS, SECURITIES, MONEYS, FRAUDULENT STATE TAX STAMPS, OR ARTICLES USED IN COUNTERFEITING.—The 2d undesignated paragraph of section 2314 of title 18, United States Code, is amended by inserting "or foreign" after "interstate"; and

(9) LAUNDERING OF MONETARY INSTRUMENTS.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1014 (relating to loans and credit applications generally; renewals and discounts)," before "section 1201"; and

(2) by inserting "section 1343 (fraud by use of facility of interstate or foreign commerce)," before "section 1344".

(10) INDICTMENTS AND INFORMATION DISMISSED BEFORE PERIOD OF LIMITATIONS.—Section 3289 of title 18, United States Code, is amended by striking "or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final," and inserting "or, in the event of an appeal, within 60 days of the date the dismissals of the indictment or information becomes final," after "within six calendar months of the expiration of the applicable statute of limitations,".

(b) TECHNICAL CORRECTION.—Section 1101(6)(B) of the Right to Financial Privacy Act (12 U.S.C. 3401(6)(B)) is amended by striking "section 3(f)(1)" and inserting "section 4(f)(1)".

(c) CLERICAL AMENDMENTS.—

(1) The heading for section 1343 of title 18, United States Code, is amended to read as follows:

"§ 1343. Fraud by use of facility of interstate or foreign commerce".

(2) The table of sections for chapter 63 of title 18, United States Code, is amended by striking the item relating to section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate or foreign commerce.".

SEC. 405. WIRETAP AUTHORITY FOR BANK FRAUD AND RELATED OFFENSES; TECHNICAL AMENDMENTS TO WIRETAP LAW.

Section 2516 of title 18, United States Code, is amended—

(1) in paragraph (1)(c)—

(A) by inserting "section 215 (relating to bribery of bank officials)," before "section 224";

(B) by inserting "section 1014 (relating to loans and credit applications generally; renewals and discounts)," before "sections 1503,";

(C) by striking "section 1343 (fraud by wire, radio, or television)," and inserting "section 1343 (fraud by use of facility of interstate or foreign commerce), section 1344 (relating to bank fraud),"; and

(D) by striking "the section in chapter 65 relating to destruction of an energy facility,"; and

(2) in paragraph (1)—

(A) by striking the 1st subparagraph which is designated as "(m)";

(B) by striking "and" at the end of the 2d subparagraph designated as "(m)" (as determined before the amendment made by subparagraph (A) of this paragraph);

(C) by striking the period at the end of subparagraph (n) and inserting "; and"; and

(D) by adding at the end the following new subparagraph:

"(o) any conspiracy to commit any offense described in any subparagraph of this paragraph."; and

(3) in paragraph (1)(j), by striking "any violation of section 1679(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft privacy) of title 49, of the United States Code" and inserting "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958".

SEC. 406. ENHANCEMENT OF ABILITY TO ORDER RESTITUTION IN CERTAIN FRAUD CASES.

Section 3663(a) of title 18, United States Code, is amended by adding at the end the following: "For the purposes of this section, the term 'victim of such offense' shall include any victim of an offense involving a scheme or artifice under chapter 63 of this title (or under the second paragraph of section 2314 of this title), or of a conspiracy to commit such an offense, irrespective of whether the defendant was convicted of an offense involving that victim or of an offense involving the property of the victim for which restitution is to be ordered.".

CHAIRMAN ANNUNZIO GIVES KUDOS TO MARK SHIELDS COLUMN ON S&L CRISIS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, national columnist Mark Shields recently wrote about the savings and loan fiasco, especially the demise of Silverado in Denver and the role played by Neil Bush. At the Banking Committee's hearing into the failure of Silverado Banking, Savings & Loan in Colorado, I pointed out that much of the loss in the S&L disaster was due to the actions of the boards of directors of the failed savings and loans. Too often the directors were rubberstamps of management or were greedy and self-dealing.

During the hearing, we heard that the President's son, Neil, as a director of Silverado, presented or voted on $106 million in loans to two borrowers with whom he had business deals. All those loans are now in default.

Mr. Shields correctly points out the role played by Neil Bush in the downfall of Silverado, especially his unorthodox relationship with developer Ken Good. I enter the column into the RECORD.

[From the Washington Post, June 6, 1990]

THE NEIL BUSH CASE: TALK ABOUT TEFLON!

(By Mark Shields)

Aneurin Bevan, the late British Labor Party leader, did not try to conceal his contempt for what he judged to be his country's unaggressive press corps. Once, when asked about proposed measures that could raise the threat of press censorship, Bevan responded: "You don't need to muzzle sheep."

That same putdown could today be used to characterize the outrageously submissive deference shown by both opposition Democrats and most of the Washington press corps toward the First Family of President George Bush. Politically, Bush has been granted a nonstick coating that makes Ronald Reagan's vaunted Teflon look like Velcro by comparison.

Here are the facts. Neil Bush, 34, President and Mrs. Bush's third son, is under investigation for possible conflicts of interest as a director of the Silverado Savings and Loan of Denver, which one year after its own auditors found it insolvent and just weeks after the 1988 presidential election, was closed by federal authorities, at a projected cost to American taxpayers of $1 billion.

No one is blaming the younger Mr. Bush for the collapse of Silverado. But Neil Bush is being asked to explain a couple of truly unusual relationships he had with two Colorado businessmen, both of whom first invested in Neil Bush's own company and then later defaulted on millions of dollars of loans from Silverado.

Take Neil Bush's unorthodox relationship with developer Ken Good. In 1984 Good made a loan of $100,000 to Neil Bush to invest in a high-risk venture. The terms were that Neil Bush did not have to repay the $100,000 to Ken Good unless the investment was successful. That's right, this may have been the first completed loan in financial history in which the creditor defaulted.

In testimony before the House Banking Committee, Neil Bush was recently asked about this special relationship with Good. In a masterpiece of understatement, the president's son responded, "I know it sounds a little fishy, but I've heard this happen before."

Not in my neighborhood you haven't Mr. Bush. There, such transfers are usually made in cash inside an unmarked No. 10 business envelope. In fact, the fishy-sounding Good-Bush transaction may qualify as a gratuity, as gravy, as grease, or worse. But it was not by anybody's definition a loan.

Even though he was required to disclose his relationship with Good and failed to do so, Neil Bush said he abstained from voting, as a director, on loans Good sought from Silverado. But the House committee released a letter written by Neil Bush, as director, to the Silverado chairman requesting a $900,000 line of credit for Ken Good, who had earlier bought a 25 percent interest in Neil Bush's own oil and gas exploration company for $10,000. That $10,000 made Good a lot bigger investor in Neil Bush's company than Neil Bush himself, who put up just $100.

But Good was a small fish compared to Denver real estate developer William Walters who had purchased for $150,000 a 6.25 percent share of Neil Bush's company. You figure it out.

As a director of Silverado, Neil Bush did not disclose his relationship with Walters. Nor did Neil Bush abstain from voting to approve $106 million of loans to Walters, all of which went into default.

Nor was Bill Walters just a borrower, either. Walters was a lender, too, through the Cherry Creek National Bank, which Walters controlled. Among those to whom Bill Walter's bank made loans was Neil Bush, who was able to borrow $1.75 million from Cherry Creek National.

About that $106 million in defaulted loans: the bill for all that and the rest of Silverado's billion-dollar tab will be picked up by the working men and women of America who pay their bills, raise their families and pay their taxes—and who not surprisingly never had anyone say: Here's a hundred grand. Pay me back only if your ship comes in; otherwise forget it.

What truly is surprising is the failure of the political press and the political opposition to confront the Bush involvement in the savings and loan scandal. Would George Bush be given the same Teflon treatment if his name were Carter or Nixon or Cuomo or Reagan?

Does anyone remember the public pummeling Billy Carter took for openly accepting $5,000 to appear at a stock car race? Howard Hughes' loan to Richard Nixon's brother, Donald, became a permanent campaign issue. Yet no presidential relative before has been personally involved in a failed enterprise that left American families as co-signers liable for a billion-dollar default.

Maybe it's Andover or Yale, or Greenwich or Kennebunkport that exempts the Bushes from ordinary criticism. Maybe it's just the moral superiority of the Mayflower Compact descendants as heard in the words of Massachusetts Republican William Welf, who, when asked where his 1990 gubernatorial campaign got the money for a large TV buy, told The Boston Globe: "We don't get money. We have money."

COMMENTS ON NELSON MANDELA

The SPEAKER pro tempore. The gentleman from Indiana [Mr. BURTON] is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, we have just had a brief debate on the issue of Mr. Mandela and his speech. The one thing I neglected to put into the RECORD during my brief talk was a couple of the comments that Mr. Mandela made that I think need to be inserted into the CONGRESSIONAL RECORD.

He had this to say about a number of people. Mr. Fidel Castro of Cuba:

Cuba is a small country, but it is richer than many others in the defense of human rights in the world.

I mentioned at the conclusion of my remarks that Mr. Castro was recently condemned by the U.N. Human Rights Commission, and hopefully Mr. Mandela will have a chance to set the record straight in his admiration for Mr. Castro, because Mr. Castro is one of the leading violators of human rights in the world.

He said about Mr. Yasser Arafat:

Mr. Arafat is fighting against a unique form of colonialism, and we wish him success in his struggle.

Now, this is one of the leading enemies of freedom and supporters of terrorism in the world.

He went on to say:

The ANC position on Israel is this: We recognize Zionism for what it is, a racist doctrine. Zionisma and apartheid are but two sides of the same coin.

I would just like to say that those who support Isarel, and most Members of this body do, ought to take a good look at some of the comments made by Mr. Mandela, because they are inconsistent with the feelings of the people of this country and the feelings of Members of this Congress. I think it is extremely important that we send a strong signal that not only do we want apartheid ended and we want freedom and democracy and a multiracial society in South Africa, but I think we need to send a signal as well that we do not want some radical terrorist organizations to take control, like the ANC has been in the past, ones that support communism, socialism, and would endanger not only the people of southern Africa and the economy down there, but also would endanger the United States as well.

As I mentioned in my brief remarks, and I think this bears repeating, minerals that we need to have to survive as a nation, both militarily and economically, come from two basic sources, the southern tier of Africa and the Soviet Union. If that area of the world, the southern tier of Africa, were to fall into the wrong hands, an anti-American Communist regime, it would bode ill for the future of this country from a military standpoint and as far as our economy and economic growth is concerned.

REMARKS ON NELSON MANDELA

The SPEAKER pro tempore. The gentleman from California [Mr. DANNEMEYER] is recognized for 5 minutes.

Mr. DANNEMEYER. Mr. Speaker, name one distinction among the following: Mu'ammar Qadhafi, Yasser Arafat, Fidel Castro, four gunmen who shot five Members of Congress in 1954 in the House Chambers, and Nelson Mandela. Only one has been invited to speak before a joint meeting of Congress.

In our zeal to genuflect before this media personality, we have allowed hero worship to replace reality; we have placed expediency before common sense. I'm sorry, my friends, but as with other travesties, silence is condoning what we say we oppose.

Americans have long grown accustomed to rewarding our enemies while abandoning our allies. Forget the Lithuanians; they're numerically inferior to the Soviets. Forget the Afghan and Angolan rebels; they constitute inconveniences to the powers-that-be. Forget the Chinese freedom fighters; it is more important to trade with the murderers in Peking. Forget the patriots who fought tyranny and totalitarianism in Nicaragua; they've become a nuisance. And now this outrage.

In our Nation's history, only three non-heads of state have addressed Congress: The Marquis de Lafeyette was a Frenchman who became an American patriot and fought alongside George Washington in our struggle for independence. Winston Churchill, when he was no longer British Prime Minister, had been a renowned wartime ally. Both were statesmen of considerable stature. Lech Walesa has spearheaded the fight to free Poland from Soviet domination and has witnessed the fruits of his labor. So who is Nelson Mandela?

Born in 1918, Nelson Mandela attended schools in South Africa and became a lawyer in the firm of Mandela and Tambo. He became a founding member of the African National Congress Youth League [ANCYL] in 1944, along with Oliver Tambo and Walter Sisulu. The ANCYL was a more radical activist offshoot of the old ANC, which was itself renamed from the South African Native National Congress [SANNC]. The SANNC had been founded in 1912 and was committed to Christian, reformist, and gradualist principles.

Mandela and company threw their lot in with Communist activists, which solidified their control over the ANC by 1959. The military wing of the ANC—Umkhonto we Sizwe [Spear of the Nation]—ostensibly formed under Mandela, was actually created by the South African Communist Party [SACP]. He was arrested for sabotage and treason in 1962.

What is the difference between Nelson Mandela and Ethel and Julius Rosenberg? Mandela pleaded guilty. His undenied complicity in sabotage and advocacy of violence was the reason even Amnesty International did not list him as a prisoner of conscience—a political prisoner. The case against him included documents in his own handwriting. In one he wrote:

> We communist party members are the most advanced revolutionaries in modern history.

In another, he stated:

> The people of South Africa, led by the South African communist party, will destroy capitalist society and build in its place socialism.

The Chicago Tribune, in an August 6, 1964, editorial, concluded that—

> Evidence brought out of the trial seems indisputable that the accused (Mandela and others) were taking part in a conspiracy plotted by the South African Communist Party with the full knowledge and support of Moscow.

Well, wasn't the ANC merely committed to the overthrow of apartheid? And hasn't communism mellowed in the past couple of years?

The ANC was founded—as the SANNC—in 1912 and renamed in 1923. Radicals formed the ANCYL in 1944 with Mandela as a principal founder. Communists rose to prominence in 1947. Apartheid was not initiated until 1948. And the particular brand of communism which Mandela and company subscribed to was the preglasnost Stalin-Krushchev-Breshnev version which enslaved half the world and was responsible for the deaths of probably 100 million persons.

Even now he plays footsie with some of the most notorious terrorists loose in the world: Qadhafi, Arafat, Castro. The ANC has supported the Iranian revolutionaries who held 52 Americans hostage for over 1 year. The ANC has supported the Marxist regime in Afghanistan. It has supported the Sandinistas in Nicaragua and the Cuban-backed Communists in Angola. Everywhere we turn, we see ANC support for every virulently anti-American outfit there is, spewing forth hatred and terrorism over the globe

And this is the ANC whose spiritual leader we reward by allowing him to speak in this citadel of liberty. And he by and large receives a hero's welcome wherever he goes. Are that many people blind to reality? Or do they simply not care? Or are they just afraid to speak up?

At a time when millions of people in Eastern Europe are at long last throwing off the yoke of totalitarianism and rushing headlong into freedom; at a time when—against all odds and predictions—the people of Nicaragua, given but one final chance, ousted the Marxist regime of Daniel Ortega; at a time when thousands of young Chinese patriots are willing to perish rather than submit to continued Communist enslavement and tyranny, and at a time when even the very walls of the Soviet empire appear to be crumbling about the feet of a restive and weary populace, why are we celebrating the unrepentant, unreconstructed rantings of a Marxist terrorist?

After his release from prison, Mandela saluted the South African Communist Party, its general secretary Joe Slovo, and the alliance between the SACP and the ANC.

Will we ever learn? Millions of unsuspecting Americans, and countless other millions worldwide, are under the illusion that Nelson Mandela is a great liberator, an inspiration, a world leader. Some in the Chamber have gone so far as to nominate him for the Nobel Peace Prize.

Millions also cheered in 1959 when young firebrand named Fidel Castro overthrew Cuban dictator Fulgencio Batista. Similarly, millions applauded when that nasty tyrant Anastasio Somoza was deposed by rebels under Daniel Ortega. Old-timers and those who know their history might even recall how enlightened it was to support the Russian revolutionaries over the decadent czarist regime. We have lived to regret those premature cheers. And here we are cheering again.

There are several attachments pertinent to Nelson Mandela and the ANC which attest to their behavior, attitudes, and policies, which I ask be inserted in the RECORD at this point.

Patriotism can mean different things to different people. Webster's New Collegiate Dictionary defines it as "love for or devotion to one's country." That's as good a definition as any, I suppose. But each of us, I am sure, has his own particular definition. But I submit this premise to you: This nation has a unique position in the history of mankind. Aside from native Americans, who were numerically submerged in the vastness of the country, for many of us, our ancestors came to these shores seeking refuge, escaping despotism and tyranny, and yearning for freedom. We can here because this land constituted the one, the only, and the last hope for liberty and justice. Our Constitution, conceived by prescient individuals, is elegant in its simplicity. It is this concept of the United States which has inspired the world. Other nations admire our rights and freedoms, though they may not like to admit it. As in high fashion, they may criticize the style, but they respect the richness of the cloth.

These days, however, the world seems turned on its head. We care more for the rights of criminals than those of victims. Rule by the majority while protecting the rights of the minority has been distorted to promotion of the minority at the expense of the majority. And the doctrine of free speech has been extended to obscene art, flag burners, and those would subvert the Constitution while it is denied to taxpayes, defenders of liberty, and practitioners of the Judeo-Christian faith.

We are told that so-called rights—even of those who seek to undermine our Government, our society, and our moral principles—must be protected at all costs, even at the expense of losing our system of government, the fabric of society, and some semblance of moral principles. We live in the age of moral relativism and class action suits. Forget the right to the pursuit of happiness; you're now entitled to happiness. And if you can't find it, take it from somebody else.

This is the attitude which makes possible the moral relativism of turning our backs on those who, like the patriots of 1776, fight for the same basic principles upon which this Nation was founded, and instead rewarding those who, given the chance, would destroy us and make off with the spoils.

Honoring Nelson Mandela is unacceptable. It is outrageous. It is a tragic commentary on how far we've gone down the road to dissolution. And it is an insult to those who have given their lives for this Nation and for the flag which, though tired and battered, still flies proudly and honestly and courageously in the hearts of its citizens.

□ 1910

DEMOCRATIC AGENDA FOR THE 1990'S

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oklahoma [Mr. MCCURDY] is recognized for 60 minutes.

Mr. MCCURDY. Mr. Speaker, today another hero in the worldwide struggle for liberty has come before us in Congress. We rejoice that Nelson Mandela chose this platform now that he is free at last.

Nelson Mandela, Vaclav Havel, Lech Walesa, and other leaders seeking to throw off oppression in their countries come to Congress for a reason. It's not just a matter of protocol or publicity. They come here because in their countries, the U.S. Congress means something. Just as Nelson Mandela is a symbol of the fight against apartheid and oppression, the U.S. Congress still stands as a symbol of the democratic freedoms to which all nations aspire.

Their visits should remind America's leaders of our awesome responsibility to show the world what democracy stands for. America cannot afford to let down millions of people around the world at the very moment they are turning to embrace our values. And yet, I fear that from the Halls of Congress to the Oval Office, we are letting the world down.

We let the world down when we spend days debating whether to rewrite our constitution to keep a few lunatics from burning the American flag—all because some Republicans in this body saw some partisan political advantage in questioning our patriotism.

We let the world down when we fail to provide the economic leadership that has always been America's role as the world's greatest economic power.

And we let the world down when we duck hard choices on the budget that are essential to future economic growth not only here, but around the globe.

Later this week, most of us will return to our districts for the Fourth of July recess. I'm not worried about explaining to the people in my district why I voted to preserve the Bill of Rights. I am more concerned about trying to explain why Washington is not tackling the serious issues.

Why haven't we been able to reverse the growing Federal debt? Why can't we answer the critical health care needs of this country? How do we ensure international competitiveness in a global economy? Why is the American standard of living on the decline? If education truly is a high priority, where are our reforms?

These are the questions on the lips of my Oklahoma constituents. These questions and one more. They are also asking. "What are you people doing out there in Washington?" The general public is not apathetic. They are wondrous. They can't figure out what we are doing because Washington is afraid to tell them.

Americans don't distrust Washington because they have lost faith in their leaders. They distrust Washington because they sense that their leaders have lost faith in them.

Mr. Speaker, I am sure that the great majority of us did not come to Congress to hide from the American people. In recent weeks, a few of us have met informally to talk about what we sense has gone wrong in Washington, and what we can do to right it.

For the past several years, a few vocal members of the other party, led by the minority whip, have been coming to this floor to offer a distorted view of America and of our party. We've had enough. Today, we're going to set the record straight.

Let me tell you about this band of Republican opportunists who would rather follow Mr. GINGRICH of Georgia than pursue the truth. They have called themselves the Conservative Opportunity Society, but they don't talk about the opportunities that are lost to Americans every day because of the borrow-and-spend budget policies of their conservative government, which ran a $42.5 billion deficit in the month of May alone.

America is not saving, investing, or producing. Instead, we spend, borrow, and consume.

The right talks about family values, but they don't talk about their party's HUD scandals, which we uncovered and which have robbed millions of American families of the most basic element of the American dream, the chance to own a home.

They talk about the work ethic, but they don't talk about the regressive tax on work they've used to cover up their enormous deficits. They say Democrats will raise your taxes, when in fact Republicans have already raised your Social Security payroll tax seven times in the last 10 years.

They talk about law and order, but they don't talk about the nationwide explosion of drugs and violent crime that happened entirely on their watch—and they don't do anything to prosecute the corrupt savings and loan executives who stole money from hard-working family depositors.

They talk about protecting the symbols of freedom, but they don't talk about protecting the freedoms for which those symbols stand—freedom of speech, freedom of choice, freedom from a government that tells you what you can and cannot say or do.

They talk about patriotism, but they don't talk about what patriotism really means—that every citizen should love this country enough to give something back.

Their distortions and their tactics disturb us. And what distrubs us most about the Republican opportunists is that they've lied to the American people about what we Democrats stand for.

Well, we've got news for the minority whip and his minions. Their free ride is over. We're not going to let them define us anymore.

From now on, we're going to be the ones who tell the country what Democrats stand for. A handful of us have started a group called the Mainstream Forum that is going to tell ordinary people on Main Street what their Republican government has done to their country.

Over the coming weeks and months, we will be standing up here on the House floor to speak openly with the American people. We're going to talk about things that matter. And we're going to tell the truth about Washington, even when it hurts.

The men and women who will lead this Mainstream Forum are Democrats. But this movement is not about ideology or party labels. It's about values—what we love about America and what we hope to change.

We are united in our frustration with the system, and in our desire to talk about things that matter. And we share a set of values that have been overlooked here for too long.

Many of us helped write the Democratic Leadership Council's New Orleans Declaration, which sets forth these values. I ask unanimous consent that the text of the New Orleans Declaration be entered in the RECORD at the conclusion of my remarks.

Our beliefs are clear and simple:

We believe, as Andrew Jackson did, in equal and expanding opportunity for all, and special privileges for none.

We believe that Government must set clear, honest budget priorities and stick to them—and that the President and Congress should work together to pay the Government's debts, not conspire to postpone them.

We believe America's tax system has become an unfair burden for average working families. We will not support a tax increase that doesn't make the overall tax burden fairer.

We believe Government should respect individual liberty and stay out of our private lives and personal decisions.

We believe that selfishness undermines society, and that citizenship means asking people to give something back to their communities and their country.

We believe in preventing crime and punishing criminals, not excusing their behavior.

We believe in expanding America's role in the world, not shrinking from it, and we believe the Nation should do everything it can to spread American products and American values to all parts of the globe.

Above all, we believe in the basic moral and cultural values that most Americans share, from the rights, responsibilities, and empowerment of the individual to the importance of faith and family.

Like most Americans, we have come to realize that no one else is going to solve America's problems for us. The Washington establishment can't. Big business won't. And the powerful interests don't want to. It's time to let the people try.

The Republicans who run this country don't share those values. For a decade, they've been dividing the Nation, rich against poor, and they've been making life harder for average working people. We're not going to let them get away with it anymore.

Anyone who shares our views is welcome to join our Mainstream Forum. The leadership has pledged to support us, and stand by our right to speak the truth. With so many interests looking out for themselves, someone needs to look out for the country.

Mr. Speaker, 1990 has been a year of democratic revolution and triumph. Today, we pledge—for the sake of the American people, this body, and our great Nation—to bring democracy back home, where it began.

Mr. Speaker, I include for the RECORD the text of the New Orleans Declaration, as follows:

THE NEW ORLEANS DECLARATION—A DEMOCRATIC AGENDA FOR THE 1990s

PREAMBLE

America is at a turning point, and so is the Democratic Party.

Around the world, democracy has triumphed, thanks in no small part to the faith, resolve and sacrifices of the American people.

Yet as we celebrate and work to consolidate freedom's gains, Americans face a new challenge: to rebuild the foundations of our own economic security. America's economic power and international leadership are slipping at the very moment nations are rushing to embrace our values.

This is no time for caution and complacency from our leaders. The measure of a president is not his standing in the polls, but America's standing in the world.

We want more for America. In the past, at moments of national crisis or uncertainty, Democrats have stepped forward to provide bold ideas and imaginative leaders. The time has come for a new generation of Democrats to lead this country forward.

Here as elsewhere, the old isms have run their course, and old politics must give way to new realities. The political ideas and passions of the 1930s and 1960s cannot guide us in the 1990s. Together we pledge to overcome the forces of inertia and orthodoxy in both parties that keep America from moving forward.

Today, we declare our intent to transcend our differences, set forth our principles, and forge a broad national agenda to restore America's economic strength, expand opportunity for every citizen, and promote freedom and democracy in the world.

With this Declaration, we take our case for change to the people.

WHERE WE STAND

We don't need polls to tell us who we are. We know where we stand, and we reaffirm the enduring principles that guide us.

In keeping with out party's grand tradition, we share Jefferson's belief in individual liberty and responsibility. We endorse Jackson's credo of equal opportunity for all, and special privileges for none. We embrace Roosevelt's thirst for innovation, and Truman's faith in the uncommon sense of common men and women. We carry on Kennedy's summons to civic duty and public service, Johnson's passion for social justice, and Carter's commitment to human rights.

We believe the promise of America is equal opportunity, not equal outcomes.

We believe the Democratic Party's fundamental mission is to expand opportunity, not government.

We believe in the politics of inclusion. Our party has historically been the means by which aspiring Americans from every background have achieved equal rights and full citizenship.

We believe that America must remain energetically engaged in the worldwide struggle for individual liberty, human rights, and prosperity, not retreat from the world.

We believe that the U.S. must maintain a strong and capable defense, which reflects dramatic changes in the world, but which recognizes that the collapse of communism does not mean the end of danger.

We believe that economic growth is the prerequisite to expanding opportunity for everyone. The free market, regulated in the public interest, is the best engine of general prosperity.

We believe the right way to rebuild America's economic security is to invest in the skills and ingenuity of our people, and to expand trade, not restrict it.

We believe that all claims on government are not equal. Our leaders must reject demands that are less worthy, and hold to clear governing priorities.

We believe a progressive tax system is the only fair way to pay for government.

We believe in preventing crime and punishing criminals, not explaining away their behavior.

We believe the purpose of social welfare is to bring the poor into the nation's economic mainstream, not maintain them in dependence.

We believe in the protection of civil rights and the broad movement of minorities into America's economic and cultural mainstream, not racial, gender, or ethnic separatism. We will not tolerate another decade in which the only civil rights movement is backward.

We believe government should respect individual liberty and stay out of our private lives and personal decisions.

We believe in the moral and cultural values that most Americans share: liberty of conscience, individual responsibility, tolerance of difference, the imperative of work, the need for faith, and the importance of family.

Finally, we believe that American citizenship entails responsibilities as well as rights, and we mean to ask our citizens to give something back to their communities and their country.

GOALS FOR AMERICA—DEMOCRATIC IDEAS FOR THE 1990s

As we enter the 1990s, we believe Democrats must be the architects of national purpose, not just the mechanics of government policy.

With this Declaration, we offer a set of ideas for moving America forward. These proposals do not attempt to address every national need or solve every national problem. But together, they would strengthen our country, reinforce mainstream values, and enable millions of our people to realize America's true promise.

Our ideas address challenges the Republicans have failed to meet. In the last decade, Americans have witnessed a real decline in U.S. economic power. The world's greatest trading nation has become its greatest debtor nation, putting our economy at the whim of foreign lenders. The federal government has been immobilized by insolvency, sharply limiting our ability to invest in the future. Our children have slipped behind in educational attainment and our workers are less literate than many of our international competitors, just as the best jobs have begun to migrate across national borders to the most highly skilled workers. Our products no longer set the world standard, as U.S. managers in industry after industry have surrendered technological leadership to competitors from Japan and elsewhere.

Here at home, the social fabric of our society has been weakened. The Republicans have redistributed America's wealth upward, further widening the gap between rich and poor. Their policies have left America with one of the most regressive tax codes in the world. And they have drained moral urgency from the fight against poverty, even as an underclass of homeless and jobless has emerged in our cities.

Unlike the Republicans, we believe that with purposeful leadership, the American people are willing to tackle these challenges. Our ideas for the 1990s offer bold new ways to solve them.

REBUILDING U.S. ECONOMIC SECURITY

America lost ground in the world economy in the 1980s. We believe the 1990s must be an era of national renewal—a time to restore America's economic strength and technological leadership in world markets. We need an economic strategy that plays to America's enormous but neglected strengths—an unparalleled scientific base, a top-flight system of higher education, a skilled and flexible workforce and a vibrant enterpreneurial tradition.

Old institutions and entrenched interests are slowing America's adaptation to the new realities of a post-industrial, global economy. We need fundamental changes in the way our society is organized to do business.

Therefore, we propose a new set of public and private actions designed to create a more dynamic, democratic capitalism:

Reordering federal tax and spending policies to create a sound fiscal enviroment for growth and enterprise, and to restore tax equity;

Instituting sweeping reforms in public education;

Enlarging the nation's supply of skilled workers through a nationwide system of youth apprenticeship;

Making strategic public, investments in human capital, infrastructure, and technology;

Expanding international trade, opening markets to U.S. goods and fighting protectionism both in our market and abroad;

Spreading individual ownership of economic assets, through employee stock ownership, savings incentives and other means;

Promoting gain-sharing plans to link pay to performance for workers and managers alike;

Encouraging more workplace democracy to ensure greater flexibility and productivity; and,

Guaranteeing that no American family with a full-time worker lives in poverty.

A NEW SCHOOL OF THOUGHT

In order to meet the challenges of the 21st Century, we must radically lift the level of public education in America.

We applaud the national educational goals, recently adopted by the governors and endorsed by the President. They focus on performance, and are rooted in the realities of the global economy. All children must be physically and mentally ready to learn when they start school. The on-time high school graduation rate should go from 75% to 90%, the international standard. When they graduate, all students should have a core of learning in language, math, science, history, and geography, and national tests at the 4th, 8th, and 12th grades should measure their progress toward this goal. Our students should lead the world in math and science achievement, not lag behind in 13th, 14th, or 15th place as they do today. All our workers should be literate and should have access to a world-class system of lifetime learning. And all our schools should be safe, disciplined, and drug-free.

The problem is, we cannot achieve these goals without a radical restructuring of American education in every state and school district, and without a real commitment from our political leaders to close the huge gap between what they say and what they do about education.

At the state and local level, that means we need to take bold new steps to:

Involve business and community leaders in dealing with the social problems that plague America more than her competitors, including high rates of teen pregnancy, alcohol and drug abuse, and high school dropouts;

Give parents more choice in the schools their kids attend;

Expand incentives for gifted students to enter the teaching profession, and provide opportunities for academically qualified adults who don't have education degrees to become teachers;

Ensure that children spend more time learning each year;

Hold parents accountable for the role only they can play in making sure their children come to school and in encouraging them as they learn; and

Give individual schools through their principals and teachers the freedom to experiment and the power to make decisions that sanction problems and reward success.

At the national level, the President and Congress need to fulfill their long-recognized obligation to provide preschool education for all children who need it. We believe that no American should be denied the opportunity to attend college or get post-secondary training solely for lack of money. By offering young Americans substantial college aid in return for national service, we can achieve that goal. We also must establish a national report card, issued annually, on the performance of students, schools, states, and the national government in moving toward the achievement of national education goals for the year 2000.

YOUTH APPRENTICESHIP

Lifting academic standards is half the battle—the U.S. also urgently needs to bridge the gulf between school and work. Germany and other nations have long used school-based apprenticeship systems to help their non-college-bound youth get the skills they need for rewarding jobs and careers. To improve the job prospects and productivity of the "forgotten half" of young Americans who do not attend college, the U.S. should likewise build a nationwide youth apprenticeship system in our schools.

Under youth apprenticeship, U.S. high schools would add a vocational education track that includes extensive on-the-job training at local businesses. With government acting as a catalyst, schools and businesses would work together to blend strong academic and technical learning with work at job sites for students who seek certification in an occupational field rather than a college education. By connecting success in the classroom with the chance to acquire marketable skills, youth apprenticeship would also give at-risk students a powerful new incentive to stay and do well in school.

Taken together, youth apprenticeship and voluntary national service can create a universal path to a good job or college education for all Americans willing to work hard or serve their country.

NATIONAL SERVICE

For a decade, the Republicans have undermined America's sense of national purpose by exalting self-interest over common interest. It is time to define new duties for citizens as well as government. And it is time to replace the politics of entitlement with new politics of reciprocal responsibility.

We propose a new, civilian version of the G.I. Bill that would promote upward mobility and encourage Americans to serve each other and their country. We envision a series of voluntary national service opportunities springing up in communities across the country: a Citizens Corps that offers educational and housing assistance to those who volunteer for public service; a Teacher Corps that would remove barriers to entering teaching; an Earth Corps to enlist youth in the battle to protect the environment, here and abroad; and a Police Corps to combat crime by putting more police officers on the streets.

THE POLICE CORPS

Government's first responsibility is to keep public order and protect law-abiding citizens from harm. Where government has failed in that duty, our poorest citizens have suffered most. Yet in recent decades, the U.S. has unwittingly allowed itself to unilaterally disarm in the domestic war against violent crime.

In 1950, there were more than three police officers for every violent crime reported in American cities. Now, more than three violent crimes are reported for every cop. We propose a Police Corps to restore public order in our communities and protect citizens by putting more police officers out on the streets, fighting crime. The Police Corps is, in essence, an ROTC program for police officers. In exchange for four years of college education and training, participants would give four years of service in their state or local polic departments.

The Police Corps answers the need for a constructive federal role in fighting crime, which is chiefly a local responsibility. It would significantly expand the supply of college-educated police officers, and make

special efforts to recruit more minorities. Just as important, it represents a new commitment to the philosophy of "community policing"—a preventive approach to crime that puts cops back on the neighborhood beat.

ENVIRONMENTAL SECURITY

The environment has become a matter of family safety and national security. For a decade, the Republicans have failed to protect our air, land, and water from pollution. They have refused to take the lead, as America must do, in combating the global ecological crisis.

We support a Strategic Environment Initiative to provide more vigorous American leadership on global warming, ozone depletion, sustainable development, and other pressing environmental issues. Here in the United States, industry needs to start providing the level of environmental protection the American people want and deserve. Polluters should be held responsible for their actions, and where pollution is a crime, executives should go to jail. Moreover, the time has come for market-based solutions that will make polluters pay the true costs of pollution, and reward consumers and manufacturers for actions that make good environmental sense.

In the '90s, environmental protection will be a precondition for economic growth. We need stronger national efforts to promote recycling, preserve wetlands, provide safe drinking water, and clean up hazardous waste.

GUARANTEED WORKING WAGE

Millions of hard-working Americans live in poverty even though they have full-time jobs. We back a proposed Guaranteed Working Wage that would enable all full-time, year-round workers who support a family to lift themselves and their families out of poverty.

Under this proposal, the current Earned Income Tax Credit would be redesigned and expanded so that it, together with wages they earn by working and the food-stamp benefits for which they are eligible, would raise the total incomes of full-time, year-round workers who support a family above the poverty level. Fully implemented, this Guaranteed Working Wage plan could end poverty for nearly four million Americans in families with a full-time worker. It would also help another seven million poor Americans in families with part-time or part-year workers.

INDIVIDUAL DEVELOPMENT ACCOUNTS

We need a welfare system that will help people climb out of poverty, not keep them poor. We propose to create new savings accounts called Individual Development Accounts (IDAs) in order to help low-income families save and to build financial assets. IDAs are modeled after Individual Retirement Accounts (IRAs) and likewise would receive favorable tax treatment. However, government would also match contributions to IDAs by low income citizens, and those savings accounts would be restricted to four purposes: post-secondary education, home ownership, self-employment, or retirement.

The administration has proposed a generous new tax break on savings for the upper-middle class. We believe any new savings plan should instead make saving easier for those who can't already afford it.

EMERGING DEMOCRACY INITIATIVE

We support creation of an Emerging Democracy Initiative that would move quickly to export democratic capitalism and democratic values to emerging democracies. Every dollar spent transforming former dictatorships into well-functioning democracies strengthens our strategic position in the world, and helps create new markets for U.S. products.

We need to move beyond traditional forms of economic and military aid by providing new forms of democratic assistance—from American scholarship programs for foreign students to democracy grants and technical expertise for groups working to build democratic institutions within their countries. Financed in part by transfers from the military budget, the Initiative could operate through existing channels (AID, the Peace Corps, etc.) and be expanded through a kind of "freedom-sharing"—sharing the welcome burden of democracy-building with our allies.

PAYING FOR PROGRESS

To build a solid foundation for our future economic security, we must invest so that our economy can grow—and we must pay for those investments.

We need a new, common sense approach for dealing with the Republican legacy of fiscal paralysis. We cannot continue to allow the cynical use of the Social Security surplus, raised from a regressive tax on labor, to mask the true scope of America's fiscal crisis.

The old budget politics of the right and the left don't work anymore. We can't tax our way out of the deficit, and we can't cut our way out, either. We have to invest and grow our way out. To make room for strategic investments in our public infrastructure and human capital—such as those we propose in this Declaration—we will need to cut spending and raise revenues.

Sensible deficit redution requires neither taking a "meat axe" to federal spending nor placing an excessive tax burden on average families, but rather a reordering of federal tax and spending priorities to create a sound environment for growth and enterprise. That means taking a hard look at federal entitlements and subsidies; cutting spending for low priorities and eliminating outmoded programs; reducing the military budget to adjust to new world realities; making strategic public investments in human capital, infrastructure, and technology; turning over to the states functions that they can perform better than Washington; and, restoring progressivity to the tax code.

We believe in financing the operations of government through progressive taxation. The U.S. has one of the world's least progressive tax systems, thanks largely to the steady rise (including seven increases in the last decade) in the Social Security payroll tax. The payroll tax burden on average American families needs to be reduced and progressively restored to the overall tax structure so that Americans are taxed according to their ability to pay.

CONCLUSION

These ideas will help us meet the challenges of the 1990s—to restore America's economic strength, expand opportunity for every citizen, and promote freedom and democracy in the world.

They represent a starting point—not an end—to our agenda for America. We have other goals as well: to fight the scourge of drug abuse by placing every drug user into treatment by the end of this decade; to assure basic health insurance coverage for 31 million Americans who are now uncovered; to provide every family with the opportunity to secure decent and affordable housing; and, to accomplish a smooth transition from the defense buildup of the 1980s to the economic buildup of the 1990s.

This is what we want for America—a chance to serve, a duty to learn, and new paths to prosperity, in a society that is just and a world that is safe and free. We invite the American people to join our cause and help us build a better and stronger America in the 1990s.

□ 1920

Mrs. PATTERSON. Mr. Speaker, I thank the gentleman for yielding and commend him for organizing this special order. I have often shared his frustration about the failure of this body to discuss the important challenges and issues facing our country.

I have also shared his concern about the distortions and misrepresentations that have taken the place of political discourse in this Nation. This is a worrisome trend that threatens to undermine our democratic values. In a democracy, the voters depend on information from a variety of sources to reach their decisions when they go into that voting booth. Their decision is only as good as their information. It is important, therefore, that they have an opportunity to receive all sides of an issue.

Mr. Speaker, for several years, I have listened in the late afternoon to speeches from the other side of the aisle about opportunity. Yet, a review of the record of the last decade clearly indicates that there appears to be a greater interest in opportunism than opportunity.

Those of us on this side of the aisle admire the people we represent. We admire the parents who take time to teach their children about values. We admire the citizens who take part in the communities where they grew up. We admire workers who care about the job they do and the product they produce.

That is why we care that these same people have not been participating in the economic opportunities of the past decade. The average American has found it harder and harder to make ends meet, to plan for his or her retirement or to send their children to school. For the first time in our Nation's history, it is likely that many of our children will not enjoy the same quality of life as their parents.

We saw a decade of hostile takeovers that made people who were already rich, richer. We were told that this activity was good for the country and our economy. We were told that it would cut the fat out of American business and make our Nation leaner, meaner, and better able to compete internationally.

But, the average American didn't benefit from these takeovers. In fact, many of them lost their jobs. The only opportunity they had was an opportunity to worry about their next paycheck. They had the opportunity to worry about whether their pension fund was going to be used in these takeovers. They had the opportunity to watch a string of once proud corporations declare bankruptcy.

In my part of the country, the textile industry has been decimated by cheap foreign imports. We have allowed countries that pay below susistence wages to dump their goods into this country. Nations like China have become the

chief importer of textiles into this country while American mills close every week.

Congress has twice passed reasonable legislation to limit textile imports in this country. But, a Republican President has twice vetoed this legislation. We tell a repressive regime that our markets are theirs while we tell our own people at home that if they just worked a little harder or modernized they can compete.

I know these people. They work hard to produce a quality product. They take pride in their work. They deserve better than to be told that the problem is their fault.

Mr. Speaker, this isn't fair. It isn't fair that it gets harder and harder for middle-class families to make ends meet while the deficit keeps going up. It isn't fair that crime and drugs have entered the homes and lives of average Americans and their neighborhoods. And it isn't fair that men, women, and children are homeless or lack health care so that they lead lives of desperate loneliness and poverty.

I know that the gentleman joins me in the belief that economic growth is the best upward mobility for everybody. Economic opportunity, however, means more than just a few individuals get richer. It means more than dividing the Nation rich against poor. It means more than turning our heads while wealthy individuals loot savings and loans and HUD.

Again, Mr. Speaker, I commend the gentleman from Oklahoma for reserving this time to talk about the important issues facing this Nation. I also took forward to doing this on future occasions when we can spend more time on many of the issues being raised today.

Mr. McCURDY. Mr. Speaker, at this time I yield to the gentleman from Alabama [Mr. BROWDER].

Mr. BROWDER. I thank the gentleman for yielding this time to me.

Mr. Speaker, it is very fitting that the Mainstream Forum stepped forward during the wonderful times of democratic revolution and with these historic Chambers still resounding from inspiring speeches from leaders of these emerging democratic movements.

This is a good time for us to reach down into our hearts and out into our districts among the people to revive our mainstream democratic principles, values and ideas.

I would like to share very briefly some of those ideas that one of my constituents wrote to me.

This lady said, in part:

> I think I should tell you that although I consider myself an independent voter, in the past I have leaned toward * * *.

I will not reveal her partisan affiliation; but she does tell me that:

> Now I am in the process of changing my political philosophy. After a decade of callousness toward social issues and the personal opportunism, greed and outright extortion exhibited by so many in high office, I am totally revolted.

And she says four very simple words that mean a lot:

> Our people deserve better.

My inspired colleague stated a few minutes ago a mainstream democratic principle, very simply, when he said, "We believe that government must set clear, honest budget priorities." Clear honest budget priorities? How can we set clear, honest budget priorities when we cannot even design a clear, honest budget?

Our budgets have been called smoke and mirrors. We hear a lot of talk about the no new taxes budgets, while hidden payroll taxes are burdened on the average working people.

We hear a lot of talk about the balanced budget when in reality the onbudget and offbudget shifting hides our ability to determine whether it is balanced or not.

Mr. Speaker, it is time to set clear, honest budget priorities, and I hope that our Mainstream Forum will help point us in that direction.

As the lady said, "Our people deserve better." They deserve simple budget honesty, they deserve simple budget honesty.

I thank the gentleman for yielding.

Mr. McCURDY. I thank the gentleman.

The gentleman from Alabama [Mr. BROWDER] has said it so well as one of the principal tenets, being honest with the American public. If we always just tell them what they want to hear, I think you can fool them some of the time but obviously you do not fool them all the time.

I thank the gentleman for not only his statement today but for his continued support for bringing mainstream issues and mainstream values to this body. He is truly a good addition to this institution and follows a person who represented that district for so many years whom we all loved and cherished, Mr. Bill Nichols.

I know Mr. BROWDER is carrying on the torch of honest government the way his predecessors had.

At this point, Mr. Speaker, I yield to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, in his opening remarks my colleague from Oklahoma mentioned those who have attempted to define the Democratic Party in less than flattering terms. There are a variety of categories in which that redefinition of the Democratic Party has occurred, not the least of which is in regard to tax policy.

To put it simply, the Republicans would have you believe that the Democratic Party, which used to be the party of tax progressivity, has now become the party of tax excessivity.

We can and we should restore to ourselves the mantle of progressive taxation, and there is an opportunity available to us to achieve that goal. If we are to take this step, we could remind American voters again which party is for tax fairness, which party is for a tax system based on ability to pay, and it has to do with the Social Security payroll tax.

I would be less than honest if I did not say that I have been disappointed so far with the Democratic Party's response to the call by New York Senator DANIEL PATRICK MOYNIHAN to reduce the Social Security tax rate. Mr. MOYNIHAN's proposal, which I have introduced here in the House, is quite simple, really. It is to protect Social Security.

Currently, the Federal Government collects over $1 billion per week in surplus Social Security funds. By the end of the 1990's, the surplus will be growing by $3 billion per week. The problem is that surplus is being spent on the other programs of Government, thereby making the Federal deficit look $60 billion smaller. This budget deceit allows the President and Congress to avoid tough decisions about balancing the rest of the budget. But worse yet, it threatens the future viability of the Social Security system.

Mr. MOYNIHAN argues quite logically that it is not right to build up a surplus in the Social Security fund if we are not prepared to protect that surplus in order to pay benefits to future retirees.

Therefore, his proposal starts by reducing the FICA payroll tax from 6.2 percent to its 1989 level of 6.06 percent.

In 1991, the rate would be further reduced to 5.1 percent, thereby eliminating the Social Security surplus while protecting full benefits for those retired or near retirement age.

Now, I respect that some may disagree with that approach, even though cutting the FICA tax rate would primarily benefit low- and middle-income taxpayers.

□ 1930

However, there should be absolutely no difference of opinion about using Social Security funds for the purpose they were intended. It was our party that took the lead in creating this program of retirement security for America's senior citizens, and we must now take the lead in defending this program for its intended purpose.

It is sad, but true that today's younger workers, the "Baby Boom" generation, have little confidence in Social Security. Any why should they when we are spending their surplus? At the very least, we should help secure Social Security for the future by moving it off budget.

In other words, if we cannot go along with the Moynihan proposal to cut the tax rate and put the system back on a pay-as-we-go basis, then we ought to set this money aside, move it off budget, so that there is greater assurance to today's workers that the program will be there to pay them

their needed benefits when they reach retirement age.

Either way, as a party we must again become the champions of Social Security.

The reality of what's happening to Social Security makes President Bush's State of the Union address seem particularly disingenuous. After submnitting a budget which spends the Social Security surplus, the President had the audacity to admonish Congress: "Don't mess with Social Security!" Democratic legislators should have responded in unison "Mr. President, you are messing with Social Security and we aren't going to let you get away with it any longer."

Earlier this year, at two separate strategy meetings, Democrats finally began to give the Moynihan proposal the serious attention it deserves. At an issues conference in New Orleans, the Democratic Leadership Council—comprised of several hundred moderate and conservative Democratic office holders—gave Moynihan an audience and an endorsement. At the same time, meeting in Indianapolis, the Democratic National Committee also expressed support for the MOYNIHAN effort.

But in the months since then, the issue seems to have disappeared, and supporters for the Moynihan proposal have gone silent. With the budget summit between congressional leaders and the President underway I believe it's time to put Social Security reform on the table. The present Social Security system cannot be changed without a budget agreement and no significant budget deficit reduction plan is possible without Social Security reform.

Senator MOYNIHAN has raised the right issues. Now Democrats in Congress must follow his lead, and rally around an issue that affects all of us. After all, if Democrats do not fight to protect Social Security for future retirees, who will?

Mr. McCURDY. Mr. Speaker, I thank the gentleman from Minnesota [Mr. PENNY] for his contribution. The gentleman has spent a lot of time, obviously, looking at this issue. I think the gentleman would concur that if an average American today makes less than $40,000, his or her effective tax rate has gone up by 66 percent in the last decade. If that person makes over $200,000, their effective tax rate and taxes has declined. That is not tax fairness. That is not bringing honesty to government into being.

What we have seen in last decade is a shift from the middle America to the rich, and I do believe that America today has to question what the administration is intending, whether or not they have been honest when the President can stand in this Chamber and say, "Don't mess with Social Security," but when his Budget Director cynically uses the surplus to disguise the real and true extent of the deficit, that is messing with Social Security. That is disguising the fact that there is tax unfairness in the system today, and all the while, I think today he came out and said that now he understands for a budget that there has to be tax increases. But many of those increases that are proposed are regressive and fall hardest on the very people that have carried the basic burden, the greatest burden over the past decade.

I think it is important that we, as Democrats and as Americans who really were in the mainstream, should point to that fact and continue to tell America that they are not getting the honest story.

Mr. Speaker, this was the first evening of the mainstream forum coming to the floor during special orders to discuss various issues. We had considerable competition with the White House function this evening, but I believe over the coming weeks and months, that more and more Members are going to come forward to speak their mind on a wide range of issues, value issues, issues that we believe that the American public wants to hear about as opposed to trivialities or avoidance of the tough issues.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LEHMAN of California). The Chair must remind all Members that while it is in order to identify a Senator as the sponsor of a measure, remarks in debate must not extend to characterization of a Senator's policy positions or to descriptions of a Senator's arguments on a measure.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BURTON of Indiana) to revise and extend their remarks and include extraneous material:)

Mr. MICHEL, for 5 minutes, today.

Mr. LEWIS of Florida, for 60 minutes on July 11.

Mr. DREIER of California, for 5 minutes each day, on June 26, 27, 28, and 29.

Mr. BURTON of Indiana, for 5 minutes, on June 26 and for 60 minutes each day, on June 27 and July 10, 16, and 17.

Mr. DANNEMEYER, for 5 minutes, on June 26.

(The following Members (at the request of Mr. McCURDY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GEREN, for 5 minutes, on June 27.

Mr. ROSTENKOWSKI, for 5 minutes, on June 28.

Mr. FALEOMAVAEGA, for 60 minutes, on June 27.

Mrs. BYRON, for 60 minutes, on June 28.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. BURTON of Indiana) and to include extraneous material:)

Mr. BARTON of Texas.
Mr. McCOLLUM.
Mr. SHUMWAY.
Ms. ROS-LEHTINEN.
Mr. GEKAS.
Mr. LAGOMARSINO.
Mr. KYL.
Ms. SNOWE.
Mr. MACHTLEY.
Mr. CONTE.
Mr. WEBER.
Mr. DELAY.
Mr. DANNEMEYER.
Ms. SCHNEIDER.
Mr. BLILEY.
Mr. ROBERT F. (BOB) SMITH.
Mr. CRANE.
Mr. GALLEGLY.

(The following Members (at the request of Mr. McCURDY) and to include extraneous material:)

Mr. NELSON of Florida.
Mr. BROWN of California.
Mr. LEVINE of California.
Mr. HAWKINS.
Mr. KANJORSKI.
Mr. KOSTMAYER.
Mr. LIPINSKI.
Mr. ROE.
Mr. EDWARDS of California.
Mr. TALLON.
Mr. RANGEL.
Mr. ENGEL.
Mr. RICHARDSON.
Mr. TRAFICANT.
Mr. DELLUMS.
Mr. ALEXANDER.
Mr. SKELTON.
Ms. LONG.
Mr. GIBBONS.
Mr. HUBBARD.
Mr. FEIGHAN.
Mr. BRYANT.
Mr. DE LUGO.
Mr. MARKEY.
Mr. MORRISON of Connecticut.
Mr. TOWNS.
Mr. WEISS.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 2014. An act to direct the Secretary of Agriculture and the Secretary of the Interior to provide interpretation and visitor edu-

cation regarding the rich cultural heritage of the Chama River Gateway Region of northern New Mexico; to the Committee on Interior and Insular Affairs.

ENROLLED JOINT RESOLUTIONS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.J. Res. 555. Joint resolution to commemorate the bicentennial of the enactment of the law which provided civil government for the territory from which the State of Tennessee was formed; and

H.J. Res. 575. Joint resolution to designate June 25, 1990, as "Korean War Remembrance Day."

SENATE ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to an enrolled bill and joint resolutions of the Senate of the following titles:

S. 1999. An act to amend the Higher Education Amendments of 1986 to clarify the administrative procedures of the National Commission on Responsibilities for Financing Postsecondary Education, and for other purposes;

S.J. Res. 264. Joint resolution to commemorate the 50th anniversary of the National Sheriffs' Association;

S.J. Res. 315. Joint resolution for the designation of July 22, 1990, as "Rose Fitzgerald Kennedy Family Appreciation Day"; and

S.J. Res. 320. Joint resolution designating July 2, 1990, as "National Literacy Day."

ADJOURNMENT

Mr. McCURDY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 36 minutes p.m.) the House adjourned until tomorrow, Wednesday, June 27, 1990, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3458. A letter from the Comptroller of the Department of Defense, transmitting three reports of violations that occurred in the Department of the Army and the Department of the Navy, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

3459. A letter from the Administrator, Environmental Protection Agency, transmitting a report entitled, "Underground Heating Oil and Motor Fuel Tanks Exempt From Regulation Under Subtitle I of the Resource Conservation and Recovery Act", pursuant to 42 U.S.C. 6915; to the Committee on Energy and Commerce.

3460. A letter from the Director, Defense Security Assistance Agency, transmitting the Department of the Army's proposed lease renewal of defense articles to Norway (Transmittal No. 14-90), pursuant to 22 U.S.C. 2796a(a); to the Committee on Foreign Affairs.

3461. A letter from the Director, Defense Security Assistance Agency, transmitting the Department of the Army's proposed lease of defense articles to Canada (Transmittal No. 12-90), pursuant to 22 U.S.C. 2796a(a); to the Committee on Foreign Affairs.

3462. A letter from the Director, Defense Security Assistance Agency, transmitting the Department of the Air Force's proposed lease of defense articles to the Netherlands (Transmittal No. 13-90), pursuant to 22 U.S.C. 2796a(a); to the Committee on Foreign Affairs.

3463. A letter from the Administrator, Environmental Protection Agency, transmitting the third report on the Superfund Innovative Technology Evaluation Program for fiscal year 1989, pursuant to 42 U.S.C. 9604; to the Committee on Science, Space, and Technology.

3464. A letter from the Director, Office of Management and Budget, transmitting his certification that the amounts appropriated for the Board for International Broadcasting for grants to Radio Free Europe/Radio Liberty, Inc., are $4,652,313 less than the amount necessary to maintain the budgeted level of operation because of exchange rate losses in the first quarter of 1990, pursuant to 22 U.S.C. 2877(a)(2); jointly, to the Committees on Foreign Affairs and Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. TRAXLER: H.R. 5158. Committee on Appropriations. A bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes (Rept. 101-556). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SLAUGHTER of New York: Committee on Rules. H. Res. 422. A resolution providing for the consideration of H.R. 4329, a bill to enhance the position of United States industry through application of the results of Federal research and development, and for other purposes (Rept. 101-557). Referred to the House Calendar.

Mr. HAWKINS: Committee of Conference. Conference report on S. 933 (Rept. 101-558). Ordered to be printed.

Mr. GONZALEZ: Committee on Banking, Finance and Urban Affairs. H.R. 1180. To amend and extend certain laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes; with an amendment (Rept. 101-559). Referred to the Committee of the Whole House on the State of the Union.

Mr. DERRICK: Committee on Rules. H. Res. 425. A resolution waiving certain points of order during consideration of the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes (Rept. 101-560). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FAUNTROY:

H.R. 5153. A bill to authorize the participation of the United States in the ninth replenishment of the International Development Association, to authorize the participation of the United States in the European Bank for Reconstruction and Development, to exempt the International Finance Corporation from Securities Exchange Commission reporting requirements, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mrs. BYRON:

H.R. 5154. A bill to amend title 10, United States Code, to provide increased separation pay and certain other benefits for members of the Armed Forces who are involuntarily separated, to provide greater flexibility in military personnel policies over the next 5 years, and for other purposes; jointly, to the Committees on Armed Services, Education and Labor, and Ways and Means.

By Mr. ROE (for himself, Mr. KENNEDY, Ms. SCHNEIDER, Mr. SCHEUER, Mr. WALKER, Mr. BROWN of California, Mr. NELSON of Florida, Mr. WOLPE, Mr. VALENTINE, Mr. TORRICELLI, Mr. BOEHLERT, Mr. NOWAK, Mr. SCHIFF, Mr. TRAFICANT, Mr. SMITH of Texas, Mr. NAGLE, Mrs. MORELLA, Mr. McMILLEN of Maryland, Mr. MINETA, Mr. GORDON, Mr. BATES, Mr. FAUNTROY, Mr. HAYES of Illinois, Ms. PELOSI, Mr. DYMALLY, Mr. SCHUMER, Mr. DWYER of New Jersey, Mr. JONTZ, Mrs. COLLINS, Mr. EDWARDS of California, Mr. GRAY, Mr. OWENS of New York, Mr. DELLUMS, Mr. NEAL of North Carolina, Mr. ECKART, Mr. TORRES, Mr. WISE, Mr. ACKERMAN, Mr. MARKEY, Mr. PALLONE, Mr. CONYERS, Mr. WHEAT, Mr. OWENS of Utah, Mr. FUSTER, Mr. HERTEL, Mr. WEISS, Mr. PAYNE of New Jersey, Mr. KANJORSKI, Mr. MACHTLEY, Mr. SIKORSKI, and Mr. McDADE):

H.R. 5155. A bill to authorize a national program to reduce the threat to human health posed by exposure to contaminants in the air indoors; jointly, to the Committees on Science, Space, and Technology and Energy and Commerce.

By Mr. STAGGERS:

H.R. 5156. A bill to require that Members of Congress provide a public accounting, on a semiannual basis, of the extent to which any of their mass mailings are made using the franking privilege; to the Committee on Post Office and Civil Service.

By Mr. MOAKLEY:

H.R. 5157. A bill to amend and extend certain laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. TRAXLER:

H.R. 5158. A bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and

for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes.

By Mr. COURTER:

H.R. 5159. A bill to amend the Internal Revenue Code of 1986 to allow senior citizens a credit against income tax for the purchase and installation of fire safety devices in residences; to the Committee on Ways and Means.

By Mr. KANJORSKI:

H.R. 5160. A bill to reform campaign practices for elections to the House of Representatives by limiting contributions from political action committees, establishing tax credits for individual campaign contributions, providing matching funds for individual small contributions, limiting the use of personal funds in a campaign, offsetting independent expenditures, encouraging the use of longer campaign commercials, and for other purposes; jointly, to the Committees on House Administration, Ways and Means, and Energy and Commerce.

By Mr. LAGOMARSINO:

H.R. 5161. A bill to amend title 5, United States Code, to provide higher rates of basic pay for Federal employees within Santa Barbara County, CA to the Committee on Post Office and Civil Services.

By Mr. LONG:

H.R. 5162. A bill to authorize the Secretary of the Army to reimburse contractors of the Department of the Army for certain damages to property in Panama caused by U.S. Armed Forces during Operation Just Cause in December 1989; to the Committee on Armed Services.

By Mr. MACHTLEY (for himself and Mr. MARKEY):

H.R. 5163. A bill to establish a comprehensive program for reducing energy consumption in Department of Defense facilities and to establish incentives within the Department of Defense to save costs through energy conservation; to the Committee on Armed Services.

By Mr. MONTGOMERY (for himself and Mr. STUMP) (both by request):

H.R. 5164. A bill to authorize the Secretary of Veterans Affairs to enter into enhanced-use agreements with respect to designated VA facilities and to direct the disposal of such designated facilities by special disposition; to the Committee on Veterans' Affairs.

By Mr. OBERSTAR (for himself, Mr. ANDERSON, Mr. HAMMERSCHMIDT, and Mr. CLINGER):

H.R. 5165. A bill to amend the Federal Aviation Act of 1958 to authorize the imposition and collection of passenger facility charges to finance certain airport-related projects, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. SLATTERY:

H.R. 5166. A bill to provide increased and special benefits to individuals involuntarily separated from the Armed Forces, and for other purposes; jointly, to the Committees on Armed Services, Ways and Means, Post Office and Civil Service, and Veterans' Affairs.

By Mr. FROST (for himself and Mr. BROOMFIELD):

H. Con. Res. 344. Concurrent resolution permitting the use of the rotunda of the Capitol to allow Members of Congress to greet and receive His All Holiness Patriarch Dimitrios; to the Committee on House Administration.

By Ms. SLAUGHTER of New York:

H. Res. 422. Resolution providing for the consideration of the bill (H.R. 4329) to enhance the position of U.S. industry through application of the results of Federal research and development, and for other purposes; House Calendar No. 123, House Report No. 101-557.

By Mr. GEJDENSON:

H. Res. 423. Resolution to provide for the correction of the engrossment of H.R. 4653; considered and agreed to.

By Mrs. SAIKI:

H. Res. 424. Resolution commemorating 200 years of the Portuguese presence in Hawaii; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DYSON:

H.R. 5167. A bill to authorize coastwise and Great Lakes documentation for the vessel *Playpen;* to the Committee on Merchant Marine and Fisheries.

H.R. 5168. A bill to authorize fishery documentation for the vessel *Paula Sue;* to the Committee on Merchant Marine and Fisheries.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 71: Mr. ROWLAND of Connecticut.

H.R. 207: Mr. SMITH of New Jersey.

H.R. 303: Mr. THOMAS of Georgia.

H.R. 539: Mr. COSTELLO, Mr. HYDE, and Mr. COX.

H.R. 844: Mr. HORTON and Mr. POSHARD.

H.R. 929: Mr. HUGHES and Mrs. UNSOELD.

H.R. 979: Mr. CONTE.

H.R. 1180: Mr. MAZZOLI.

H.R. 1582: Mr. ESPY.

H.R. 1693: Mr. GUARINI and Mr. KASTENMEIER.

H.R. 2025: Mr. ASPIN.

H.R. 2043: Mr. SCHUETTE.

H.R. 2545: Mr. SCHEUER.

H.R. 2575: Mr. MICHEL and Mr. CRAIG.

H.R. 2615: Mrs. LLOYD.

H.R. 2776: Mr. STANGELAND and Mr. THOMAS of Wyoming.

H.R. 2816: Mr. DORGAN of North Dakota and Mr. ROE.

H.R. 2853: Mr. FOGLIETTA.

H.R. 2958: Mr. ROE.

H.R. 2972: Mr. GEREN.

H.R. 3126: Mr. WEISS.

H.R. 3131: Mr. MINETA.

H.R. 3251: Mrs. BOXER.

H.R. 3278: Mr. MCDERMOTT, Mr. MOAKLEY, Mr. BOEHLERT, Mr. FOGLIETTA, Mr. HERTEL, Mr. OWENS of New York, Mr. SAVAGE, and Mr. LANCASTER.

H.R. 3343: Mr. SCHUETTE.

H.R. 3391: Mr. RANGEL, Ms. SLAUGHTER of New York, Mr. RINALDO, and Mr. KOLTER.

H.R. 3472: Mrs. MEYERS of Kansas and Mr. STUMP.

H.R. 3651: Mr. HALL of Ohio, Mr. WOLF, and Mr. BLILEY.

H.R. 3686: Mr. STUMP and Mr. BATES.

H.R. 3773: Mr. QUILLEN.

H.R. 3798: Mr. NIELSON of Utah.

H.R. 3864: Mrs. VUCANOVICH.

H.R. 3880: Mr. HAMMERSCHMIDT.

H.R. 3914: Mr. KOLBE, Mr. GILMAN, and Mr. MOORHEAD.

H.R. 3936: Mr. STAGGERS, Mr. WASHINGTON, Mr. LIPINSKI, Mr. DINGELL, and Mr. KOSTMAYER.

H.R. 3970: Mr. BOUCHER, Mr. PICKETT, and Mr. EVANS.

H.R. 3977: Mr. DOWNEY, Mr. SAXTON, Mr. DYSON, Mr. CARPER, and Mr. WELDON.

H.R. 4011: Mr. PENNY, Ms. PELOSI, Mr. SMITH of Florida, Mr. DELLUMS, Mr. FAUNTROY, and Mr. SCHEUER.

H.R. 4042: Mrs. ROUKEMA.

H.R. 4048: Mr. OLIN, Mr. JACOBS, and Mr. TALLON.

H.R. 4100: Mr. HORTON, Mr. DANNEMEYER, Mr. DORNAN of California, and Mr. LANCASTER.

H.R. 4110: Mr. CROCKETT, Mr. BOSCO, Mr. WILLIAMS, Mr. COLEMAN of Texas, Mr. SERRANO, Mr. WEISS, Mr. MAZZOLI, and Mr. SABO.

H.R. 4226: Mr. WOLF.

H.R. 4231: Mr. BRUCE, Mr. HORTON, Mr. OWENS of New York, Mr. RAHALL, Mr. SYNAR, and Mr. NIELSON of Utah.

H.R. 4245: Mrs. ROUKEMA, Ms. OAKAR, Mr. FRANK, Mr. PRICE, Mr. LEACH of Iowa, Mr. SHUMWAY, Mr. PARRIS, Mr. MCCOLLUM, Mr. BEREUTER, Mr. DREIER of California, Mr. HILER, Mr. RIDGE, Mr. BARTLETT, Mr. ROTH, Mr. MCCANDLESS, Mr. SAXTON, Mrs. SAIKI, Mr. BUNNING, Mr. BAKER, Mr. STEARNS, Mr. GILLMOR, Mr. PAXON, Mr. ROWLAND of Connecticut, Ms. ROS-LEHTINEN, Mr. MCEWEN, Mr. SMITH of New Hampshire, Mr. DOUGLAS, Mr. BLAZ, Mr. DONALD E. LUKENS, Mr. MCMILLAN of North Carolina, Mr. INHOFE, Mr. SHAYS, Mr. HORTON, Ms. MOLINARI, Mrs. VUCANOVICH, Mr. SCHUETTE, Mr. BURTON of Indiana, Mr. MILLER of Washington, Mr. GRANDY, and Mr. CAMPBELL of California.

H.R. 4262: Mr. KLECZKA and Mr. SAXTON.

H.R. 4330: Mr. GEKAS, Mr. GRAY, Mr. HALL of Ohio, Mr. MFUME, Ms. OAKAR, and Mrs. SCHROEDER.

H.R. 4345: Mr. FIELDS and Mr. WOLF.

H.R. 4424: Mr. KOLTER, Mr. HANCOCK, and Mr. GALLO.

H.R. 4475: Mr. BILBRAY, Ms. MOLINARI, Mr. JOHNSTON of Florida, Mr. BOSCO, Mr. INHOFE, Mr. PERKINS, Mr. STUDDS, Mr. DELAY, Mr. WALSH, Mr. GILLMOR, Mr. TANNER, Mr. SKELTON, Mr. KENNEDY, and Mr. BROOMFIELD.

H.R. 4492: Mr. HAWKINS, Mrs. KENNELLY, Mr. MINETA, Mr. SCHUMER, and Mr. WASHINGTON.

H.R. 4494: Mrs. MEYERS of Kansas, Mr. LAUGHLIN, Mr. MINETA, Mr. LIVINGSTON, Mr. MANTON, Mr. MCHUGH, Mrs. PATTERSON, Mr. KOLBE, Mr. HAMMERSCHMIDT, Mr. LOWERY of California, Mr. GRANDY, Mr. CONDIT, Mr. MCCURDY, Mr. GUNDERSON, Mr. YATRON, Mr. WEBER, Mr. LEWIS of California, Mr. BOSCO, and Mr. BATEMAN.

H.R. 4531: Mr. LEACH of Iowa, Mr. OWENS of New York, Mr. PALLONE, and Mr. JONES of North Carolina.

H.R. 4574: Mr. LEHMAN of Florida and Mr. AUCOIN.

H.R. 4583: Mr. ANDREWS, Mr. HAWKINS, Mr. WAXMAN, and Mr. MARTINEZ.

H.R. 4604: Mr. MCDERMOTT, Mr. BERMAN, Mr. ACKERMAN, Mr. LEWIS of Georgia, Mr. FOGLIETTA, Mr. SOLARZ, Mr. COSTELLO, Mr. ROYBAL, Mr. SHAW, Ms. SCHNEIDER, and Mr. SHAYS.

H.R. 4617: Mr. DWYER of New Jersey, Mr. KOLTER, Mr. HUGHES, Mr. HOUGHTON, Mr. PALLONE, Mr. JAMES, and Mr. YOUNG of Florida.

H.R. 4640: Mr. MADIGAN and Mr. SOLOMON.

H.R. 4650: Mr. PRICE and Mr. Saxton.

H.R. 4755: Mr. McDERMOTT, Mr. FAZIO, Mr. JAMES, and Mr. ROE.

H.R. 4808: Mr. LEVINE of California.

H.R. 4891: Mr. McCRERY.

H.R. 4959: Mr. VALENTINE.

H.R. 4972: Mr. WALSH.

H.R. 4977: Mr. EMERSON, Mr. LEWIS of California, and Mr. COLEMAN of Texas.

H.R. 4981: Mr. NIELSON of Utah.

H.R. 4994 Mr. JONTZ.

H.R. 5008: Mr. HUGHES, Mr. PASHAYAN, and Mr. EDWARDS of California.

H.R. 5011: Mr. HORTON.

H.R. 5028: Mr. LAGOMARSINO.

H.R. 5029: Mr. SCHEUER.

H.R. 5050: Mr. McMILLAN of North Carolina, Mr. BRYANT, Mr. RITTER, Mr. VALENTINE, Mr. LEWIS of Florida, Mr. SOLOMON, Mr. McNULTY, Mr. LANCASTER, Mr. TRAXLER, Mr. MARTIN of New York, Mr. MINETA, Mr. McHUGH, Mr. SCHAEFER, Mr. KANJORSKI, Mr. PEASE, Mr. BRUCE, Mr. LEHMAN of California, Mr. BILBRAY, Mr. DEFAZIO, Mr. RHODES, Mr. HAMMERSCHMIDT, Mr. BROWN of Colorado, Mr. GRANDY, Mr. JONTZ, Mr. KYL, Mrs. MEYERS of Kansas, and Mrs. JOHNSON of Connecticut.

H.R. 5055. Mr. KASICH, Mr. MADIGAN, Mr. DELAY, Mr. COLEMAN of Missouri, Mr. SMITH of Texas, Mr. BARTON of Texas, and Mr. McCANDLESS.

H.R. 5101: Mr. DEFAZIO and Mr. SANGMEISTER.

H.R. 5120: Mr. FORD of Michigan, Mr. LEHMAN of California, and Mr. DYMALLY.

H.J. Res. 57: Mr. SWIFT.

H.J. Res. 201: Mr. STUMP.

H.J. Res. 214: Mr. BOEHLERT, Mr. PRICE, Mr. CARR, Mr. APPLEGATE, Mr. BORSKI, Mr. ORTIZ, Mr. DE LUGO, and Mr. COBLE.

H.J. Res. 439: Mr. SHAW and Mr. NEAL of Massachusetts.

H.J. Res. 459: Mr. LOWERY of California, Mr. LANCASTER, Mr. WALGREN, Mr. STANGELAND, and Mr. PARRIS.

H.J. Res. 509: Mr. GORDON, Mr. YATRON, Ms. KAPTUR, Mr. KILDEE, Mr. LEHMAN of Florida, Mr. MURPHY, Mr. McNULTY, Mr. SERRANO, Mr. COUGHLIN, and Mr. KENNEDY.

H.J. Res. 513: Mr. DEWINE, Mrs. PATTERSON, Mr. CHANDLER, Mr. RITTER, Mr. FASCELL, Mr. RINALDO, Mr. SMITH of Texas, Mr. SMITH of Florida, Mr. DINGELL, Mr. MACHTLEY, Mr. FAWELL, Mr. CARPER, Mr. LEWIS of Florida, Mr. TRAXLER, Mr. HENRY, Mr. UPTON, Mr. MATSUI, Mr. PORTER, Mr. MORRISON of Connecticut, and Mr. MICHEL.

H.J. Res. 519: Mr. SERRANO, Mr. THOMAS of Wyoming, Mr. GUARINI, and Mr. STANGELAND.

H.J. Res. 524: Mr. THOMAS of Wyoming, Mr. DEFAZIO, and Mr. STANGELAND.

H.J. Res. 535: Mr. TALLON, Mr. TOWNS, Mr. WALSH, Mr. HAYES of Louisiana, Mr. CONYERS, Mr. GINGRICH, Mrs. PATTERSON, Mr. FUSTER, Mr. DREIER of California, Mr. NATCHER, Mr. HUGHES, Mr. CARPER, Mr. SERRANO, Mr. MATSUI, Mr. ORTIZ, Mr. YOUNG of Alaska, Mr. HAMMERSCHMIDT, Mr. PANETTA, Mr. ARCHER, Mr. BALLENGER, Mrs. BENTLEY, Mr. BOSCO, Mr. HUNTER, Mr. GEKAS, Mr. SCHEUER, Mr. THOMAS of Wyoming, Mr. KENNEDY, Mr. MARTIN of New York, Mr. MFUME, Mr. MURPHY, Mr. OWENS of Utah, Mr. SCHUMER, Mr. WYLIE, Mr. BORSKI, Mr. HUBBARD, Mr. PACKARD, Mr. SMITH of New Jersey, Mr. TAUZIN, Mr. BILIRAKIS, and Mr. COUGHLIN.

H.J. Res. 543: Mr. GINGRICH, Mr. THOMAS A. LUKEN, Mr. McCOLLUM, Mr. JONES of North Carolina, Mr. NATCHER, and Mrs. BYRON.

H.J. Res. 551: Mr. TALLON, Mr. MRAZEK, Mr. ROE, Mr. TOWNS, and Mr. PALLONE.

H.J. Res. 552: Mr. SUNDQUIST, Mr. HARRIS, Mr. HEFNER, Mr. HANSEN, Mr. TALLON, Mr. THOMAS of Wyoming, Mr. WOLPE, Mr. FAUNTROY, Mr. WHITTEN, Mr. FASCELL, Mr. MONTGOMERY, Mr. WOLF, Mr. MURPHY, Mr. FLAKE, Mr. NATCHER, Mr. BATES, Mr. LAGOMARSINO, Mr. BARNARD, Mr. DYSON, Mr. PAXON, Mrs. JOHNSON of Connecticut, and Mr. MAVROULES.

H.J. Res. 554: Mr. APPLEGATE, Mr. LEWIS of California, Mr. LIVINGSTON, Mr. MAVROULES, Mr. McHUGH, Mr. NEAL of Massachusetts, Mr. MOORHEAD, Mr. PANETTA, Mr. STOKES, Mrs. LOWEY of New York, Mr. HAYES of Illinois, Mr. PORTER, Mr. PURSELL, Mr. SAWYER, Mr. SCHUETTE, Mr. TAYLOR, Mr. ROBERT F. SMITH, Mr. VALENTINE, Mr. VENTO, and Mr. WYLIE.

H.J. Res. 578: Mr. LIPINSKI, Mr. MORRISON of Connecticut, and Mr. FAUNTROY.

H.J. Res. 588: Mr. HARRIS, Mr. KOLTER, Mr. CARPER, Mr. RAHALL, Mr. JONES of Georgia, Mr. ANDREWS, Mr. MOODY, Mr. PRICE, Mr. KLECZKA, Mr. ASPIN, Mr. STAGGERS, Mr. VOLKMER, Mr. HASTERT, Mr. DORNAN of California, Mr. GOODLING, Mr. GRANDY, Mr. DEWINE, Mr. BONIOR, Mr. LANCASTER, Mr. WILSON, Mr. MURTHA, Mr. GINGRICH, Mr. PICKETT, Mr. SISISKY, Mr. FRENZEL, Mr. BATES, Mr. GEREN, Mr. SARPALIUS, Mr. MOAKLEY, Mr. SCHIFF, Mr. SMITH of Vermont, Mr. GUARINI, Mr. TORRICELLI, Mr. MINETA, Mr. CONTE, Mr. BOSCO, Mr. BRUCE, Mr. CARDIN, Mr. YATRON, Mr. JOHNSON of South Dakota, Mr. GAYDOS, Mr. EDWARDS of Oklahoma, Mr. HEFNER, Mr. CAMPBELL of Colorado, Mr. ATKINS, Mr. BRYANT, Mr. BUECHNER, Mr. GUNDERSON, Mr. BARNARD, Mr. KANJORSKI, Mr. MONTGOMERY, Mr. BEVILL, Mr. HAMILTON, Mr. SABO, Mr. NOWAK, Mr. DERRICK, Mr. ANTHONY, Mr. HATCHER, Mr. RIDGE, Mr. HOUGHTON, and Mr. THOMAS of Wyoming.

H.J. Res. 602: Mr. WAXMAN, Mrs. BOXER, Mr. SKAGGS, Mr. MANTON, Mr. STUDDS, Mr. DIXON, Mr. SPRATT, Mr. MARTINEZ, Mr. DURBIN, Mr. WALSH, Mr. SKEEN, Mr. ERDREICH, Mr. NEAL of Massachusetts, Mr. FAUNTROY, Mr. DEFAZIO, and Mr. PARRIS.

H. Con. Res. 270: Mrs. SCHROEDER, Mr. TORRES, Ms. SCHNEIDER, Mr. ROYBAL, Mr. HOCHBRUECKNER, Mr. ROSE, Mr. ACKERMAN, Mr. SMITH of Florida, and Mr. PANETTA.

H. Con. Res. 276: Mr. LANCASTER, Mr. BOSCO, Mr. WHEAT, Mr. HARRIS, Mr. SAXTON, Mr. MORRISON of Connecticut, Mr. EMERSON, Mrs. BOGGS, Mr. BOUCHER, Mr. BUSTAMANTE, Mr. COBLE, Mr. COOPER, and Mr. CARPER.

H. Con. Res. 293: Mr. GALLO, Mr. BAKER, Mr. FUSTER, Mr. CAMPBELL of California, Mr. MARTINEZ, and Mr. FAWELL.

H. Con. Res. 309: Mr. ANDREWS, Mr. HAWKINS, Mr. WAXMAN, and Mr. MARTINEZ.

H. Con. Res. 336: Mrs. BENTLEY, Mr. OWENS of New York, and Mr. ECKART.

H. Res. 342: Mr. DORNAN of California, Mr. COMBEST, Mr. HASTERT, and Mr. HYDE.

H. Res. 418: Mr. OWENS of New York, Mr. CONYERS, Mr. NIELSON of Utah, Mr. GOODLING, Mr. SYNAR, and Mr. JOHNSTON of Florida.

EXTENSIONS OF REMARKS

SANTA MONICA STUDENTS HELP THE HOMELESS

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. LEVINE of California. Mr. Speaker, I rise today to draw my colleagues' attention to an elementary school in my district whose students are doing their part to alleviate hunger among Santa Monica's homeless community. Every Wednesday, students at Pluralistic School No. 1 bring extra sack lunches to school to donate to the Ocean Park Community Center, just seven blocks away. The center in turn distributes the lunches to the homeless.

The lunch program should serve as a model to other schools that are lookng to move beyond holiday food drives to make an ongoing commitment to improving the lives of the less fortunate members of their community. The students of PS No. 1 have shown that anyone with a sense of compassion and some initiative can help. No one need feel powerless.

Mr. Speaker, an article recently appeared in the Los Angeles Times which describes the program and the students' involvement in greater detail. I ask that it be included in the RECORD at this point.

[From the Los Angeles Times, June 14, 1990]

SCHOOL FULL OF COMPASSION

(By Barbara Koh)

It's not on the scale of Comic Relief, but it comes straight from the heart and the kitchen cupboards.

Every Wednesday morning, children at PS No. 1, a small private school in Santa Monica, tote two sack lunches to school—one for themselves and one for a homeless person. They deposit the extra lunches into a crate at the school gate, then the food is whisked to the nearby Ocean Park Community Center by a parent and some students.

The project is the brainstorm of the PS No. 1 Parents' Guild community services committee, which wanted to go beyond holiday feeding programs, committee member Audrey Arlen said.

"We also wanted children to feel they participate in something in their everyday lives," Arlen said. By helping to deliver the lunches, the students, ages 5 to 12, see that "what they're doing went to somebody—not just, 'Oh, my mommy's writing a check."

The voluntary program was launched last fall, and the response has been enthusiastic, Arlen said. Parents clamored to be delivery drivers, she said, and now, as the school year winds down, lunches continue to come in at a rate of about 30 a week.

The school, whose initials stand for "Pluralistic School," has 89 students. Arlen said that although some families have never contributed a lunch, "every child is aware of this happening" and is more conscious of the homeless.

A few students who have brought extra lunches said they did so—at least originally—because it's a school activity.

Casey Mortensen, 11, said he participates to help people who are less fortunate." But he acknowledged that "I normally wouldn't have thought of it . . . but [the school] brought it up." Others said they felt powerless to help the homeless, and the lunch program provided an easy way to do so.

The plight of the homeless is not new to the children, most of whom live on the Westside. They see transients on Wilshire Boulevard and at the beach. PS No. 1 classes regularly play and eat lunch at Memorial Park, and uneaten lunches are left for the homeless.

Some of the homeless are probably just lazy, students said. "But some [were] fired from their job through no failings of their own," Casey said. He said that instead of food, he likes to bring shampoo, toothpaste or toothbrushes on Wednesdays, because they last longer.

Homelessness could happen to anyone, children said. "It probably wasn't even their fault," said Danny Levene, 10. "They're regular people—with no money."

"You see then in blankets, huddled in doorways," he said. "It's just terrible to see them."

"But you can understand that they'd go nuts living like that," said Nico Zimmerman, 11.

On a recent Wednesday, it was Nico's turn to visit the Ocean Park Community Center. At 9:15 a.m. Nico, his mother and 6-year-old sister loaded the lunches into the family's Toyota Land Cruiser for the seven-block juant from the school on Euclid Street to the center, at 7th Street and Colorado Avenue.

"We're vegetarian, but I put meat in it because I figure they don't get much protein," said Nico's mother, Joan Andersson, describing the sandwich she made that morning. Typically, she said, she'll also pack fruit juice, chips, granola bars and extra canned food.

The family carried in the lunch crate and two grocery bags stuffed with sacks, some of them printed with whimsical penguins and dirt bikes to appeal to children. In addition to the sandwiches, yogurt, trail mix and apple juice, the contributions included a batch of bran muffins and children's clothing.

In the brightly lit center, lines of homeless people snaked up to sleek counters to receive clothing, counseling, referrals to health clinics, assignments to shelters, and lunches and provisions such as dried beans and peanut butter. Other people milled about, chatting to themselves or to one another. Several stuffed their belongings in tote bags or luggage carts. Their clothes were ill-fitting and worn, their hair and beards scruffy.

Andersson crouched down to daughter Emma and explained that the homeless could get showers and food there.

The center, a converted surgical-instruments factory, distributes food to 100 to 200 people a day, Executive Director Vivian Rothstein said. Every year, it serves about 4,500 people. "You just have to need food. We provide it," Rothstein said.

About a third of the food is donated by individuals, churches, restaurants and civic groups, a third is from the Westside Food Bank and a third is bought, Rothstein said. Donations, especially juice and high-protein food, are always needed, she said.

Other schools run food drives periodically, but PS No. 1 is the only one to provide sack lunches on a regular basis, Rothstein said.

Nico Zimmerman said the visit left him sad. "People could give a little more money [to the homeless]," he said, adding that he gives panhandlers any spare change he has. He fired off other suggestions to help the homeless: employment programs, "vacant motel rooms—let them use them, an initiative to give them more money."

His opinion on why they are homeless is strong and clear: "I think it's capitalism. A lot of people are idiots, a lot of people are greedy."

"Communism would be better," he said. Or at least, he quickly added, a combination of "the best of both" capitalism and communism.

Andersson said that, in discussing homeless people with her children, "I just try to make it clear it's just people—who're down on their luck." The lunch project, she said, is "an extension of the way kids are treated [at PS No. 1]. Kids are treated as individuals. . . . You don't put people down."

"Elementary school is the time for kids to learn about people who're different from themselves," PS No. 1 Director Joel Pelcyger said.

He said that the school has had seven deaf students in classes with the hearing children. "If they're not exposed to people who are different, you're led to a lifetime of prejudice," he said.

Given those lessons, said Andersson, "I think it's hard for kids to [understand] how you can just walk by" a homeless person.

The 19-year-old school prides itself on its community spirit. The students, who are grouped by two-year age ranges rather than in traditional classes, have cheered residents of retirement homes and have picked up garbage on beaches. A newspaper clipping of "Top 10 Simple Things to Save the Earth" and a brochure outlining "Twelve Steps to Personal and Planetary Health" adorn the bulletin board in the school lobby.

The annual Jogathon/Bikeathon school fund-raiser netted $4,800 in March, and pupils decided to start giving money to community groups. The student council granted $1,200 to the Westside Children's Center for playground equipment, but not before grilling the center staff to see that the funds would directly benefit children rather than adult bureaucrats.

"The school is not a self-contained classroom," Pelcyger said.

"We live here, the [Ocean Park Community] Center is here, this is what we do," Arlen said.

With the lunch program, she said, "the kids are aware, and they're aware on a con-

tinuing basis. Community service has to be an ongoing commitment, not just when you get the guilt."

Mr. Speaker, the children at PS No. 1 should be proud of themselves for making a very real difference in the daily lives of Santa Monica's homeless. I urge my colleagues to join me in commending the students, their parents, and the faculty for their efforts on behalf of Santa Monica's homeless population.

LAYING DOWN THE CHEMICAL-ARMS SWORD

HON. H. MARTIN LANCASTER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. LANCASTER. Mr. Speaker, I ask that the attached article be included in the Extensions of Remarks in the CONGRESSIONAL RECORD. The article, entitled "Laying Down the Chemical-Arms Sword," focuses on the recent chemical weapons arms control agreement reached by the United States and the Soviet Union at the recent Washington summit between President Bush and Soviet President Gorbachev.

Of particular import is the article's acknowledgment of Congress' role in bringing about this important achievement. While we should take pride in our efforts, we must be mindful that there is much left to be accomplished if we are to completely eliminate the threat of chemical weapons from our world.

Nevertheless, the first momentous step has been taken. As my colleagues consider the following article, I urge them to reflect upon the importance of this recent agreement and to continue to amplify their efforts until we achieve the desired end of global elimination of the chemical weapons scourge.

[From the Christian Science Monitor, June 20, 1990]

LAYING DOWN THE CHEMICAL-ARMS SWORD

(By Dante B. Fascell)

President Bush and President Gorbachev recently made a momentous decision on chemical arms control and disarmament. At the June 1 Washington summit, they signed an agreement not only to begin destruction of their chemical weapons but also immediately to stop the production of these indiscriminate weapons.

This affirmation of long-standing bipartisan congressional efforts to stop chemical-weapons production and use eliminates the inconsistencies and contradictions that plagued the Reagan administration's policy on chemical weapons. For the first time, Congress has effectively stopped the production and deployment of a major weapons system.

Secretary of State James Baker has accurately described the US-Soviet chemical-weapons ban as "a trailblazing agreement." It gives the superpowers a unified stance on this critical issue. By establishing an unambiguous leadership role—for both the US and the Soviet Union at the multilateral chemical-weapons talks in Geneva, it significantly enhances the likelihood of convincing other states to support a worldwide ban on the production and usage of chemical weapons.

This is an unprecedented and unique arms control agreement. It is unprecedented because it provides for US-Soviet cooperation in destroying their respective chemical-weapons stocks. It is unique because both superpowers agree to immediately stopping chemical-weapons production, thereby providing the best hope for a negotiated global ban.

As the superpowers lay down their chemical swords together, they are challenging all countries to do the same. No more carping and sniping at the superpowers. No more grumbling about past US hypocrisy of wanting to produce new binary chemical weapons while simultaneously expecting others to forswear these weapons. The moment of truth has come when all nations must exert the political will and courage necessary to ban these inhumane weapons once and for all.

It has been a long, hard eight-year struggle for the House of Representatives finally to convince the executive branch of the foreign policy logic, arms control rationale, and good common sense of its position opposing the production of new binary chemical weapons.

It was simply foolish to spend billions on new chemical weapons that were:

Technically flawed and which consistently failed the Defense Department's own testing standards as documented by the General Accounting Office;

Rejected by our European allies;

Demonstrated to have no practical military value; and

Morally repugnant to civilized mankind.

Contrary to persistent Pentagon contentions that binary chemical weapons would somehow add to US security, the only thing they added to was the federal deficit!

Consequently, congressional action effectively stopped a new generation of chemical weapons from being produced and deployed.

This congressional action combined with the summit signature of a US-Soviet agreement to halt chemical-weapons production and to begin destruction stakes out new credibility and leadership for the US on this issue.

When Presidents Bush and Gorbachev laid down the chemical-weapons sword at the Washington summit and signed a chemical arms control agreement, it was a historic arms control achievement. It signaled the beginning of the end for chemical weapons.

This arms control achievement is a great confidence-building measure—both between the two superpowers and between the superpowers and the rest of the world. It represents a concrete example of superpower cooperation at its best. It represents a turning point because now other nations have no excuse for not joining the superpowers in ridding the world of all chemical weapons by the beginning of the 21st century.

PLO CONTINUES TO ENGAGE IN TERRORISM

HON. JON L. KYL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. KYL. Mr. Speaker, last week, President Bush announced he was suspending contacts with the PLO due to the refusal of the PLO to condemn the May 30 terrorist attack against Israel by the Palestine Liberation Front—a faction of the PLO—whose leader, Abu Abbas, is a member of the PLO Executive Committee. I applaud this decision.

The May 30 attack is only the latest demonstration that, despite Yasser Arafat's December 1988 pledge to renounce terrorism, the PLO continues to sponsor terrorism. Further, Arafat's refusal to condemn the attack and terminate all ties with Abu Abbas, who was also responsible for the hijacking of the *Achille Lauro* cruise ship and the murder of American Leon Klinghoffer, calls into serious question his commitment to the pledges he made in December 1988.

In fact, according to a special report prepared by the Adviser for Counter Terrorism to the Israeli Prime Minister, titled, "PLO Terror: A Year Since its Renunciation"—December 15, 1988–December 15, 1989—Fatah, Arafat's faction of the PLO, conducted 13 terrorist attacks inside Israel's pre-1967 borders. In addition, there were 17 border attacks by PLO organizations.

The simple fact is that the PLO has violated the terms of the United States-PLO dialog by its continued terrorist attacks. The record on this is clear. The President's decision to halt this dialog is correct. This dialog should not resume until Abu Abbas is expelled from the PLO and that organization, as a whole, recognizes Israel's right to exist, accepts U.N. Resolutions 242 and 338, and renounces terrorism.

TRIBUTE TO DR. DELORES CROSS

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. PAYNE of New Jersey. Mr. Speaker, I am honored to bring to your attention the outstanding contributions of one of our country's most accomplished educators. Dr. Delores Cross was recently appointed the first woman president of Chicago University. Once again Delores Cross has caused our hearts to swell with pride in the 10th District of New Jersey. Despite tremendous odds against her, she has always taken that extra step to distinguish herself among her peers. She stands as an example to all of us that tenacity, hard work and dedication to excellence is still a guaranteed recipe for success in America. When the door of opportunity opened, Delores Cross was not afraid of the pervasive gender and racial discrimination that plagues our society. She spoke up loudly, "Yes, me too" and "Yes I can". Her determination and courage has lifted her to the top of her profession and provided inspiration to us all.

A distinguished scholar and professor, she obtained her B.S. degree from my alma mater Seton Hall University. I can testify from experience that the sledding was rough for young ambitious blacks at that time. A true scholar's thirst for knowledge cannot be satiated. Delores Cross went on to obtain her masters from Hofstra University and Ph.D. from the University of Michigan. She distinguished herself as a professor and moved into administration as vice chancellor for student affairs at City University in New York. When opportunity knocked there was no turning back for Dr. Delores Cross. She moved on to become presi-

dent of the New York State Higher Education Services Corp. Onward and upward to become associate vice president for academic affairs at the University of Minnesota. Onward and upward to her most recent distinction as president of an important urban university. We know that Doctor Cross' journey has not ended, her energy and commitment will keep nourishing the immense educational needs of our multicultural society.

I might mention that this dynamic and graceful woman is also the mother of two children and runs marathons. Mr. Speaker, I am so proud of and happy for this wonderful woman and her family.

RECOGNIZING THE VETERANS UPWARD BOUND PROGRAM

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to bring to the attention of my colleagues a program which not only benefits our community, but also helps to reconstruct the lives of our veterans. These veterans, who selflessly dedicated their lives to serving our country and our people, are finally able to obtain the benefits that were promised them upon their enlistment.

In my district, Miami-Dade Community College, an upstanding educational institution which has served our community for several years, has instigated the Veterans Upward Bound Program. This program, funded by the Department of Education, identifies low-income, disabled or disadvantaged veterans and provides them with educational opportunities and skills training. The renewable 3-year grant maintains that the program assist 120 veterans each year. Currently, the Veterans Upward Bound Program at Miami-Dade Community College is serving 132 veterans, many of whom are homeless.

The programs include tutoring and individualized courses in English, reading, mathematics, and computer literacy. It also provides personal and vocational counseling without cost to the veterans. In addition, the program provides GED preparation and precollege courses to those who wish to seek college degress.

One of the vital parts of the Veterans Upward Bound Program is the counseling they receive for substance abuse. Further, individual therapy and guidance in securing support for rehabilitation is promoted.

One of the most innovative parts of the program is called Bill's Place, a nonprofit corporation which provides necessary housing for the veterans. This is not part of the Veterans Upward Bound Program grants. However, residents must be enrolled in the program, maintain a 2 grade point average, and adhere to the rules of the contracts by which they agree to live.

Currently, there are three houses with eight residents in each. A chairman of each house, elected by the residents, assigns tasks and ensures that each resident obeys rules and attends all scheduled classes and functions. Each house is run in the same manner as a military barrack with periodic inspections by the staff of Bill's Place.

I would like to recognize the director of the Miami-Dade Community College Veterans Upward Bound Program, William W. Ryan. Through his concern and dedication to this program, he is changing the lives of veterans who stumbled into many obstacles. I am certain that this program will not only benefit these veterans, but the entire community as well. I commend him for his efforts and wish all the Veterans Upward Bound Program participants much success as they embark on their new future.

MANDELA'S BOLD POLITICKING

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. DYMALLY. Mr. Speaker, I rise to enter into the RECORD an article by Ms. Mary McGrory, the Washington Post, June 26, 1990.

Ms. McGrory's article captures the essence of Mr. Nelson Mandela's visit to the United States. He brought to us a message of hope; a commitment to his fight for freedom; an intellectual honesty not too often seen among public figures. His fearlessness, courage, and eloquence brought new inspiration to people all over the world.

[From the Washington Post, June 26, 1990]

MANDELA'S BOLD POLITICKING

(By Mary McGrory)

Imagine finding inside this "Moses"—as Nelson Mandela has been hailed many times on his triumphant tour—a down-to-earth, tough-minded politician?

The first inkling he gave that he is something more than an elderly icon and a symbol for his people came on Ted Koppel's "Nightline" show when he spoke of being beholden to Yasser Arafat, Moammar Gadhafi and Fidel Castro. His questioners were shocked. Too bad, Mandela coolly replied. Your enemies are not necessarily our enemies, he suggested.

The trio the United States loves to hate had encouraged the African National Congress during its darkest days, he explained. The U.S. government, of course, had not. Or, to put it another way, as former House speaker Thomas P. "Tip" O'Neill often said: All politics is local. Mandela is obviously having a lovely time, and he seems as delighted as his audiences, but he had to send messages back to the home folk, messages that show that the sensational reception has not gone to his head.

But it was when he got to the White House lawn that he really showed his stuff. Only a politician would have done what he did to President Bush. Here was a man barely out of prison standing up to the leader of the western world and shoving him back about 10 paces. In effect, Mandela told the president that he did not know what he was talking about in regard to African National Congress violent opposition to South Africa's apartheid system, and lectured Bush on the importance of consulting the ANC before he does anything further.

It was breathtaking boldness, carried off with that strangely endearing dignity. Mandela, with his navy blue suit and his formal speech patterns, seems to come from another era, one that never knew the 30-second sound bite. He never looked at Bush while he was executing this affrontery.

Naturally, he looked straight into the cameras, he talked directly to his legion of new fans—the people of New York, Boston and Washington—who stood for hours for a glimpse of him, who greeted him with tears and cheers, who could hardly find words for their admiration. They rarely see conviction. The Republican president got where he is by being supple. The Democrats in Congress hasten to fashion compromises with the care they once applied to legislation they believed in. Mandela, the holdout, is magic and unique.

On the White House lawn, Bush was almost a prop. When his guest had finished, all he did was marvel, "No notes—wonderful."

Mandela knew he had taken the East Coast by storm. He is a compelling figure, hopelessly non-intrusive to local counterparts. Which one of them would stay in jail for 27 years and come out smiling, would have the patience and endurance to tough it out, foreseeing that a decent president like Frederik W. de Klerk would have to release him unconditionally just because he needed someone to talk to?

Although Mandela says fairly convincingly that he wants to "let bygones be bygones"—his wife Winnie is of a different school—he can be harsh with de Klerk. On "Nightline," he said de Klerk did "nothing"—which was probably a way of telling the ANC that he was as militant as ever. On the White House lawn, he was a little kinder to his liberator. He wanted to help de Klerk "maintain his position," he said.

He brought to Washington, which is undergoing the drug-and-perjury trial of its black mayor, Marion Barry, the same sort of healing that he seems to have imparted to New York and Boston. Irritated New Yorkers slowed down to watch him. In Boston, home of liberal causes and racial tensions, black and white joined in common joy at his coming. Outside the White House, tourists shrieked as he passed.

It was as if some sort of general amnesty had been declared. Blacks are proud of him: He is the first world-class leader they have had since Martin Luther King Jr. was assassinated. Whites are grateful to him: He survived the worst that a white government could do to him, and he talks about education and principles and the official, institutionalized racism of apartheid, not the ersatz; version claimed by unscrupulous black politicians.

And if he is a politician, he is a good one. He used those long years behind bars to good effect. He not only founded a clandestine institution of higher learning, he organized a headquarters for the ANC behind bars. And he thought things through. So when someone pointed out the contradiction of his saying that the human rights records of Arafat, Gadhafi and Castro were not his business, while demanding the world take a part in South Africa's domestic affairs, he could say, with grandeur, that apartheid is so monstrous a practice that the world has a moral obligation to interfere.

PENNSYLVANIA NEWSPAPER WINS PULITZER

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. KOSTMAYER. Mr. Speaker, I want to call to the attention of my colleagues the last of 10 editorials written by Tom Hylton of the Pottstown Mercury in Pottstown, PA.

These editorials on the subject of farmland preservation won this year's Pulitzer Prize for editorial writing, and I commend them to my colleagues.

THE LAND IS OURS TO PROTECT FOR OUR CHILDREN AND GRANDCHILDREN

As this century dawned, Rotterdam was Europe's greatest harbor and one of its most ancient cities. It was a fairytale setting of clocktowers and gables, tile roofs and narrow cobblestone streets.

Then, on May 14, 1940, the German bombers came. In less than three hours, 600 years of history were wiped from the face of the earth.

The paving over of rural Chester County lacks the drama, the malevolence—and the shocking suddenness—of the blitzkreig on Rotterdam.

The result will be the same

The Dutch rebuilt Rotterdam, and it is a great and vibrant city. But its history is confined to the library and we are all the lesser for it.

Chester County will always have Valley Forge, Longwood Gardens, the Wyeth museum, and other monuments to its magnificent past.

But when its gently rolling hills are covered with housing projects, and its quiet country roads are widened, straightened, and lined with convenience stores, then the heart and soul of Chester County will be gone forever.

The transformation of historic countryside into modern suburbia will come not at the hand of a madman, but through our own folly. Unfortunately, many people do not realize the scope of recent commercial and housing construction. They don't appreciate how close Chester County is to permanently losing its rural character.

A sense of identity, a pride in our home and surroundings, is what we need. Chester County is beautiful beyond compare. The rolling farmland, the wooded hillsides, the streams and wildlife are precious endowments we all enjoy. They have been handed down to us from generation to generation, and they are ours to protect for our children and grandchildren. We have a responsibility to be good stewards of our land.

It makes no difference how much farmland is left in the Midwest; or how many forests there are in the Appalachians. Chester County is our home.

The proposed $50 million bond issue on the Nov. 7 ballot will provide funds for open space and farmland preservation. The bond issue is indispensible to protect our heritage. The cost is small; measured in terms of generations, it is trivial.

Last fall, Mercury columnist Cindy Mitch described feelings that many of us share:

A few days ago I trekked up a hill in Chester County. You get to this hill by making your way through a tangle of branches and fallen tree limbs. Your feet slide off small rocks hidden by a thick carpet of moss and dead leaves. If you look up at just the right time, and are very, very quiet, you come eyeball to eyeball with a doe and her fawn. There is no sound except for the birds and the movements of small animals and the rhythm of your heart beating in unison with the life of the forest.

I sit up here on this hill and I think about the vegetable stand next to the Country Tavern. I think of how my grandmother used to chop firewood on cold winter days just a few yards down the hill from where I'm sitting. I think of my grandfather and how he once broke wild horses on this land.

I remember nights in this forest when the only illumination was the light streaming down from the moon and stars. I remember how we could stand out here alone and not be afraid of the darkness, because there was nothing out here that would hurt us. When I was a kid I knew the land would be good to me simply because I was good to the land. Back then, we had an unspoken pact with Mother Nature. In the ensuing years, we broke it.

There are people coming around here now destroying this land. They pay lip service to it. They claim they have a feel for the land and its history. They're lying.

When you have a feel for this land you don't destroy it to build houses and resorts and office complexes. When you have a feel for the land you nurture it. You respect it. You treat it the way you would like it to treat you.

And then you pick up a multi-colored leaf and some cool, damp moss and a dried twig or two. And you hold these things as close to your heart as you possibly can before they slip away from you.

The Chester County we love is slipping away from us. Once it's gone, it's gone. The $50 million bond issue is essential to protect what we have left. We urge all Chester County voters to go to the polls Nov. 7 and vote yes to save open space.

IN MEMORY OF C.R. SMITH

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BARTON of Texas. Mr. Speaker, for the information of my colleagues I am inserting into the RECORD a statement concerning Mr. C.R. Smith who died on April 10, 1990.

This morning the fine people in my district are mourning the passing of an aviation legend.

C.R. Smith, who was put to rest at Arlington National Cemetery last week, was a man who helped build American Airlines into one of the world's largest and most successful airlines.

Mr. Smith was a giant in an era of aviation pioneers. He entered the airline business in the days of open cockpit biplanes—and began building American into a company that today operates more than 500 jetliners flying the globe.

But "Mr. C.R.," as he was affectionately known, was more than a pioneer. He was a sensitive manager who touched the lives and hearts of thousands of men and women who worked for his airline or who traveled on American. The affection he inspired has been demonstrated clearly by the outpouring of praise that followed his passing.

C.R. Smith was part of the heart and soul of American Airlines—and of the modern aviation industry. He will be sorely missed.

SKELTON SPEAKS TO MARINE CORPS COMMAND AND STAFF COLLEGE GRADUATION

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. SKELTON. Mr. Speaker, on June 8 of this year I was privileged to deliver the graduation address at the U.S. Marine Corps Command and Staff College in Quantico, VA. In acknowledgment of those graduates and their achievements, I respectfully submit the text of that speech:

GRADUATION ADDRESS BY CONGRESSMAN IKE SKELTON

INTRODUCTION

We gather today to celebrate the achievement of hard work well done. Those officers who have spent the past 10 months at this command and staff college know well the exciting changes that have taken place at this institution of higher learning over the past few years. You have benefited from those changes. The curriculum has evolved from a disparate combination of courses in tactics, management, and political science to an integrated set of courses that focuses on the art of war at the operational level. That concentrated focus has also prepared you for thinking in strategic terms and at the same time has prepared you for joint operations.

Let me extend my sincere congratulations to all of you on today's achievement. Savor today's accomplishment, but now is not the time to rest, much work remains to be done. You are now ready to put to use the knowledge you have gained over this past year. Most of you will leave this center of learning and put your education to work in operational units scattered across this country and the vast oceans and continents beyond. At the same time, however, I hope you will share with those who remain behind—your former instructors and the school director—an honest appraisal of this past year's work. Let them know if you were challenged, what insights you gained, what changes you would make to the curriculum, teaching staff, and method of instruction. Over the next six months I hope you will make time in a busy schedule to provide them this necessary feedback.

The changes taking place at this command and staff college must continue if the hope to make this institution a world-class center of military learning is to be fulfilled. Those in positions of authority—both here and at Headquarters Marine Corps—need to use this precious period of peace. They need to make the schools here at Quantico so good, that you leave here knowing that you are par excellence, that senior strategists in the world would look to you for the most educated commentary on warfare, and that your battlefield decisions would be such that parents would want their sons under your command in time of conflict. And, in the ultimate test—combat—your decision-making should be so superior that you could overcome any adversary.

BUDGET PRESSURES AND THE WORLD IN 1990

As you know the Department of Defense is in its sixth straight year of real cuts in the defense budget. In the mid-1980s the pressures on defense spending came on two fronts—the internal one of budget deficits and the external one of trade deficits. Now, in the 1990s the defense budget will come under even greater pressure as a result of the stunning events that took place in Eastern Europe in the last half of 1989. The collapse of the Warsaw Pact and the changes taking place in the Soviet Union present the United States with a diminished threat to peace in Europe.

The world in 1990 is a far different place than the world that existed just a year ago. The ideals of freedom, democracy, and human rights, for which this country has sacrificed much blood and treasure over the past 50 years, have have affirmed throughout the world—in Eastern Europe, Nicaragua, South Africa, and even the Soviet Union. The "long twilight struggle"—the words used by President Kennedy to describe the bitter contest against Communist expansion—is coming to an end.

But the world of 1990 is still a perilous one. Taking the long view of history we should realize that this is nothing new. We still live in the nuclear age and the hazards of it are still with us, if less keenly felt. Even after the nuclear arsenals of the United States and the Soviet Union have been reduced through negotiations, each side will still possess thousands of nuclear weapons. This nation will still have to deal with a Soviet Union that will remain a great power.

Elsewhere, the United States will have to cope with the consequences of increasing military power in countries throughout the world. Nuclear and chemical weapons proliferation, in conjunction with the spread of ballistic missile and other technologies, afford the potential for countries such as Syria, Libya, Iraq, Iran, and others to figure on the world stage. In the Far East, for example, Stalinism still holds sway in North Korea, China, and Vietnam. I believe Korea must rank as the most probable country in the world where American forces could become engaged in large scale combat.

So while we can relax a bit because of the improvement in American-Soviet relations, these other challenges will continue to confront us for the foreseeable future. Before we disarm too far, as some in this country would have us do, I believe it would be better to assess the threats we face before we arbitrarily slash our defenses. In 1935 Winston Churchill warned his countrymen that "wars come very suddenly." It would be a warning well worth keeping in mind in 1990. In other words, the ordeal of the 20th century is not over.

In many ways the present period is comparable to the months immediately after World War II. There was much joy then because the war had been won. The cry throughout the country was "bring the boys home"—and we did. However, the future at that time was uncertain. Little did we realize the strategic threat that Stalin's Russia would assume in just a few short months and war in Korea in five short years.

Today, there is again much happiness in the West. As in 1945 the call was gone out again to cut the defense budget. Once again however the future was unclear. Yet defense leaders have to make decisions today to design military forces that will defend the world-wide interests of the United States in the post-cold war era. Unfortunately, many of those decisions are driven by budgetary pressures rather than strategic considerations. At the same time, trying to put together a military strategy is very difficult, if not impossible, when there is no consensus about a new national security strategy.

COPING WITH CHANGED CIRCUMSTANCES

During this period of uncertainty in the world and of declining defense budgets it is imperative that we strengthen the renewed educational effort that has taken place in the military over the past few years. This renewed interest in military education has come in the wake of the Goldwater-Nichols legislation of 1986. I would like to think that the House Armed Services Committee panel on military education has also played a constructive role in renewing the interest in military education.

Usually such changes, whether in defense organization or military education, come only after some great shock to the system. For example, an interesting case of an Army trying to cope with changed circumstances is that of the French Army after the crushing defeat in the six week Franco-Prussian war of 1870. The lesson for French Army leaders can be summed up in one word—"Elan", the offensive spirit. The memory of Sedan—"never speak of it; think of it always"—infected French military leaders for more than forty years. Combined with the national desire for "revanche", the French Army eagerly charged into battle in 1914 hoping that a short violent offensive campaign would restore the glory of France and the French Army that had been lost at Sedan. Unfortunately, the French military proved itself inflexible in its thinking. Forty years of studying only offensive tactics left the French Army ill-prepared when the time came to go wage a defensive struggle, as happened unexpectedly in the early fall of 1914. A short campaign turned into a four year stalemate in the trenches that stretched from Switzerland to the English Channel. Defense, not offense, marked that would one day come to be known as the great war.

After the first world war French military leaders once again devoted much thought to the problem of war in the modern era. Exhausted but victorious, France tried to fashion defense policies that would ensure the security of the nation for the day when Germany would once again be a key player in the affairs of Europe.

If "elan" had proved a bust for an earlier generation, then maybe defense offered the answer to the problem of securing the safety of the country. Here the bloody experience of trench warfare cast its long shadow. Once again, however, inflexible conformist thinking, firmly embedded among civilian authorities in government and in the French general staff, undermined sound defense planning. Offensive tactics employed in the Spanish Civil War and later in Poland during the first campaign of the second world war did little to shake the confidence of the French general staff in the primacy of the defense. The blitzkrieg tactics of the German Army in the spring of 1940 with its tragic results for the French nation revealed just how wrong were the lessons learned by the French general staff after World War I.

STRATEGIC VISION

We in the United States succeeded at the higher level of strategic thinking prior to World War II, because our command and staff and war college during the 1920s and 1930s produced officers of exceptional character and strategic vision. As a nation we emerged victorious from World War II in no small measure because of the moral and intellectual strengths found at the highest levels of the American officer corps.

Unfortunately, after the war we became complacent. Strategic thinking atrophied after 1945. In the nuclear age many believed that the ideas and thoughts associated with classical military history and strategy had been rendered obsolete.

Maurice Comte De Saxe, the famous French military analyst, noted that "few" men occupy themselves in the higher problems of war. They pass their lives drilling troops and believe this is the only branch of the military art. When they arrive at the command of armies they are totally ignorant, and in default of knowing what should be done—they do what they know."

Doing what one knows, rather than what should be done, is a problem which many military commanders have faced throughout history. It's a problem not unfamiliar to the American military in the recent past. I would contend that in Vietnam the American military did what it knew—fighting the conventional war which it had fought in World War II and Korea—rather than knowing what to do—fighting the Revolutionary War in which it became engaged. It took ten years to put together a strategy to win the Vietnam war. By that time it was too late. The patience of the American public had come to an end.

The bitter experience of Vietnam, which resulted from a loss of strategic vision, sent American military men back to the study of war and military history. Many of you here today are the beneficaries of that renewed interest in the study of war. I hope you have learned that a military career includes a life long commitment to self-development. It is a process of education of study, of reading, and of thinking that should continue for the rest of your professional military life.

Yes, tactical proficiency is very important, but so too is strategic vision. It can only come after years of careful reading, study, reflection, and experience. You need to be aware of the natural yardstick of 4,000 years of recorded history Thucydides, Plutarch, Sun Tzu, Clausewitz, Napoleon, Mahan and Mackinder have much to offer tomorrow's future generals and admirals. Today's officer corps must be made aware of this inheritance. If you have been made aware of this inheritance over the past ten months, you will have fulfilled the sacred trust your superiors—and indeed our Nation—have placed in your hands today.

Winston Churchill put this idea in these words: "Professional attainment, based upon prolonged study, and collective study at colleges, rank by rank, and age by age—those are the title reeds of the commanders of the future armies, and the secret of future victories."

DIFFICULT DAYS

On a personal level, let me express to every one of you—and your parents, wives, and children—my sincere thanks for what you do. Yours is a stern and demanding profession. We, your fellow countrymen, depend on you and your willingness to make the great sacrifices that you do. Too few of us appreciate those sacrifices. And the irony is that we would not have this Nation if it were not for professionals such as you who bear with it through the good times and the bad.

I must confess to you the concern I have about the security of our country as I look to the future. My fear in that in some ways we may return to the difficult days for our military that we went through in the 1930s and more recently after Vietnam. In an address to the Military Schools and Colleges Association in 1923 Maj. George C. Marshall noted. "The regular cycle in the doing and undoing of measures for the national defense." He observed that, "we start in the making of adequate provisions and then turn abruptly in the opposite direction and abolish what has just been done."

I do not believe our Nation will make the drastic cuts it made in its security in the 1930s, but these next few years for those in the military will be difficult ones nonetheless. Many of my colleagues would not hesitate in cutting the army numbers to 300,000. Some would be quite happy to do away with the marine Corps by consolidating it with the Army. A few weeks ago, during the consideration of the budget measure in the house, there were 90 votes for a budget that cut next year's military outlay expenditures by $23 billion. As you know, the outlay cuts would mostly be in manpower and operation and maintenance. The budget that passed, which I voted against, will cut defense expenditures by $11.5 billion. Should that be the final budget figure, you will see draconian reductions.

The temptation to become discouraged for those serving in uniform will grow. Please do not give in to it. In moments of doubt recall the words of Franklin Roosevelt: "The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith." We do not know what tomorrow holds. There is no crystal ball in which to look to foretell the future. Only a kaleidoscope with its uncertain patterns gives us a clue to what lays in store for uniformed Americans. Whether you will march again to the Halls of Montezuma or sail to the shores of Tripoli we do not know. But you should be guided by the words of Robert E. Lee: "Do your duty in all things. You cannot do more. You should never wish to do less."

Again, thank you for your kindness and your invitation to speak today. I congratulate you on this milestone accomplishment in your life. I wish you godspeed on your journey to keep our country free and secure.

A TRIBUTE TO NELSON MANDELA

HON. PETE GEREN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GEREN of Texas. Mr. Speaker, these are the days when the walls of oppression and totalitarian rule crumble down. These are the days when the call of freedom rings its loudest and the flame burns its brightest.

A new march toward freedom is being taken up around the globe, in the public squares of China, in the halls of the Politburo, and in the streets of Berlin. For the people of South Africa, however, this struggle is neither sudden, nor new. This battle for freedom is the only life that the black South African has ever known.

Each struggle for freedom, past and present, has its leader. The people of South Africa have the great Nelson Mandela.

His message is universal. We were inspired by the same message spoken by Lech Walesa as he stood before us to tell us of the Polish struggle for freedom. It was the message delivered by the Chinese students as they stood before the tanks of the Chinese army in Tiananmen Square. It was the message of our own forefathers as they built a democratic society.

Mandela's struggle is the staff upon which his people have leaned since he took up the cause in 1944. His imprisonment served only to ignite the forces for democracy in South Africa, elevating him to something more than just a man. Mandela is the embodiment of the struggle for freedom in South Africa.

Throughout his captivity and today, Mandela's spirit has lived on in the hearts of all South Africans, white and black, who have sought peace, justice, and liberty for all. He has carried the flag of liberty high, with dignity and respect, with honor and strength. He is a reminder to those who seek to maintain apartheid of the futility of their struggle.

The path down which his struggle has taken him would have defeated most. For others, it would have led them on the path to extremism. But Mandela has never lost his commitment to democracy. He says:

I have fought against white domination and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony with equal opportunities. It is an idea which I hope to live for and achieve, but if need be, an ideal for which I am prepared to die.

It is a bitter irony that the same year the United States passed it first guarantee of civil rights for all Americans, Nelson Mandela was sentenced to life in prison for fighting the same fight. It was a cause our own Reverend King died to defend. It is a cause we must still fight for every day.

As the struggle for equality continues in South Africa and around the world, we in the United States have a unique opportunity to renew our own commitment to civil rights. The Civil Rights Restoration Act stands before Congress, a bill to restore the spirit of the 1964 civil rights law that some seek to disembody. Nelson Mandela repeatedly rejected conditional offers for freedom over the years because he knew true equality could know no boundaries. We must not impose them either.

The boundaries of his prison walls did not confine the spirit of Nelson Mandela but only served to strengthen his resolve. Mr. Mandela has referred to his 26 years in prison as "long, lonely, wasted years." Yes, they were long and lonely, but they were far from wasted. It was from that jail cell that he became the personification of all black South Africans imprisoned by the chains of oppression.

A year ago, Nelson Mandela sat alone in a jail cell. Today, he stands with us in this great institution of democracy. Our cause for freedom has been carried so far by the spirit of Nelson Mandela. Yet, we have so far to go. In these tumultuous times, we must look more than ever to the need for understanding, the importance of community, and the future of civil rights. It is for these things Nelson Mandela lives. We must do the same.

TRIBUTE TO CHATMAN FAMILY

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. PAYNE of New Jersey. Mr. Speaker, by their fruits ye shall know them—Matthew 7:20. Records are not precise, but in the decade preceding the 20th century God brought Dyke Ross Chatman and Warren Pete Chatman together in matrimony. Their descendants are gathering in celebration this month at Newark, NJ, to count their blessing and have a good time. Strong families are the substance out of which a strong nation is made. We are blessed when families come together for the purpose of strengthening the family bond for we, as a nation, are strengthened by that enterprise. During a particularly difficult time in our history—when black men were being lynched in record numbers—Warren Pete and Dyke Ross Chatman provided strong leadership and values to their eight children. The fruit from this strong union was firm and of substance: Ulysses—a school principal; Marie—a guidance counselor; Warren—owner of a bowling alley; Lillian—a teacher; Grace—a secretary; Ernestine—a dietitian; Eugene—food distributor; and Gwendolyn—a teacher. The union was blessed with 16 grandchildren including a lawyer, investment banker, businessman, program director, public health nurse, teacher, policeman, physicist, civil servant, vice principal, vocational education teacher, banker, linguist and three computer specialists. The 32 great-grandchildren and 2 great-great-grandchildren of the union are following their ancestors' footsteps and distinguishing themselves in a wide variety of State building professions.

Mr. Speaker, on behalf of the people of the 10th District of New Jersey, I hereby herald and commend the Chatman family reunion which will be held at Newark, NJ, on June 29 through July 1, 1990. In calling together the outstanding fruits of this blessed union the Chatman family demonstrates family solidarity and love for each other that is an inspiration to our community.

RECOGNIZING "SIRA" FOR EXCELLENCE IN SERVING THE PUBLIC

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Ms. ROS-LEHTINEN. Mr. Speaker, I am honored to recognize the International Society of Amateur Operators, better known as SIRA (La Sociedad Internacional de Radio Aficionados, Inc.). This public service group was founded in Miami, FL, on December 4, 1971, and has remained a very successful nonprofit, non-political, and all-volunteer organization.

SIRA's local activities are focused on the first bilingual repeater in the United States transmitting from the Nine Island Condominium located in Miami Beach. It links low pow-

ered handheld and mobile units with public service agencies in Dade, Broward, and Monroe Counties. Thanks to the repeater and its battery back-up, SIRA has stood firm through blackouts and riots—1980 and 1989—to carry information to the media. Together with SIRA's strategic location, the repeater has been able to keep contact with the Key Largo area in the event of hurricanes and has aided in the locating and rescuing of numerous persons who have been lost or adrift at sea.

Internationally, SIRA has been equally as vital. When Nicaragua—1972, and Guatemala—1976, were leveled by a series of earthquakes, SIRA's correspondents in the stricken areas broadcasted details of the disasters over its emergency network and alerted the rest of the world. Where others would not venture, SIRA flew to the scene to establish special communication links with OAS in Washington, DC, consulates across the nation, the Salvation Army, the Red Cross, Sister Cities International and other top level agencies. SIRA, with its limited resources, was even able to out do TV and radio marathons in delivering relief to the victims. Time and time again, SIRA has repeated itself by rushing to the scene of tragedy with aid in hand 24 hours a day. SIRA was there in places such as Mexico City—1985, and El Salvador—1986, when they were leveled by tremors; Armero, Colombia when entombed by volcanic mud slides; and the endless number of locations threatened by killer hurricanes such as Kate, Gilbert, Joan, Hugo, and Fifi.

Thanks to individuals like Rafael M. Estevez, president; Jose Sarda, vice president; Sabastian Jaime, secretary; and Nilo Ruisanchez, treasurer, who concentrate on the interest of the public, we have organizations such as SIRA who care for their fellow man and wish to serve him.

ONE MAN SITTING IN A LITTLE OFFICE WRITING ON A YELLOW PAD

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. DANNEMEYER. Mr. Speaker, speaking of the powerful civil rights establishment, economist Thomas Sowell says:

> They're worried about one man sitting in a little office out in California writing on a yellow pad. They don't feel themselves capable of countering what I might say.

What is it that so frightens the leaders of the civil rights movement that they threatened to boycott a recent meeting with President Bush if Dr. Sowell were to attend? The attached article from the June 26 edition of the Washington Times examines Dr. Sowell's critique of the effects of affirmative action programs on the two-thirds of Americans who qualify as minorities under the civil rights laws.

I would like to highlight several of Dr. Sowell's observations:

> In country after country and in radically different cultures, a striking pattern emerges: the elites of the favored group benefit, while those at the bottom, at whom the policies are presumably targeted, retrogress;
>
> The preferences inevitably expand to cover new groups and wider areas, and as they do, group polarization increases. A backlash, often bloody, develops;
>
> Preferences increase the risk of hiring marginal members of the preferred group by setting a floor under the qualifications employers require of minorities. This makes the less educated, the less skilled, and the less experienced members of the group a more risky gamble for an employer than they otherwise would be;
>
> The policies tend to reinforce America's oldest myth, that white are superior to blacks, by mismatching talented minority students with colleges that demand more than they can deliver. Thus, more than 70 percent of the black students at the University of California at Berkeley fail to graduate, even though their academic performance is above the national average.

I urge my colleagues to read this article within the larger context of the growing number of respected black academicians and intellectuals—including Walter Williams, Shelby Steele, Clarence Thomas, William Allen, and William Lucas—who believe that preferential policies are inconsistent with the original goals of the American civil rights movement.

[From the Washington Times, June 26, 1990]

SCHOLAR STILL AFFIRMS PERIL OF RACE QUOTAS

(By Carolyn Lochhead)

Thomas Sowell was conspicuously absent when President Bush met recently with a group of activists of diverse races, sexes, religions, physical disabilities and other assorted traits. Mr. Bush wanted to discuss the Civil Rights Act of 1990, a bill speeding through Congress; the activists had threatened to boycott the confabulation had Mr. Sowell been invited. The White House acquiesced in the interests of peace, harmony and meaningful dialogue.

Mr. Sowell might have contributed a diversity of the mental sort. He chuckles at the consternation he causes among leaders of powerful organizations that enjoy easy political and media access. "They're worried about one man sitting in a little office out in California writing on a yellow pad," he says. "They don't feel themselves capable of countering what I might say."

The power of that writing on the yellow pad and the mind behind it can be judged by the fear they inspire. Long pilloried by the civil rights establishment, Mr. Sowell has throughout his career challenged conventional wisdom about racial policies and other dogmas.

He is a scholar at the Hoover Institution in California and a syndicated columnist whose work appears regularly in this newspaper. His latest book, "Preferential Policies: An International Perspective," is sure to provoke. This time Mr. Sowell examines racial and other group preferences—the application of different rules or standards to members of different groups—that have been imposed by governments around the world from affirmative action in the United States to apartheid in South Africa.

He also looks at preferences for far-flung groups such as India's untouchables, Nigeria's Hausa Fulani, New Zealand's Maori, Sri Lanka's Sinhalese and many others.

In country after country and in radically different cultures, a striking pattern emerges: the elites of the favored group benefit, while those at the bottom, at whom the policies are presumably targeted, retrogress. Discussions of the rationales and the hopes of the programs abound, with little thought paid to their actual results.

The preferences inevitably expand to cover new groups and wider areas, and as they do, group polarization increases. A backlash, often bloody, develops. Nigeria plunged into civil war. In Sri Lanka, a country that once had better race relations than the United States, Sinhalese mobs burned Tamil people alive in the streets.

"I see no reason why it can't happen here," Mr. Sowell says. Nothing is easier than to start a spiral of racial confrontations, he contends, "and nothing is harder than to stop it."

The United States has not yet traveled as far as other nations have in implementing preferential policies. "But if the current bill, the so-called Civil Rights Act of 1990," becomes law, he says, "we will have quotas set in concrete, no matter how much people deny it. And the hatred that is going to grow out of that is going to be something like we've never seen."

In the Bensonhurst section of New York City, whites murdered a black teen-ager in a racial attack last year; today in Brooklyn, a black demagogue hurls racial slurs at Korean grocers as the heirs to Little Rock watch in silence. On U.S. college campuses, the vanguard of affirmative action, Mr. Sowell says he sees the very trends beginning that have repeated themselves worldwide with disastrous results. White student unions are forming, and administrators react by suppressing speech. "The backlash has already begun," he says.

Born in a small town in Georgia some 60 years ago and raised in Harlem, Mr. Sowell is no stranger to the racism that preferences are intended to remedy. Always out of step with conventional wisdom, the economist was a Marxist during the height of McCarthyism and today is a classical liberal when "progressivism" is in vogue.

It is not Mr. Sowell's ideals that have changed since his youth, he says, but rather his understanding of how to achieve them. His concern lies not with intentions or hopes but with results, not with what a law declares it will achieve but the incentives it creates and the real consequences that follow.

Just as similar preferences have done in other countries, he says, affirmative action benefits elites at the expense of the less successful—fewer jobs for unskilled minorities so that minority engineers and scientists will be able to have "15 or 16 job offers instead of five or six."

Yet this possibility is almost never raised in the Kennedy-Hawkins debate, he says. "They're talking in terms of 'strengthening civil rights laws' and 'stopping the retreat from civil rights' and all sorts of vague statements of that sort about intentions and rationales, but without one speck of concern for the incentives they are creating."

Such incentives may account in part for the worldwide pattern of retrogression among the least advantaged group members even as the elites advance. Mr. Sowell argues that U.S. preferences especially increase the risk of hiring marginal members of the preferred group. Firms face a greater legal risk, for example, when firing a black female than a white male.

Mr. Sowell recalls a female academic who said she hires only "promotable" female assistant professors because she has "no time to waste at [Equal Opportunity Commission] hearings and in the courtroom." The preferences in this way set a floor under the qualifications employers require of minorities, he says, "making the less educated, the less skilled and the less experienced members of the group a more risky gamble for an employer than they would otherwise be."

The common wisdom holds that minorities need preferences in order to progress. Dogma, Mr. Sowell counters. Affirmative action often gets credit for trends already under way. "It is an often-cited statistic that the number of blacks in professional and other high-level occupations increased significantly after the Civil Rights Act of 1964," Mr. Sowell writes, "but it is an almost totally ignored fact that the number of blacks in such occupations increased even more rapidly in the years preceding passage" of the act.

Mr. Sowell vigorously attacks the widespread assumption—and the foundation of most civil rights law—that discrimination primarily causes statistical imbalances by occupation. "The fatal fallacy of 'affirmative action' policies," he writes, "is to assume as a norm a condition of even or random distribution of groups that is seldom, if ever, found on this planet."

Group disparities are the norm, he says, and proportional representation the anomaly—not the reverse, as U.S. courts, regulators and lawmakers nearly always assume. Group over- or underrepresentation is commonplace throughout the world in almost any occupation or institution. Human beings do not produce statistically balanced results, Mr. Sowell argues. Even when employer practices are not involved, group disparities are common.

Age can heavily influence a group's statistical representation in everything from prison populations to university professorships. Discrimination may be found to statistically "explain" why some groups are underrepresented in certain areas, just as shoe size can statistically "explain" test scores on mathematics exams, he notes.

Undoubtedly a correlation exists, because toddlers cannot answer as many math questions as 40-year-olds. Nor is it likely, he points out, that groups concentrated in landlocked states would be evenly represented in maritime industries.

Yet the common remedy for group imbalances is to put groups where they would have been, but for the assumed discrimination. Such remedies, Mr. Sowell says, further assume knowledge that no one possesses. "What would the average Englishman be like today, 'but for' the Norman conquest? What would the Middle East be like 'but for' the emergence of Islam?" Such speculation nonetheless routinely forms the basis of group preferences, he says.

Once in place, preferences usually expand to cover more groups and more benefits. Preferences for India's untouchables now include groups that outnumber the untouchables, and it is estimated that two-thirds of the U.S. population belongs to a preferred group. "Clearly, no recitation of the historic oppressions suffered by blacks can justify preferences for white middle-class women," Mr. Sowell writes. In the meantime, the policies cast suspicion over their intended beneficiaries, he argues. The "dumb-jock" stereotype now has a racial counterpart.

More tragically, affirmative action has generated artificial failure among minority students by mismatching them with colleges, Mr. Sowell contends. The pool of qualified candidates is too small to ensure proportional representation at all colleges; so when top universities, each competing for minority students, find that they cannot fill their quotas, they lower their admissions standards and siphon off students whose qualifications match the standards of second-rung institutions. These institutions in turn siphon students from still lower-tiered schools. At each step, students who might have succeeded at a school that matched their qualifications systematically drop out. More than 70 percent of the black students at the University of California at Berkeley, Mr. Sowell says, fail to graduate, even though their academic performance is above the national average.

The consequences are serious. San Jose State University Professor Shelby Steele wrote recently that such policies tend to reinforce "America's oldest myth, that whites are superior . . . that blacks are inferior."

Mr. Sowell first warned Americans 20 years ago that the conclusion people will draw from racial preferences is not that the programs have failed, but that blacks just cannot hack it. He is not optimistic about where it all may end. "There's a consolation in being as old as I am," he said recently. "I don't think that I'm going to live to see the terrible trends that are setting in, particularly in race relations, come to their conclusion. I certainly would not want to be here for that."

TRIBUTE TO WALTER L. ANDERSON

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BROOKS. Mr. Speaker, the Federal work force includes many exemplary and dedicated individuals who serve our Nation with honor and distinction. All of us who regularly interact with civil servants are well aware that a special few of them rise above even these high levels of achievement. Walter Anderson of the General Accounting Office is one of the special few.

Walter L. Anderson is retiring as the senior adviser in the Information Management and Technology Division. His retirement ends an era in GAO.

After serving as a naval electronics officer at the end of World War II, Walter Anderson completed his master's degree in electrical engineering education and became a computer pioneer. His experience includes Sperry UNIVAC and serving as national president of the American Federation of Information Processing Societies and chairman of the computer group of the Institute of Electrical and Electronics Engineers [IEEE]. Also, he was CEO of a company which made computer and electronics testing equipment.

Walter Anderson joined the GAO in 1974 after 28 years in the computer field in private industry. He was one of a key group of technical experts brought in by Comptroller General Elmer Staats to help GAO address ADP and telecommunications in Federal agencies. From 1974 through 1985, he was an associate director and senior associate director responsible for many GAO projects which had, and still have, great influence on Federal ADP and telecommunications. Walter headed up several GAO investigations which I commissioned as chairman of the House Government Operations Committee. His work included a report recommending cancellation of the Air Force phase IV procurement and redirection of the project, which alone saved the taxpayers $800 million. Other reports to the Congress on governmentwide ADP problems significantly impacted the operations of the General Services Administration, Bureau of Standards, and the Office of Management and Budget, and included reports on Federal ADP standards and software contracting. The former caused redirection of, and increased budget for, the Government's ADP Standards Program; the latter was so well thought of by the professional community that it was selected for inclusion in a technical guidebook published by the IEEE.

Walter Anderson's honors and awards are numerous, including induction into the Government Computer News Hall of Fame in 1989, IEEE Centennial Medal for Extraordinary Achievement in 1984, and the GAO Distinguished Service Award in 1981.

Above all, Walter Anderson produced and supported workable Federal ADP solutions. His combined knowledge of computer science, practical data processing, procurement, and management reality is very rare and will be greatly missed by all of us.

In recognition of the high esteem in which he is held, and considering Walter's many contributions to the General Accounting Office, to the Congress, and to the Nation, I ask that this tribute be made a part of the RECORD of the House of Representatives.

KOREA—THE FORGOTTEN WAR

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. FEIGHAN. Mr. Speaker, Monday, June 25, 1990, marked the 40th anniversary of the beginning of the Korean war and a day to remember those who sacrificed their lives to fight this war. There is nothing that I can say to match the eloquence of Richard Danielson, a World War II and Korean war veteran, vice president of the Korean War Veterans Association and also one of my constituents. At this point in the CONGRESSIONAL RECORD, I would like to include a copy of his essay entitled "Korea—The Forgotten War." As you can see, Mr. Danielson speaks from the heart and captures the true spirit of those Americans who went to Korea.

KOREA—THE FORGOTTEN WAR

(By Richard Danielson)

Between the storied Allied triumphs of World War II and the trauma of Vietnam, a bitter military ordeal in Korea cost the lives of tens of thousands of Americans. Today millions of their countrymen are only dimly aware of the conflict.

Forty years ago, on June 25, 1950, the Korea War started and was halted by an armistice on July 27, 1953. It involved 22 na-

tions under the United Nations Sanction fighting together in defense of the Republic of Korea. There were 297,855 Allied Casualties which included 9,779 listed as missing and 400 prisoners who have not been accounted for after nearly 36 years.

More than 5.7 million Americans served during the conflict. Some 33,600 were killed in action, including about 8,200 listed as missing and presumed dead. Another 21,400 died of non-battle causes and more than 103,000 were wounded during the three years of war.

From the State of Ohio, there were 1,755 known casualties who died, including 301 who are listed as missing.

In the Greater Cleveland Area, there were 268 who died and 56 are listed as missing. Two Cleveland area brothers, Paul and Donald Dowling, captured at the Chosin Reservoir have not been accounted for on the official U.S. Military Casualties listed for the Korean War.

It was one of the most miserable wars the United States ever fought. The weather alone probably caused more casualties than the enemy. The war introduced to the world the term "brainwashing" in which many prisoners suffering physical and emotional hardship, underwent political indoctrination and assaults on their will and self-esteem. Of the 7,140 Americans captured or interned, only 4,418 were returned by the enemy at the end of the War.

Dubbed a "police action", it lacked the image of righteous crusade to which most past U.S. Wars have been evaluated. American troops fought as valiantly as ever, but conditions were never right for a complete victory. Some of the greatest heroics occur after difficult situations, such as the grinding 78-mile withdrawal from the Chosin Reservoir in December 1950. During this withdrawal, Allied ground troops incurred 4,400 battle casualties and 7,000 casualties due to bitter weather. During this time, nearly 100,000 North Korean refugees were evacuated by the American forces to freedom.

The United Nations forces, most of them Americans, stopped the Communist North Koreans from taking over the South. But Allied efforts to drive the aggressors North to the Manchurian border and reunite the divided nation under a pro-west government failed because of the intervention of the Chinese Forces.

In the end, the Armies were back where they had begun, on either side of the so-called demilitarized zone at the 38th parallel, which divided Korea into the Northern and Southern political entities established at the conclusion of World War II. Governments of both sides decided to work on an agreement to end the war. In this day of rapprochement with China, it is even impolite to talk about the war in which China was a principal adversary.

But the men and women who helped the South drive back the invasion from the North did succeed in one thing. They kept South Korea outside the Marxist Orbit and today it is one of the leading emerging industrial powers of the world.

With the North Koreans returning the remains of 5 U.S. Servicemen on May 27, 1990, after nearly 36 years, there is hope that peace will come for the people of Korea and there will be an end to the "Forgotten War—Korea".

THE NATIONAL ENDOWMENT FOR THE ARTS

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. WEISS. Mr. Speaker, I would like to share with my colleagues this letter to the editor of the Washington Times regarding a June 12, article on the National Endowment for the Arts. The article distorts the nature of several artists' work, damaging both them personally and the community's faith in the National Endowment for the Arts. Such distortion and misinformation has been inflaming the already fiery debate surrounding the National Endowment for the Arts and violating artists' rights.

Yesterday, Artist David Wojnarowicz won a Federal suit against Rev. Donald Wildmon, the executive director of the American Family Association, for misrepresenting the artists' work. The American Family Association sent out a pamphlet to 6,000 people, including Members of Congress, members of the clergy and media outlets, illustrating 14 small details of the artist's larger works that were displayed in a gallery receiving some NEA grant money. The court held the pamphlet "could be seen as misrepresenting the work of the artist, with likely damage to the artist's reputation and to the value of his works." The court ruled that the pamphlet violated Wojnarowicz's rights under the New York Artists Authorship Rights Act, and might give off the impression "that the photographic reproductions included in the pamphlet represented complete works of art * * * as distinguished from fragments of larger works, as in most cases they were.

I encourage my colleagues to read this letter to the editor. We all must be wary of this campaign of misinformation and distortion—it is unfairly damaging a successful agency and the livelihood of artists involved.

BROOKLYN, NY,
June 20, 1990.

LETTERS TO THE EDITOR,
The Washington Times,
Washington, DC.

TO THE EDITOR: Divide and conquer: that would seem to be the strategy behind the article by George Archibald in your paper on June 12, 1990, alleging that John Frohnmayer, Chairman of the National Endowment for the Arts (N.E.A.), is trying to "kill five controversial solo-performance theater grants" recommended by peer panels. The publication of this unconfirmed rumor is an obvious attempt to drive a wedge through the community that supports an unrestricted arts endowment.

The article names three artists whose grant applications will supposedly be rejected because their work is controversial. It then proceeds to present a grossly distorted picture of that work, including outright falsehoods about its content. Taken completely out of context, descriptions of isolated moments in Karen Finley's work fail to make clear that, far from sensationally recreating and promoting violent sex acts. Finley presents a critique of a society in which sexual violence is a constant threat to women's lives. The suggestion that Molly Hughes engages in simulated sex acts on stage is just not true. Furthermore, using an unattributed quote describing Hughes' focus as "lesbian desire" is a blatant attempt to capitalize on the homophobia which has partly fueled the movement to restrict the endowment. Perhaps in the future your researchers will go to the artists themselves for information about their work.

None of the sources for any of the allegations in the article are named. Who are the "agency and council officials" who, contrary to a 25-year-long policy of confidentiality, gave out names of artist applicants, labeled them "controversial," and allowed them to be publicly slandered simply because they applied for a grant? The winners of public grants will be public knowledge; but to single out controversial applicants for public vilification allows the N.E.A. granting process to be used as a kind of official blacklist. We saw this kind of thing in the 1940s and 1950s when artists were branded as Communists. We won't stand for it now.

The distortions of these artists' work are damaging to them personally, and to the community's faith in the endowment's granting process. An arts endowment that excludes artists because of their sexual orientation or social and political point of view, cloaking these exclusions in vague intimations of "obscenity," would be truly un-American.

We doubt that Chairman Frohnmayer or the N.E.A. staff would stoop to this kind of political scapegoating, even in a misguided attempt to preserve the arts endowment by appeasing its attackers. Such actions would be in direct violation of the N.E.A.'s Statement of Mission: to help create and sustain "a climate encouraging freedom of thought, imagination and inquiry."

JESSIE ALLEN (and Others).

IT'S TIME TO CARE ABOUT OUR ENVIRONMENT

HON. CARROLL HUBBARD, JR

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. HUBBARD. Mr. Speaker, I would like to share with my colleagues an excellent letter I received last week from Mrs. Janice J. Hatler of Madisonville, KY.

Janice Hatler has eloquently expressed her concern for the environment and the apathetic attitude most Americans have toward keeping it clean. Furthermore, Janice Hatler rightly proclaims that environmental initiatives must come from Congress.

I urge my colleagues to read and consider her well-written letter. It follows in its entirety:

MADISONVILLE, KY,
June 15, 1990.

Congressman CARROLL HUBBARD, Jr.,
U.S. Representative, Rayburn House Offfice,
Washington, DC.

HON. CARROLL HUBBARD: The older I become, the more concerned I grow about our environment. Day after day, the news brings horror stories of the multitude of abuses that plague the oceans and rivers, predictions of global warming and its consequences, and the critical situation with our country's landfills.

I am writing to you to urge you to become more conscientious of the environment as our representative in Congress. To urge you to do what is right for the betterment of the

environment, not what benefits corporate executive's billfolds.

Personally, I feel Americans must alter their way of living. We have been living the "high life" if you will, for long enough. We citizens of the United States are very lucky. Every convenience and luxury are at our fingertips. Unfortunately though, this has been at the expense of our precious environment.

The vast majority of Americans are not willingly going to change their lifestyles. So the changes must come from you, that is, from Congress and legislation. Why not have mandatory recycling of our used products—glass, plastic, and paper—from every city in this country? Why not initiate a massive campaign of tree planting that provides tax exemption with so many acres planted? All of our efforts towards preserving the earth are so essential to our continued existence as a species. Every person in America must begin to care more. And the industrial giants are not exempted. Stricter and tighter restrictions and penalties must be enforced for the careless and purposeful dumping of waste into the earth. It is imperative that we begin to stop the deterioration of our environment.

I beseech you to become more concerned and create those laws that will enable us all to live in a world that is less abused and cluttered with our human waste.

Sincerely,

JANICE J. HATLER.

TRUE MEANING OF FREEDOM ESCAPES NELSON MANDELA

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. CRANE. Mr. Speaker, this is a truly historic occasion. This is only the third time in our Nation's history that we have allowed a foreign private citizen to address a joint meeting of Congress. In 1824, this honor was bestowed upon the Marquis de Lafayette, who served the cause of American independence, during which time he became a close friend of George Washington, the father of our country. Lech Walesa, the much admired leader of the Solidarity movement in Poland, was the second private citizen to address both bodies in a joint meeting. In fact, at the presentation of the Presidential Medal of Freedom to Mr. Walesa during his visit in 1989, President Bush compared his efforts on behalf of the people of Poland to those of the Marquis de Lafayette:

> * * * like him [the Marquis de Lafayette], you represent not only a people but also an idea—an idea whose time has come. That idea is freedom. The time is now.

Today, Nelson Mandela, deputy president of the African National Congress [ANC], has joined the ranks of these genuinely great men. But does he stand for the same freedoms as the Marquis de Lafayette and Lech Walesa? I am afraid to say, he does not. While there is little doubt that Mr. Mandela is committed to the struggle against apartheid in South Africa, he clearly has little or no understanding of the true meaning of freedom.

Nelson Mandela, who claims to stand for the freedom and independence of black South Africa, has a history of supporting terrorism, even when it involves violence against innocent civilians. In fact, since his release from prison, the Marxist-dominated ANC has been responsible for the deaths of hundreds of innocents. Furthermore, it is difficult not to question the sincerity of a man who himself has conceded that his organization is responsible for the torture and execution of some of its own members who tried to exercise their freedom of choice by breaking ties with the ANC.

Nelson Mandela's ignorance of the true meaning of freedom is further exemplified by the number of comments he has made throughout his trip to the United States praising the leadership of such notorious human rights violators as Fidel Castro, Yasser Arafat, and Mir'ammar Qadhafi. If Mr. Mandela envisions a new South Africa using these people as role models, clearly blacks in that country have nothing to gain and everything to lose under ANC leadership.

While our Founding Fathers were quick to realize that personal freedom is difficult to realize without economic freedom, Nelson Mandela has not seen the light. Despite the fact that the folly of communism has finally been realized throughout much of Eastern Europe, as well as in parts of Africa itself, Mr. Mandela continues to ignore the economic irrationality of a socialist economic system. He has stated that the "nationalization of the mines, the financial institutions and monopoly industries is the fundamental policy of the ANC and it is inconceivable that we will ever change this policy." Clearly, there is indeed expected to be some confusion on the part of our constituents when, on the one hand, the United States Congress hails a man like Lech Walesa who was instrumental in bringing democracy to Poland through the dismantling of the Stalinist economic system, and on the other hand heaps praise on Nelson Mandela, who, if given the opportunity, would implement the very same policies Lech Walesa fought to eradicate.

Mr. Mandela claims that United States sanctions imposed against South Africa in 1986 are largely responsible for his release as well as the many other remarkable changes which have occurred in that country over recent months. Further, he has publicly called for stronger sanctions stating that they would likely bring greater improvements. The fact of the matter is, however, that these historic steps, such as lifting the state of emergency, reforming the state security system, abolishing hospital and other forms of segregation, releasing political prisoners, and rescinding the prohibition on the ANC, have all taken place on the heels of the election of President de Klerk, nearly 3 years after U.S. sanctions first went into effect.

It is highly unlikely that our sanctions had anything to do with Mr. de Klerk's actions. In fact, it can be argued that sanctions have actually hurt the struggle to end apartheid by increasing the economic might of the white minority while undercutting the economic power of the blacks. Since the imposition of sanctions, most American firms sold their subsidiaries to white South Africans at fire-sale prices. In many instances, the new owners responded by laying off blacks and abolishing the many progressive work rules, educational programs, and fair pay which blacks had come to expect from their American employers.

While the light at the end of the tunnel is visible to so many, Mr. Mandela cannot see it because, along with the ANC, he is seeking more than simply one man, one vote.

I, frankly, am dismayed by the extent to which many of my conservative colleagues, as well as the administration, have embraced Mr. Mandela during his trip here. Truly, this strong show of support is clearly uncalled for, especially in light of the fact that Mr. Mandela showed absolutely no regard for this body when he hailed as comrades the four Puerto Rican gunmen who opened fire in the House Chamber in 1954, wounding five of our colleagues.

TRIBUTE TO THE FORT WORTH SISTER CITIES PROGRAM

HON. PETE GEREN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GEREN of Texas. Mr. Speaker, during this tumultuous and glorious period in world history, with walls of oppression crumbling all over the globe and people in the farthest corners of the Earth risking everything for the cause of freedom, the mission envisioned by President Eisenhower for his Sister Cities Program has never held more meaning nor been more important. Our country, our traditions, our values and our symbols have inspired countless millions with hope for a better life for themselves and for their children.

We have a duty to extend our hand of friendship to those millions. President Eisenhower saw his Sister Cities Program as one of the ways we could do just that. Mr. Speaker, I am proud that the city of Fort Worth, TX, has shared in that mission and this year was recognized with the Reader's Digest Award for having the best Sister Cities Program in the Nation for a city its size. Fort Worth, the city "where the West begins," prides itself in its friendliness, its openness, and its commitment to community service. It has taken the spirit of Sister Cities to heart and has joined with Reggio Emilio, Italy; Trier, West Germany; Nagaoka, Japan; Bandung, Indonesia; and just this week, Budapest, Hungary.

Today, I ask Congress to join me in commending the citizens of Fort Worth and the Fort Worth Sister Cities Program for their receipt of the Reader's Digest Award as the one of the best in America and for their commitment to the cause of international understanding and world peace. They are a part of the constellation of our country's thousand points of light.

MANDELA PRAISE OF QADHAFI, CASTRO, AND ARAFAT WRONG

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. McCOLLUM. Mr. Speaker, in light of Mr. Nelson Mandela's visit to the United States and his address today before a joint session of Congress, I would like to bring to your attention the following petition. The signatures you find at the end of this document are the names of five mayors of south Florida cities including the mayor of Miami who have signed their names to actively oppose the visit of Nelson Mandela to our country. I believe it is important to recognize the fact that Mandela has publicly supported such current leaders as Yassir Arafat, Fidel Castro, and Mu'ammar Qadhafi whose violations of human rights have been denounced not only in this country but worldwide. He has also refused to renounce violence in the pursuit of his goals in South Africa. As people throughout the United States celebrate the arrival of Nelson Mandela and greet him with a hero's welcome in cities around the country, I feel compelled to not only state my own opposition to his views with regard to Qadhafi, Castro, and Arafat, but to make public the opposition of other individuals who have been betrayed by Mandela's praise of these human rights violators.

The petition reads as follows:

We, the undersigned Cuban-American elected officials, grateful for all the liberties and freedoms embodied in our democratic political system, hereby once more repudiate and condemn the inhumanity and shamefulness of apartheid, and support the aspirations of all black South Africans who wish a free and more democratic society.

In accordance with the above, we condemn all violations of human rights perpetrated against black South Africans for their rightful and simple aspirations. These violations of human rights have been exceedingly documented in all types of international forums through individual and institutional testimonies. However, these violations are not carried out exclusively by the government of South Africa; other governments habitually violate their citizens' human rights of which the present Cuban regime is the most prominent.

In view of these facts, we, Cuban-Americans, find it beyond reasonable comprehension that Mr. Nelson Mandela, a victim of so many years of oppression by his own government, not only fails to condemn the Cuban government for its human rights violations, but rather praises the virtues of the tyrannical Castro regime. This behavior is unacceptable now that said regime has been publicly condemned by the United Nations Commission on Human Rights based in Geneva, Switzerland. Rather than supporting the oppressors and violators of human rights, Mr. Mandela should support those whose human rights are being violated in Cuba.

We congratulate Mr. Mandela on his newly acquired freedom. We condemn his support of human rights violations in Cuba. Lastly, we do not understand how a human rights violator like South Africa has freed Mr. Mandela, and the United States, a beacon of freedom, continues to hold Dr. Orlando Bosch incarcerated without legal justification. We demand Dr. Orlando Bosch's freedom.

JULIO MARTINEZ,
Mayor of Hialeah.
JUAN A. RIVERO,
Mayor of Sweetwater.
PEDRO REBOREDO,
Mayor of West Miami.
GILDA OLIVERA,
Mayor of Hialeah Gardens.
XAVIER SUAREZ,
Mayor of Miami.

TRIBUTE TO ST. ANN'S MELKITE CATHOLIC CHURCH OF WEST PATERSON, NJ, ON ITS HOSTING THE 31ST MELKITE CONVENTION

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. ROE. Mr. Speaker, it is with the deepest reverence and the greatest sense of pride that I rise today to salute an outstanding house of worship and parish community in my Eighth Congressional District of New Jersey which has been a spiritual focal point and a beacon of faith for countless numbers of worshipers in the greater northern New Jersey area.

I am speaking of St. Ann's Melkite Catholic Church of West Paterson, NJ, which is host to the 31st Melkite Convention. This proud and historic occasion will culminate on July 7, 1990, at the grand banquet which will celebrate the achievements of the convention and the first century of the Melkite Church in the United States.

Mr. Speaker, the history of St. Ann's Melkite Catholic Church is indeed a rich one. For the benefit of you and our colleagues, I would like to insert for the RECORD the history of this truly fine and respected house of worship:

It all began at the turn of the century, when a large number of Syrian immigrants began to arrive in this country from Aleppo, Damascus, and Lebanon. With a devotion to their ancestry and tradition, they were served in the early days of their migration, by visiting Melkite priests who held services in Paterson and Union City.

As the Melkite congregation grew, the need for a permanent place of worship became apparent. On June 9, 1921, Metropolitan Maximao Sayegh of Tyre blessed the site of the future church, the O'Neill estate on Mill Street in Paterson, New Jersey, and in April 1922 groundbreaking ceremonies took place and work started immediately. Msgr. Sheppard, vicar general of the diocese of Newark, blessed the church on December 8, 1922. Construction of the new church was completed by December 8, 1932, the 10th anniversary of the dedication of the first chruch, the New St. Ann's Church was solemnly blessed. The new church was to be called St. Ann's, in respect to the mother of Mary and grandmother of Jesus.

The church grew rapidly and thrived in spite of the Depression and throughout World War II. Even though parishioners moved to new communities, they remained loyal to St. Ann's Church. Their loyalty was put to a true test on August 28, 1970, the day the church was gutted by a devastating fire that completely destroyed the church.

Shortly before 3:00 a.m., fire broke out in St. Ann's Byzantime Melkite Catholic Church, at that time the only place of worship for Melkite Christians in the State of New Jersey. Spectacular flames soared 60 feet high into the air. By 3:15 a.m., the fire had grown to a fourth alarm. The granite figure of St. Ann looked down calmly as firemen fought the blaze and parishioners and friends wept at the loss. Two hours later, everything was gone—the church and its treasures were destroyed. Another era for St. Ann's had ended.

Since a church is more than a building, the people of St. Ann's immediately transformed the parish auditorium into a church and included an inconostasis. For the next several years, this became the place of worship, while the clergy and committees studied alternatives and decided to relocate in suburban West Paterson, NJ.

Groundbreaking for the new church was held in 1972. Under the expert guidance of the clergy and parishioners, the necessary committees were formed to work on the new complex and all it entailed. The 1973 Christmas liturgy was celebrated in the bare church. During construction of the new church, St. Ann's Church celebrated its golden anniversary. The church not only celebrated 50 years of service and commitment to the community, but celebrated a new beginning in its new location. Solemn dedication of the new complex took place in December 1974. The parishioners' resolve held out and a new church was built in West Paterson, NJ by December 1974. Currently, the new church thrives in its new location serving the parishioners and the community.

The bicentennial year of 1976 brought to our diocese and our country the Icon of Our Lady of America, dedicated by His Beatitude Maximos V. Hakim. This icon was a pilgrimage icon traveling to the faithful in many States until it was stolen from the church in 1977. Through the constant and solemn prayers of the parishioners, the icon was returned and has been enshrined at St. Ann's ever since.

On July 6, 1989, the Episcopal ordination of Nicholas J. Samra, pastor of St. Ann's took place. Not only was he the pastor, but he was a parish son. This was a day which was truly one of the greatest in the 70-year history of the wonderful community. Bishop Nicholas was named auxiliary bishop of the Midwest region of the diocese, with residence in Detroit, Michigan. This was later changed to bishop of the East region and rector of the St. Gregory Seminary with his residence in Boston.

The St. Ann's community has been truely blessed by the ordination of three parish sons to the priesthood. Nicholas J. Samra, Basil Samra, and Kenneth Sherman have all entered the priesthood to help others and guide people spiritually, values promogulated by the church and its community. Another parish son, Michael Jolly, was ordained deacon to serve the St. Ann community. The following clergy are those who served with a full commitment and love of the community of St. Ann: Fr. Cyril Anid, 1919; Fr. Joseph Raya, 1949; Fr. Maxim Chalhoub, 1953; Fr. Gabriel Dick, 1953; Fr. Albert Gorayeb, 1963; Deacon Basil Samra, 1973; Fr. Roman Obrycki, 1976; Fr. Alphonse Stevenson, 1976; Fr. Joseph For-

tuna, 1977; Fr. Mark Melone, 1978; Fr. Nicholas Antiba, 1978; Fr. Paul Frechette, 1978; Fr. James Babcock, 1981; Fr. Nicholas Samra, 1981; Deacon Michael Jolly, 1986; Deacon Edward Bsarany, 1987; Deacon Roland Basinski, 1987; Fr. Philip Raczka, 1989; Fr. Basil Adcock, 1989; and Fr. Albert Wehbe, 1989.

If you can dream, then you can be. We Melkites have had many dreams throughout our diocese, throughout our parishes, and throughout St. Ann's. As our dreams became a reality we grew. We must keep on growing. We here at St. Ann's are indeed fortunate and honored to host the 31st National Melkite Convention and celebrating a century of the Melkite Church in America. This is a true sign of growth in our diocese.

We will dream on as we have gloriously for the last 100 years. Our future is bright? and our goals are many. Our community life and unity has strengthened us for 70 years at St. Ann's. We will continue on as long as we accept the challenge of our dreams. We will live in the Glory of God and then as men we will be fully alive.

Mr. Speaker, I appreciate the opportunity to present the history of this distinguished church that has remained dedicated to helping others and guiding them spiritually. As St. Ann's Melkite Catholic Church hosts the 31st Melkite Convention and celebrates a century of the Melkite Church in America, I know that you and all of our colleagues here in Congress will want to join me in extending our warmest greetings and sincere appreciation for both the service and guidance it has provided for the community, State, and Nation.

THE HOUSE OF REPRESENTATIVES ELECTION CAMPAIGN REFORM ACT OF 1990

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. KANJORSKI. Mr. Speaker, today I am introducing the House of Representatives Election Campaign Reform Act of 1990. This bill makes a number of fundamental changes to the way in which congressional campaigns are conducted, especially in the area of campaign finance.

Over the last few years there has been increasing concern across the country that political action committees [PAC's], through their contributions, have come to wield extraordinary influence on how the Congress conducts its business. Personally, I believe these concerns, on the whole, are unfounded. Nevertheless, in order to govern effectively, it is essential that the public have confidence in the integrity of the legislative process.

Today, that confidence has been shaken. Regardless of our personal views on the issue, it is clear, that in order for many Americans to regain their trust of the process, we in Congress must make fundamental changes in ways campaigns are financed and in the overall role played by PAC's.

Earlier this year I entered into the RECORD an article written by Mr. Norman J. Ornstein, resident scholar at the American Enterprise Institute for Public Policy Research, which appeared in Roll Call. In that article, Mr. Ornstein made a number of recommendations for provisions in a campaign finance reform bill. As I indicated at that time, I have drawn on many of the insights and proposals contained in that article in drafting this legislation.

My bill restores public trust and confidence in our system in several ways. First, it would reduce the maximum amount a PAC may contribute to a candidate for the House of Representatives from the current $5,000 to $2,000.

Second, this legislation would increase the reliance of House candidates on smaller contributions from individuals from their own States.

Third, by limiting personal contributions or loans by candidates or their families to $100,000, the bill checks the increasingly disturbing and growing trend of wealthy candidates spending vast sums of their own personal money to, as some have contended, attempt to "buy the election."

Fourth, it provides candidates who are the victims of "independent expenditures" with the means to effectively counter this increasing practice of special interests attempting to pervert the election process.

Fifth, the legislation attempts to elevate the dialog of campaigns by requiring broadcast stations to offer their lowest rates to candidates who purchase time in 1-to-5 minute segments, rather than continuing to use the 30-second "hit-and-run" tactics which have become all too common in today's campaigns.

Sixth, the bill provides that candidates for the House may not establish or maintain campaign committees other than their authorized campaign committee. Where these additional committees currently exist, they are rarely established for the purpose of financing the campaigns of their founders. Instead, they are most commonly used by incumbent Congressmen to enhance their stature with their colleagues in Congress by serving as a vehicle to make campaign contributions.

Finally, the bill contains stiff criminal penalties for violations of its provisions.

Each of these items is important to restoring the public's trust in the way campaigns and the legislative process operate. However, the cornerstone of this package is the elevation of the importance of smaller contributions from individuals from the candidates' home States. My bill accomplishes this in several ways.

First, it provides a 100-percent tax credit for the first $200 an individual contributes to a campaign.

Second, the bill allows individuals to check off on their tax returns a contribution of $2 to a House of Representatives Campaign Trust Fund.

Third, the trust fund would provide candidates with matching funds for the first $200 in contributions from individuals, up to a maximum of $300,000. To be eligible for matching funds, candidates must first raise at least $25,000 from individuals from their State in amounts of $200 or less, and agree to limit the use of their personal funds to $100,000.

Fourth, a portion of any excess campaign funds a candidate may have following the election must be returned to the trust fund in the pro rata share that trust fund moneys accounted for of the total receipts of the campaign.

Mr. Speaker, let me also point out that this bill does not limit the total amount which can be spent on a campaign for Congress. As much as I understand and sympathize with this objective of some of my colleagues, I am concerned that any number we might select would be arbitrary and inappropriate in some races.

There is no question that it costs much more to run for a seat in Congress from New York City than it does to run a comparable campaign for a seat from northeastern Pennsylvania. Limiting the amount that can be spent on a campaign would unavoidably result in either too much, or too little being allowed, depending on the level and the seat involved.

Instead by significantly reducing the role of PAC's, establishing an upper limit on matching payments, limiting the amount of a candidate's personal funds in a campaign, and making television and radio rates for longer campaign messages more affordable, I believe this bill will result in less campaign spending while elevating the quality of campaign dialogs.

Mr. Speaker, it is time for us to take significant steps to restore trust and faith to our campaign system. For this reason I salute your commitment and dedication to bringing this issue to the House floor for action. I believe that this legislation contains vital elements which should be in any final package adopted by this body and I urge my colleagues to join me in this effort.

SECTION-BY-SECTION ANALYSIS OF HON. PAUL KANJORSKI'S HOUSE OF REPRESENTATIVES ELECTION CAMPAIGN REFORM ACT OF 1990

Section 1. Short title—The Act may be cited as the "House of Representatives Election Campaign Reform Act of 1990".

Section 2. Limitation on contributions to House of Representatives candidates by political action committees—Reduces from $5,000 to $2,000 the maximum contribution a political action committee may make to a candidate per election.

Section 3. Credit for contributions to congressional campaigns—Provides a 100% tax credit for the first $200 (or $400 in the case of a joint tax return) in personal contributions an individual makes to a House candidate running from the same state.

Section 4. Designation of income tax payments to the House of Representatives Campaign Trust Fund—Provides for a $2 tax check-off on individual federal tax returns to be paid to the "House of Representatives Campaign Trust Fund."

Section 5. Establishment of the House of Representatives Campaign Trust Fund—Creates a House of Representatives Campaign Trust Fund under the Secretary of the Treasury to receive funds derived from the $2 check-off on individual tax returns and authorizes expenditures from the trust fund to certified candidates who have raised not less than $25,000 in contributions of $200 or less from individual contributors from their states.

Section 6. Amendment to the Federal Election Campaign Act of 1971 relating to reporting of individual resident contributions in elections for the office of representative—Requires House candidates to report to the FEC when they have raised more than $25,000 in contributions of $200 or less from individuals residing in their states and requires the FEC to certify this to the Secretary of the Treasury.

Section 7. Amendment to the Federal Election Campaign Act of 1971 relating to matching payments from the House of Representatives campaign trust fund—

(a) Entitles House candidates to matching funds from the trust fund for the first $200 in contributions from individuals who reside in the state.

(b) Limits maximum total aggregate matching payments to $300,000.

(c) In order to receive the matching payments, House candidates are required to certify, under penalty of perjury, that neither they, nor their family, shall furnish more than $100,000 in personal funds or loans for the campaign.

Establishes penalties of up to $25,000 in fines and/or 5 years in prison for violations of any certification that a candidate will not exceed $100,000 in personal funds.

(d) Provides that if a candidate for the House refuses to make a certification that he/she will not spend over $100,000 in personal funds, that candidate's opponents may receive matching funds for up to $1,000 in contributions from individuals regardless of their state of residence.

(e) Allows opponents of a House candidate, who violates a certification to limit personal spending to $100,000, to receive from the trust fund payments equal to the amount of personal funds contributed by the violating candidate in excess of $100,000.

(f) Permits certified House candidates who are the target of independent expenditures which exceed $10,000 to receive from the trust fund an amount equal to 300% of the amount of the independent expenditure. Persons found to have willfully or intentionally sought to subvert the intent of subsection may be fined up to $25,000 and/or imprisoned for up to 5 years.

(g) Requires the repayment to the trust fund of a portion of any excess campaign funds after the election in an amount equal to the pro rata share that trust fund payments accounted for of the candidate's total aggregated receipts from all sources for the election. Repayments to the trust fund shall not exceed the total amount received from the trust fund.

(h) Requires the FEC to issue regulations to biennially index the provisions of subsection (a).

Section 8. Amendments to section 304 of the Federal Election Campaign Act of 1971 with respect to independent expenditures—Requires the reporting to the FEC, within 24 hours, of any independent expenditures in a House race which exceeds $10,000, and a statement as to which candidate the independent expenditures are intended to help or hurt. Requires the FEC to notify each candidate of the independent expenditures within 24 hours.

Section 9. Amendment Relating to Broadcast Media Rates and Disclosures—

(a) Requires broadcast stations to offer their lowest rates to House qualifying candidates who have agreed to limit personal spending to $100,000, for commercials which are 1 to 5 minutes in length.

(b) Requires the inclusion of the statement "This candidate has not agreed to abide by the spending limits for this Congressional election campaign set forth in the Federal Election Campaign Act" in any broadcast or print advertisements of House candidates who refuse to agree to limit personal spending to $100,000.

Section 10. Penalties—Makes it unlawful to furnish false information to, or to withhold information from, the FEC, punishable by up to $10,000 in fines and/or up to 5 years in prison.

Section 11. Restrictions on Control of Certain Types of Political Committees by Candidates—Prohibits House candidates from establishing, maintaining, or controlling a political committee other than an authorized committee of the candidate.

Section 12. Authorization of Appropriations—Authorizes such sums as are necessary to carry out the Act.

Section 13. Effective Date—Provides for the provisions of the Act to take effect after December 31, 1990.

Section 14. Severability—If any provision of the Act is held to be invalid, this will not affect the other provisions of the Act.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "House of Representatives Election Campaign Reform Act of 1990".

SEC. 2. LIMITATION ON CONTRIBUTIONS TO HOUSE OF REPRESENTATIVES CANDIDATES BY POLITICAL ACTION COMMITTEES.

Section 315(a)(2)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2(A)) is amended by striking out "$5,000" and inserting in lieu thereof "$2,000".

SEC. 3. CREDIT FOR CONTRIBUTIONS TO CONGRESSIONAL CAMPAIGNS.

(a) GENERAL RULE.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting a new section 24 as follows:

"SEC. 24. CONTRIBUTIONS TO CONGRESSIONAL CAMPAIGNS

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter, an amount equal to 100 percent of any congressional contribution which is made by such individual within the taxable year, as defined in subsection (c)(1).

"(b) LIMITATIONS.—

"(1) The credit allowed by subsection (a) for a taxable year shall not exceed an aggregate of $200 ($400 in the case of a joint return) for all congressional contributions by an individual in said year.

"(2) The credit under subsection (a) shall not be allowed with respect to a congressional contribution, if the contribution is transmitted to the candidate or a campaign committee of the candidate through an intermediary group, organization, or committee.

"(c) DEFINITIONS.—For purposes of this subsection—

"(1) The term 'congressional contribution' means a contribution or gift of money, payment of which is made during the taxable year, to an individual who is a candidate for nomination or election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States in any primary, general, or special election, and which—

"(A) is from a taxpayer (or either spouse in the case of a joint return) who is a resident of the State in which the election is held; and

"(B) is solely for the use by the recipient to further his candidacy for nomination or election to such office.

"(2) The term 'candidate' means an individual who—

"(A) publicly announces before the close of the calendar year in which the contribution or gift is made that he is a candidate for nomination or election to one of the offices specified in paragraph (1); and

"(B) meets the qualifications prescribed by law to hold such office.".

(b) CLERICAL AMENDMENT.—The table of sections for Part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 23 the following new item:

"SEC. 24. Contributions to Congressional Campaigns.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 1990, in taxable years ending after that date.

(d) The Federal Election Commission shall issue regulations providing for the biennial indexing of the tax credit established under this section.

SEC. 4. DESIGNATION OF INCOME TAX PAYMENTS TO THE HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION OF INCOME TAX PAYMENTS TO BE USED FOR THE HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) IN GENERAL.—Every individual whose adjusted income tax liability for the taxable year is $2 or more may designate that $2 shall be paid over to the House of Representatives Campaign Trust Fund.

"(b) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the adjusted income tax liability of an individual is the tax liability of such individual (as determined under subsection (b) of section 6096) for the taxable year reduced by the amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund) for such taxable year.

"(c) JOINT RETURNS.—In the case of a joint return showing adjusted income tax liability of $2 or more, each spouse may designate that $2 shall be paid over to the House of Representatives Campaign Trust Fund.

"(d) MANNER AND TIME OF DESIGNATION.—Subsection (c) of section 6096 shall apply to the manner and time of the designation under this section.".

(b) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation of income tax payments to be used for the House of Representatives Campaign Trust Fund.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 5. ESTABLISHMENT OF THE HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to Trust Fund Code) is amended by adding at the end the following new section:

"SEC. 9511. HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'House of Representatives Campaign Trust Fund', consisting of such amounts as may be appropriated or credited to such trust fund as provided in this section or section 9602(b).

"(b) TRANSFER TO FUND OF AMOUNTS DESIGNATED BY INDIVIDUALS.—There is hereby appropriated to the House of Representatives Campaign Trust Fund amounts equivalent to the amounts designated under section 6097.

"(c) EXPENDITURE FROM FUND.—Amounts in the House of Representatives Campaign Trust Fund shall be available to provide matching payments in accordance with section 325 of the Federal Election Campaign Act of 1971. Expenditures from the Fund shall be made, in such manner as the Federal Election Commission may prescribe by regulation, to each candidate who certifies to the Commission that—

"(1) the candidate and the authorized committees of the candidate have received contributions totaling not less than $25,000, in contributions of $200 or less from individual contributors who are residents of the State from which the candidate is running for nomination or election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following new item:

"Sec. 9511. House of Representatives Campaign Trust Fund.".

SEC. 6. AMENDMENT TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 RELATING TO REPORTING OF INDIVIDUAL RESIDENT CONTRIBUTIONS IN ELECTIONS FOR THE OFFICE OF REPRESENTATIVE.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

"REPORTING OF INDIVIDUAL RESIDENT CONTRIBUTIONS IN ELECTIONS FOR THE OFFICE OF REPRESENTATIVE

"SEC. 324. (a) Each primary election or general election candidate for the Office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States who desires to receive matching payments under section 325 shall report to the Commission all contributions received by the candidate and the authorized committees of the candidate totaling not less than $25,000, in contributions of $200 or less from individual contributors who are residents of the State from which the candidate is running for nomination or election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"(b) For purposes of making matching payments from the House of Representatives Campaign Trust Fund, the Commission shall certify to the Secretary of the Treasury the amounts reported under subsection (a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections taking place after December 31, 1990.

SEC. 7. AMENDMENT TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 RELATING TO MATCHING PAYMENTS FROM THE HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 301 et seq.), as amended by section 6, is further amended by adding at the end the following new section:

"MATCHING PAYMENTS FROM THE HOUSE OF REPRESENTATIVES CAMPAIGN TRUST FUND

"SEC. 325. (a) ELIGIBILITY FOR MATCHING FUNDS.—A primary election or general election candidate for the office of Representative who, under section 324, reports to the Commission that the candidate and the authorized committees of the candidate have received contributions totaling at least $25,000, in contributions of $200 or less from individual contributors who are residents of the State from which the candidate is running, shall be entitled to matching payments from the House of Representatives Campaign Trust Fund under section 9511 of the Internal Revenue Code of 1986 in an amount equal to the aggregate total of the first $200 in contributions from individuals who are residents of the State from which the candidate is running.

"(b) MAXIMUM MATCHING BENEFIT.—The aggregate total of matching payments a primary election or general election candidate may receive as provided under subsection (a) shall not exceed $300,000 in any election.

"(c) RESTRICTION ON ELIGIBILITY FOR MATCHING FUNDS.—

"(1) A primary election or general election candidate for the office of Representative who, under subsection (a) would qualify for matching funds must certify to the Commission, under penalty of perjury, that neither the candidate nor any members of the candidate's family, will furnish (by contribution, loan, or otherwise) from the personal funds of the candidate or the candidate's family an aggregate amount exceeding $100,000 with respect to the election.

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $25,000, or imprisoned not more than 5 years, or both. Any officer, employee, or agent of any political committee who knowingly consents to any expenditure in violation of the provisions of paragraph (1) shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

"(3) For the purposes of paragraph (1), the term 'candidate's family' means an individual who is related to the candidate as father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandfather-in-law, grandmother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

"(d) ADDITIONAL MATCHING FUNDS. If a candidate refuses to make the certification required under subsection (c), all other candidates eligible under subsection (a), with respect to that primary or general election, shall be entitled to matching payments from the House of Representatives Campaign Trust Fund under section 9511 of the Internal Revenue Code of 1986 in an amount equal to the total of all contributions they receive from individuals regardless of State of residence of the contributors and for amounts up to $1,000.

"(e) COMPENSATION TO OPPONENTS OF CANDIDATES WHO VIOLATE THE PERSONAL FUNDS LIMITATION CERTIFICATION.—If a candidate is found under subsection (c)(2) to have violated the provisions of subsection (c)(1), all other candidates eligible under subsection (a), with respect to that primary or general election, shall be entitled to payments from the House of Representatives Campaign Trust Fund under section 9511 of the Internal Revenue Code of 1986 in an amount equal to the amount in excess of $100,000 as provided under subsection (c)(1).

"(f) INDEPENDENT EXPENDITURES OFFSET.—

"(1) If a candidate certified under subsection (c) is notified by the Commission, as provided under section 304 (d) or (e) of the Federal Election Campaign Act (2 U.S.C. 434) that independent expenditures are made during an election cycle by one or more person or entity aggregating an amount in excess of $10,000 in opposition to such certified candidate or for an opponent of such candidate, the notified candidate shall be entitled to payments from the House of Representatives Campaign Trust Fund under section 9511 of the Internal Revenue Code of 1986 in an amount equal to 300 percent of the amount of such independent expenditures.

"(2) Any person or entity found by the Commission to have willfully or intentionally sought to subvert the intent of this subsection shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

"(g) REPAYMENT OF TRUST FUND FROM EXCESS FUNDS.—

"(1) If at the conclusion of a primary election or general election in which a candidate who has received payments from the House of Representatives Campaign Trust Fund under section 9511 of the Internal Revenue Code of 1986 has excess campaign funds attributable to that election, such candidate shall within 30 days refund to the trust fund the amount of the excess campaign funds which equals the pro rata share that payments provided to such candidate from the trust fund accounted for of such candidate's total aggregated receipts from all sources with respect to such election.

"(2) In no case shall the amount of refund required under paragraph (1) exceed the total aggregated payments provided to such candidate from the trust fund with respect to that election.

"(h) INDEXING REGULATION.—The Federal Election Commission shall issue regulations providing for the biennial indexing of the provisions of subsections (a) and (b).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections taking place after December 31, 1990.

SEC. 8. AMENDMENTS TO SECTION 304 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 WITH RESPECT TO INDEPENDENT EXPENDITURES.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

"(d)(1) Any independent expenditures made, or obligated to be made, by any person or entity in an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress which in the aggregate total more than $10,000 shall be reported by such person or entity to the Commission within 24 hours after such independent expenditures are made. Thereafter, any independent expenditures by such person or entity in the same election cycle shall be reported by such persons or entity to the Commission within 24 hours after such expenditures are made or obligated.

"(2) Such statements shall be filed with the Commission and the Secretary of State for the State involved and shall contain a statement under penalty of perjury by the person or entity making the independent expenditures, or by the person or entity incurring the obligation to make such expenditures, as the case may be, indicating whom the independent expenditures are actually intended to help elect or defeat. The Commission shall notify each candidate in the election of each such report within 24 hours after the report is made.

"(3) Notwithstanding the reporting requirements established in this paragraph, the Commission may make its own determination that a person or entity has made, or has incurred obligations to make, independent expenditures with respect to any election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress which in the aggregate totals more than $10,000.

"(4) The Commission shall notify each candidate in the election about each such detemination within 24 hours after each such determination is made.

"(5) For purposes of this section, an expenditure will be deemed to be made when it is incurred.

"(e) When two or more persons or entities, in cooperation, consultation, or concert with each other, make, or obligate to make, independent expenditures during any general, primary, or runoff election period for the office of Representative in, or Delegate or Resident Commissioner to, the Congress each such person or entity shall report to the Commission, under subsection (d), the amount of such expenditure or expenditures made by each such person or entity in coordination, consultation, or concert with such other person, persons, entity, or entities when the total amount of all expenditures made by such persons or entities in coordination, consultation, or concert with each other exceeds the applicable amount provided in such subsection.".

SEC. 9. AMENDMENTS RELATING TO BROADCAST MEDIA RATES AND DISCLOSURES.

(a) Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended by inserting at the end thereof the following:

"*Provided, however,* That in the case of a candidate who has made the certification required under section 325(c) of the Federal Election Campaign Act of 1971, paragraph (1)(A) shall be applied without regard to the phrase 'class and' if the unit is at least 1 but not more than 5 minutes in length.".

(b) Section 318(a) of the Federal Campaign Act of 1971 (2 U.S.C. 441d(a), is amended by—

(1) striking out the period at the end of paragraph 3 and inserting in lieu thereof ";"; and

(2) adding at the end thereof the following:

"(4) if paid for or authorized by a candidate in an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress who is a candidate, or the authorized committee of such candidate, who has not made the certification required under section 325(c) of the Federal Election Campaign Act of 1971, such communication shall also contain—

"(A) in the case of a radio broadcast station the following oral, or

"(B) in the case of a television broadcast state the following oral and printed, or

"(C) in the case of a newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising the following printed sentence: "This candidate has not agreed to abide by the spending limits for this Congressional election campaign set forth in the Federal Election Campaign Act.'.".

SEC. 10. PENALTIES.

(a) It is unlawful for any person knowingly and willfully—

(1) to furnish any false, fictitious, or fraudulent evidence, books, or information (including any certification, verification, notice, or report) to the Commission under this Act, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission under this Act; or,

(2) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this Act.

(b) Any person who violates the provisions of paragraph (a)(1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

SEC. 11. RESTRICTIONS ON CONTROL OF CERTAIN TYPES OF POLITICAL COMMITTEES BY CANDIDATES.

Section 303 of the Federal Election Campaign Act of 1971 (2 U.S.C. 432) is amended by adding at the end of the following:

"(j) A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States may not establish, maintain, or control a political committee, other than an authorized committee of the candidate or a committee of a political party.".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary for the purpose of carrying out its functions under this Act.

SEC. 13. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect after December 31, 1990.

SEC. 14. SEVERABILITY.

If any provision of this Act or any amendment made to this Act, or the application of any such provision to any person or circumstance is held invalid, the validity of any other such provision, and the application of such provision to other persons and circumstances shall not be affected thereby.

THE 75TH ANNIVERSARY OF THE WILLIAMSPORT ROTARY

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GEKAS. Mr. Speaker, I would like to draw the attention of my colleagues to an arm of an extraordinary organization that I am proud to say is in my congressional district.

The Williamsport Rotary in Pennsylvania is celebrating its 75th anniversary. That means only 5 years after the Rotary was established on a national level, the group was born in Williamsport. Throughout the decades, the organization has done stellar work in the community. It brought the Boy Scouts to Williamsport, it started the Crippled Children's Society and has consistently striven to increase tourism in this beautiful part of Pennsylvania.

With a membership of 90 people, comprised primarily of educators, business people, clergy members and other civic-minded citizens, the Rotary is highly visible in the Williamsport area. Most recently, the group is focusing on establishing a transitional home for women and children. This, like all the Rotary's projects, is a fine and worthy goal.

Mr. Speaker, sometimes life can seem difficult and overwhelming. In those times, organizations like the Rotary provide kindness and strength to the community. America is a better place because of the Rotary, and for 75 years, Williamsport has been a better place for its local chapter.

On behalf of my constituents, I thank the Rotary members for their work. Its importance cannot be overestimated.

THE PROTECTION OF OUR CONSTITUTION AND OUR FLAG

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. ANDERSON. Mr. Speaker, last week I had to make one of the most difficult decisions of my public service career; whether or not to amend the Constitution of the United States to protect the United States flag. While many Members knew immediately how they would vote, I did not. If I would have only had to make the decision to cast my vote to protect the flag, it would not have been difficult. As one who has served in the Armed Forces, and lived through four wars, I can attest to the principle, honor, and courage, that our flag represents. Under no circumstances would I ever support, or condone, the desecration of the flag that I have personally fought to protect. However, the difficulty stemmed from the method by which we were choosing to protect this extraordinary symbol of our Nation and her people: Amending the Constitution.

As a young boy growing up in the California desert, I learned the meaning and the value of this glorious document. Enshrined in the Constitution of the United States are the rights, privileges, and responsibilities upon which this great Republic rests. Not only as a duly elected representative of my country and my State, but also as a U.S. citizen, I have sworn a solemn oath to uphold this document, carefully crafted by our Founding Fathers almost 200 years ago.

Clearly and unambiguously written in the Constitution is the explicit guarantee that each citizen has the freedom to speak as he or she wishes, without reference to whether others deem their statement popular. The evolving law of the land has also found that our Constitution protects the free expression of thought and opinion as well. It is this first amendment to our Constitution, perhaps the most important, that has created the love we have for our country and made her the envy of the world. I feel strongly, and I would suggest that most everyone in this country does, that there is nothing more crucial to the prosperity and strength of this country than the free, unhindered exchange of ideas.

Last week, I voted to uphold the first amendment by opposing a new constitutional amendment that would have, if enacted, forbid the burning of our national symbol, the American flag. It is my sincere belief that proposed amendments to our Constitution should speak to expanding freedoms, not to limiting the rights, ideas, and aspirations for which the blood of thousands of Americans has been shed. Flag burning is a deeply emotional and disturbing issue, not only for veterans who lost friends and limbs in the defense of this Nation, but for all citizens who look to, and pledge allegiance to our flag, the symbol of

our Republic. Under the flag of this Nation, American men and women marched to turn back the tide of tyranny and repression. As a result of that commitment, billions around the world see the American flag as representative of the highest ideals of humankind.

The questions I had to ask myself were should we tamper with the first amendment because we find revolting and abhorrent the behavior of a few malcontents and juveniles seeking the focus of television cameras and flash bulbs? Should we guarantee each and every display of flag burning its share of media coverage and police action? I was not alone in asking these questions. My own constituency, and I am sure the rest of the country, were wrestling with these same questions and appeared to be virtually split on them. After accessing the views, letters, and phone calls from numerous constituents, I decided we should not. Flag burners, do not threaten our Republic. The Stars-Spangled Banner shall continue to wave regardless of how many radicals will burn it in a fit of anger, unable to get people to pay attention to their views in any other way.

So while our blood may boil, and while we may look upon these displays with anger and sadness, we must remember, that the flag is a symbol of all the rights of this Nation of free individuals enjoy. However, in actuality, it was the Constitution that first created these rights that the flag represents. Isn't ignoring those who burn the flag the best way to silence, them, rather than privileging them by weakening the first amendment? We owe at least that much to our veterans as a keeping of faith with the values and ideas for which they fought and for which they made this country the strongest, most enduring and brightest beacon of democracy in the world. In this year when democracy has erupted across the globe, we must not be the first to qualify its meaning.

I voted for the Flag Protection Acts of 1989 and 1990, the statutory method for protecting the flag, in my belief that as our Nation's symbol, the flag should be protected. Much to my disapproval, the Supreme Court found that act to be unconstitutional on a 5-to-4 decision. I do not particularly agree with those five Justices that made that decision, however, I feel I must abide by it. To those of my constituency that I have upset by my decision to vote against the constitutional amendment, I hope they understand my reasoning. I offer my assurances that my love for the flag and its symbolism, is to the highest level. While my decision may not be universally popular, I find the protection of our Constitution to be my highest duty. In the debate surrounding an antiflag-burning amendment, we have all found one very positive aspect. We all have gained new insight into the importance of the flag to us as individuals and as a nation.

FLAG AMENDMENT

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BILIRAKIS. Mr. Speaker, I had intended to insert in the June 21 CONGRESSIONAL RECORD my statement on the flag amendment vote in the House. However, it was inadvertently left out of that RECORD. I would like to submit my statement at this time in order that my views on this important issue can be made known.

Mr. Speaker, I rise in support of the flag amendment legislation that we consider today in the House.

At about this time last year, the Supreme Court decided that burning the flag was a protected form of free speech. The decision was close—5 to 4—but that was the decision. Now, many of us were frankly astounded by that decision, astounded and gravely disappointed, and I was one of those in this House who immediately afterward introduced legislation to reverse it.

However, I took this step not at all lightly, because I believed that to reverse this decision of the Supreme Court one course and one course only was open to us. That course required amending the U.S. Constitution.

I accept that the Constitution must remain open to amendment, indeed, in the words of Thomas Jefferson, that "laws and institutions must go hand in hand with the progress of the human mind." However, I likewise agree with Mr. Jefferson in not being an advocate for frequent changes in laws and constitutions. That is why my decision was such a difficult one.

Others in this Chamber protested, claiming that a law could be written that would at once protect our flag and be acceptable to the Supreme Court without amending the Constitution. I was skeptical, but I chose to try that option in the faint hope that it might be successful. Now we know the result: The Supreme Court struck down that law, too, by the same 5-4 margin.

Therefore, Mr. Speaker, we are here today to initiate the process by which our Constitution may be amended for the 27th time—and I think that is important to keep in mind. We who support this legislation are deciding nothing here today. We are simply opening the door for the people of this Nation to speak. Should this legislation pass the Congress, the question will go to each of the States. They—the people of this Nation—will make a final decision on this matter and I stand ready to accept their verdict.

I never accepted that this was an issue of free speech, that burning the flag is a form of protest. The American flag does not stand for any particular Government policy or decision or person. It stands for the United States of America, and to desecrate it means that America shouldn't exist—that freedom and democracy shouldn't exist—that in fact, the right to peaceful protest shouldn't exist. I cannot and will not support this idea.

The late Senator from Illinois, Everett M. Dirksen, once answered this free speech argument. He called it false and sour.

"A person can revile the flag to his evil heart's content," he said, "But it is only if his contempt takes physical form—such as trampling, tearing, spitting and burning the flag—that he can be punished. Only his violence is punished," he said.

I couldn't argee more. I say that by protecting our flag we deny no one the right of free speech or of peaceful political protest. I'll defend the right of anyone to get up and say whatever is on his mind.

That is, in fact, the entire point: By defending the flag we ensure that this right never will be denied. All we ask is that the flag be accorded the same respect we offer to those who protest under its freedoms.

If living symbols of freedom and liberty mean nothing, if the ideals and not the evidence are all that matter, why don't we just open up the archives and tear up the Constitution and Declaration of Independence? They're just fading, old pieces of paper, aren't they?

The fact of the matter is that they are much more than that. They have told generations and generations of immigrants seeking a better life—immigrants like my parents and some of yours—that here in America we believe it is an individual's right to choose, to control his own destiny.

This flag means America—it means that we should be able to disagree. How can anyone believe otherwise? How could anyone not choose freedom over tyranny, justice over injustice, liberty over servitude? These great ideas are what this flag—our flag—stands for. It is hope, dreams, the very best man can offer the world and the future.

That is the promise that our flag holds out to the oppressed people of the many lands around the globe. It is the same promise that those people have seen in these stars and stripes for generations.

It is that promise of opportunity and fulfillment that has drawn millions to our shores ever since the first star-spangled banner was run up the flagpole.

Mr. Speaker, what disturbs me about all of this is that we as a nation must go to these lengths—to the extreme of amending the document upon which all of our national history and heritage rests—to reconfirm these very national beliefs. Yet because of the decisions of the Supreme Court, we must, in fact, do that. We are driven to do so through our reverence for the national banner and our lack of options.

Our freedom, our ability to live life generally as we please within the conventions of society, has not come cheaply. Our cemeteries are filled with the bodies of those who had great dreams of productive lives with loving families—dreams that were forfeited in order that you and I and our children would be able to lead better lives.

Our freedoms have been bought and paid for by that sacrifice, and I believe that we owe it to them to ensure that this country can be all that it was meant to be. In my mind that doesn't include contempt and desecration—it requires determined, constructive effort every day. All of this and more is woven into those few yards of cloth—and that is why I will vote to support this legislation.

COST-OF-LIVING PAY RAISE NEEDED BY FEDERAL EMPLOYEES IN SANTA BARBARA, CA

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. LAGOMARSINO. Mr. Speaker, I rise today to introduce legislation which will allow those Federal employees residing in Santa Barbara County, CA to continue serving the Federal Government while residing in a county where the cost of living has risen considerably.

By proposing to increase the salaries of Federal employees in the New York, San Francisco, and Los Angeles CSMA's by 8 percent, the administration has taken the first step in rectifying the gross disparities which exist between the salaries of public sector and private sector employees. Although I applaud the administration for putting forward this locality pay initiative and recognizing the need for action in this matter, I am concerned that the proposal excludes many areas, such as Santa Barbara County, which suffer equally from the problems associated with a high cost of living.

The legislation I am introducing today will provide the same pay raise for Federal employees residing in Santa Barbara County as for those Federal employees living in the counties contained in the Los Angeles CSMA, including Ventura County.

Any pay proposal passed should take into account the entire country, acknowledging that pockets of high cost exist throughout. High cost pockets, such as Santa Barbara County, should not be excluded from Federal pay reform merely because they are not located in proximity to a major metropolitan area.

The Federal employees in Santa Barbara County wish to continue serving their country. By granting a pay raise to the Federal employees of Santa Barbara County equal to the proposal for counties within the Los Angeles CSMA, we can provide those employees with the relief they need until a comprehensive Federal pay reform package is formulated and passed into law.

I urge my colleagues to join me in sponsoring this much needed legislation.

NORTH AMERICAN VAN LINES SHOULD BE REIMBURSED FOR DAMAGES

HON. JILL LONG

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Ms. LONG. Mr. Speaker, I rise today to introduce a bill which would authorize the Secretary of the Army to reimburse contractors of the Department of the Army for certain damages to property in Panama.

This legislation is very narrow in scope. It would only apply to contractors located on a military installation of the United States in Panama on December 22, 1989, pursuant to requirements of the contract. Furthermore, only the damages caused by actions of the U.S. Armed Forces during Operation Just Cause would be eligible for reimbursement.

The Secretary of the Army would be authorized to consider a reimbursement if it is presented within 2 years following the date of damages, and only if the damages have not in any way been caused by negligent or wrongful acts of the contractor or the contractor's agents.

Mr. Speaker, I was made aware of the need for this legislation by a company which is headquartered in my congressional district, North American Van Lines. North American owns a Panamanian subsidiary, NAVPAN, which is an authorized United States Government contractor. Approximately 95 percent of the business activity of NAVPAN relates to performing moving services for the Department of Defense, the U.S. Embassy in Panama, and the Panama Canal Commission. As a United States Government contractor, NAVPAN was required to locate its facilities within the perimeter of Albrook Air Force Base, in the Panama Canal Zone. The company has leased an old hangar from the Secretary of the Army since 1963.

This hangar was occupied by armed members of Manuel Noriega's "Dignity Battalion" on December 22, 1989. After unsuccessful efforts to neutralize the enemy with smaller weapons, U.S. forces decided to employ missiles, which destroyed both the hangar and the NAVPAN facilities located within.

North American promptly prepared reimbursement proceedings for the estimated $615,000 of damages which resulted from this action. Unfortunately, the Department of the Army was compelled to deny North American's request, stating that the legislative authority does not exist to reimburse contractors for damages sustained during combat activity.

Mr. Speaker, the legislation which I am introducing today is quite straightforward, and it ought to be noncontroversial. It will simply give the Secretary of the Army the authority to reimburse North American for its losses. In this way, the damages arising from Operation Just Cause may be fairly assessed, and compensations may be made accordingly.

It is a great injustice that the United States is sending millions of dollars to Panama to help rebuild the country after Operation Just Cause, while a United States-owned firm which has faithfully served our Government in Panama for 27 years cannot even get reimbursement for damages considered. Moreover, if NAVPAN is forced to rebuild its facilities without reimbursement funds, it will be less likely for the company to continue operations. This will be a great inconvenience for the U.S. Government agencies which have come to rely on NAVPAN for transportation needs.

Finally, Mr. Speaker, while $600,000 may not sound like much on Capitol Hill anymore, it does represent more than one-quarter of the losses suffered by North American Van Lines last year. Recovery of those losses is expected to determine whether the company will be in the red or the black this year. I am thus concerned about the future of a prominent business which has been in Fort Wayne for nearly 40 years, as well as the future of its 3,000 employees who live in my congressional district.

Mr. Speaker, when the United States invaded Panama last December, we as a nation assumed a great responsibility. The legislation which I have proposed will be a small step toward more completely fulfilling that responsibility.

BILINGUALISM IN GOVERNMENT DOES NOT WORK

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. SHUMWAY. Mr. Speaker, the world is watching as Canada, our good friend to the north, wrestles with a language conflict that threatens to split the fiber of the nation. As we witness the Canadian constitutional crisis, an inescapable conclusion is emerging: Bilingualism in government does not work.

After years of attempting to provide equal status for English and French, Canada is divided by bitterness, resentment, and even hatred. The message for the future of the United States is being played out in present-day Canada.

While language conflicts in our country are serious now, they are not acute. However, as Canadians have learned, linguistic problems often bubble beneath the surface for years before erupting. Discord between French speakers and English speakers dates back 200 years in Canada. The country became officially bilingual in 1969, according equal status to both French and English. However, 5 years later, Quebec adopted French as its official language in an effort to preserve its unique French culture and language. That decision, and subsequent laws to enforce it, created bitterness and resentment in English Canada.

The language issue in Canada differs from that in the United States in some ways. Our country is historically English speaking. For centuries, immigrants coming here have recognized the necessity to learn the common language of the land. Today, however, we are hearing demands for official bilingualism in the United States. These small fissures developing beneath the surface of our national unity may now one day erupt, much as they have in Canada 21 years after that country declared itself officially bilingual.

Canada is living testimony to the divisiveness of official bilingualism and its serious threat to national unity. English and French speakers in Canada are so polarized that, regardless of the outcome, the division will take years to heal. Baseball fans in Toronto have booed the French verses of the national anthem; English speakers have stomped on the Quebec flag in Ontario and Quebec has forbidden stores to post signs in English.

The United States cannot ignore language strife in Canada, nor can it dismiss as unimportant the frequent calls for official bilingualism in this country. Hispanic activists, claiming to speak for Hispanic Americans, are demanding Government services in Spanish. This spring, the Hispanic Issues Conference in

Racine, WI, endorsed a full, bilingual approach to public affairs: Spanish-speaking poll workers at elections; Spanish language news updates in local newspapers; important information printed in both English and Spanish, side by side so that one language would not be higher than another

Some activists maintain that Hispanics will not assimilate into the culture of the United States. Therefore, Government services must be provided in Spanish. Still others point out that there are now areas of the country where a knowledge of Spanish, and not English, is vital for daily living.

In light of all this, as well as the constitutional question in Canada, it is time to ask whether the ultimate goal of these Hispanic activists is to institute bilingual Government in the United States. Do they seek to establish linguistic encalves in this country, much like Quebec?

If the answer is yes, we as a nation need to examine exactly what bilingualism in government will mean. For example, what will be the public expense? In Canada, official bilingualism on the Federal level costs one-half billion dollars annually. The Canadian Government in Ottawa employs 1,500 language experts. The expense of providing Federal bilingualism is a source of resentment.

In the United States the costs would be exorbitant. Of the 208 languages in the world, 148 are represented in this country. If we offer Government services in Spanish, are we also going to offer them in French, German, Italian, Farsi, Tagalog, Greek, and all the others?

Should Canadian unity survive its current crisis, there is still a lesson for the United States concerning our own current language debate. With the Canadian turmoil in mind, perhaps we would do well to heed President Teddy Roosevelt who 75 years ago made an excellent argument for one common language of govenment:

> The one absolutely certain way of bringing this Nation to ruin, of preventing all possibility of its continuing to be a Nation at all, would be to permit it to become a Nation of squabbling nationalities.

To ensure that we remain a nation of unity, one in which strength is forged from rich cultural diversity through a common language, I urge my colleagues to join me in cosponsoring House Joint Resolution 81, the English language amendment to the Constitution, designating English as the official language of the United States.

IN MEMORY OF W.O. COOPER, PAST NATIONAL PRESIDENT OF THE DISABLED AMERICAN VETERANS

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. PICKLE. Mr. Speaker, this country recently lost one of its great civic leaders—a pillar of the civic community of the cities of Austin and Dallas and the State of Texas, and an outstanding spokesman for our disabled veterans—William O'Brien Cooper, known to those close to him as "Bill." He died recently in Paris, France, at the age of 81.

In recent years, Bill Cooper lived in my district in Austin, TX, and he was just as active and effective a leader as he was in earlier years with the Dallas and Texas Junior Chambers of Commerce, when he served as president of each group. He loved to take part in youth projects, like the establishment of a summer camp for predelinquent boys.

Bill's service to his Nation began, like many young men of his day, immediately after the attack on Pearl Harbor. Bill enlisted in the Tank Corps of the U.S. Army, serving with the 12th Armored Division from 1942 to 1946. His service earned him the Bronze Star, France's Medal of Liberation, and numerous World War II campaign medals.

When the war ended, Bill became interested in the needs and problems of war veterans and their dependants. He provided great assistance to World War II vets through his work with the Federal Government in veterans, housing, and reemployment programs, serving in the Southwestern States of Arkansas, Louisiana, Oklahoma, and Texas for 4 years before entering private business.

Through his business career, Bill continued to work on behalf of veterans, especially the disabled. He held positions of leadership at the local, State, and national levels in the Disabled American Veterans, becoming its national commander in 1960. Under his leadership, new emphasis was placed on broadening the range of services available to disabled veterans and their dependants. Through the efforts of Bill's administration, the DAV veterans service grew to be one of the most outstanding programs of its kind in the Nation.

The past national adjutant general of the Disabled American Veterans, Denvel D. Adams, credited Bill Cooper not only with the organization's success but it's very survival. "Bill was one of the generals that led the DAV out of the throws of bankruptcy" when the DAV was on the brink of financial ruin, Adams said. Upon learning of Bill's death, past national commander Billy Kirby described Bill as "a man who was everything the DAV stands for, a true gentleman. He never once sought to get anything out of the DAV. He only sought to give what he could give, how he could best serve his fellow man."

Following his tenure as national commander of the DAV, Bill was chosen by the U.S. Department of State to become the Director of the Agency for International Development to the Sudan, a position he held until 1967. For his efforts with the Agency, Bill was honored by the Sudanese on numerous occasions for his personal contributions to the economic development of the country.

Bill continued his lifelong work on behalf of veterans and earned worldwide recognition while serving as Secretary General of the World Veterans Federation from 1967 to 1976. The Federation includes associations of war veterans, former resistance fighters, deportees, prisoners of war, and war victims from 49 countries on 5 continents. Under Bill's leadership, the Federation worked to promote the interests of all people disabled by war.

For his important contributions as WVF Secretary General, Bill was inducted into the Order of Orange-Nassau, one of the highest honors the country of the Netherlands can bestow. During Bill's induction into the Order, the Dutch Secretary of State for Foreign Affairs described Bill as "a man who not only advocated but translated into his daily life the principles of freedom, peace, and human dignity."

Mr. Speaker, from a personal standpoint, I have lost a dear and loyal friend. Bill Cooper and I were not only good friends when it came to veterans matters, we were close personal friends.

For the last 15 years or so, Bill lived in Austin and was active in civic and political affairs. He never let up on his activities, carrying on with the vigor of a much younger man and remaining extraordinarily loyal to his friends and his causes. Somehow you knew that Bill Cooper would always be there to do something for you or for a good cause—not just waiting to be asked, but taking the initiative ahead of time.

Mr. Speaker, Bill Cooper's death is an inestimable loss to veterans in this country and around the world. I have visited his family: his wife Lucille of Austin, TX, his son, Don, and daughter-in-law, Eva, of Alexandria, VA, and two grandchildren, Paul and Stephanie. I feel a very personal loss with the passing of this remarkable, warm and kind man.

BUSH ADMINISTRATION REFUSES TO ENFORCE ANTI-APARTHEID SANCTIONS

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BRYANT. Mr. Speaker, yesterday, President Bush welcomed to the White House, Nelson Mandela, Deputy President of the African National Congress. Today, Mr. Mandela addressed a joint session of the U.S. Congress.

Yet it is ironic that—almost 4 years after the enactment over President Reagan's veto of the Comprehensive Anti-Apartheid Act of 1986—the Bush admninistration, like the Reagan administration before it, continues to refuse to enforce the sanctions required by law against the racist apartheid Government of South Africa.

A year ago, I became aware of the fact—in spite of explicit language in the Anti-Apartheid Act that "no iron or steel produced, or iron ore extracted, in South Africa may be imported into the United States"—that the Reagan and Bush administrations had consciously permitted 1.8 billion pounds of iron and steel products to enter the United States from South Africa in just the first 2 full years of the law.

Not just the failure, but the conscious refusal of the Reagan and Bush administrations to enforce the sanctions with regard to iron and steel contained in the Anti-Apartheid Act was exposed in an excellent series of articles by Kenneth F. Bunting of the Fort Worth Star-Telegram.

Some of the South African steel that the Bush administration says is not covered by Congress' absolute ban—you see the Presi-

dent and his agents say that Congress did not mean what it said in the law—is destined for a bridge over the Houston Ship Channel at Baytown, TX.

The third largest suspension bridge in America and the largest single project ever undertaken by the Texas Department of Highways and Public Transportation will, if the use of the 11 million pounds of South African steel approved for import by the Bush administration is permitted, be a monument to racism.

Many of us in the Congress cosponsored the Comprehensive Anti-Apartheid Act of 1986 and enacted it over President Reagan's veto to send a clear and unquestionable message to the Government of South Africa that the American people do not approve of, will not condone, and will no longer economically support the racist apartheid system which oppresses 26 million South African blacks like Nelson Mandela.

The Bush administration's failure to enforce the letter of the law muddles that message and minimizes its impact at a time when United States policy should be—as Nelson Mandela told the Congress and the American people today—to increase economic and political pressure on South Africa, rather than relax it. The nonracial democratic government demanded by the Anti-Apartheid Act—and nothing short of that—must continue to be our requirement for easing the sanctions.

Sadly, the Reagan and Bush administrations found every conceivable loophole in the Anti-Apartheid Act to avoid enforcing fully the sanctions against South Africa.

Where there were no loopholes—as in the case of the absolute ban on all iron, steel, and iron ore products from South Africa—the Reagan and Bush administrations invented loopholes so big you could bring in enough steel from South Africa to build more than 100 Astrodomes.

Although Kenneth F. Bunting of the Fort Worth Star-Telegram deserves credit for breaking this important story of the Bush administration's failure to enforce the South African steel sanctions, Dan Stets of the Philadelphia Inquirer has done perhaps the most definitive reporting on the Bush administration's refusal to put teeth in the sanctions designed to help end apartheid in South Africa.

As we can still hear the powerful words of Nelson Mandela, I call to the attention of my colleagues and the American people the impressive account reported by Dan Stets: Doing Business With South Africa: Loopholes Hobble U.S. Sanctions.

[From the Philadelphia Inquirer, May 13, 1990]

DOING BUSINESS WITH S. AFRICA: LOOPHOLES HOBBLE U.S. SANCTIONS

(By Dan Stets)

On an October day almost four years ago the senator from Indiana rose in the middle of a torrid Capitol Hill debate to address his colleagues.

"We are dealing with a tragic situation," said Republican Richard G. Lugar. "People are being killed. . . . We are against tyranny, and tyranny is in South Africa."

Riding the tide of that sentiment, the Senate voted, 78-21, to override President Ronald Reagan's veto of legislation imposing economic sanctions.

Congress meant the sanctions to demonstrate that there would be no more business as usual with the ruling white "tyranny" in South Africa.

Nearly four years later, they have demonstrated a lot less than that.

Congress thought it was stopping the flow of U.S. oil to South Africa.

Almost 19 million gallons of U.S. petroleum products have arrived in Durban since 1986.

Congress thought it was putting an end to the U.S. import of South Africa steel.

Eleven million pounds of South African steel is being used to build a bridge near Houston.

Congress thought it was stopping textile imports.

More than 182,000 tons of textile products have arrived from South Africa since 1986.

Congress thought it was banning the shipment of U.S. guns and ammunition to South Africa.

Since then U.S. manufacturers have shipped 53 tons of arms and ammunition to Cape Town—bound, they say, for Zimbabwe.

Congress thought it was banning the import of food from South Africa.

Americans have eaten 1,187 tons of lobster tails and enough tuna to fill 113 million cans, all shipped from South Africa since 1986.

The sanctions passed by Congress have scarcely put a dent in the volume of trade between the United States and South Africa.

In 1985, U.S. companies did $3.28 billion in business with South Africa. In 1989 they did $3.19 billion. The United States is South Africa's third-largest trading partner.

Why did the sanctions turn out to be a paper tiger?

First, the law was compromised from the start by the vague language in which it was cast. And second, neither the Reagan nor the Bush administration aggressively enforced it.

In almost four years, only three violations have been successfully prosectued.

"The Reagan-Bush administration has never been truly supportive of sanctions against South Africa," said Rep. John Bryant (D., Texas). "What they have done is attempt to avoid enforcing them by writing regulations which are far outside the permissible scope of the law."

Both advocates and adversaries of the sanctions law agree that its impact has been far less than many in Congress anticipated.

"The House bill that I introduced was taken by the Senate and watered down," said Rep. William H. Gray 3d. "Certain loopholes and general statements were made which left a lot of room for interpretation."

The Phiadelphia Democrat said he believed the loopholes had been exploited by successive Republican administrations not enamored of the law.

"Over the last four years, it is very clear that the Republican administrations . . . tried every possible way to get around the law," Gray said.

Perhaps, said John A Davies, South African consul in New York, some members of Congress expected too much of their law.

"If you can't topple the government of Cuba in [more than] 20 years, how do you expect your sanctions on South Africa to have any effect, beyond the side effect of putting people out of work?" Davies said.

TUNA

The sanctions law says:

"No article that is suitable for human consumption, that is a product of South Africa may be imported into . . . the United States."

A tuna has no home but the sea.

Just ask the U.S. Customs Service.

Because of that Customs Service ruling, enough tuna has been shipped to the United States from South Africa to fill 113 millions 6½-ounce cans.

Customs decided that the tuna is not really South African because it comes from international waters off South Africa.

The first land the tuna sees is South African, but that does not matter. The tuna is shipped from South Africa, but that does not make it a "product of South Africa" according to a Customs Service ruling.

A key to the ruling: The tuna is caught by Taiwanese fishermen.

This is how the ruling came about.

Star-Kist Foods realized that the anti-apartheid sanctions threatened a vital source of its tuna. The giant tuna company feared that the law could be read to prohibit the import of tuna from Cape Town.

"That act was a lot of concern to us." said Malcolm E. Stockwell, general manager of purchasing for Star-Kist, which is a division of H.J. Heinz Co. of Pittsburgh.

Star-Kist hired James P. Walsh, a Washington lawyer who used to be general counsel to the Senate Commerce Committee.

Walsh received a reply from Gerald J. McManus, acting assistant customs commissioner, which noted a shortcoming that would prove a major stumbling block in the enforcement of the anti-apartheid act. Nowhere did the law define "product of South Africa."

Without that congressional guidance, McManus was left to define it on his own, in accordance with other laws administered by his agency. He decided that under those laws the tuna would not be defined as a South African product.

Star-Kist was allowed to keep importing the tuna because it was caught by Taiwanese—not South African—fishermen.

"There is always an issue about what is a product in fisheries," Walsh said in a recent interview. "What happens frequently is that fish is transshipped around the world, but it basically remains the product of the catching nation. Frequently, Customs get confused about whose product it is."

Before passage of the law, Star-Kist used to buy fish from South African fishermen, Stockwell said.

"Since the law was passed, we have not touched their fish," he said.

Now, he said, Star-Kist only buys fish caught by Taiwanese vessels fishing far out at sea.

How does U.S. Customs know that Star-Kist does not import tuna caught in South African waters or by South African fishermen?

It takes the company's word for it.

That is the answer time and again when it comes to enforcement of the sanctions. The Customs Service does not have enough people to adequately enforce the law, according to a recent study by the General Accounting Office, Congress' investigative arm.

Star-Kist's tuna is frozen and placed in cold storage in Cape Town. The storage areas are bonded warehouses, so, technically speaking, the fish does not enter the customs territory of South Africa.

Then it is shipped aboard a Japanese vessel to Puerto Rico, where the slabs of fish are transformed into the hockey pucks

of tuna that fill familiar cans on grocery shelves across America.

Since passage of the sanctions law, Star-Kist has imported 45 million pounds of tuna from South Africa. That is enough tuna to fill about 44 million cans.

Once Star-Kist got the approval, Bumble Bee Seafoods of San Diego felt free to continue importing tuna through South Africa.

Bill Woods, who supervises procurement for the tuna company, said Bumble Bee also bought exclusively from Taiwanese fishermen who operate off African shores.

"The only port in the area that has cold-storage capacity to consolidate the loads is Cape Town," Woods said. "That's where the vessels discharge their catches. It is then picked up by refrigerated vessels for transportation to Puerto Rico."

Since 1986, those ships have collected 70 million pounds of Bumble Bee tuna from the South African port. That's enough tuna to fill about 69 million cans.

In fact, since Congress passed the sanctions bill, records kept by Piers, a shipping data base owned by the Journal of Commerce in New York, indicate that the amount of tuna arriving in the United States from South Africa has increased dramatically.

Altogether, 116,352 tons of seafood were imported from South Africa to the United States between 1987 and 1989.

But the tuna did not really come from South Africa, the Commerce Department says: It came from the sea.

LOBSTER TAILS

The lobster tails have South Africa written all over them.

No Taiwanese fishermen are involved. No one claims they come from international waters.

They are caught in South African waters by South Africans.

The ruling that exempted tuna from the sanctions law does not apply.

But 1,187 tons of South African lobster tail have been shipped to the United States since Congress passed the anti-apartheid law.

Illegally?

No. Another Customs Service ruling makes legal the import of South African lobster tails.

It is a question not of nationalities or international waters or where the lobsters land. It is, the Customs Service ruled, a question of flags.

Though the lobsters are caught by South Africans operating in South African waters, they are processed on board ships that fly foreign flags—primarily those of Panama and the Cayman Islands, a British colony.

That means that after a lifetime as a South African lobster, the crustacean changes citizenship when it breaks the water's surface.

To justify the ruling, Customs officials went back 20 years to a 1966 case involving fish caught off the coast of Africa by Greek fishermen.

Some of the fish was processed ashore. Some of it was processed aboard Greek ships. Was the fish Greek or African?

Customs ruled that the "country of origin" was the country whose flag flew on the processing vessel.

That same ruling was applied four years ago when Robert L. Follick, a New York lawyer who specializes in customs law, asked whether the sanctions law banned the import of South African lobster tails.

"The ruling merely restated a position that customs had been administratively following for some 20-odd years," Follick said. "There is nothing novel in this result."

Specialty Seafoods of New York is one of the companies that imports frozen fish and lobster tails from South Africa.

"It is foreign product that is landed in South Africa in bond, then imported," said Al Stella of Specialty Seafoods. "It has been coming in for many years."

In 1986, the White House got a "wake-up call" on the matter of apartheid.

"We have an opportunity to provide a moral wake-up call for our President, who doesn't understand the issues," said Rep. Gray, the Philadelphia Democrat.

That wake-up call was a resounding vote in both houses to override Ronald Reagan's veto of the sanctions law.

It was a wake-up call that foes of apartheid might have delivered to several presidents since 1960, when the massacre of 69 blacks in Sharpeville by South African police opened the world's eyes to the problem of apartheid.

By 1960, the rigid system under which six million whites now rule over 24 million blacks was 12 years old.

Under apartheid, the white minority controls most of the land and the economy. Blacks are denied a right in national elections that Americans take for granted—one man, one vote.

The United Nations reacted to Sharpeville with a resolution demanding an end to apartheid. The United States took no such action.

Two years after Sharpeville, the United States criticized the use of sanctions and challenged their effectiveness.

Ten months later, Adlai E. Stevenson, then ambassador to the United Nations, denounced a proposed arms embargo against South Africa.

"The application of sanctions in this situation is not likely to bring about the practical result we seek," Stevenson said.

When other nations fought for sanctions, the United States defended South Africa. It vetoed U.N. Security Council attempts at a mandatory trade embargo in the 1970s and at a mandatory oil embargo in the 1980s.

And when Congress, outraged over decades of White House inaction on the plight of black South Africans, passed the Comprehensive Anti-Apartheid Act 1986, it in was swiftly vetoed by Reagan.

Congress reacted with equal swiftness to override him.

"Whether sanctions work or not is not the issue at all," Sen. Ernest F. Hollings (D., S.C.) said as the Senate completed the override. "It's about your values as a people—and that's one you don't hesitate on."

Values aside, have the sanctions worked? In this watershed year that has seen the release of Nelson Mandela, John Davies of the South African consul's office says no.

"People say that things are changing in South Africa because of sanctions," Davies said. "That is completely untrue.

"The process of change, the process of political reform, began long before the sanctions were imposed," he said. "In the years subsequent to the act, apart from the past six months, there were practically no reforms."

And, while the new law was the toughest measure ever enacted by the United States against South Africa, it still was pretty limited.

"The thing to remember about the Comprehensive Anti-Apartheid Act is that it is by no means comprehensive," Davies said. "It excludes the majority of trade between South Africa and the U.S.

"Most of the [pre-1986] trade was minerals, most of which are not included—gold, diamonds, vanadium, platinum. Those things between them form the bulk of the trade anyway," he said.

Davies was wrong about gold. It is sold by a government agency, and the law bans all trade with South African agencies.

But he was right about the other minerals, particularly those that the United States decided it had to have for defense reasons.

As to the other trade, Davies said, "by and large, we have managed to find alternative markets."

The Japanese and West Germans moved quickly to take advantage of the business opportunity, emerging as South Africa's leading trade partners.

"Nobody would deny that sanctions, in the global sense, have had an impact on the economy simply because of the fact that they undermined confidence in South Africa," Davies said. "That has led to the inability of South Africa to raise capital abroad."

The sanctions law prohibits new investment by U.S. companies in South Africa, and another congressional action has had more far-reaching impact. In 1988, Congress eliminated U.S. tax credits for taxes paid in South Africa.

That action and continuing public pressure from within the United States had led more than 170 U.S. companies to withdraw from South Africa since 1985. the value of the rand, South Africa's currency, has fallen by more than half since 1986.

"The inability of the country to raise new investment abroad had the serious consequence of preventing the economy from expanding," Davies said. "Apart from that, the sanctions have very little impact."

TEXTILES

The law says:

"No . . . textiles . . . that [are] produced or manufactured in South Africa may be imported into the United States."

Men's wear. Infant wear. Women's wear.

Fabrics.

Cotton.

The textiles continue to come.

A total of 182,789 tons have arrived from South Africa since 1986, according to a review of Piers' shipping records.

House of Nations in New York City received 10 tons of boys' jeans from South Africa in January of last year when the freighter Hazelbank arrived from Durban.

A call to the company in New York shed little light on whether House of Nations knew there was a prohibition against importing textiles from South Africa or whether the goods originated in South Africa.

"I don't know who you are, and I am not giving out any information. It's that simple," said the man who answered the phone at House of Nations. He declined to give his name.

The owner of another New York City clothing firm—Darby Classics—said he took great pains to obey the sanctions law.

Peter Oswald said he traveled to Swaziland, a landlocked country bordered on three sides by South Africa, to be certain that his order for flannel shirts was being filled there.

The 68 tons of shirts would be shipped from Durban, but he wanted to be sure that they weren't manufactured in South Africa as well.

The recurring question—when is a product from South Africa not South African—is particularly troubling to businesses that want to deal with other countries in the region, according to a senior Treasury Department official.

The official, who agreed to be interviewed only on the condition that his name not be used, said there were cases when produce and textiles simply passed through South Africa from adjoining landlocked countries.

Why does the Customs Service label them as South African imports?

A mistake, the official said.

"What Customs has found in most of these cases is that the country of origin is incorrectly shown," he said.

But a Customs Service spokesman said it was very difficult for his agency to catch people determined to circumvent the sanctions law.

"You are talking about millions of shipments a year coming from all over the world," said Edward Kittredge. "I would suppose it is not hard to hide something. We have to depend on people dealing honestly."

How does the Customs Service enforce sanctions-law restrictions?

A General Accounting Office report concluded, ". . . its enforcement primarily consists of ensuring that documentation on all imports from South Africa contain . . . required [approval]."

In other words, the Customs Service simply reviews the paperwork submitted by companies whose business involves South Africa.

The Commerce Department says it is pursuing possible violators.

"There are several investigations going on about illegal export of petroleum products to South Africa," said Bill Arvin, a supervisor with the department's Office of Export Enforcement.

Have the Reagan and Bush administrations turned a blind eye toward the exports?

"It is not so much being allowed as it is just not being caught," Arvin said.

Actually, there have been three.

Two people have pleaded guilty and a third awaits trial for attempting to ship 38 anti-tank-missile guidance components to South Africa.

A Connecticut couple received three years' probation, and their two South African partners got six months in jail for plotting to smuggle 8,000 South African pistols into the United States.

The only American to receive a jail term was a New York man who imported four jet engines from South Africa. He was sentenced to three months in jail and a $100,000 fine. His company was fined $1 million. The engines were worth $5 million to $6 million.

CONSUMER PRODUCTS

Try the Pizza Hut or Kentucky Fried Chicken. Fill up with Mobil. Have a Coke, a bowl of Kellogg's Corn Flakes, a dab of Heinz catsup. Shoot a roll of Kodak film. Pick up some Eveready batteries and a bottle of Johnson & Johnson baby oil. Drive a Ford.

Sounds like America?

It's South Africa today.

The U.S. sanctions, targeted at such specific products as oil, steel and food, were not designed to cripple the day-to-day consumer economy of South Africa. And they haven't.

Scores of products that seem to define the American marketplace are available in South Africa.

Sanctions may have helped kill off foreign investment and driven down the value of South African currency, but they have done little to change the shopping habits of South Africans.

Businesses have found countless ways to satisfy the letter of the sanctions law without depriving South African consumers of products many hold dear. And when the market-place has felt the influence of anti-apartheid pressures, more often than not an American company has voluntarily changed its way of doing business.

Often the brand name has been changed or the price is higher.

Kodak, for example, no longer ships its film to South Africa. But the film remains widely available. Wholesalers simply buy the film from suppliers in the Middle East and Australia, passing it on to South Africans at higher prices.

Many shops carry Heinz catsup. But it is made by the H.J. Heinz Co. of Canada, a subsidiary of the Pittsburgh firm, and imported by South African merchants.

Other products retain their American brand names, but are manufactured in South Africa under licensing arrangements.

In some cases, American companies have divested by selling their assets to South African buyers, who continue to market the same products.

General Motors, for instance, sold its assets to South African investors, who formed Delta Motors. Delta manufactures the very same cars that GM once made, using components brought from GM.

IBM sold its local assets to a South African company. The local firm imports and sells IBM computers. The Ford Motor Co. sold its assets to the South African Motor Corp., which still manufactures the "Ford Sierra," a model Ford makes and sells in Europe.

Coca-Cola moved its syrup plant to neighboring Swaziland, selling its South African assets to locals. They formed the National Beverage Services Co, to license bottlers who keep South Africa supplied with Coke.

Tune in to *Dallas, thirtysomething, Designing Women, Wonder Years and Murphy Brown.*

No problem in South Africa.

State-run television runs current episodes of those and other popular American TV shows.

Johannesburg has a video rental shop on virtually every corner, and the counters are piled high with recent American films.

Movies—*Born on the Fourth of July and Driving Miss Daisy*—arrived in South Africa within months of their debuts in New York.

Almost four years after Congress imposed sanctions, South Africans have struggled with the political and psychological impact, but in the marketplace they have barely paid the price.

IRON AND STEEL

The law says:

". . . no iron or steel produced in South Africa may be imported into the United States."

The third-longest suspension bridge in America will arch into the sky just west of Houston. Only the Verrazano Narrows and Golden Gate bridges are longer than the 4,100-foot steel span that soon will carry traffic over the Houston Ship Channel.

On South African steel.

Eleven million pounds of it.

It slipped through a Reagan administration loophole—a ruling by the Customs Service that the sanctions law did not address unassembled bridge sections.

The ruling that created the loophole produced screams of outrage from Rep. Bryant, a member of the House Energy and Commerce Committee, which has oversight responsibility for the Customs Service.

It is a big loophole.

Steel and iron can be fashioned into thousands of products. The Customs Service ruled that the sanctions law only covered 15 types of them, Bryant said.

About 900,000 tons of South African iron and steel—worth more than $350 million—flowed into the United States in 1987 and 1988, Bryant said.

He wrote to Treasury Secretary Nicholas F. Brady to complain, pointing out that nearly half of the imports were pig iron, which clearly was banned under Treasury Department regulations.

"The Treasury Department's failure to enforce the letter of the law muddles the message and minimizes its impact at a time when U.S. policy should be to increase economic and political pressure on South Africa, rather than relax it." he wrote Brady.

The Bush administration defended its ruling at a congressional hearing in February.

Herman J. Cohen, assistant secretary of state for African affairs, said iron and steel were being allowed into the country because of the "legislative history" of the act.

Cohen said that history—including the debate on the floor of the Senate—suggested that Congress envisioned a ban mirroring that of the European Economic Community.

The EEC does not ban all iron and steel products.

If it was not banned in Europe, the Reagan administration ruled, Congress did not intend to ban it here.

Enter the prefabricated steel for the Houston channel bridge.

Bryant said the administration's position was outrageous.

"The law absolutely bans all iron and steel from South Africa after Dec. 31, 1986," he said. "No exceptions are permitted."

OIL AND PETROLEUM PRODUCTS

The law says:

"No crude oil or refined petroleum product . . . may be exported to South Africa."

South Africa has half the world's gold.

South Africa has 12 percent of the world's diamonds.

But it has none of the world's oil.

Turning off the spigot that poured oil into South Africa seemed like the quickest way to undermine its Westernized economy and get the attention of its white leaders.

The Arab oil producers thought so when they announced an embargo in 1973; the United Nations thought so when it approved an embargo in 1979, and the U.S. Congress through so when it voted sanctions into law.

South Africa still has plenty of oil.

Tankers heavy with crude oil sail into Durban almost daily; delivering as much as 3.9 billion gallons of oil a year.

The South African government refuses to discuss oil imports, but a study by an independent shipping research group based in the Netherlands has determined that most of it comes fom Arab countries that ignore the various embargoes.

A study of Piers' shipping records since the sanctions were imposed shows that U.S. companies have stopped open shipments of crude oil to South Africa.

But petroleum-based products are another matter.

U.S. companies have shipped almost 19 million gallons of petroleum-based products to South Africa since 1986.

And most of those shipments have the explicit blessing of the U.S. government.

The products largely are lubricant additives, vital to the machinery of industry and transportation.

Congressional sponsors say they intended a broad ban on such exports, but the Commerce Department has determined that the sanctions law applies to just 49 of the hundreds of variations of petroleum products.

It is difficult to put a precise value of the U.S. petroleum-based products that have gone to South Africa since 1986, but industry analysts estimate they have been worth more than $190 million and perhaps as much as $760 million.

Made in large part from crude oil, the additives give lubricating oil the ability to prevent automobile motors and industrial machinery from overheating.

"Without the additives, your car's engine would burn. The oil would just burn up," said John P. Bye, an industry analyst from Provident National Bank in Philadelphia. "It is an engineered product that is vital."

In other words, the additives keep the engines of South Africa running smoothly, the very engines that Congress had hoped to silence when it passed the sanctions law.

The red, white and blue flag of Liberia fluttered from the stern of the tanker that steamed into the South African port of Durban one September afternoon last year.

There was nothing Liberian about its cargo.

The tanker Stolt Excellence carried more than 300,000 gallons of oil additives manufactured by two American companies. It had taken on the $3 million cargo in Houston three weeks earlier.

In Durban, the additives would be blended with other petroleum products to make lubricating oil.

A petroleum-based product manufactured by a U.S. company and dispatched to South Africa from a U.S. port.

A violation of the sanctions law?

"We are fully in tune with the United States government on this business of South Africa," said Joseph I. Rue, company secretary at Lubrizol Corp. of Wickliffe, Ohio.

The second company that had cargo aboard the Stolt Excellence agreed.

"These are not petroleum products as is commonly accepted. These are additives," said Paul Murphy, a spokesman for Caltex Petroleum Corp., a joint venture of two major U.S. oil companies, Chevron Corp. and Texaco Inc.

"You are talking about petroleum being an ingredient in the product," he said in a telephone interview. "The phone I am using is a petroleum-based product in a sense."

That's the critical question: What is a petroleum product under the sanctions law?

Both company records and a top executive of Lubrizol indicated that the additives it shipped to South Africa were manufactured primarily from crude oil.

John Bye, the industry analyst, said the additive "is not a direct oil product, but it is made from chemicals which are made from oil."

Caltex and Lubrizol did not ship the material without making sure they had the permission of the U.S. government.

"According to the Commerce Department's own definition of petroleum products, and in light of advice we received from product engineers and inside and outside counsel, we concluded these were clearly not petroleum products," Murphy said.

Murphy is right. Under Commerce Department regulations, the shipments to South Africa are legal.

Are those Commerce Department regulations a reflection of what Congress had in mind when it passed the sanctions law?

"If it is a lubricating additive and it is based on petroleum, then the intent of the law is that it would be covered," said Robert Brauer, special counsel to Rep. Ronald V. Dellums, (D., Calif.), one of the chief sponsors of the Anti-Apartheid Act.

The 300,000 gallons of oil additives that the Stolt Excellence delivered to Durban for Lubrizol and Caltex in September reflected the extensive business the two U.S. companies do with South Africa.

Shipping records indicate that Lubrizol has been the prime U.S. exporter of petroleum products to South Africa since 1986, sending dozens of shipments of additives each year.

Since the sanctions went into effect, Lubrizol has shipped 12.5 million gallons of petroleum-derived products worth at least $125 million to South Africa.

Caltex, the second-largest U.S. exporter of petroleum products to South Africa, has shipped 3.3 million gallons worth at least $33 million to South Africa since 1986.

But another big company said the law changed its way of doing business.

"We stopped because of the passage of the law," said John C. Lord, a spokesman for Mobil Corp.

Lord said Mobil believed that the law clearly prohibited the export to South Africa of specialty oil products, including lubricating oils and additives.

Its exports to South Africa dwindled to almost nothing after passage of the law.

FOODS

The law says:

"No agricultural commodity, product, byproduct [or] . . . article that is suitable for human consumption, that is a product of South Africa may be imported into the . . . United States. . . ."

The food from South Africa keeps coming.

Coffee, tea, fruits, tobacco, alcoholic and nonalcoholic beverages.

More than 40,000 tons of food and tobacco have been imported from South Africa since 1986, according to shipping records.

Those imports were valued at $4.3 million in 1988 alone, according to statistics compiled by the Commerce Department.

The food imports—which have dropped considerably since 1986—are something few people want to talk about or own up to.

Those who will talk generally say that the food simply passed through South Africa on its way from another African country to the United States.

Still, there are some puzzling cases.

Take the canned pineapple concentrate shipped from South Africa to Y.S. International of Miami.

Pineapples are grown in several African countries. South Africa is the continent's leading producer and ranks eighth in the world.

Shipping manifests show that Y.S. International received 20 tons of pineapple concentrate—588 containers full—on Nov. 11, 1987. The pineapple came from Durban to Savannah, GA, aboard a Panamanian ship, the Gacka.

"I don't think I have ever handled a shipment from South Africa," said John Southby, owner of Y.S. International in a telephone interview.

Southby, who said he knew nothing about a pineapple shipment, described his firm as a forwarding company that serves various importers.

"Basically, we don't import anything," he said.

Then there's a company called Rohde & Liesenfeld of New York City.

The company received a shipment of 260 tons of tobacco that arrived in Baltimore aboard a freighter, the Virgo, on Oct. 17, 1987. The tobacco came from Durban, according to shipping records.

Although his company imports tobacco, import agent Steve Rofaf said he did not believe Rohde & Liesenfeld ever imported tobacco from South Africa. And if it did, he said, it certainly did not own the tobacco.

"We are just a broker and freight forwarder," Rofaf said. "The merchandise would not have been ours."

Then there is coffee.

General Foods received a shipment of 2.5 million pounds of coffee from South Africa.

General Foods sells coffee under the brand names Maxwell House, Yuban, Sanka and Brim.

The coffee did come from South Africa, according to General Foods spokesman Cliff Sessions. But, he said, it was grown in Uganda.

"It left Uganda on a ship named the Merchant Principal on Sept. 26 [1989]," Sessions said. "It went to Durban, South Africa. For some reasons, the coffee was transferred to the Columbine at Durban and left there Sept. 25."

Again, the Commerce Department accepted the paperwork as sufficient evidence that the shipment was not a "product of South Africa."

ARMS

The law says:

"No item contained on the United States Munition List . . . may be exported to South Africa . . . for use by the armed forces, police, or other security forces of South Africa or for other military use."

The guns are not really going to South Africa. Like the tuna and the lobster and the clothing and the coffee, they are just passing through, according to the U.S. companies that ship them there.

About 53 tons of U.S. small arms and ammunition were shipped to South Africa between 1987 and 1989, according to shipping records.

The guns were bound for Zimbabwe, South Africa's landlocked neighbor, the gun manufacturers said.

"Indeed, the shipment was made," said John R. Falk, of Olin Corp. in Stamford, Conn. "However, South Africa was strictly an intermediate stop. It was consigned to Zimbabwe. It was one of several shipments to Zimbabwe."

The shipping records show that Olin sent pistol and rifle ammunition from its Winchester division in Illinois to Cape Town last year.

To prove that his company had not violated the law, Falk produced a copy of Olin's export declaration, which showed that the company had shipped 9,000 pounds of ammunication to Harare, Zimbabwe, through an intermediary in Cape Town.

Shipping records indicate that Jonas Aircraft & Arms of New York City sent 1,588 pounds of ammunition, four cases of pistols and several crates of rifles to a consignee in Cape Town in 1989.

"We don't export anything to South Africa," said Jeff Steinemann, a salesman for the company. "We sell to Zimbabwe, and its gets passed through South Africa. We would never get an export license to South Africa. That is an impossibility."

All of the shipments to Zimbabwe, formerly known as Rhodesia, are approved by the State Department, he said.

"We are a company that has been in business over 50 years, and we intend to stay in business as long as we can," Steineman said. "There is no reason to do anything that is not legal or appropriate."

Steineman declined to produce export documents that indicated the weaponry had gone to Zimbabwe.

The documents he provided the Commerce Department were sufficient to satisfy the agency.

Once again, the government relied solely on paperwork submitted by the exporter as proof that the shipments went on to Zimbabwe and did not violate the sanctions law. Both companies—Olin and Jonas—were judged by the Commerce Department to be well within the law.

Nelson Mandela has been freed and the wheels of change are clearly turning in South Africa.

Do sanctions matter any more?

Yes, says Anglican Archbishop Desmond Tutu, who says they must continue until there are signs of "irreversible change."

Yes, says Mandela, who is calling for stiffer U.S. sanctions to speed the reforms.

Yes, says Rep. Gray, who recently met with South Africa President F.W. de Klerk in Pretoria.

"I think it is very clear that . . . Reagan and Bush have allowed an interpretation of the Anti-Apartheid Act which gets around the spirit if not the letter of the law and provides economic fuel for the political engine of apartheid," Gray said.

"That must stop," he said.

He predicted that if the South Africa government did not move to abolish apartheid quickly, Congress would put real teeth in the sanctions law.

Gray, who recently led a congressional delegation to South Africa, said de Klerk had told him that he favored majority rule and was willing to negotiate with black leaders to achieve it.

"If there is no substantive negotiations [toward majority rule]," Gray said. "I think you may see Congress in this session seek to close all of the loopholes in [the law.]"

NATIONAL URBAN LEAGUE MARKS 80 YEARS OF PROGRESS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. RANGEL. Mr. Speaker, on the occasion of its 80th anniversary, I would like to pay tribute to the National Urban League.

The National Urban League is a proud and strong coalition of Americans committed to racial equality. For eight decades, it has been committed to equal opportunity and the creation of an open, integrated, and pluralistic society. The league has met many challenges and has led the way with its multiracial and nonpartisan approach.

Born of hope and necessity in 1910, the Committee on Urban Conditions Among Negroes dared to promote interracial cooperation at a time when racism was rampant in America. Since then the National Urban League has been providing education and jobs to minorities across the country. Its history begins with the great migration northward of millions of African Americans leaving the South early in the century. It spans the race riots, World War I, and the building of jobs and families during the twenties. During the Great Depression the National Urban League helped African Americans fight for survival. During World War II, it created national programs to ease racial tension and increase production in the defense industries. After the war, efforts were focused on jobs, training, and housing.

A period of bridge-building followed. The National Urban League built links to businesses, foundations, governments—the power structure of America—to finance programs in education and employment for the disadvantaged. During the turmoil and tragedy of the sixties and seventies, the National Urban League was there as a healer and a helper.

Its presidents became national leaders with their message of hope. Their names are familiar to millions of Americans—George Edmund Haynes, Eugene Kinckle Jones, Lester B. Granger, Whitney M. Young, Jr., Vernon E. Jordan, Jr., and John E. Jacob. These leaders provided hope and inspiration, as well as jobs and education to millions of African Americans.

The National Urban League now has affiliates in 114 cities, representing 34 States and the District of Columbia. With the national headquarters staff and affiliates, the Urban League has more than 2,500 staff members, and over 30,000 volunteers. The league provides programs of direct service to a million people each year. Its name has always been synonymous with employment, training, and job placement. The league also undertakes advocacy, research, and special projects which have a positive impact on the lives of additional millions. Last year it worked in the educational interest of over 2.5 million African-American public school students. Every year it raises more than $50 million in support of skills training, career counseling, and job placement.

John E. Jacob, the league's current president and chief executive officer, is a leader who looks to the future as well as remembers the past. Mr. Jacob has developed an alliance with business and government to help negotiate power from the powerful and give it to the powerless. He has called for a new Urban Marshall Plan to investigate our cities and our people. He has called for black/white parity by the year 2000.

I say it is a dream worthy of a great leader and a great organization. This dream could come true if the White House and Congress were to implement the necessary steps. The ending of the Cold War gives the opportunity to bring this dream to reality. During the coming decade, over a third of the new entrants in the labor force will be composed of minorities. Mr. Jacob has stated, that "This offers an opportunity to integrate the disadvantaged into the economic mainstream. To ignore this opportunity could prove devastating to America, producing a country where people need jobs and jobs need people—without a match between the two."

The National Urban League also plays a leading role with its publication, "The State of Black America", the most authoritative annual document examining the conditions of African Americans. The book addresses the disparities in American society and gives insights into the solutions for achieving justice and equality. It is used by members of Congress and the other influential leaders. And while "The State of Black America" may not be sufficient to change the course of national events, each year it reaches out to the conscience of the country.

The National Urban League annual conference includes provocative addresses by American leaders and scholars. It is called the Nation's foremost forum on race relations.

In this new decade, the league is calling for an Urban Marshall Plan, an intense national effort to educate and employ all of our people, to achieve parity, and to eliminate racism from our national life.

For its vision, leadership and exemplary work, I salute the National Urban League and ask you to join me in support for this outstanding organization.

ADDRESSING CONGRESS IS AN HONOR WHICH HAS BEEN DIMINISHED

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. DELAY. Mr. Speaker, I am saddened to learn that the Members of this body are diminishing the value of the honor of addressing the U.S. Congress.

Today, Mr. Nelson Mandela addressed a joint meeting of Congress. He is not a head of State nor has he been victorious in his struggle. This is unprecedented in the history of our Congress. What's more is that while all of us in Congress want to see an end to apartheid, I doubt that any of our Members would support the kind of governmentally oppressive society that Mr. Mandela would seek to impose.

Keep in mind that Mr. Mandela still actively supports Marxism. Keep in mind that Mr. Mandela still refuses to renounce violence and terrorism. Keep in mind that Mr. Mandela still publicly praises and admires tyrants and terrorists like Fidel Castro, Mu'ammar Qadhafi, and Yasser Arafat.

In fact, Mr. Mandela recently stated that he supported the terrorists who in 1954 attempted to assassinate Members of Congress right here in the hallowed Chamber of the House of Representatives. He praised the terrorists at a rally in New York City and considered them to be comrades.

As recently as 1 month ago, Mr. Mandela declared that Cuba "stands head and shoulders above" the other nations of the world "in its love for human rights and liberty."

Fidel Castro is a tyrant and despot and Mr. Mandela's praise of him is greatly misplaced. It is precisely for this reason that five Cuban-American mayors in south Florida have de-

nounced Mr. Mandela for refusing to condemn the human rights violations in Cuba.

The United States of America and the U.S. Congress have been a beacon of leadership for the principles of liberty, democracy, and human rights for more than 200 years.

Mr. Speaker, make no mistake, Nelson Mandela is no friend to liberty, democracy, or human rights. He is the deputy president of the African National Congress. Their support for liberty and freedom is feigned. The ANC has announced their own constitutional guidelines which call for democracy, the freedom to form political parties, and freedoms of association, thought, worship, and the press.

However, all of these rights are subject to the direct approval of the ANC which could ban any and all state or social institutions which do not "take active steps to eradicate, speedily, the economic and social inequalities produced by racial discrimination." Further, the ANC would reserve the right to ban any or all groups which the ANC believes is ethnically or regionally exclusive.

The ANC does not respect nor defend human rights. Our own Defense Department has appropriately labeled the ANC a terrorist organization. Nelson Mandela even admitted last April that it is a practice of the ANC to torture and execute its own members when they try to exercise freedom of thought and not obey the directives of the ANC. In fact, throughout Nelson Mandela's 27 years of imprisonment, Amnesty International never recognized him as a political prisoner because he was not jailed for his political viewpoints, but for his personal involvement in violent activities.

Mr. Speaker, by allowing Nelson Mandela to address the U.S. Congress without renouncing violence, terrorism, or tyranny we have done an extreme injustice to all of those persons who have come to address Congress before him.

I deeply regret the decision to invite Nelson Mandela to speak at a joint session and cannot participate under these circumstances.

AROOSTOOK MENTAL HEALTH CENTER PREVENTION PROJECT IN TOP TEN

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Ms. SNOWE. Mr. Speaker, I would like to take this opportunity to congratulate the Aroostook Mental Health Center prevention project on being named as an "Exemplary Prevention Program" by the Office of Substance Abuse Prevention. The center's project was recently designated as one of the 10 best in the country and they will be honored this Friday here in Washington for their work.

Substance abuse is a growing problem which has not limited itself to the city streets but has infiltrated our small towns as well. Therefore, the need to educate our youth to the dangers of drug and alcohol abuse is just as important in Madawaska or Caribou as it is in New York City or Miami.

In Caribou and Madawaska the Aroostook Mental Health Center is running a community-based program to help our children, their families, and the community win the fight against drugs. The prevention project's main goal is to develop a community-based substance abuse prevention planning and service model which can be used throughout Aroostook County.

The project provides a spectrum of services such as prevention, education, outreach, intervention, and treatment. With the involvement of parents and community organizations the project provides prevention training and consultation, peer education programs for high school students, and training for parents to help their children develop coping skills. The project also cosponsors a number of preventon activities aimed directly at young people. These programs include Just Say No Clubs, Up With Teens, Buddy System, Aroostook Teen Leadership Camp, and Phone Friends.

Substance abuse is not just an individual problem, it is a community problem because it affects all of us. The Aroostook Mental Health Center's prevention project provides an excellent model for other communities to follow, as it seeks to engage the entire community in the war on drugs.

I hope my colleagues will join me in congratulating the center and the other nine winners for their work on the front lines. They are leaders in our efforts to reach the goal of a drug free America.

JOE WRIGHT—CIVIL RIGHTS LEADER

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. EDWARDS of California. Mr. Speaker, it is with deep regret that we learned of the death at age 37 of Joe Wright on June 15.

I first came to know Joe Wright in the course of years-long effort among Members of Congress and other civil rights activists to overthrow the 1972 convictions of the Wilmington 10, nine black men and one white woman, unjustly convicted for allegedly setting fire to a grocery store in Wilmington, NC. Joe was one of the Wilmington 10 defendants.

Civil rights leaders nationwide charged that the arrests and trials were racially motivated, designed to punish the 10 defendants because of their civil rights activities. Joe Wright and the other nine members of the Wilmington 10 became the rallying point for other civil rights activities throughout the South.

Many Members of Congress protested what were generally considered to be political prosecutions. Amicus briefs were filed by Members of Congress demanding new trials.

In 1978, after questions were raised about the fairness of the trial, Gov. James B. Hunt, Jr., released Joe on parole. He was already on study release at North Carolina State University.

In 1980 the U.S. Court of Appeals for the Fourth Circuit reversed the convictions, ruling unanimously that the defendants had been denied a fair trial. North Carolina officials chose not to seek new trials. Joe was recently successful in obtaining an expungement of his record, representing himself before the North Carolina courts.

Upon his release, Joe came to Washington, DC and served on my staff from 1979 to 1981. He did a fine job, made many friends on the Hill, and was active in civil rights activities.

One could well understand if Joe had emerged from his imprisonment and unjust conviction an embittered man. But such was not the case. He left prison determined to work to make our legal system a better one. During his time on my staff and since, his dedication never faltered. At the time of his death, Joe was looking forward to attending law school in the fall, and to putting to work for social change the skills and knowledge he expected to master there.

All of us who knew and loved Joe Wright were saddened by news of his passing. He was a major hero of the national civil rights movement. He was also a gentle and kind man who leaves a legacy of warmth and affection.

HONORING NEW MEXICO FOREST SERVICE EMPLOYEES

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. RICHARDSON. Mr. Speaker, earlier this month 13 outstanding Forest Service employees in New Mexico were honored by Agriculture Secretary Clayton Yeutter. These superior public servants deserve congressional recognition as well.

The Forest Service staff of the Ghost Ranch Living Museum in Abiquiu received the Superior Service Award for Education and Information. Those honored include Group Leader Albert Martinez, and group members Frances Quintana, Higinio Romeor, Wilfred Sandoval, Benjamin Romero, Fidel Martinez, Elfido Lopez, Robert Garcia, Pacomio Salazar, and Bennie Morales.

These outstanding workers are being recognized for exceptional performance in maintaining, improving, and staffing the Ghost Ranch Living Museum to provide a superior center for environmental education and natural resource information.

The men and women of the Ghost Ranch Living Museum do not have an easy task. They educate visitors using only what mother nature has provided—native, flora, fauna, and habitat. That means putting bobcats, eagles, and lobo wolves in truly natural settings—right down to the sense of space and right down to the type of soil that a specie expects to find. Metal bars don't fool a bear; traditional cages are strictly out.

Every year 100,000 visitors navigate potholed two-lane highways to see the exhibit just north of the village of Abiquiu. Once there, they learn the history of a particular native animal, the habits and traits of that specie, how an enclosure answers that animal's needs. Visitors get guided tours, interpretive talks, and individual attention.

Much of what the staff teaches is not written in books. To find out, for example, why a bobcat prefers one perch to another or that a wire fence is more pleasing to a migratory elk's sense of space than a concrete wall,

employees spend long hours talking to specialists and walking through the habitat to note its most minute details. Literally and figuratively these men and women go the extra mile.

Rodney Replogle, an audio visual production specialist in New Mexico, also received a Superior Service Award for Education and Information. He is being recognized for his contribution for improving the public awareness of the natural world through his audiovisual exhibits and displays.

Tom Pettigrew, a highway engineer, received a Superior Service Award for Mangement Effectiveness and Improvements. Mr. Pettigrew's long-term superior service truly relfects the Forest Service mission of caring for the land and serving people.

Louis Romero, a management analysis officer, also received a Superior Service Award for Management Effectiveness and Improvements. Mr. Romero is being recognized for his work in promoting humanistic policies leading to innovaton, productivity, and job satisfacton among Federal employees.

These 13 superior public servants work under the direction of Regional Forester Dave Jolly who also deserves credit for providing a positive work environment for his employees.

Mr. Speaker, I urge my colleagues to join me in congratulating and honoring these outstanding men and women who have excelled in public service.

SOUTH GATE, CA—ALL-AMERICAN CITY 1990

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. HAWKINS. Mr. Speaker, I would like to take a moment to congratulate the community of South Gate, CA, for its recent acceptance of the 1990 All-America City Award.

This award, which is presented by the National Civil League and sponsored by the Allstate Foundation, was bestowed on the city of South Gate on June 9, 1990. South Gate was chosen from among a pool of 113 applicants in recognition of civil excellence and an ability to improve civic infrastructure. An "All-America City" is described as one which has "worked together to identify and solve common problems."

It is refreshing to see communities that have overcome internal differences succeed in the implementation of programs that revitalize the economy and open opportunities to the residents. South Gate takes pride in three specific programs that have helped the city get back on track after several years of decline: The South Gate Youth Commission, the Smokestacks to Shortstacks—a program of economic recovery and development—and the program entitled Bridging the Cultures. These programs are a direct result of efforts to redevelop community prosperity following various plant closings in the 1970's and 1980's. The 1970's also brought a shift in the ethnic makeup of the area, creating various culture and social problems.

To combat this array of dilemmas, volunteers offered time and money. In 1988 South Gate joined five surrounding cities to address unemployment and job training, using funds from the Federal Job Training Partnership Act. With the help of local government and schools, efforts were made to reach out to the new Latino population. The South Gate Youth Commission also made great inroads with programs ranging from career days to antigang and antidrug rallies.

Strong leadership and community willingness are two key factors in achieving success at revitalization. These elements made it possible for the city to be named "All-America 1990" and it is with pride that I commend the community of South Gate for a remarkable effort.

SHOULD WE FUND THE NEA?

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. ALEXANDER. Mr. Speaker, Congress is engaged in an important debate over the future of Federal support for the arts.

Should we continue to fund artistic endeavors?

If we subsidize the arts, what kind of projects are worthy of Government support?

It is a serious question which deserves serious debate.

All of us are acutely aware of the controversy swirling around the National Endowment for the Arts, a controversy sparked by two exhibits—those of Robert Mapplethorpe and Andre Serrano. I am sure that each of my colleagues has received letters and phone calls from constituents who are concerned with the kind of projects paid for, in part, by their tax dollars.

Let me be clear about my position on this issue. While I have not seen the works involved in the NEA controversy, information that I have reviewed convinces me that I would find them extremely disgusting and vile.

For that reason, I voted last fall to discipline the NEA for funding activities which constituted an affront to the moral and religious sensibilities of the vast majority of the American people.

When the House of Representatives considered the 1990 appropriations bill containing funding for the NEA, I voted with the majority to cut Endowment funding. That vote sent a very clear message that the NEA violated its statutory authority in permitting the works in question to be funded.

In response to congressional concern about these exhibits, the final version of the bill prohibits the NEA from using any funds to support obscene art or art without "serious literary, artistic, political or scientific value."

I believe that these restrictions are justified, that taxpayer dollars not go to fund what most would see as pornographic. Artists would still be able to create works of their choosing, but when they depend on Government funds, they will have to abide by these regulations.

They would make the choice.

On the other hand, I disagree with some of my colleagues who have suggested that instead of addressing this controversy, we should simply cut out all funding for the NEA.

If they are successful in their efforts, it would destroy an agency which has funded many deserving activities and projects.

In my home State of Arkansas, NEA funding has supported many worthwhile projects—projects which have touched the lives of thousands of citizens.

Symphonies, traveling art exhibits, and local arts organizations have received NEA money. In my State, it would be difficult—if not impossible—to continue these programs if NEA ceased to exist.

If we permitted the destruction of this program because errors in judgment allowed the funding of two objectionable exhibits, we would be epitomizing the saying about throwing the baby out with the bath water.

I would urge that we not eradicate support for the arts simply because this is a difficult problem to resolve.

I believe that Federal support for the arts should continue—under appropriate guidelines, guidelines intended to prevent the type of problems NEA has recently encountered.

The arts are an important part of an overall education. They should not be neglected.

WALKING THAT LAST MILE WITH NELSON ROLIHLAHLA MANDELA

HON. RON de LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. DE LUGO. Mr. Speaker, I wish today to pay tribute to a man who, through his own dogged persistence, endurance, and sheer will to survive, has become not only a symbol of the struggle for social and economic justice in his own land of South Africa but—just as importantly—has also become a giant symbol upon which all of humanity can focus and gain needed inspiration in the too often lonely and difficult struggle for human rights for all men.

This man—Nelson Rolihlahla Mandela—through his own life's struggles, setbacks, and triumphs has come to embody the very essence of his own words, namely, that "To deny any person their human rights is to challenge their very humanity."

The names in the South African struggle may not be familiar to us all: Sharpeville, Soweto, Crossroads, Biko. But we find common ground and empathy when we remember our own Selma, Birmingham, Little Rock, and King.

However, lest we settle for the cheaper satisfactions of mere sentimentality, Nelson Mandela is quick to continually remind us that, amidst the cheers, handshakes, and falling tickertape that have followed in his wake—as he makes his way across the United States—"We have yet to arrive at a point that we can say South Africa is set on an irreversible course to a democratic, united, and nonracial country."

Until this happens, he reminds us, we must not lift the economic sanctions we now impose on that land. "We would be fools," he adds, "to think that the road ahead is without obstacles."

So, Mr. Speaker, to us Americans who have given him and his people such a joyous, tumultuous welcome here he says, "Together with you, we have made Government listen. We have broken the walls of South African jails."

"Victory is in sight," he tells us. "We ask you to walk this last mile with us. Nothing will stop our date with destiny."

Mr. Speaker, the people of the U.S. Virgin Islands join me in paying well-deserving tribute to this man who has given us a means of alliance with his people's struggle for freedom that is totally consistent with our national history, our national goals, and our national ideals.

COUNT MILITARY PERSONNEL STATIONED OVERSEAS AT THEIR HOME OF RECORD

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GOODLING. Mr. Speaker, today I rise in strong support of H.R. 4903 which would direct the Census Bureau to count all overseas military personnel at their home of record for purposes of reapportionment. For years I have advocated census practices which will ensure the right of all citizens to be accurately counted in the census.

Our military personnel stationed overseas were finally included in the census process last year. However, they will be counted at their last place of stateside residence, not where they call home.

It only makes sense that our overseas military should be counted in the place they call home and the place they visit on holidays. Our overseas military personnel usually do not consider the location where they were last stationed home.

For purposes of congressional representation, areas which do not have military bases should not have their one person-one vote right diluted by skewed methods of census counting.

I was very pleased to join my colleagues, and especially my colleague from Pennsylvania [Mr. RIDGE], as a cosponsor of this bill to ensure our overseas military personnel are counted where they belong, at their home of record. Service personnel declare their home of record at the time of enlistment and it follows them throughout their tour of service.

Remember, on the floor of the House 2 years ago, this body rejected the current approach of counting military personnel at their last place of stateside residence.

I would like to thank the chairman, the distinguished gentleman from Michigan [BILL FORD], for bringing this legislation to the floor. I would also like to thank the Subcommittee Chairmen Mr. SAWYER and Mr. RIDGE for their leadership on this very important issue.

I urge the rest of my colleagues to join in support of this legislation to count overseas military personnel at their home of record, which is only fair and just.

MANDELA SPEAKS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. TOWNS. Mr. Speaker, I rise today to applaud the incredible achievements of Nelson Mandela. Today, in a joint session of the Congress, Nelson Mandela becomes only the third private citizen in the history of this country to address this body.

It has been said that great men are not born, but are shaped by their circumstances. To paraphrase, the great American poet, Maya Angelou, diamonds are created by pressure. Nelson Mandela is South Africa's most precious diamond.

In South Africa, the apartheid regime exerts incredible pressures on the lives of black people. However, leaders such as Stephen Biko and Nelson Mandela have emerged despite this pressure. Instead of bending to the regime or breaking under its pressure, the great leaders of South Africa have become stronger and strengthened the black community.

Thirty years ago Nelson Mandela was tried and convicted for treason. By an ironic and peculiar twist, the apartheid regime concocted the ludicrous argument that it was treason to encourage the black citizens of South Africa to band together and protest to seek redress from their Government. In South Africa, the rule of law is sometimes replaced with a rule of thumb.

The Government opened fire on the group. Scores of people were killed in the Sharpesville massacre. Nelson Mandela and over 20 other defendants stood trial and were convicted and given a life sentence. This may seem like a strange turn. However in South Africa, such twists and turns are to be expected.

Following his conviction Nelson Mandela went to prison at Robben's Island. He spent 27 years at Robben's Island. However, while he was there he did not give up the desire to be free or the belief that he be free one day. His wife, Winnie Mandela, a tireless and courageous woman, spoke on his behalf to the outside world. I salute her tireless devotion to the struggle to obtain freedom for her country and her husband. It was through her outspoken and diligent efforts that the world was not allowed to forget this noble man. Together, they fought to gain the release of all those who had been unjustly imprisoned. At 70, he was released. After 27 years, this modern Jonah came out of the belly of the whale unscarred and still able to speak eloquently and without malice about the evil that had held him there for so long.

Today, Nelson Mandela spoke to a joint session of the U.S. Congress. His words resounded with a message which was soft-spoken yet unequivocal: Apartheid must end.

LONG-TERM WATER AND POWER NEEDS OF INSULAR AREAS, H.R. 2567

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today in support of H.R. 2567 legislation which will, in part, authorize funding for the Bureau of Reclamation to study the long-term water, sewer, and power needs of the insular areas of the United States. This legislation passed the House of Representatives on June 14, 1990.

Mr. Speaker, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands comprise this country's overseas territories. None of them has water, sewer, or power systems which would be considered adequate by residents of the 50 States. The recent devastation of the Virgin Islands by Hurricane Hugo, and a similar devastation of the Manu'a group of islands in Samoa in 1987, and again in February of this year have brought to the forefront the inadequacy of the water and power systems in our insular areas. The residents of these areas frequently receive contaminated or inadequate supplies of water and power. When hurricanes come, and they come frequently, there is no drinkable water, no power, and no sewage treatment.

The results of the study this bill authorizes will assist the Federal and territorial governments in determining the magnitude of the problem and the steps that should be taken to correct it.

Mr. Speaker, I had intended that this statement be inserted in the RECORD during the debate of the bill on the floor but it was inadvertently not submitted.

Also, Mr. Chairman, the amendment to the bill would not have been possible without the support of Mr. GEORGE MILLER, chairman of the Water and Power Subcommittee and Mr. RON DE LUGO, chairman of the Territorial and International Affairs Subcommittee of the House Committee on Interior and Insular Affairs. Congressman BOB LAGOMARSINO and BEN BLAZ also contributed significantly to the final product.

THE WAR AGAINST ENERGY WASTE

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. MARKEY. Mr. Speaker, I am pleased to join today with my friend and colleague, Mr. MACHTLEY, in introducing legislation that will bring more effective energy conservation to the Department of Defense.

Among all Government agencies and branches, the Department of Defense has been the most successful in achieving energy savings. In fiscal year 1989, the Department accomplished a 5.4-percent reduction in total

energy costs, over halfway to the Federal Energy Management Improvement Act's goal of a 10-percent reduction by 1995. Yet there are signifcant savings still available, especially in light of the fact that the Defense Department's energy budget exceeds $2.7 billion a year—representing over 80 percent of the total Federal energy budget.

At present, there is little reason for a military base commander to begin a program of investments in energy conservation or renewable energy technologies. Under current regulations, if there are savings in energy costs, they may be used only during the fiscal year for which they were appropriated. An accurate evaluation of savings, however, is not usually available until the end of the fiscal year, leaving no time for use of the savings.

In pursuing conservation, base commanders must divert the precious resources of money and staff time to new plans and strategies. These strategies will, in the end, save the Government a considerable amount of money. Yet those stationed at a base currently see no benefits from their efforts. These individuals are on the frontline of the war against waste, and they should be compensated for their role.

Our legislation rewards a base commander and his base by passing along a share of the accomplished savings during the succeeding fiscal year for morale, recreation, or minor military construction. This share would amount to one-third of the savings, with one-third going to the Treasury for deficit reduction, and the remaining one-third targeted for further energy investments at the base.

This bill enables Congress to in one stroke help the environment, reduce the deficit, and boost morale among our Nation's military forces taking the lead in energy conservation.

Mr. Speaker, it is my hope that this proposed legislation will be well received by my colleagues, and I urge them to join Mr. MACHTLEY and me in support of this legislation.

HONORING RONNIE AND MICHAEL BECHER

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. ENGEL. Mr. Speaker, this past week in my home State of New York, two outstanding members of the community, Ronnie and Michael Becher, were honored as shomrim, guardians of Jewish unity. I would like to join the group that bestowed this honor, CLAL Yisrael—the National Jewish Center for Learning and Leadership—in recognizing the accomplishments of the Bechers.

Michael Becher's experiences as a Holocaust survivor have driven him to dedicate his efforts to political action. He is a member of Salanter/Akiva/Riverdale Academy Board of Trustees, and he serves on the national executive committee of the American Israel Political Action Committee and on its New York board. He and his wife are both members of AIPAC's National Senate Club.

Among her many activities, Ronnie volunteers her time as executive vice president of the Hebrew Institute of Riverdale and is coordinator of the Woman's Tefilah of Riverdale.

The honor of being named shomrim reflects a devotion and commitment to Jewish causes and organizations. Through their work with Jewish groups and many other community services, Michael and Ronnie Becher have shown true leadership and civic responsibility. I congratulate the Bechers and wish them many more years of good health and happiness.

TRIBUTE TO GOLDEN AGE SENIOR CITIZENS OF LOCAL UNION 1331

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to the Golden Age Senior Citizens of Local Union 1331, an organization that for the past 30 years has served the interests of retirees of L.T.V. Steel, formerly Republic Steel, in my 17th Congressional District of Ohio.

Founded in 1960 by Joseph Hallas, with the assistance of Harry Prislipsky, George Yaroscak, and George Vukovich, this seniors' organization has been a focal point for communal activity among retired L.T.V. steelworkers throughout the Mahoning Valley. Currently, the union proudly boasts 5,000 retirees in its membership, the largest such organization in the State of Ohio.

The present officers of the Golden Age Senior Citizens Local Union 1331 are: Fred Fortunato, president; Joseph Hallas, vice president; Joseph Carlini, secretary; J.R. Moore, financial secretary; Joe Ryzner, treasurer; Lena Costello, trustee; Dan Walters, trustee; Steve Garasic, guide; and Mary Walters, publicity.

Again, I would like to recognize the Golden Age Senior Citizens of Local Union 1331 on their 30-year anniversary. I am proud and honored to represent such a fine organization.

HONORING THE WAHCONAH REGIONAL HIGH SCHOOL STATE QUIZ TEAM CHAMPIONS

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. CONTE. Mr. Speaker, I rise today to honor the Wahconah Regional High School quiz team, which recently won the High Q finals and became the Massachusetts State champions. Wahconah Regional High School is located in Dalton, a charming site in the Berkshire Hills, and a most praiseworthy educational facility.

High Q is a statewide scholastic competition involving over 100 Massachusetts public and private secondary schools. To attain a spot in the final championship, the team reigned victorious in both the quarter- and semi-final matches. It was only through the drive and dedication of this team that such a goal was attainable. The team managed to defeat Stoneham High School by a score of 480 to 440.

I am delighted when I think of the constructive way in which these students are growing and developing during these formative years. They have chosen to adopt positive leadership roles and that in itself deserves recognition. Winning the State championship in High Q is the icing on the cake.

My sincere personal praises go to the captain of the team, Michael Donahue, and the other members of the team, John Mason, Stephen Hamm, and Kara Louison. They each contributed significantly to the success of their team.

Mr. Speaker, I am very happy for and proud of the quiz team. Their exemplary performance deserves the highest commendation. I extend my most heartfelt congratulations to the Wahconah Regional High School quiz team and wish them continued success in their academic careers.

TRIBUTE TO THE GENERAL FEDERATION OF WOMEN'S CLUBS

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize the 100th anniversary of the General Federation of Women's Clubs.

The General Federation of Women's Clubs truly has "a past to remember, a future to mold." Since its founding, the federation has brought together local women's clubs from around the country and throughout the world. It is admirable that all of their member clubs evolve around community improvement through volunteer service.

The GFWC's programs promote conservation, education, the arts, and health care planning here in the United States. Internationally, they promote educational and cultural exchanges.

The GFWC has made substantial achievements in our communities; 75 percent of our Nation's public libraries were established by this fine organization. They helped to establish kindergartens as part of the public schools for adults as well as reforms in the juvenile court system.

My praise in the federation's achievements could go on and on. The GFWC has proven time and again how much they have contributed to our society.

It is with great pleasure that I salute the 100th anniversary of the General Federation of Women's Clubs. I wish them continued success.

THE DISTINGUISHED CAREER OF CHIEF RONALD NELSON

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. DELLUMS. Mr. Speaker, I rise today to recognize Chief Ronald Nelson of the city of Berkeley's Police Department on the occasion of his retirement, and to draw attention of my colleagues to his distinguished record.

Chief Nelson has been the chief of police for Berkeley since 1982 managing a 300-person full-service department. It is important to note that many of the citizens of the city of Berkeley have a direct, proprietary interest in the functions and services of its police department, and the Berkeley police have undoubtedly had more sensitivity training sessions on the city's multiethnic and multicultural population than any other city of its size.

Before coming to Berkeley, Chief Nelson was city manager of the city of Compton, after having served as the assistant city manager of that city. He has also served as chief of police for the China Lake Police Division of the U.S. Naval Weapons Center, China Lake, CA, and as police commander with the Compton Police Department. He received his early training and experience with the Los Angeles Police Department, which he joined in 1956 as a police officer, advancing to sergeant, lieutenant I and then lieutenant II.

Chief Ronald D. Nelson received his bachelor of arts degree from Drake University, his master of arts degree from Pepperdine, and did additional academic work in sociology and public administration at California State University at Los Angeles, Loyola Marymount, Fort McClennan, California Institute of Technology, and California Polytechnic University. He is also credentialed by the State of California to teach and has taught at Cerro Coso Community College.

It is a pleasure to join with my constituents in recognizing Chief Nelson's work over the years and to wish him every success in his future endeavors.

NELSON MANDELA'S VISIT TO THE UNITED STATES

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BLILEY. Mr. Speaker, today we marked a new era in the ongoing struggle against South Africa's apartheid government. We have been joined by a black leader of phenomenal spirit, a vocal activist in South Africa's most prominent black organizations, Nelson Mandela. Released from prison only a few short months ago, Mr. Mandela has continued his fight for the termination of South Africa's oppressive apartheid.

For 27 years, Mr. Mandela's voice was heard from behind the bars of a prison cell. Though sometimes that voice was muffled, Mr. Mandela managed to continue his campaign against the white minority government. And in the end, his patience and determination has begun to prevail.

Mr. Mandela is making this monumental trip in the name of furthering his goal. He has come to encourage this country to continue to pursue economic sanctions against South Africa. It is those same sanctions demonstrated globally, that have kept the pressure on the Government of South Africa and brought the dynamic changes to which President F.W. de Klerk referred last month in Brussels. But those changes have not been comprehensive. The majority of the South African people have little if no political power at all. We must continue to pressure the Government in order to achieve that same goal of political freedom on which our country was founded. This year we have witnessed phenomenal changes in the political attitude of the global community. Is it not right to continue to encourage South Africa to make the same changes? To encourage the white minority government to allow the majority to have a voice in their government? I think so. Without continuing the pressure that we have maintained on South Africa's Government, the apartheid system will remain in place.

I congratulate Mr. Mandela on his persistence and his ability to lead his people to meet the challenges which will topple apartheid. I encourage him to continue his crusade through peaceful means, those same means promoted by Martin Luther King, Jr. The renunciation of a violent, armed struggle, and the persistent use of peaceful methods will ensure a continued commitment to his cause by the international community. I enthusiastically welcome him to this country and I wish him luck in his endeavors.

AN EXAMPLE OF AMERICAN GENEROSITY

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GALLEGLY. Mr. Speaker, I rise today to publicly express my deepest appreciation for the assistance given to a family in my district after one member of that family was seriously injured in the recent explosion aboard the U.S.S. *Midway*.

Robert "Shane" Kilgore, a fireman aboard the *Midway*, was one of 16 crewmen injured in last Wednesday's explosion. He is now being treated at the Brooke Army Medical Center at Fort Sam Houston, TX, and is receiving the best care possible.

I would like to thank the Navy for arranging accommodations for Fireman Kilgore's parents and other family members. I would also like to thank two public-spirited companies for their generosity. Continental Airlines agreed to fly the family from Los Angeles to San Antonio at no charge, and Prime Time Shuttle, an airport transportation company, provided free transportation for the family to Los Angeles International Airport. Those companies' quick and compassionate response was greatly appreciated by Fireman Kilgore's family and by myself.

Mr. Speaker, it is a great American tradition to come to others' aid in times of crisis. I am pleased to share with my colleagues this outstanding example of the spirit of compassion and caring that has helped make our country what it is today. I'm sure they join with me in thanking the Navy, Continental Airlines, and Prime Time Shuttle for their efforts, and in extending our prayers for Shane's recovery.

TRIBUTE TO JOHN PAUL McCLELLAN

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. BROWN of California. Mr. Speaker, I would like to ask my colleagues to join me today in saluting Mr. John Paul McClellan, who is celebrating his 50th year as a National Association of Letter Carriers [NALC]-AFL-CIO member. He was honored on Sunday, June 24, 1990, at a dinner in my congressional district.

As a card-carrying union member nearing my 40th anniversary with the I.B.E.W., I am in a position to appreciate the commitment John Paul has shown to the cause of working men and women everywhere. John Paul has served as president of NALC branch in my congressional district from 1968 through the present date. He formerly served as a District Ten officer in the California State Association of Letter Carriers.

Please join me in recognizing John Paul McClellan, who has led the fight for justice and dignity for America's letter carriers for half a century. We look forward to many more years of his outstanding contributions.

SANTEE COOPER HELPS PRESERVE THE LOGGER

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. TALLON. Mr. Speaker, I am pleased to note that Georgetown County in my home State of South Carolina has enacted a progressive program to protect loggerhead sea turtles. The county is the first in my State to pass an ordinance to minimize beach lighting during the turtle's nesting season. And, Mr. Speaker, I am proud that our State-owned utility, Santee Cooper, has volunteered to implement a public awareness campaign to encourage compliance with the new law.

The loggerhead turtle, which is our State reptile, is a threatened species in South Carolina. This makes the Georgetown County and Santee Cooper interest in protecting the turtles even more significant.

Georgetown County's ordinance will regulate artificial lighting along the oceanfront to safeguard female turtles and hatchlings during the nesting season, which lasts from May through October. Street lights, security lights or even house lights can disorient the turtles. They often confuse artificial light with the natural illumination of the ocean. And, rather than heading for the sea, they head farther inland

where they may be trapped in vegetation, hit by cars or eaten by predators.

Santee Cooper recognized the Georgetown County program as an important environmental effort, and I am pleased to say they did not hesitate to volunteer help. Santee Cooper organized and launched a public awareness campaign to notify the citizens and many visitors to the beaches of Georgetown County that care should be taken to protect the turtles. Santee Cooper is distributing free bumper stickers and light switch stickers to residents and visitors to encourage them to turn off beachfront lights after 10 p.m. during the nesting season. The utility is also assisting the county with shielding and screening artificial lighting along the oceanfront.

Santee Cooper's involvement in the turtle program is just the latest effort in a tradition of environmental concern. Throughout its 56-year history in our State, Santee Cooper has worked to preserve and protect the environment. Santee Cooper is known for its timber program, flood control, and protection of striped bass in its lakes. Santee Cooper has also been an innovator in areas of aquatic weed control, agricultural research, and the fight against acid rain.

It is encouraging to see the cooperation between Georgetown County and Santee Cooper on this important project. I am proud of the initiative taken to preserve this threatened species, and I commend the Georgetown County Council and the board and staff of Santee Cooper for their efforts to preserve our natural heritage.

MASS MAILINGS

HON. HARLEY O. STAGGERS, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. STAGGERS. Mr. Speaker, today I have introduced legislation that would call for a public accounting, on a semiannual basis, of the extent to which mass mailings are made using the franking privilege. At the present time there is no coordinated reporting system. Although it is possible to obtain the information, it is not in a form readily accessible to the American public and taxpayers.

This legislation does not create a new limit on the number of mailings Members of Congress may send out each year. I, like a number of Members of Congress who have sent mailings sparingly during their tenure in office, am frustrated by Members who bemoan the number and costs associated with mass mailings, while at the same time are sending mass mailings.

Although there appears to be legislation that calls for new limits on the number of mailings, there is not, to my knowledge, a straight forward bill that calls for disclosure in the form of a semiannual report that records the number of mailings and the quantity of each of those mailings. It is my belief that the public wants to know how much mass mail is being sent and this legislation will answer that question.

Mr. Speaker, I urge my colleagues to join with me and support the right of the public to know about mass mailings.

TAMPA'S DESIGNATION AS AN ALL-AMERICAN CITY

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 26, 1990

Mr. GIBBONS. Mr. Speaker, I rise today to honor my hometown, Tampa, FL, which recently was named one of the Nation's 10 All-American cities by the National Civic League. With this award, the league recognizes cities that solve local problems through active citizen participation and cooperation.

The All-American City Award is the oldest and most respected community recognition program in the United States. Since its inception in 1949, more than 4,500 American communities have applied for the honor, but only 400 have been selected. Recipients are chosen for their success in bringing business, government, and citizens together at the local level to solve community problems such as economic decline, hunger, natural disasters, affordable housing, health care, homelessness, drugs, and aging.

We are proud of our fair city by the bay. Tampa is touted as the "next great American city" and has been selected to host the 1991 Super Bowl for its 25th anniversary celebration. The All-American City Award recognizes the many conscientious citizens and civic leaders who work together to make Tampa a great place to live.

Tampa's award was based on three innovative projects initiated under the leadership of our dynamic mayor, Sandy Freedman. First is "Paint Your Heart Out, Tampa." Through this program, thousands of volunteers, using donated paints and brushes, paint and clean up homes of low-income and elderly residents. This year, about 3,000 people painted more than 100 homes. Next, Tampa's "Peer-to-Peer" program helps stop code violations such as junk cars, overgrown yards, and deteriorating houses. City officials encourage community groups to recognize violations and send postcards to alert the owners about problems. Last the "Quick Uniform Attack on Drugs," or the QUAD Squad, is a special police force that focuses on drug dealers in inner-city neighborhoods. Officers are assigned to specific city quadrants, and carry beepers which citizens call to report suspected drug activities. Because of this program, response time and relationships between police and citizens have improved.

Mayor Freedman and her staff, especially Bob Harrell, Roger Wehling, Joe Huskey, Nick D'Andrea, Jr., Larry Canalejo, and Bill Doherty, deserve credit for these fine accomplishments. The Tampa Police Department, Lt. John Cuesta III and Sgt. John Garcia also deserve praise. Citizen volunteers like Margaret Vizzi, Doug Lobel, Tom Willett, Linda Hope, and Alice Kelly, as well as other political, business, and civic leaders, have earned high acclaim for their creativity and commitment. Their successful campaigns greatly aided Tampa's efforts to combat those problems familiar to cities throughout America.

My sincere congratulations to Tampa, a city for the 21st century.